



**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
SUPPLEMENTARY EXAMINATION
LLM 8201: INTERNATIONAL CRIMINAL LAW**

Date: **Monday, 6th May 2024**

Time: **3 Hours**

Instructions

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions
3. This is a closed-book examination.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

QUESTION 1 [30 Marks]

- (a) The jurisdiction of the International Criminal Court is limited to the most serious crimes of concern to the international community as a whole and for which perpetrators should not go unpunished. Discuss the definition and the core elements of the following Rome Statute crimes.
- (i) Genocide. **[5 Marks]**
 - (ii) Crimes against humanity **[5 Marks]**
 - (iii) War crimes **[5 marks]**

Support your answer with citations of the relevant provisions of the Rome Statute as well as the applicable jurisprudence of the International Criminal Court and/or other tribunals.

- (b) The International Criminal Court for the former Yugoslavia (ICTY) and the International Criminal Court for Rwanda (ICTR), commonly known as the *ad hoc* tribunals, are credited for marking an important milestone in the world's journey towards fighting impunity for mass atrocities. In this context, discuss the following:
- (i) Three essential features or characteristics of the *ad hoc* tribunals. **[3 Marks]**
 - (ii) Three shortcomings or criticisms of the *ad hoc* tribunals. **[6 Marks]**

- (iii) Three key contributions of the *ad hoc* tribunals in the development of international criminal law. [6 Marks]

QUESTION 2 [15 Marks]

“The principle of complementarity governs the exercise of the [International Criminal] Court’s jurisdiction. This distinguishes the Court in several significant ways from other known institutions, including the international criminal tribunals for the former Yugoslavia and Rwanda (the ICTY and the ICTR)”.

ICC-OTP, *Informal expert paper: The principle of complementarity in practice*, 2003. P. 2

Considering the above statement, discuss the meaning, rationale, and application by the International Criminal Court of the principle of complementarity.

QUESTION 3 [15 Marks]

“Has the ICC unfairly targeted Africa or, to the contrary, has Africa perhaps unfairly targeted the ICC? One certainly has to wonder. The ICC’s rendezvous with African politics reveals a chasm as wide and deep as the Great Rift Valley.”

Sunga, L ‘Has the ICC unfairly targeted Africa or has Africa unfairly targeted the ICC?’ in Mariniello, T (ed) *The International Criminal Court in search of its purpose and identity* (2014) 147

In view of the above statement, identify and critically examine the validity of at least three major concerns that have fuelled Africa’s strained relationship with the ICC and the Rome Statute system in the past decade.

QUESTION 4 [15 Marks]

The State of Raspara is a member of the African Union (AU) and the United Nations (UN). Between April and December 2022, the State’s military forces were engaged in an armed conflict against the Freedom for Raspara Forces (FRF), an ethnic-based armed group that seeks to forcefully take power from the current sitting president. During the nine months of the conflict, both parties committed grave violations of international human rights law and international humanitarian law.

A commission of inquiry established by the African Union in September 2022, reported three months later that there were reasonable grounds to believe that that war crimes and crimes against humanity had been committed by both sides of the conflict. It found that FRF had killed thousands of civilians, abducted thousands of women, girls and boys, many of whom had been forcibly recruited as child soldiers or subjected to forced marriages and sexual slavery. The military, it found, had committed extrajudicial killings, mass arbitrary arrests and detentions, torture and other ill-treatment, leading to thousands of deaths in custody, enforced disappearances, and other crimes including rape and sexual violence.

Under the mediation of the AU, a cessation of hostilities agreement between the State of Raspara and FRF was signed at the AU headquarters in Addis Ababa, Ethiopia in January 2023. With the signing of the agreement, the parties have now moved to discuss other elements of the peace agreement, including transitional justice.

You are a staff of the AU Mediation Support Unit, working under the AU Special Envoy for Raspara. Ahead of the negotiation on the specific issue of transitional justice, the Special Envoy has asked you to prepare a briefing on the justice and accountability options that could possibly be pursued. In particular, the Special Envoy has posed the following questions:

- a) Since Raspara has not ratified the Rome Statute, under what modalities or preconditions may the International Criminal Court exercise jurisdiction over the war crimes and crimes against humanity committed in Raspara? **[6 Marks]**
- b) As the parties seem to prefer the establishment of a hybrid court, what are the essential elements of a hybrid court and its advantages over the International Criminal Court or other forms of international tribunals? Discuss at least three essential elements and at least two advantages. **[9 Marks]**

Support your answer with concrete examples and/or references to relevant treaty law.

QUESTION 5 [15 Marks]

“The adoption of the Malabo Protocol has provoked strong reactions. Those who are in favour of it stress the potential contributions it could make to the search for viable mechanisms to comprehensively address human rights and criminal law issues in Africa in a single legal forum. Those in this camp tend to emphasize the innovations contained within it and would typically assert that regionally driven means to prosecute serious international and other crimes could prove to be complementary with the ICC. Those in the opposite camp, on the other hand, perceive the Malabo Protocol as a rebel or protest court created by the AU to undermine the ICC”.

Clarke, K *et al* ‘Introduction: Origins and issues of the African Court of Justice and Human and Peoples’ Rights’ in Jalloh, C *et al* (eds) *The African Court of Justice and Human and Peoples’ Rights on context: Development and challenges* (2019) 1, 13.

Considering the above statement, discuss three key strengths or innovations of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol).