

# PROSECUTING INTERNATIONAL CRIMES IN NIGERIA: SHARED RESPONSIBILITIES BETWEEN THE ICC AND NIGERIAN COURTS

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## ABSTRACT

The paper appraised the international crimes and their prosecution in Nigeria and assessed jurisdictional issues of Nigerian courts and state responsibilities. Prosecution of international crimes is a matter of international public policy. International Criminal Court (ICC) was established by Rome Statute to ensure effective prosecution of international crimes. While the complementary jurisdiction was conferred on International Criminal Court (ICC), the national or domestic courts are vested with jurisdiction as the court of first resort. There are hues and cries for the prosecution of the perpetrators of international crimes in Nigeria at various instances. The sources of the paper are both primary and secondary. The article will find that despite the fact that Nigeria has ratified the Rome Statute since 27<sup>th</sup> September, 2001, it is yet to domesticate same. It will also examine how Nigerian court exercise jurisdiction on acts constituting international crimes. The article will conclude that Nigerian courts are well seized with jurisdiction to prosecute international crimes. The article will further call on the Nigerian government through its legislative arm to domesticate the Rome Statute.

**Keywords: Domestication, Humanity, International Crimes, Jurisdiction, Prosecution, Ratification, War Crimes**

## 1.0 INTRODUCTION

International crimes are reckoned as most serious crimes of concern to the international community as a whole.<sup>1</sup>International Criminal Court (ICC) was established by adoption of Rome Statute on July 17, 1998. Nigeria as a state party ratified Rome Statute on September 27, 2001. Since the establishment of ICC, the global community has been awakened on the need to exhibit cooperation in fighting offences called international crimes.

In recent times in Nigeria, there have been perpetrations of offences considered as international crimes. The Boko haram insurgence in North-East, Nigeria since 2009 is an often cited case of perpetration of international crimes in Nigeria. Both state actor and the

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<sup>1</sup>. See Article 5 of Rome Statute of International Criminal Court.

insurgents are suspects in this circumstance. For instance, the leader of the group was believed to have been extra-judicially killed by agents of the state, while the group also had, at different instances, claimed responsibilities for perpetration of many crimes involving murder, kidnapping, bombing, raping and allied offences.<sup>2</sup> Accordingly, the International Criminal Court (ICC) has identified 8 potential cases of perpetration of international crimes in respect of the Boko-haram activities and Nigerian Army; whereas 6 cases are against the Boko haram group, 2 cases are against the Nigerian army<sup>3</sup>. Also, cases of clash between the Islamic Movement of Nigeria (IMN) and Nigeria army in 2015 leading to the killing of many members of the group, is also a point raised among perpetration of international crime in Nigeria. Also the allegation of killing of several innocent Nigerian youth by the Nigerian army during the #EndSARS protest was a case of perpetration of international crimes.

The Rome Statute establishes International Criminal Court (ICC) to try individual perpetrators of crimes considered as gross violation human rights. The ICC is not intended as a substitute to domestic court neither is it conferred with the criminal jurisdiction of the states but rather, it seeks to maintain complementary jurisdiction with those national courts.<sup>4</sup> It follows therefore that the jurisdiction of the International Criminal Court (ICC) is invoked where the national courts are unwilling or unable to investigate or prosecute international crimes.<sup>5</sup>

Perpetration of international crimes by and against Nigerians outside the territory of Nigeria is a legal issue of jurisdiction for prosecution. The willingness and ability of Nigeria-state to investigate and prosecute these crimes in its domestic courts is of great concern. Accordingly, the Nigeria Attorney-General of the Federation, had informed the ICC of prosecution and conviction of some perpetrators of international crimes by Nigerian courts<sup>6</sup> just as he disclosed that other indictable Boko haram suspects who were accused of international crimes were being prosecuted at Federal High Court, Abuja Division.<sup>7</sup> Given the nature of the offences for which those culprits being prosecuted at national courts in Nigeria and crime committed, being international crimes, the question that quickly come to mind to what extent do the Nigerian courts have jurisdiction to try such international crimes. It is in this perspective that this paper, aside its introductory part, is divided into five segments. The second segment examines the components of international crimes; the third segment discusses jurisdictional issues of prosecution of international crimes; while at the

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<sup>2</sup> Titus Kehinde Adekunle and Nuncha Suntai Gambo, 'Nigeria's Commitment to Prosecuting International Crimes and the place of International Criminal Court' *Ibadan Journal of Peace & Development* (2020) 10(1) 146-153.

