



“Investing in Africa’s future”

COLLEGE OF BUSINESS, PEACE, LEADERSHIP & GOVERNANCE

NPHR 504: INTERNATIONAL CRIMINAL LAW & TRANSITIONAL JUSTICE

END OF SEMESTER EXAMINATIONS

NOVEMBER 2021

LECTURER: DR. L. SITHOLE

DURATION: 5 HOURS

INSTRUCTIONS

Answer question one and any other question

You have 5 hours to complete and submit your answer to the University Moodle platform.

You are encouraged to provide appropriate references where necessary in your work. Anti-plagiarism tools will be used to assess your answer for any form of exam misconduct. Any cases of positive exam misconduct will be punished in terms University Regulations.

Question 1(Compulsory)

President Aku Batu had ruled the state Zegonia since 2002. Zegonia's population consisted of two ethnic groups; the Malowa which counted 75% and the Saroti, an intellectual elite which counted the remaining 25%. There were great differences between the two groups regarding religion and culture. By the fall 2006, President Batu, himself a Malowa, began to lose popularity due to increasing unemployment and general dissatisfaction with the President's arrogant style. The next election was scheduled in 2008, and in a strategy meeting, Batu's political advisor said the President should seek to turn the Malowa against the Saroti in order to regain popularity. This could be done by broadcasting anti-Saroti propaganda in radio and television, the advisor suggested.

The President discussed the idea with his Propaganda Minister, Rudra Bann, who agreed this was probably the only way to win the next election. Bann suggested that in order to make the plan more efficient they should effectively "remove all Saroti from Zegonian territory". In a radio speech 15 November 2006, Propaganda Minister Bann personally made a speech broadcasted on radio and television. He started by advising all Saroti to move to the neighboring state of Abelia, from which this ethnic group originally originated. Here, they would be more welcome, he said. As the speech developed, he became more and more agitated and in the end he encouraged Malowa to kill all Saroti who were still in the territory of Zegonia by the end of December.

By the end of December, most Saroti had left Zegonia, but approximately 10,000 had not left, as they did not believe they would actually be killed. In January 2007, President Batu sent a sealed order to all military units in Zegonia, the soldiers of which were exclusively Malowa, ordering that all remaining Saroti should be killed as the Propaganda Minister had warned. The President now felt that there was no way back, and as a leader he could not display weakness. One of the generals, Andreas Bimbo, saw that a sealed envelope arrived at his headquarter, but he did not open it. He explained to a colleague that he had heard the radio speech and feared it might be an order

to “do something terrible”. When he got home that day, he packed two suitcases and drove to his cabin in the mountains with his half-Saroti wife and their two little girls. Two days later, all Begonia military units, including that of General Bimbo, started to kill the Saroti. Within two weeks, all 10.000 Saroti were killed. Both Begonia and Abelia had ratified the Rome Statute in 2000.

In light of the above, answer the following questions: 5

- a) Will the ICC have jurisdiction over the crimes committed in Begonia?
- b) Would your answer in a) above be different if Begonia had not ratified the Rome Statute?
- c) Can Propaganda Minister Bann be held responsible under the Rome Statute?
- d) Can General Bimbo be held responsible under the Rome Statute?
- e) Are there any defences that the military General can rely on? **[50 marks]**

Question 2

- a) With reference to practical situations and cases, discuss the relevance of truth and reconciliation commissions as a response to international crimes. **[30 marks]**
- b) ‘The International Criminal Court has limited and confusing jurisdictional competence, but is, nevertheless, the best court before which to bring the most serious offenders. As such, complementarity is an unwarranted hindrance to achieving international justice.’ Discuss **[20 Marks]**

Question 3

- a) Examine and discuss the state cooperation regime established by the Rome Statute. Consider the main weaknesses of this regime, and suggest mechanisms or means to enhance or improve it in the interests of prosecution of international crimes. **[40 marks]**
- b) Identify and discuss the sources of international criminal law. **[10 marks]**

Question 4

- a) Distinguish between functional and personal immunity under the ICC **[30 Marks]**
- b) Discuss the major criticisms against the ICC. **[20 marks]**

END OF EXAMINATION