

**INTERNATIONAL CRIMINAL COURT AND AFRICAN
UNION: THE WAY FORWARD TO END IMPUNITY
FOR INTERNATIONAL CRIMES IN AFRICA**

BY

BULANGU MUSA MUHAMMAD

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degree of Doctor of Philosophy in Law

Ahmad Ibrahim Kulliyyah of Laws
International Islamic University Malaysia

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ABSTRACT

The primary objectives of the research are to examine the accusation of the African Union (AU) that the International Criminal Court (ICC) has been targeting and prosecuting the African leaders only and to investigate the extents and challenges facing the AU's future prospect to investigate or prosecute the perpetrators of international crimes through its own proposed court known as African Court of Justice and Human Rights (ACtJHR) with international criminal law jurisdiction. The research aims at resolving and removing the misconception of the AU and to move forward to end impunity for international crimes in Africa. Various research methods were used in conducting the research, such as legal doctrinal and non-doctrinal methods, empirical, and non-empirical methods, as well as analytical and comparative methods. After thoroughly investigating the AU's accusation against the ICC of targeting and prosecuting the African leaders, the research found that the crimes within the jurisdiction of the ICC were mostly committed in Africa and African authorities were not able or willing to investigate or prosecute the perpetrators and thus encouraging impunity for the perpetrators. It is also found that most of the African situations were referred to the court is from the African states themselves, requesting the court to investigate or prosecute the perpetrators. Another finding is that there are many situations before the court from other regions around the globe, and under proceedings of the court, not only from African continent, such as situations involving Georgia, Colombia, Afghanistan, Venezuela, Iraq, Palestine, Philippines, Myanmar, and Ukraine. The AU's future prospect of the proposed court with international criminal law jurisdiction may not happen soon as even the Protocol that is going to create the court, and the Protocol to create an international criminal law section of the court with international crimes jurisdiction have not been ratified by the African states. The research has made several recommendations. It recommends to the African states to put a pressure on the United Nations Security Council (UNSC) to adopt a resolution to deal with serious situations, such as in Syria and Myanmar in order to make referrals to the ICC rather than criticising the court. African states are advised not to ratify international treaties unless and until they are fully familiar with their objectives and contents to avoid further confrontation and misconception. Furthermore, by virtue of the complementarity principle, the ICC is the court of last resort and the court encourages investigating or prosecuting the perpetrators by the domestic courts. Therefore, African states are required to investigate or prosecute the international crimes domestically, and are encouraged to ratify the Protocol creating the proposed court (ACtJHR) that will have international criminal law jurisdiction in order as the court to be operated soon to investigate or prosecute the international crimes regionally in Africa under the AU umbrella.

خلاصة البحث

الأهداف الرئيسية للبحث هي دراسة تتعلق بالاتهامات الاتحاد الإفريقي (AU) ضد المحكمة الجنائية الدولية (ICC) وفي المفاهيم الخاطئة بأن المحكمة تستهدف زعماء الأفارقة وتحاكمهم فحسب دون غيرهم، وكذلك البحث عن مدى النطاق والتحديات التي تواجه الاتحاد الإفريقي في الآفاق المستقبلية لإمكانية إجراء تحقيق أو مقاضاة مرتكبي الجرائم الدولية من خلال إنشاء محكمة مقترحة للاتحاد تُعرف باسم "محكمة إفريقيا للعدل وحقوق الإنسان (ACTJHR)" ذات اختصاص القانون الجنائي الدولي. يهدف البحث إلى إيجاد حل لتلك المفاهيم الخاطئة في المحكمة الجنائية الدولية وإزالتها للمضي قدماً في وضع حد للإفلات من العقاب في الجرائم الدولية في إفريقيا. وقد استُخدمت أساليب بحثية مختلفة في إجراء هذا البحث، وما فيها الأسلوب المذهبي وغير المذهبي، والأسلوب التجريبي وغير التجريبي، والأسلوب النقدي والتحليلي، والأسلوب المقارن. وبعد دراسات شامل حول الاتهامات الاتحاد الإفريقي ضد المحكمة الجنائية الدولية، وفي المفاهيم الخاطئة بأن المحكمة تستهدف زعماء الأفارقة وتحاكمهم دون غيرهم، يجد البحث بأن الجرائم التي تدخل في ضمن اختصاص المحكمة الجنائية الدولية قد ارتكبت بالفعل في إفريقيا، وأن السلطات الإفريقية غير قادرة أو غير نارية لإجراء تحقيق أو محاكمة ضد الجناة، وبالتالي تُشجع الإفلات من العقاب، حيث وقَّعت العديد من الجرائم في المنطقة ولم تجر أي تحقيق أو محاكمة ضد الجناة. كما تبين أن معظم الحالات الإفريقية قد تم إحالتها إلى المحكمة من قبل السلطات الإفريقية نفسها، وطلبت من المحكمة التحقيق مع الجناة أو مقاضاتهم. وكما تبين أيضاً أن هناك العديد من الحالات من قارات أخرى حول العالم في قيد التحقيق القضائي أمام المحكمة وليس من إفريقيا فقط، كحالة جورجيا، وكولومبيا، وأفغانستان، وفنزويلا، والعراق، وفلسطين، والفلبين، وميانمار، وأوكرانيا. وأما الآفاق المستقبلية للاتحاد الإفريقي لإنشاء محكمة مقترحة ذات اختصاص القانون الجنائي الدولي قد لا يحدث قريباً، حيث إن البروتوكول الذي بموجبه يتم إنشاء المحكمة، والبروتوكول المعدل الذي بموجبه يتم إضافة اختصاص القانون الجنائي الدولي مع اختصاص على الجرائم الدولية إلى المحكمة المقترحة لم يتم التوقيع والمصادقة عليها من قبل الدول الإفريقية. يُقدّم البحث توصيات مختلفة حيث بدلاً من انتقاد المحكمة الجنائية الدولية ينبغي على الدول الإفريقية ممارسة ضغط على مجلس الأمن الدولي التابع للأمم المتحدة لاتخاذ قرار يجعله التعامل مع الحالات الخطيرة الأخرى، ولتمريرها وإحالتها إلى المحكمة الجنائية الدولية، كحالة سوريا وميانمار. ويُصحح الدول الإفريقية أن لا تُقدّم على توقيع أو تصديق معاهدات دولية حتى تكون على دراية كاملة بموضوع وفحوى ونطاق المعاهدة لتفادي المزيد من المواجهة وسوء التفاهم. علاوة على ذلك، وبفضل مبدأ التكامل، فإن المحكمة الجنائية الدولية هي محكمة يتم اللجوء إليها كخيار الأخير، حيث تُشجع المحكمة في إجراء تحقيق أو مقاضاة ضد الجناة أمام المحاكم الوطنية المحلية. وعليه فإن الدول الإفريقية مطالبة بالتحقيق في الجرائم الدولية أو مقاضاتها وطنياً ومحلياً. وكذلك يُشجع الدول الإفريقية في التوقيع والتصديق على البروتوكول المحكمة المقترحة للاتحاد الإفريقي، "محكمة أفريقيا للعدل وحقوق الإنسان" والبروتوكول الذي بموجبه يتم توسيع نطاق اختصاص المحكمة ليشمل اختصاص القانون الجنائي الدولي للدخول إلى حيز التنفيذ، وتشغيل محكمة من أجل إجراء تحقيق أو مقاضاة الجرائم الدولية إقليمياً في إفريقيا تحت مظلة الاتحاد الإفريقي.

APPROVAL PAGE

The thesis of Bulangu Musa Muhammad has been approved by the following:

**Abdul Ghafur Hamid
Supervisor**

**Mohd. Hisham Mohd. Kamal
Co-Supervisor**

**Muhamad Hassan Ahmad
Co-Supervisor**

**Mohammad Naqib Eishan Jan
Internal Examiner**

**Makane Moise Mbenge
External Examiner**

**Rahmat Mohamad
External Examiner**

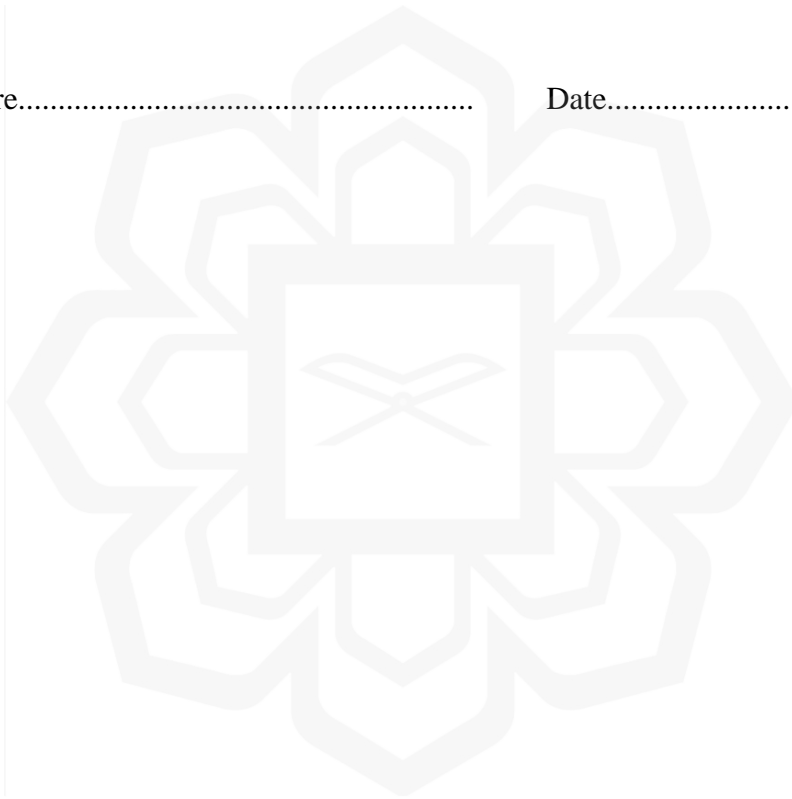
**Meftah Hrairi
Chairman**

DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Bulangu Musa Muhammad

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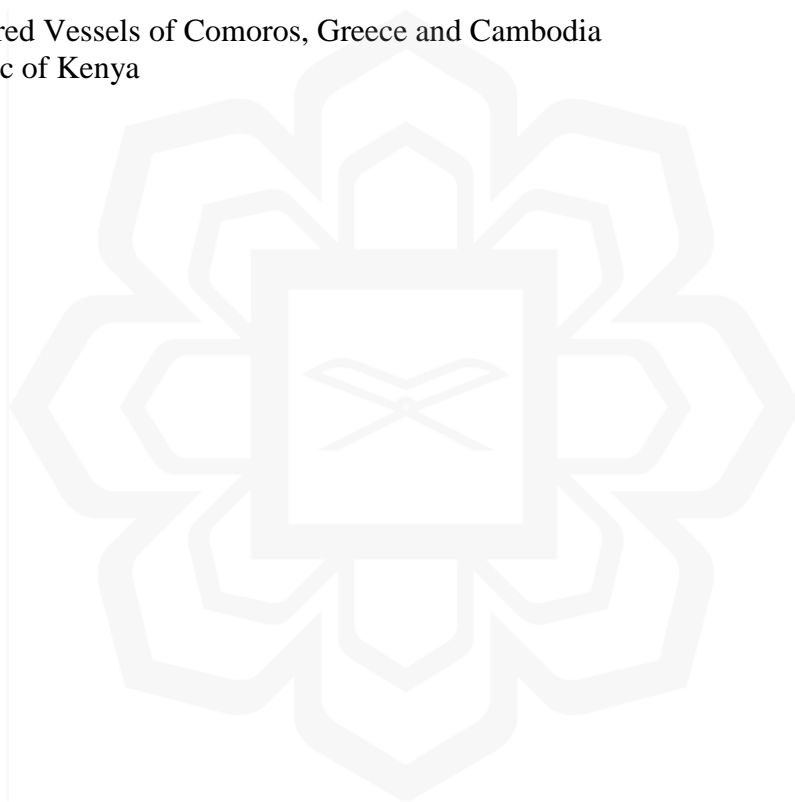
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LIST OF AFRICAN SITUATIONS WITH ICC

Burundi
Central African Republic
Central African Republic II
Côte D'Ivoire
Darfur, Sudan
Democratic Republic of the Congo
Guinea
Libya
Mali
Nigeria
Registered Vessels of Comoros, Greece and Cambodia
Republic of Kenya
Uganda



LIST OF OTHER SITUATIONS WITH ICC

Afghanistan
Bangladesh/Myanmar
Colombia
Georgia
Iraq/UK
Palestine
Philippines
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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Right
ACJ	African Court of Justice
ACOHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
ACtJHR	African Court of Justice and Human Rights
AI	Amnesty International
API	Additional Protocol I
AP II	Additional Protocol II
AU	African Union
AUCIL	African Union Commission on International Law
CA3	Common Article 3 of the Geneva Conventions
CAR	Central African Republic
CENSAD	Community of Sahel-Saharan States
CICC	Coalition for the International Criminal Court
COMESA	Common Market for Eastern and Southern Africa
CtJAU	Court of Justice of the African Union
CW	Chemical Weapons
DRC	Democratic Republic of Congo
EAR	East African Region
ECOWAS	Economic Community of West African States
EIO	End Impunity Organisation
ECCC	Extraordinary Chambers for the Courts of Cambodia
EU	European Union
EUROJUST	European Union Judicial Co-operation in Criminal Matters
GC	Geneva Conventions
HCCH	Hague Conference on Private International Law
HNWG	Hague and New York Working Groups
HRW	Human Rights Watch
IAC	International Armed Conflict
IC	International Crimes
ICC	International Criminal Court
ICD	International Crimes Division
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDR	International Dispute Resolution
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	International Law Commission
IMTFE	International Military Tribunal for the Far East
IMTN	International Military Tribunal, Nuremberg
IRMCT	International Residual Mechanism for Criminal Tribunals
KSA	Kingdom of Saudi Arabia

KSC	Kosovo Specialist Chambers
LOAC	Law of Armed Conflict
LoN	League of Nations
LOW	Law of War
LRA	Lords Resistant's Army
NATO	North Atlantic Treaty Organisation
NGOs	Non-Governmental Organisations
NIAC	Non-International Armed Conflict
OAU	Organisation of African Unity
OPCW	Organisation for the Prohibition of Chemical Weapons
OTP	Office of the Prosecutor
PCA	Permanent Court of Arbitration
PICC	Permanent International Criminal Court
REC	Regional Economic Communities
SADC	Southern African Development Community
SC	Security Council
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
TFV	Trust Fund for Victims
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNRLDP	United Nations Rule of Law Development Program
UNSC	United Nations Security Council
US	United States
USA	United State of America
WMD	Weapons of Mass Destruction
WW II	World War Two