<sup>3</sup> ICC Preliminary Examination Report, 2017. <[https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf)>

<sup>4</sup> Muhammed Tawfiq Ladan 'An overview of the Rome Statute of the International Criminal Court: Jurisdiction and Complementarity Principle and issues in domestic implementation in Nigeria'. *Afe Babalola University: Journal of Sustainable Development Law and Policy*, (2013) 1(1) 37-53.

<sup>5</sup> Ibid.

<sup>6</sup> ICC Preliminary Examination Report, 2017. <[https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf)> accessed July 10,

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fourth segment, issue relating to state responsibilities in the prosecution of international crimes is analysed. The concluding segment proffers useful suggestions towards

## **2.0 COMPONENTS OF INTERNATIONAL CRIMES**

International crime is a generic term for certain extremely serious violation of international law.<sup>8</sup> The Rome Statute of International Criminal Court (ICC) defines international crimes in the paradigm of the existing international norms; it draws from the treaties such as Fourth Geneva Convention of 1949 and their Additional Protocols of 1977, Genocide Convention of 1948, Torture Convention and so on.<sup>9</sup>

The Rome Statute of International Criminal Court (ICC), being the primary treaty that governs international crimes, defines international crimes as well as other various international treaties and agreements.<sup>10</sup> Rome Statute does not expressly define international crimes but states that International Criminal Court (ICC) will have jurisdiction limited to the “most serious crimes of concern to the international communities as a whole”. Those “serious crimes” are listed as the crimes of genocide, crimes against humanity, war crimes and the crimes of aggression.<sup>11</sup> The prohibition of those crimes is a norm of international law therefore forming fundamental principle of international law.

### **2.1 Crimes of genocide**

The Convention on the Prevention and Punishment of crime of genocide, 1948 defined genocide. Genocide is referred to acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.<sup>12</sup> The act of genocide may include killing or seriously harming members of the group, inflicting conditions designed to exterminate or destroy the group, preventing births in the group, and forcibly transferring children of the group to another group.<sup>13</sup>

Article 6 of Rome statute provides that “genocide” means any of the following act committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the groups;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent birth within the group;
- (e) Forcibly transferring children of the group to another group.

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<sup>7</sup> Ibid.

<sup>8</sup> < <https://www.prosecutionservice.ni/topics/internationalcrimes/what-are-international-crimes> > accessed 10 July 2024.

<sup>9</sup> See Articles 5,6,7and 8 of the Rome Statute define international crimes from the spectrum of genocide, war crime, crimes against humanity and crimes of aggression.

<sup>10</sup> <[https://www.law.cornell.edu/wex/international\\_crimes](https://www.law.cornell.edu/wex/international_crimes)> accessed 10 July 2024.

<sup>11</sup> See Articles 6, 7 ,8 and 8b of the Rome Statute of International Criminal Court define the crime of genocide, war crime, crimes against humanity and crimes of aggression respectively.

<sup>12</sup> <<http://seoul.ohcr.org/files>> accessed 10 July 2024.

<sup>13</sup> The International Criminal Tribunal of former Yugoslavia (ICTY) had an occasion to examine genocide perpetrated against Bosnian Muslims. Also, the International Criminal Tribunal for Rwanda (ICTR) had an occasion to examine genocide perpetrated against an ethnic, Tutsi – a minority ethnic.

## 2.2 Crimes against humanity

Crimes against humanity are fundamental in international humanitarian law. It is a large-scale attack against the civilians. An act will amount crime against humanity if it is perpetrated as part of a widespread or systematic attack against a civilian population, with the knowledge of the attack.<sup>14</sup>The concept of crimes against humanity runs through the international humanitarian law, customary international law and the decisions of international courts.<sup>15</sup>

Article 7 of Rome Statute enunciates that “crime against humanity” means any of the following acts when committed as parts of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>16</sup>

## 2.3 War crimes

War crimes are violations of international humanitarian law. International humanitarian law is otherwise known as laws of war. It seeks to mitigate the effect of war. International humanitarian law is now codified in treaties as well as in customary international law.<sup>17</sup>Geneva Conventions and customary international law now established rules that armed groups must abide by during the international armed conflicts and non-international armed conflicts; the rules which are now the fundamental principles of international humanitarian law.

Examples of war crimes under the Geneva Conventions are wilful killing, torture or inhuman treatment, wilfully causing great suffering or superfluous or serious injury, extensive destruction and so on.

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<sup>14</sup> <<http://seoul.ohcr.org/files>> accessed 10 July 2024.

<sup>15</sup> For example, the International Criminal Tribunal of former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the international criminal court.

<sup>16</sup> See Article 7 paragraph 1 of Rome Statute of International Criminal Court.

<sup>17</sup> <<http://seoul.ohcr.org/files>> accessed 10 July 24.

Article 8 of Rome Statute<sup>18</sup> states that “war crimes” means:

- (a) Grave breaches of Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - (i) Wilful killing;
  - (ii) Torture or inhuman treatment, including biological experiments
  - (iii) Wilfully causing great suffering, or serious injury to body or health;
  - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
  - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
  - (vii) Unlawful deportation or transfer or unlawful confinement;
  - (viii) Taking of hostages.

War crime can be said to mean grave breaches of Geneva Convention against persons or property protected under the provisions of Geneva Convention.<sup>19</sup>It can also mean serious violations of laws and customs applicable in international armed conflicts, within the established framework of international law.<sup>20</sup>In the case of armed conflict not of international character, war crime also means serious violations of article 3 common to the four Geneva Conventions<sup>21</sup>.It is obvious therefore that in non-international armed conflict, it is a war crime if any of the acts mentioned below are committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause<sup>22</sup>. Those acts are:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regular constituted court, affording all judicial guarantees which are generally recognized as indispensable.

The above listed acts only amount to a war crime if committed in non-international armed conflicts and thus, does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature.<sup>23</sup>Besides, war crime can also be other serious violations of the laws and customs applicable in non-

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<sup>18</sup> See Article 8 paragraph 2 of Rome Statute of International Criminal Court.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid. Article 8 paragraph 2 (b).

<sup>21</sup> Ibid. Article 8 paragraph 2 (c).

<sup>22</sup> Ibid. Article 8 paragraph 2 (c).

<sup>23</sup> Ibid. Article 8 paragraph 2 (d).

international armed conflicts (armed conflicts not of an international character) within the established framework of international law.<sup>24</sup>

## 2.4 Crimes of aggression

“Crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations<sup>25</sup>.

An “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations<sup>26</sup>. Any of the following acts will qualify as an act of aggression<sup>27</sup>:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of State of armed bands, groups, irregulars or mercenaries, which carry out act of armed forces against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

It is crystal clear that crime of aggression cannot be committed in non-international armed conflict. It stands to reason that crime of aggression is a crime of international character; it is a crime involved in international armed conflicts.<sup>28</sup>

## 3.0 JURISDICTIONAL ISSUES OF PROSECUTION OF INTERNATIONAL CRIMES

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<sup>24</sup> See Article 8 paragraph 2 (e) of the Rome Statute of the International Criminal Court to see a long list of acts that amount to serious violations of international laws and customs applicable in non-international armed conflicts.

