

**REPORT OF THE SESSIONAL COMMITTEE ON LEGAL
AND PARLIAMENTARY AFFAIRS ON THE
INTERNATIONAL CRIMINAL COURT BILL, 2006**

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REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE INTERNATIONAL CRIMINAL COURT BILL, 2006

1.0 Introduction

The International Criminal Court Bill, 2006 was read for the first time on 5th December 2006 and referred to the Committee of Legal and Parliamentary Affairs in accordance with Rules 112 and 113 of the Rules of Procedure of Parliament. In analysing the Bill, the committee was guided by Rule 113 of the Rules of Procedure of Parliament.

2.0 Methodology

The Attorney General and Minister of Justice and Constitutional Affairs introduced the Bill to the Committee.

In the process of analysing the Bill, the Committee discussed the Bill and received memoranda from the following stakeholders:

1. Uganda Law Reform Commission
2. Directorate of Public Prosecution
3. Uganda Law Society
4. Advocates for Public and International Law – Uganda
5. International Criminal Court Coalition in Uganda

3.0 Objectives of the Bill

The Bill is intended to give the force of law in Uganda to the Rome Statute adopted on 17th July 1998 by the UN Diplomatic Conference of Plenipotentiaries and ratified by Uganda on 14th June 2002; to implement obligations assumed by Uganda under the Rome Statute; to make further provision in Uganda's law for the punishment of the international crimes of genocide, crimes against humanity and war crimes; to enable Uganda to co-operate with the International Criminal Court (ICC) in the performance of its functions, including the

investigation and prosecution of persons accused of having committed crimes referred to in the Rome Statute; to provide for the arrest and surrender to the ICC of persons alleged to have committed crimes referred to in the Rome Statute; to provide for various forms of requests for assistance to the ICC; to enable the Ugandan courts to try, convict and sentence persons who have committed crimes referred to in the Rome Statute; to enable the ICC to conduct proceedings in Uganda; and to provide for the enforcement of penalties and other orders of the ICC in Uganda.

4.0 Observations

The Committee observed that:

- a) The Bill requires the consent of the Attorney General before prosecutions can be commenced under it. However, Article 120 of the Constitution of Uganda gives and mandates the Director of Public Prosecution to commence and prosecute criminal offenders.
- b) ~~The Bill provides for a death penalty for crimes such as genocide~~ and crimes against humanity under the Penal Code and yet the Rome statute that stipulates against offences of genocide, war crimes and crimes against humanity does not provide for the death penalty. Persons prosecuted in Uganda under this law will get a harsher punishment than those who will be tried under the Rome Statute.
- c) Article 19(1)(a) of the ICC Bill provides that persons under the age of 18 years shall not incur any criminal responsibility. However, Article 8(2) (b) (xxvi) of the Rome Statute makes it an offence for a person to enlist children under the age of 15 years to take part in hostilities. These two provisions create an opportunity for children between 16 and 17 to be enlisted without the enlisters committing

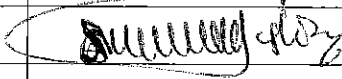

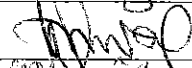
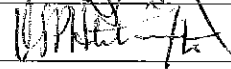
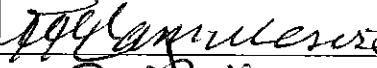
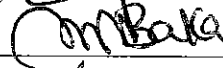
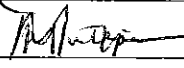
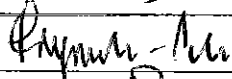

crimes, and the children not being criminally responsible for their actions.

- d) The Rome Statute provides for several matters of determination to be referred to the Magistrate Court. In some countries, Magistrates are the equivalent of the Judges in Uganda. Owing to the gravity of the offences created by the Bill, the committee is of the view that matters for determination before the Magistrate courts should be handled by the High Court.
- e) The Rome Statute applies equally to all persons without any distinction based on official capacity. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law shall not bar the court from exercising its jurisdiction over such a person.

5.0 Recommendation

The Committee recommends that the Bill be passed into law subject to the proposed amendments

**REPORT OF THE SESSIONAL COMMITTEE ON LEGAL AND
PARLIAMENTARY AFFAIRS ON THE INTERNATIONAL CRIMINAL COURT
BILL, 2006**

NO	NAME	SIGNATURE
1.	Hon. Tashobya Stephen	
2.	Hon. Sabila Herbert	
3.	Hon. Achia Remigio	
4.	Hon. Ndeezi Alex	
5.	Hon. Niwagaba Wilfred	
6.	Hon. Maj. Mpabwa Sarah	
7.	Hon. Gen. Tinyefunza David	
8.	Hon. Netalisire Sarah	
9.	Hon. Col Kyamulesire Ramadhan	
10.	Hon. Bakka Mugabi Stephen	
11.	Hon. Joseph Balikudembe	
12.	Hon. Karooro Okurut Mary	
13.	Hon. Meddie Mulumba	
14.	Hon. Nyombi Peter	
15.	Hon. Ben Wacha	
16.	Hon. Lukwago Erias	
17.	Hon. Njuba Sam	
18.	Hon. Abdu Katuntu	

PROPOSED AMENDMENTS TO THE ICC BILL, 2006

1 Clause 3 on page 7

- (i) In the definition of the word "crime" delete the words "includes offence" and replace them with the words "crime" includes genocide, crimes against humanity, war crime or crime of aggression".

Justification

To restrict the jurisdiction of the court to trying only offences prescribed for by the Rome Statute.

