



**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8202: INTERNATIONAL CRIMINAL LAW PROCEDURE**

Date: **Monday, 17th July 2023**

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]

Discuss the material and mental elements required to establish the following modes of criminal liability or responsibility under the Rome Statute of the International Criminal Court:

- (a) Joint commission [8 Marks]
- (b) Indirect perpetration [4 Marks]
- (c) Superior or command responsibility [6 Marks]
- (d) Ordering [4 Marks]
- (e) Aiding and abetting [4 Marks]
- (f) Incitement to genocide [4 Marks]

QUESTION 2 [15 Marks]

“Over the last two decades, plea bargaining has spread beyond the countries where it originated – the United States and other common law jurisdictions – and has become a global phenomenon. Plea bargaining is spreading rapidly to civil law countries that previously viewed the practice with skepticism. And it has now arrived at international criminal courts”.

Jenia Iontcheva Turner ‘Plea bargaining and international criminal justice’
(2017) 48 *McGeorge Law Review* 219.

- (a) Considering the October 2020 *Guidelines for Agreements Regarding Admission of Guilt* developed by the Office of the Prosecutor of the International Criminal Court, discuss any three factors that the Prosecutor would need to carefully weigh before entering into a plea bargain agreement. **[9 Marks]**
- (b) With reference to the relevant provisions of the Rome Statute of the International Criminal Court, discuss three procedural safeguards that a trial chamber of the International Criminal Court must consider when an admission of guilt is made by an accused person. **[6 Marks]**

QUESTION 3 [15 Marks]

Banda, a state party to the Rome Statute of the International Criminal Court, is an African state located in the Great Lakes region. Between November 2020 to December 2022, the Banda Defence Forces (BDF) was engaged in an armed conflict with a rebel group known as the Banda Peoples' Liberation Army (BPLA). During that period, both parties to the conflict are reported to have committed crimes against humanity and war crimes. Some of the major incidents of violations and abuses are described in a report by the United Nations Commission on Human Rights in Banda.

In one incident dated 26 January 2021, Simba Marara, a force commander in the BDF, is alleged to have ordered the beating and torture of a captured member of the BPLA to extract information about the operations of the rebel group. After hours of torture, the BPLA member provided details of how the group had attacked and killed civilians. In another incident dated 16 April 2021, it is alleged that under the instruction of his superior, Simba Marara led a bombing raid on six huts. The BDF's military intelligence had determined that BPLA's members were hiding in those six huts. However, it became clear after the attack that those killed were women and children who had taken refuge in the huts.

- (a) Assuming that a case relating to the situation in Banda is now before the ICC, discuss the extent to which the evidence obtained from the BPLA member in relation to the incident dated 26 January 2021 is admissible. **[6 Marks]**
- (b) Assuming that Simba Marara is standing trial at the ICC, including for the war crime of killing civilians on 16 April 2021, discuss the possible grounds for excluding criminal responsibility that Simba Marara may invoke in his defence. **[9 Marks]**

QUESTION 4 [15 marks]

- (a) One of the upshots of Article 69(2) of the Rome Statute of the International Criminal Court is that the International Criminal Court (ICC) may permit the admission of prior recorded testimony of a witness during trial. Describe the general conditions under which the ICC may permit the introduction of such evidence. **[9 Marks]**
- (b) With reference to the relevant provisions of the Rome Statute of the International Criminal Court, explain the evidentiary standard of proof applicable during the following proceedings at the International Criminal Court. **[6 Marks]**
 - i. Issuance by the pre-trial chamber of a warrant of arrest or a summons to appear
 - ii. Confirmation of charges by the pre-trial chamber

- iii. Trial of an accused person by the trial chamber

QUESTION 5 [15 Marks]

“Every international or hybrid tribunal, from Nuremberg onwards, has needed to develop its own procedural system based on the often limited and inconclusive legal framework. Each such system incorporated elements from the major domestic traditions of common law and civil law which were combined in unique ways. As a result, from its relatively recent state of inexistence or underdevelopment, international criminal procedure has emerged as a sophisticated branch of law and a new subdiscipline”.

Robert Cryer *et al* (2019) *An introduction to international criminal law and procedure* Cambridge: Cambridge University Press, p. 405

Identify and discuss four ways in which the Rome Statute of the International Criminal Court incorporates or reflects elements of the inquisitorial model of criminal procedure.