<sup>25</sup> See Article 8 *bis* paragraph 1 of the Rome Statute of the International Criminal Court. Article 8 *bis* was inserted to Rome Statute by resolution RC/Res.6 of 11 June 2010.

<sup>26</sup> See Article 8 *bis* paragraph 2 of the Rome Statute of the International Criminal Court.

<sup>27</sup> Ibid.

<sup>28</sup> For examples, the Israel Invasion and bombardment of Hamas and the Iranian airstrike against Israel will constitute crime of aggression.

Jurisdiction refers to the power of a state to affect persons, property and circumstances within its territory. Jurisdiction is exercised by state through its legislative, executive and judicial actions.<sup>29</sup> Jurisdiction in international law is related to state's sovereignty. The rights to prescribe or legislate and enforce law are inherent in statehood.<sup>30</sup> The concept of jurisdiction is generally conceived in prescriptive or legislative jurisdiction.<sup>31</sup> This is expressive of the power of the state to make applicable law to issues and events through its relative arms.<sup>32</sup>

Generally, a state exercises jurisdiction within its territory. Territorial jurisdiction or territorial limitation is generally envisaged by the concept of jurisdiction in international law. The territorial principle, which births territorial jurisdiction, is to the effect that states have exclusive authority to deal with criminal issues arising in their states. This territorial principle is nonetheless construed liberally on issues bordering on international crimes.<sup>33</sup> International law recognizes the power of the state to legislate and adjudicate on events occurring outside its territory. Extra-territorial jurisdiction is gaining recognition in commission of international crimes. Certain principles have been recognized as the bases for extra-territorial jurisdiction; those principles are listed hereunder.

- (a) Nationality Principle: This principle is also called active personality principle. It recommends a state to exercise criminal jurisdiction over any of its nationals who perpetrated crime in another state. It posits that states have jurisdiction on crimes committed by persons having the nationality of the forum state.<sup>34</sup>
- (b) Passive Personality Principle: It allows states, though in few cases, to claim jurisdiction to try foreign nationals for offences committed outside their territories but which affects their nationals. Jurisdiction of a state is recognized on the act committed against its nationals, nonetheless the commission outside the territory of the forum state.<sup>35</sup>
- (c) Protective Principle: It indicates the jurisdiction of a state on the acts affecting the security of the state.
- (d) Universality Principle: It is also called the universal jurisdiction principle. It advocates the invocation of jurisdiction in which the alleged crime may be prosecuted by all states. It allows international crimes to be prosecuted by all states having conferred jurisdiction to the universe. It asserts jurisdiction over offence notwithstanding place or personality of the perpetrator or victim. Its justification is a matter of international public policy and international treaties.<sup>36</sup>

### 3.1 International Criminal Court (ICC)

International Criminal Court (ICC) is the principal court with jurisdiction on international crimes. The court was established by Rome Statute, the Statute being adopted on June 17,

<sup>29</sup> <<https://www.britannica.com/topic/international-law/jurisdiction>> accessed 30<sup>th</sup> August 2024.

<sup>30</sup> Malcom Shaw, *Jurisdiction: In International Law* (Cambridge University Press; 2008).

<sup>31</sup> Cedric Ryngaert, 'The Concept of Jurisdiction in International Law' <<https://unijuris.sites.uu.nl/wp-content/uploads/sites/9/2014/12/The-Concept-of-Jurisdiction-in-international-law.Pdf>> accessed 8<sup>th</sup> July 2024.

<sup>32</sup> See Lotus case and the principles enunciated therein by the Permanent Court of International Justice.

<sup>33</sup> Ibid (n 29) Cedric Ryngaert,

<sup>34</sup> <<https://www.icrc.org/e>> accessed 13<sup>th</sup> July 2024.

<sup>35</sup> <<https://www.britannica.com/topic/international-law/jurisdiction>> accessed 10 July 2024.

<sup>36</sup> <<https://www.icrc.org/e>> accessed 13<sup>th</sup> July 2024.

1998. The headquarters of the court is in Hague in Netherland. The Court, International Criminal Court (ICC), does not try states but rather, it tries individual perpetrators and crimes considered as international crimes. It does not substitute the criminal jurisdiction of the state but it rather maintains complementary jurisdiction with national courts.<sup>37</sup>It stands to reason that the jurisdictions of the national courts or states to investigate and prosecute international crimes are not fettered by International Criminal Court (ICC). The court will however sway to action when states and there are unwilling or unable to investigate and prosecute international crimes.

According to Article 5 of Rome Statute, “The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

It is clear that the jurisdiction of the international criminal court is limited to the crime of genocide, crimes against humanity, war crimes and the crimes of aggression. It has however been posited in the past that crimes of aggression does not form part of the crimes over which the international criminal court can exercise jurisdiction.<sup>38</sup>There is however a shift in the paradigm which occurred when the paragraph 2 of the Article 5 of the Rome Statute was deleted.<sup>39</sup>

There is no need for existing armed conflict before the court can have jurisdiction on commission of crime against humanity. International criminal court will have jurisdiction when war crime is committed both in International armed conflicts and Non-international armed conflicts. However, jurisdiction of international criminal court is limited over acts committed in Non-international armed conflicts because internal disturbances, tensions, riots, isolated and sporadic act of violence and similar acts are excluded among the acts over which the court has jurisdiction.<sup>40</sup>

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<sup>37</sup> Ibid (n 4) Muhammed Tawfiq Ladan.

<sup>38</sup> Ibid.

<sup>39</sup> Paragraph 2 of Article 5 (which provides that “The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nation.”) was deleted in accordance with RC/Res.6, annex I, of 11 June, 2010.

<sup>40</sup> *ibid* (n 36).

<sup>41</sup> Article 13 of Rome Statute of International Criminal Court (ICC).

The prosecution of international crime at International Criminal Court (ICC) may be initiated by the prosecutor or the state party or United Nation Security Council.<sup>41</sup>The state party can request removal of the prosecutor, contest competency of the Court of the admissibility of the case. However, when the case is initiated by the Security Council, it is assumed to act for international community and competency of the court for the admissibility will not avail. The Security Council can ask for suspension for up to twelve months of investigation and judgment of the Court.<sup>42</sup>

The court has and can exercise jurisdiction on the national of the state party. Accordingly<sup>43</sup>, the Court shall determine that a case is inadmissible where:

- (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20 paragraph 3;
- (d) The case is not of sufficient gravity to justify further action by the Court.

In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice<sup>44</sup>.

In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings<sup>45</sup>. The court shall satisfy itself that it has jurisdiction in any case brought before it. It may *suo motu* determine the admissibility of a case<sup>46</sup>. The challenges to

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<sup>42</sup> Muhammed Tawfiq Ladan ‘An overview of the Rome Statute of the International Criminal Court: Jurisdiction and Complementarity Principle and issues in domestic implementation in Nigeria’. *Afe Babalola University: Journal of Sustainable Development Law and Policy*, (2013) 1(1) 37-53.

<sup>43</sup> Article 17(1) of Rome Statute of International Criminal Court.

<sup>44</sup> Article 17(2) of Rome Statute of International Criminal Court.

<sup>45</sup> Article 17, paragraph 3 of Rome Statute of International Criminal Court.

<sup>46</sup> Article 19, paragraph 1 of Rome Statute of International Criminal Court.

the admissibility of a case on the grounds above referred to or challenges to the jurisdiction<sup>47</sup> of the Court may be made by:

- (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
- (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
- (c) A State from which acceptance of jurisdiction is required under article 12.

