

**IMMUNITY OF STATE OFFICIALS AND PROSECUTION OF
INTERNATIONAL CRIMES IN AFRICA**

By

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Chacha Bhoke Murungu
Pretoria, 23 May 2011.



Dedication

To my family

Declaration

I declare that the thesis titled **Immunity of state officials and prosecution of international crimes in Africa**, which I hereby submit for the degree *Doctor Legum* (LL.D), at the University of Pretoria, is my work and has not previously been submitted by me for a degree or examination at this or another university. Where secondary material is used, this has been carefully acknowledged and referenced in accordance with University requirements.

Chacha Bhoke Murungu

Signature.....

23 May 2011.

List of abbreviations

AU	African Union
BBC	British Broadcasting Corporation
CICC	Coalition for an International Criminal Court
DRC	Democratic Republic of the Congo
ECCC	Extra-ordinary Chambers in the Courts of Cambodia
EU	European Union
FRY	Former Federal Republic of Yugoslavia
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
JCE	Joint Criminal Enterprise
LRA	Lord's Resistance Army
MLC	Mouvement pour la Libération du Congo
NATO	North Atlantic Treaty Organisation
NGOs	Non-Governmental Organisations
IMT	International Military Tribunal, at Nuremberg
IMTFE	International Military Tribunal for the Far East, at Tokyo
Rome Statute	The Rome Statute of the International Criminal Court

RPF	Rwandan Patriotic Front
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
SICT	Supreme Iraqi Criminal Tribunal
TRC	Truth and Reconciliation Commission
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNGA Res	United Nations General Assembly Resolution
UNSC Res	United Nations Security Council Resolution
USA	United States of America

Summary

This study deals with two aspects of international law. The first is ‘immunity of state officials’ and the second is ‘prosecution of international crimes.’ Immunity is discussed in the context of international crimes. The study focuses on Africa because African state officials have become subjects of international criminal justice before international courts and various national courts both in Europe and Africa. It presents a new contribution to international criminal justice in Africa by examining the practice on prosecution of international crimes in eleven African states: South Africa; Kenya; Senegal; Ethiopia; Burundi; Rwanda; DRC; Congo; Niger; Burkina Faso and Uganda. The study concludes that immunity of state officials has been outlawed in these states thereby rendering state officials amenable to criminal prosecution for international crimes.

The thesis argues that although immunity is founded under customary international law, it does not prevail over international law *jus cogens* on the prosecution of international crimes because such *jus cogens* trumps immunity. It is argued that, committing international crimes cannot qualify as acts performed in official capacity for the purpose of upholding immunity of state officials. In principle, customary international law outlaws functional immunity in respect of international crimes. Hence, in relation to international crimes, state officials cannot benefit from immunity from prosecution or subpoenas.

Further, the study criticises the African Union’s opposition to the prosecutions before the International Criminal Court (ICC). It argues that however strong it may be, such opposition is unfounded in international law and is motivated by African solidarity to weaken the role of the ICC in Africa. It concludes that the decisions taken by the African Union not to cooperate with the ICC are geared towards breaching international obligations on cooperation with the ICC. The study calls upon African states to respect their obligations under the Rome Statute and customary international law. It recommends that African states should cooperate with the ICC in the investigations and prosecution of persons responsible for international crimes in Africa.

At international level, the study reveals the conflicting jurisprudence of international courts on subpoenas against state officials. It argues that, state officials are not immune from being subpoenaed to testify or adduce evidence before international courts. It contends that issuing subpoenas to state officials ensures fairness and equality of arms in the prosecution of international crimes. It recommends that international courts should treat state officials equally regarding prosecution and subpoenas. It further recommends that African states should respect their obligations arising from the Rome Statute and that, immunity should not be used to develop a culture of impunity for international crimes committed in Africa.



List of terms

Immunity – State officials – Prosecution – International crimes – Subpoenas – *Jus cogens* – African Union – African jurisdictions – International courts – International Criminal Court.

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