

## Chapter 6

### Conclusion and recommendations

#### 6.1 Introduction

In line with the objectives of this study as indicated in the introduction,<sup>1</sup> the study sought to address three key issues.<sup>2</sup> Firstly, whether international law *jus cogens* imposing an obligation to prosecute and punish persons responsible for international crimes prevail over immunity of state officials, and secondly, whether state officials are immune from being subpoenaed by international courts exercising jurisdiction over international crimes. Thirdly, the study also sought to understand the practice of African states on immunity and prosecution of international crimes. This chapter presents findings on the above three issues so as to indicate whether the assumptions by the study are proven or not.<sup>3</sup> Findings are followed by appropriate recommendations on each issue.

#### 6.2 Findings

Since every chapter has its own conclusion on the identified issues, it is not necessary to repeat the said conclusions here. Rather, this chapter gives general conclusions running throughout the whole of this study. The conclusions presented below confirm the assumptions underlying this study.

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<sup>1</sup> See Ch. 1, part 1.7.

<sup>2</sup> See Ch 1, part 1.3.

<sup>3</sup> See the assumptions in Ch. 1, part 1.4.

### 6.2.1 International law *jus cogens* imposing obligation to prosecute and punish perpetrators of international crimes prevail over immunity

It is acknowledged that immunity arose out of the necessity for state relations as well as the smooth functioning of state officials within their own states and abroad.<sup>4</sup> International law as found in treaties and custom is certain that state officials do not enjoy immunity before international courts when such courts have jurisdiction over international crimes. The ICJ confirmed this position in the *Arrest Warrant* case decided in 2002, and this still remains the position to date. Other international courts have also confirmed this position in the cases of *Kambanda*, *Milosevic*, *Taylor*, *Karadzic*, *Omar Al Bashir* and *Saddam Hussein*.

At national level, there is no settled position in international law whether serving state officials can be prosecuted for international crimes before foreign domestic courts. The case of Habré in Senegal suggests that it is only possible to prosecute former state officials of a foreign state. Further, the trial of Mengistu in Ethiopia only suggests that former state officials can be prosecuted before their own national courts. Immunity of state officials before national courts is an area which needs to be studied further. The real issue is whether, if indicted, the serving state officials can benefit from immunity from prosecution before foreign domestic courts or national courts from their own states. This leads to the consideration of two competing norms in international law. On one hand, there are international law *jus cogens* imposing obligation *erga omnes* to prosecute perpetrators of international crimes. On the other, the issue of immunity of state officials as recognised under customary international law arises.

Chapter 2 of this study has shown that international law *jus cogens* imposing obligations *erga omnes* in relation to international crimes prevail over immunity of state officials. Immunity is regarded as being lower to *jus cogens* rules because such rules are

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<sup>4</sup> See, A Orakhelashvili (2006) *Peremptory norms in International law*, 320; DP Stewart 'Immunity and accountability: More continuity than change' (2005) 99 *American Society International Law Proceedings* 227, 229; D Aversano 'Can the Pope be a defendant in American courts? The grant of head of state immunity and the judiciary's role to answer this question' (2006) 18 *Pace International Law Review* 495, 506.

fundamental such that they cannot be superseded by immunity. Consequently, if immunity is granted to any state official responsible for international crimes, such action is a breach of customary international law and treaty law requiring states to prosecute and punish persons responsible for international crimes.

There are six grounds in which immunity of state officials cannot prevail over international law *jus cogens*. First, treaty obligations to prosecute state officials accused of international crimes are incompatible with immunity. Second, states have impliedly waived the immunity of their officials by signing treaties criminalising certain international offences. Third, customary international law lifts functional immunity in case of international crimes. Fourth, the *jus cogens* nature of international crimes supersedes immunity attaching to state officials. Fifth, international crimes fall outside the notion of acts performed in a sovereign capacity. Sixth, the fundamental rights of victims are incompatible with immunities<sup>5</sup> in that they require perpetrators of international crimes to be prosecuted.

From the listed grounds, it is appropriate to conclude that international law does not allow immunity of state officials to prevail over international law *jus cogens* on the prohibition and punishment of international crimes. This position applies in national and international courts. It is applicable particularly to international crimes, including genocide, the crime of aggression, crimes against humanity, war crimes, terrorism, slavery, human-trafficking, apartheid and torture. Hence, if international law *jus cogens* are in conflict with immunity in respect of these crimes, it is obvious that *jus cogens*, hierarchically superior norms than immunity rules, must override the immunity even though immunity arises from customary international law.

After concluding on the competing norms of *jus cogens* and immunity, we turn to present findings on the question of subpoenas against state officials before international courts. This is another important aspect of immunity considered by this study.

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<sup>5</sup> YQ Naqvi (2010) *Impediments to exercising jurisdiction over international crimes*, 254.

### **6.2.2 State officials do not enjoy immunity from being subpoenaed by international courts**

In chapter 3, the study offered views on the question of immunity of state officials in relation to prosecution of international crimes before international courts. This emanated from the fact that the practice in international courts is not consistent regarding immunity of state officials from prosecution and issuance of *subpoenas ad testificandum* and *duces tecum*. The discussion on subpoenas against state officials is based on the jurisprudence of international courts. Particularly, we have discussed case law of the ICTR, ICTY and SCSL.

It is concluded that there is no uniformity regarding the treatment of immunity of state officials in respect of prosecution and subpoenas. International courts have contributed to the confusion on whether immunity protects state officials from issuance of subpoenas *ad testificandum* and *duces tecum*. This is where there is inconsistency in terms of the judicial practice and interpretation. This confusion is observed in the decisions of the Trial Chambers in *Norman* case decided by the SCSL in 2006 and the *Bagosora* cases decided by the ICTR. The ICTR Trial Chamber rejected motions to subpoena President Paul Kagame who should have testified for the defence in respect of his role and that of RPF in the genocide in Rwanda in 1994. The Trial Chambers in those cases have decided that serving state officials are immune from being subpoenaed to testify or produce documents that can be used as evidence before international courts, doing so by aligning with immunity of such officials. It should be noted that the minority dissenting decisions on subpoena in the Trial and Appeals Chambers in *Norman* case are the correct and proper interpretation to be adopted, which this study accepts, as they represent a contemporary international criminal law on the question of immunity, holding that serving state officials are not immune from *subpoenas* before international courts with jurisdiction to prosecute and punish individuals responsible for international crimes. However, it must be noted that in *Norman* case, the majority decisions upheld immunity of President Tejan Kabbah as protected under section 48(4) of the Constitution of Sierra Leone, and not applying the immunity provisions as contained in the Statute of the SCSL.

The conclusion is that in this case, the court applied domestic law of Sierra Leone and not international law on immunity thereby creating confusion on whether immunity applies in relation to international crimes.

However, in 2008 the SCSL Trial Chamber in *Sesay, Kallon and Gbao* case accepted the new position that former state officials, particularly former President Tejan Kabbah of Sierra Leone can be subpoenaed before it to testify for purposes of expeditious trial and equality of arms. The conclusion is that the SCSL has come to accept that issuing subpoenas to state officials is the right course provided that the court is satisfied with the conditions for subpoenas. This marks the court's change of its own previous position, perhaps a sign of having realised its own errors of 2006 in the subpoena application in *Norman* case

The decision of the Trial Chamber of the ICTY on the subpoenas in *Blaškić* case echoes that serving state officials are not immune from being subpoenaed to testify before international courts. The Appeals decision in *Blaškić* case should not be followed as it detracts from the progressive development of international criminal law on immunity of state officials and their duty to assist international courts by appearing before such courts. International courts must follow the position stated in *Krštić* case by the Appeals Chamber which echoes the position that state officials are not immune from prosecution as well as from the issuance of subpoena provided that the conditions for the issuance of subpoenas are met.

Apart from the discussion on immunity and prosecution at international level, the study has examined these two aspects at the African regional level as presented below.

### **6.2.3 There is no comprehensive regional framework to prosecute international crimes and outlaw immunity of state officials in Africa**

We have examined in chapter 4 whether there is any comprehensive African regional framework to prosecute international crimes as well as outlaw immunity attaching to state

officials in respect of such crimes. It is observed that Africa does not have a clear regional treaty or judicial institution to repress international crimes. It has been argued that the Constitutive Act of the African Union contains provisions on the rejection of impunity<sup>6</sup> and those allowing intervention in grave circumstances of international crimes.<sup>7</sup> Although rejection of impunity may be interpreted to mean demands for prosecution of perpetrators in Africa, it is nevertheless argued that the provision is not sufficient and comprehensive to address immunity in relation to international crimes. Intervention as reflected in article 4(h) of the Constitutive Act of the AU refers to military intervention but not judicial intervention such as prosecution of perpetrators of crimes.

However, it has been established that there is only one express and comprehensive instrument on the prosecution of international crimes at sub-regional level. The Great Lakes Region has adopted a progressive Protocol<sup>8</sup> to deal with international crimes in the sub-region. This Protocol outlaws immunity of state officials<sup>9</sup> and imposes obligation on member states in the sub-region to prosecute and punish international crimes.<sup>10</sup> The AU cannot rely on this single comprehensive instrument to prosecute international crimes in the region. Hence, there is need for the AU to take measures to establish such mechanisms. Further, the fact that there is no adequate mechanism to suppress international crimes at regional level indicates the need for the AU to support the existing international institutions with jurisdiction over crimes committed in Africa. In this regard, it is important for the AU to support the ICC in prosecuting individuals responsible for crimes committed in African states.

In addition to exploring the legal and judicial frameworks on the prosecution of international crimes in Africa, chapter 4 of this study has also discussed the perception by

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<sup>6</sup> Art 4(m) & (o), Constitutive Act of the AU.

<sup>7</sup> Art 4(h), Constitutive Act of the AU.

<sup>8</sup> Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, signed at Nairobi, by the International Conference on the Great Lakes Region on 29 November 2006.

<sup>9</sup> Art 12 of the Protocol.

<sup>10</sup> Art 9 of the Protocol.

the AU against the prosecution of African individuals, especially state officials. Below is the finding on the AU's perception against the ICC.

#### **6.2.4 The African Union's opposition to the International Criminal Court violates international law**

It has been indicated in chapter 4<sup>11</sup> that the AU has adopted several decisions not to cooperate with the ICC in the prosecution of President Omar Al Bashir of Sudan. The AU opposes the ICC prosecutions on the grounds that the ICC reflects imperialism, selective justice of targeting only Africans, and that the ICC has acted with double standards. While it is accepted that the ICC has only prosecuted individuals from Africa, leaving individuals from other parts of the world, the above arguments should not be taken as an exoneration of the African states' obligations towards the ICC. An observation is made that African states have simply acted on nothing but solidarity. This has a potential of violating international law obligations arising from the Rome Statute.<sup>12</sup>

It should be understood that the ICC is not meant to target only Africans. Most of the allegations levelled by the AU against the ICC indicate that there is little understanding of the role that the ICC can play in Africa. It is better that African states take an objective approach in the fight against impunity for international crimes.

International law has long created obligations on parties to treaties to respect their obligations arising from such treaties.<sup>13</sup> Because a majority of African states are parties to the Rome Statute creating the ICC, by refusing to cooperate with the ICC on the arrest warrant for President Omar Al Bashir of Sudan, such states have violated their obligations in respect of cooperation with the ICC.<sup>14</sup> Further, the decisions by the AU calling for non-cooperation with the ICC actually violates article 87(6) of the Rome Statute which imposes an obligation on intergovernmental organisations (like the AU) to

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<sup>11</sup> See conclusion reached in ch.4, part 4.6.

<sup>12</sup> See generally, arts 86-93, Rome Statute.

<sup>13</sup> Vienna Convention on the Law of Treaties, 1969.

<sup>14</sup> See, arts 86-93, Rome Statute.

cooperate with the ICC in the investigations and prosecutions of persons responsible for international crimes within the jurisdiction of the ICC.

Further, customary international law imposes obligation on states to prosecute and punish international crimes. This also extends to issues of cooperation with judicial institutions established to punish international crimes such as genocide, war crimes, crimes against humanity, torture and the crime of aggression. In this regard, calls for non-cooperation with the ICC in the prosecution of international crimes violate customary international law. One must understand that by adopting decisions on non-cooperation with the ICC, the AU has acted in violation of the provisions of the Constitutive Act of the AU which reject impunity and outlaw genocide, war crimes and crimes against humanity.<sup>15</sup>

Following the above finding on the mechanisms at regional level, it was necessary to examine the practice on prosecution of international crimes in some African states as discussed in chapter 5 of this study. In the following part, we present findings on the issues of immunity of state officials and prosecution of international crimes in selected African jurisdictions.

#### **6.2.5 Immunity of state officials has been outlawed in some African jurisdictions**

Chapter 5 of this study has examined the existing laws, judicial precedents and state practice on immunity and prosecution of international crimes in Ethiopia, South Africa, Senegal, Kenya, Rwanda, Burundi, Uganda, Burkina Faso, Niger, Congo and the DRC. With the exception of the DRC, these states have enacted laws to implement the Rome Statute at domestic level. The DRC is still in the process of enacting a law to incorporate the Rome Statute. In all these states, it is observed that international crimes are punishable by law. Except in Senegal, all the laws studied in these states expressly reject immunity of state officials from prosecution for international crimes.

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<sup>15</sup> Art 4(h), (m) & (o), Constitutive Act of the AU.



### **6.2.6 The laws implementing the Rome Statute in some African states allow universal jurisdiction and retroactive application of punishment**

The laws studied in these states go beyond what the Rome Statute provides. Such laws confer national courts with universal jurisdiction to prosecute persons responsible for international crimes. This is a very good indication that any person who commits international crimes can be held responsible. The fact that universal jurisdiction is recognised in these states means that national jurisdictions have a wide margin to close impunity gaps in respect of crimes within the jurisdiction of the ICC. Universal jurisdiction in such laws will allow national jurisdictions to exercise positive complementarity as recognised under articles 1 and 17 of the Rome Statute. Because these states have empowered domestic courts to exercise universal jurisdiction, it follows that such courts can apply universal jurisdiction to reject immunity of state officials provided that such officials are responsible for international crimes. In this regard, courts in these states can prosecute persons who commit international crimes outside the territory of such states. These states are good examples for other African states that have not yet enacted laws to punish international crimes at domestic level.

However, national jurisdictions such as Senegal, Niger and Burkina Faso have gone to the extent of providing for an absolute universal jurisdiction without the necessary requirement of the territoriality and nationality links. This might lead to universal jurisdiction *in absentia*. It must be understood that the absolute universal jurisdiction cannot attain effective enforcement. Unless the perpetrators are found in the territory of the prosecuting state, there is no hope for its active role in the punishment of international crimes.

Additionally, the laws implementing the Rome Statute in Senegal and Uganda<sup>16</sup> are inconsistent with the Rome Statute because such laws create punishment for crimes committed in the past thereby allowing retroactive application of the laws and punishment. These laws seem to be inconsistent with article 22 of the Rome Statute

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<sup>16</sup> *International Criminal Court Act*, No 11 of 2010 (Uganda).

which outlaws application of laws and punishment for crimes committed in the past (*nullum crimen sine lege*). The Rome Statute requires that a person cannot be criminally responsible unless the conduct in question constituted, at the time it took place, a crime within the jurisdiction of the court.<sup>17</sup> The Rome Statute requires that, in case of ambiguity as to the definition of a crime for purpose of criminal responsibility, an interpretation most favourable to the accused be adopted. Despite the express provision outlawing retroactive application of the laws and punishment as seen in article 22 of the Rome Statute, international law has not yet done away with the possibility of prosecuting persons responsible for crimes committed in the past, provided that such crimes are recognised under customary international law. This means that, any conduct, which may not be a crime under the Rome Statute, can still be recognised as such under customary international law. In fact, article 22(3) of the Rome Statute recognises the possibility that the Rome Statute does not affect the characterisation of any conduct as criminal under international law independently of the Rome Statute. In this regard, laws allowing retroactive application are more practical in the field as international crimes will not go unpunished.

### **6.3 Recommendations**

From the preceding findings, this study presents a number of recommendations as indicated below. Recommendations are directed at international and national courts, the African Union, and specific African states.

#### **6.3.1 Courts should hold that international law *jus cogens* prevail over immunity**

It has been concluded that international law *jus cogens* imposing obligation *erga omnes* to prosecute and punish persons responsible for international crimes prevail over immunity of state officials. This is relevant to both national and international courts. Truly, there is no uniform position before national and international courts. It is easily accepted before international courts with jurisdiction over international crimes that

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<sup>17</sup> Art 22(1), Rome Statute.

immunity cannot prevail over *jus cogens*. Contrary to the above, national courts' judgments in *Mugabe* and *Gaddafi* cases as discussed in chapter 2, reflect the position that immunity may prevail unless there is a clear treaty provision outlawing such immunity of state officials. The possible solution should be the harmonisation of national and international laws in order to avoid the confusion between national and international jurisprudence on immunity of state officials. Harmonisation can be by way of enacting specific legislation outlawing immunity at national jurisdictions. This could be possible for example, through domestication of international treaties outlawing immunity of state officials in respect of international crimes. Harmonisation of international and national laws may lead the courts to hold that international law *jus cogens* must prevail over immunity founded on customary international law.

### **6.3.2 Courts should issue subpoenas against state officials**

*Subpoenas* should be issued against state officials who may be in a position to assist the defence or prosecution and the courts in unfolding the truth and for fairness reasons to the accused persons. One cannot simply imagine seeing some state officials being indicted and arrested whereas others of equal responsibility are simply protected by the same law that prosecutes others. For example, it is just unimaginable that Charles Taylor was indicted on the basis of international law rejecting immunity, whilst Tejan Kabbah was not subpoenaed to testify for the defence in *Norman* case. Equally, it is rather a mockery of international law to find that Tony Blair and Gerhard Schröder were not subpoenaed based on immunity of such leaders whereas Milošević was indicted, arrested and prosecuted by the ICTY and the court rejected any immunity accorded to Milošević by virtue of his official status. The same goes for President Paul Kagame who should have been subpoenaed by the ICTR to testify in the *Nzirorera's* application for subpoena.

This study suggests that if conditions for the issuance of subpoenas are fulfilled, international courts, such as ICC, should not shy away from issuing subpoenas against serving state officials even though this seems to be envisaged under article 64(6) (b) of the Rome Statute. Issuing subpoenas may ensure fairness, expedition of trials and

equality of arms in international prosecutions. These are essential to both the defence and prosecution sides before international courts. Therefore, such courts should not unreasonably withhold this kind of remedy where there are grounds for its issuance.

The preceding recommendations relate to the situation obtaining in international courts. It is important that one understands the position at the African regional level with particular reference to the issue of immunity and prosecution of international crimes, as we now turn to recommend.

### **6.3.3 The African Union should adopt a regional treaty to prosecute international crimes and outlaw immunity, and such treaty should call for cooperation with the International Criminal Court**

Following the finding that there is no comprehensive regional mechanism to prosecute international crimes and outlaw immunity in Africa,<sup>18</sup> it is recommended that the AU should consider adopting a treaty which will allow prosecution of international crimes in Africa. Such treaty should also outlaw immunity of state officials in respect of international crimes. The suggested treaty should call upon African states to prosecute and punish persons responsible for international crimes. The AU needs to learn from the Great Lakes Region which has adopted a Protocol on the prosecution and punishment of international crimes. It would be better if the AU followed the steps initiated by the Great Lakes Region. The AU can adopt such a treaty by amending article 4(h) of the Constitutive Act of the AU to allow judicial intervention in terms of prosecution of perpetrators of international crimes. Such amendment should also call for the establishment of a regional judicial organ to prosecute international crimes in Africa. Since the AU has shown its desire to establish a criminal chamber within the African Court of Justice and Human Rights,<sup>19</sup> it is recommended that the AU should amend the

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<sup>18</sup> See part 6.2.3 above & Ch.4 above.

<sup>19</sup> See, Decision on the Implementation of the Assembly Decision on the Abuse of the Principle of Universal Jurisdiction, Doc. Assembly/AU/Dec.213(XII), 4 February 2009, para 9 (stating that ‘The Assembly...Requests the Commission, in consultation with the African Commission on Human and Peoples’ Rights, and the African Court on Human and Peoples’ Rights, to examine the implications of the

Statute of the African Court of Justice and Human Rights and its Protocol<sup>20</sup> in order to pave the way for the establishment of the proposed criminal chamber.

Despite the proposed establishment of an institution with competence over international crimes in Africa, it is recommended that the treaty establishing such institution should also impose an express obligation on African states to ratify the Rome Statute. Such obligation should also extend to issues of cooperation with the ICC. This would enable a majority of African states to become states parties to the Rome Statute thereby allow such states to exercise positive complementarity as recognised under the Rome Statute.<sup>21</sup> It must be recalled that the ICC is a modern and permanent international court which may exercise jurisdiction over international crimes committed anywhere in the world, including Africa. It is suggested that, in case of competing requests, the ICC should take precedence over the African judicial institution or national requests. This would be in line with what has already been suggested by the member states of the Great Lakes Region in the Protocol which calls for prosecution of international crimes.<sup>22</sup>

Since the ICC is an international judicial institution capable of prosecuting individuals, including those from African states, it is recommended that African states should cooperate with the ICC in the investigation and prosecution of international crimes committed in African states. Hence, African states should desist from levelling legally unfounded claims against the ICC.

#### **6.3.4 African states should ratify and implement the Rome Statute**

It is recommended that African states that have not yet ratified the Rome Statute should do so and proceed to domesticate it into national laws so as to give effect to the treaty at

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Court being empowered to try international crimes such as genocide, crimes against humanity and war crimes, and report thereon to the Assembly in 2010’).

<sup>20</sup> For a detailed discussion on the African Court of Justice and Human Rights, see, M Hansungule ‘African courts and the African Commission on Human and Peoples’ Rights’ in A Bösil and J Diescho (2009) *Human rights in Africa: Legal perspectives on their protection and promotion* 233-271.

<sup>21</sup> See arts 1 and 17, Rome Statute.

<sup>22</sup> Arts 21 - 24 of the Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination.

domestic level. It is important for national jurisdictions to be consistent with international law contained in the Rome Statute. Such laws should also expressly reject immunity for state officials charged with international crimes. If African states ratify and domesticate the Rome Statute, there will be no unnecessary complaints that the ICC is targeting Africans only. Once such laws are enacted, African states would have the competence to exercise jurisdiction over persons responsible for international crimes in Africa. This would be in line with the principle of positive complementarity recognised under the Rome Statute. Hence, there could be no animosity between African states and the ICC regarding prosecution of international crimes in Africa. Further, the fact that African jurisdictions can prosecute international crimes at domestic level they would assist the ICC in reducing its bulk of cases arising from African states.

### **6.3.5 States should allow universal jurisdiction based on territoriality and nationality principles, and should harmonise their laws with international law standards**

It is recommended that states like Senegal, Niger, and Burkina Faso which have enacted laws implementing the Rome Statute thereby allowing absolute universal jurisdiction, should amend the laws in order to adopt the principle of universal jurisdiction based on nationality links and territoriality of the victims or perpetrators. These requirements will enhance the possibility of holding responsible those who commit international crimes. It will also avoid universal jurisdiction *in absentia* which results from absolute universal jurisdiction.

Absolute universal jurisdiction is weak in that it cannot be applied if the perpetrator of crimes cannot be found in the territory of the state with competence to exercise such jurisdiction. It is meaningless to have absolute universal jurisdiction if courts cannot be able to exercise power over the perpetrators of crimes. Absolute jurisdiction is ambitious but very weak. Hence, if emphasis is put on the presence of perpetrator in the territory of a state, it will be easy to enforce warrants of arrest issued in respect of international crimes committed outside the territory of a state concerned.

Furthermore, it is recommended that national laws in Senegal and Uganda should be harmonised with the Rome Statute in order to meet international standards, particularly in respect of retroactive application of punishment. Uganda and Senegal should amend their laws implementing the Rome Statute in order to respect the principle of *nullum crimen sine lege* and *nulla poena sine lege* as contained in article 22(1) and (2) of the Rome Statute. It is obvious that retroactivity of laws violates the rights of accused persons under articles 7(2) of the African Charter on Human and Peoples' Rights, article 3(4) of the International Covenant on Civil and Political Rights (to which Uganda and Senegal are states parties), and article 8 of the Universal Declaration of Human Rights. It is already accepted in human rights jurisprudence that retroactive application of the laws in Senegal violates human rights of accused persons as was held by the ECOWAS Court in the case against Habré.<sup>23</sup>

It would be better if the national laws were aligned with international human rights standards contained in treaties. However, should Uganda and Senegal choose not to amend their laws to outlaw retroactivity application of their laws, it will nevertheless, not be a breach of customary international law as was held in the *Eichmann* case.<sup>24</sup> This case echoes that customary international law has imposed on states the duty to prosecute international crimes, and that there is no state practice and custom that states cannot allow retroactive application of their laws to persons responsible for crimes committed in the past.

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<sup>23</sup> See, Arrêt CEDEAO/ECOWAS Ruling: *Habré c. République du Sénégal*, 18 November 2010, paras 1-62. *Affaire Hissein Habré c/République du Sénégal*, Role General No. ECW/CCJ/APP/07/08, Arrêt No. ECW/CCJ/JUD/06/10 du 18 Novembre 2010, La Court de Justice de la Communauté Economique des Etats de l'Afrique de l'Ouest (CEDEAO), Siégeant à Abuja, au Nigeria, ce jeudi 18 Novembre 2010.

<sup>24</sup> *Attorney General of Israel v Adolf Eichmann*, Records of Proceedings in the Supreme Court of Israel, Appeal Session 7, Judgment, 29 May 1962, para 8.