The principle of complementarity is fundamental in the jurisdiction of the International Criminal Court (ICC) regarding prosecution of international crimes. It presupposes that the national courts have primary jurisdiction for prosecution of international crimes while the International Criminal Court (ICC) has secondary jurisdiction. This principle is the fundamental principle upon which the International Criminal Court (ICC) is premised. The jurisdiction of the court is only complementary to the national courts or national criminal jurisdiction<sup>48</sup>. It is therefore a court of last resort. Its jurisdiction may be invoked when the national courts are unwilling and unable to investigate or prosecute.

### 3.2 Jurisdiction of Nigerian Courts

Nigeria is regarded as a state under international law. Nigeria is a sovereign state<sup>49</sup>. Being a sovereign state, Nigeria has territorial jurisdiction and even extra-territorial jurisdiction which is demonstrated in its prescriptive power to legislate on international crimes. All the types of jurisdiction in international law may be divided into prescriptive jurisdiction, enforcement jurisdiction<sup>50</sup> and adjudicative jurisdiction<sup>51</sup>. While the prescriptive jurisdiction is the ability or power to make to regulate activities through the legislative power of the state, the enforcement jurisdiction is its ability to validly enforce its law through the exercise of its executive power whereas the adjudicative jurisdiction is the state power to adjudicate through its judicial arm. It follows therefore that effective prosecution of international crimes in Nigerian courts is an issue of adjudicative jurisdiction which is also intertwined with prescriptive jurisdiction and enforcement jurisdiction. While the prescriptive jurisdiction necessitates the enforcement jurisdiction, the enforcement jurisdiction culminates in the adjudicative jurisdiction. The ability of national courts, tribunals and bodies exercising judicial function to hear and decide on matter is integral to prosecution of international crimes.

The adjudicatory or judicial power in Nigeria is vested in the courts<sup>52</sup>. In exercising its adjudicatory power on international crimes, the courts are enabled by the Constitution and

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<sup>47</sup> Ibid, Article 19(2).

<sup>48</sup> Article 1 of Rome Statute of International Criminal Court.

<sup>49</sup> Section 2 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

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<sup>50</sup> <<https://www.cambridge.org/core/books/abs/international-law/jurisdiction/35B1965C8E04782D5A434393D34D8>> accessed 14 August 2024.

<sup>51</sup> Svantesson, Dan Jerker B., 'The Impact of our Categorization of Types of Jurisdiction: Solving the Internet Jurisdiction Puzzle' (Oxford, 2017; online edn, Oxford Academic, 23 Nov. 2017), <<https://doi.org/10.1093/oso/9780198795674.003.0008>> accessed 27 August 2024.

<sup>52</sup> Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

legislations.<sup>53</sup> On the principles of international law, which are also enshrined in the Constitution, the Nigerian will not convict a person for an act which is not defined as a crime and with a specified penalty.<sup>54</sup>

The Rome Statute of international criminal court is already ratified by Nigeria as a state party but yet to be domesticated. Since the Rome Statute of international criminal court is not yet domesticated in Nigeria, the court cannot rely on it and no one can be directly tried or convicted for an offence thereunder by the Nigerian court. Beyond ratification, domestication of the Rome Statute of international criminal court is fundamental for its direct application and its invocation by Nigerian court in the exercise of jurisdiction on international crimes. This is a constitutional limitation of the Nigerian courts in the applicability of international treaties. Section 12(1) of the Constitution<sup>55</sup> which provides that “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by National Assembly.” The Supreme Court has expatiated on the above Constitutional provision in *Abacha v Fawehinmi*,<sup>56</sup> when it held thus:

An international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law by the National Assembly, it has no such force of law as to make its provisions justiciable in our courts. This was the tenor of Section 12(1) of the 1979 Constitution [now re-enacted in section 12 (1) of the 1999 Constitution].

The Nigerian courts however have jurisdictions to try international crimes by a dint of incorporation of international crimes in many of the criminal legislations within its state.<sup>57</sup>The prescriptive jurisdiction of the Nigeria states has been exercised with due regards to the principles of international law thereby vesting jurisdiction in Nigerian courts to adjudicate on international crimes, though the crimes are not directly given the nomenclatures of international crimes. The jurisdictions of the Nigerian courts in international crimes are so large that it can be extra-territorial.<sup>58</sup>

Additionally, the domestic jurisdiction bestowed on the Nigerian Court by reason of incorporation of international crimes in its legislation, Nigerian courts also have jurisdiction in international crimes by reason of domestication of other international treaty that is incorporated into the Rome Statutes.<sup>59</sup>

#### **4.0 STATE RESPONSIBILITIES IN THE PROSECUTION OF INTERNATIONAL CRIMES**

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<sup>53</sup> *ibid*, Sections 251, 257 and 272.

<sup>54</sup> *ibid*, Section 36 (8).

<sup>55</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>56</sup> [2000] NWLR (Pt.660) 228.

<sup>57</sup> Examples of some of those criminal legislations are Criminal Code Act, Criminal Code Law, Penal Code Law.

<sup>58</sup> See the principle of extra-territorial jurisdiction discussed above.

<sup>59</sup> See, for example, Geneva Convention Act.

All states have the responsibility or obligation to uphold international criminal law. Some of those responsibilities or obligations are as follows:

- i. It is the duty of a state party to prosecute anyone within its state who commits international crime. It is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes.<sup>60</sup> This duty is very fundamental in international criminal law.<sup>61</sup> State has primary duty to prosecute or extradite those responsible for international crime. The maxim *aut dedere aut judicare* places duty to prosecute on the state. Also, the complementary jurisdiction that International Criminal Court is meant to maintain in the prosecution of international crimes is a pointer that state is the one saddled with the duty to prosecute. Prosecution of and punishment for commission of international crimes by contracting states is central to the principle of universal jurisdiction. Violator of international crimes can be prosecuted and punished under the individual criminal responsibility or commander responsibility (command responsibility)<sup>62</sup>.
- ii. It is the responsibility of every state party to observe and implement the Conventions and treaties on international crimes<sup>63</sup>.
- iii. It is the duty of a state party to cooperate fully with the International Criminal Court in its investigation and prosecution of crimes within the jurisdiction of the court<sup>64</sup>.
- iv. It is the duty of a state party to surrender a person requested by the International Criminal Court<sup>65</sup>.
- v. It is the duty of a state party to comply with the request by the International Criminal Court for assistance in relation to investigation and prosecution<sup>66</sup>.
- vi. It is the duty of state party to domesticate Rome Statute of International Criminal Court and enact International Criminal Court Act,

## 5.0 CONCLUSION AND RECOMMENDATIONS

It is the findings of this article that instances of commission of various types of international crimes well established in Nigeria. It is also found that although, Nigeria as a signatory to the Statute of Rome convention, successive government Nigeria lack the political will and the courage to effectively prosecute the perpetrators of international crimes in Nigeria.

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<sup>60</sup> See the preamble to the Rome Statute of the International Criminal Court.

<sup>61</sup> Deepa Kansera, 'State Obligations Under International Criminal Law' *Rostrum's Law Review (2014) (1) (iv)* <<https://philarchive.org/archive/KANSOU>> accessed 28 August 2024.

<sup>62</sup> Articles 25 and 28 of Rome Statute of the International Criminal Court.

<sup>63</sup> Common Article 1 of the Geneva Convention.

<sup>64</sup> Article 86 of Rome Statute of the International Criminal Court.

<sup>65</sup> *ibid*, Article 89.

<sup>66</sup> *ibid*, Article 93.

The study concludes that courts in Nigeria have extensive jurisdiction to adjudicate on crimes committed in Nigeria whether such crime are among international crimes or not. It is further concluded that although the International Criminal Court (ICC) is a specialised court for prosecution of international crimes, its jurisdiction is merely complementary to Nigerian courts.

To ensure the realisation of its noble objectives, it is recommended that Rome Statute be domesticated and enacted as Nigerian law in accordance with the extant provisions of the Nigerian constitution.<sup>67</sup>

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<sup>67</sup> See Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).