Clause 3 on page 8

- (ii) Delete the words "magistrate" means a magistrate Grade I and Chief Magistrate;

Justification

The committee proposes to replace the word "magistrate" with the word "registrar"

- (iv) Immediately after the definition of the word "prosecutor" insert the following-

"registrar" means a registrar of the High Court;

Justification

The duties being imposed on the Magistrate are administrative issues which should be handled by the Registrar.

3 Clause 8 on page 12; delete sub clause (3) (a);

Justification:

The bill is inconsistent with the Rome statute in so far as it makes reference to the Penal Code Act which provides for the death sentence, whereas the Rome Statute in Article 77(1)(b), provides for a term of life imprisonment as the maximum penalty for extremely grave crimes.

4 Clause 9 on page 13; delete sub clause (3)(a)

Justification

The bill is inconsistent with the Rome statute in so far as it provides for the death penalty, whereas the Rome Statute in Article 77(1)(b), provides for a term of life imprisonment as the maximum penalty for extremely grave crimes.

5 Clause 25 on page 22; delete clause 25.

Justification:

The bill is inconsistent with Article 98(4) of the Constitution in as far as it does not recognize the immunity of the President from arrest or court proceedings while holding office as President.

6. Clause 26:

- i. Clause 26 on page 23; delete the word “magistrate” in line 2 of sub clause (1) (a), and replace it with the word “registrar”.
- ii. Clause 26 on page 23; delete the word “magistrate” in line 1 of sub clause (2), and replace it with the word “registrar”.

Justification

The jurisdiction of magistrate courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

7. Clause 27

Clause 27 on page 24; in line 4 of sub clause (3), delete the word “magistrate” and replace with the word “registrar”

Justification

The jurisdiction of magistrate courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

8. Clause 28:

- i. Clause 28 on page 25; in line 1 of sub clause (5)(a) delete the word “magistrate” and replace with the word “registrar”

- ii. Clause 28 on page 25; in line 1 of sub clause (5)(b), delete the word “magistrate” and replace with the word “registrar”
- iii. Clause 28 on page 25; in line 2 of sub clause (5)(b), delete the word “magistrate” and replace with the word “registrar”

Justification

The jurisdiction of magistrate courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

9. Clause 28 on page 26; in line 4 of sub clause (6); delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

10. Clause 29 on page 26; in line 4 of sub clause (5); delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

11. Clause 31
 - i. Clause 31 on page 27; in line 1 of sub clause (1) delete the word “magistrate” and replace it with the word “registrar.”
 - ii. Clause 31 on page 27; in line 1 of sub clause (2) delete the word “magistrate” with the word “registrar.”
 - iii. Clause 31 on page 27; in line 4 of sub clause (3) delete the word “magistrate” and replace it with the word “registrar.”
 - iv. Clause 31 on page 27; in line 1 of sub clause (4) delete the word “magistrate” and replace it with the word “registrar.”

- v. Clause 31 on page 27; in line 2 of sub clause (5) delete the word “magistrate” and replace it with the word “registrar.”

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

12. Clause 32

- i. Clause 32 on page 28; in line 2 of sub clause (1), delete the word “magistrate” and replace it with the word “registrar”
- ii. Clause 32 on page 28; in line 1 of sub clause (1) (a); replace the word “magistrate” with the word “registrar”
- iii. Clause 32 on page 28; in line 1 of sub clause (1) (b); replace the word “magistrate” with the word “registrar”
- iv. Clause 32 on page 28; in line 2 of sub clause (2) delete the word “magistrate” and replace it with the word “registrar”
- v. Clause 32 on page 28; in line 1 of sub clause (3) delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

13. Clause 33

- i. Clause 33 on pages 28 and 29; in line 1 of sub clause (1), delete the word “magistrate” and replace it with the word “registrar”
- ii. Clause 33 on page 28 in line 2 and 3 of sub clause (1) (b); delete the word “magistrate” and replace it with the word “registrar”

- iii. Clause 33 on page 29 in line 1 of sub clause (2); delete the word “magistrate” and replace it with the word “registrar”
- iv. Clause 33 on page 29; in line 1 of sub clause (3)(a); delete the word “magistrate” and replace it with the word “registrar”
- v. Clause 33 on page 29; in line 1 of sub clause (3)(b); delete the word “magistrate” and replace it with the word “registrar”
- vi. Clause 33 on page 29; in line 1 of sub clause (6)(a); delete the word “magistrate” and replace it with the word “registrar”.
- vii. Clause 33 on page 30; in line 2 of sub clause (7), delete the word “magistrate” and replace it with the word “registrar”.

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

14 Clause 34

- i. Clause 34 on page 30; delete the word “magistrate” in the head note and replace it with the word “registrar”.
- ii. Clause 34 on page 30; in line 1 of clause 34 delete the word “magistrate” and replace it with the word “registrar”.

Justification

The jurisdiction of magistrate’s court in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

15 Clause 35

- i. Clause 35 on page 30 ; in line 1 of sub clause (1) delete the word “magistrate” and replace it with the word “registrar”.

- ii. Clause 35 on page 30 ; in line 1 of sub clause (2); delete the word “magistrate” and replace it with the word “registrar”
- iii. Clause 35 on page 30 ; in line 1 of sub clause (2)(a) and (2)(b); delete the word “magistrate” and replace it with the word “registrar”
- iv. Clause 35 on pages 30 and 31; in line 2 of sub clause (3) delete the word “magistrate” and replace it with the word “registrar”
- v. Clause 35 on page 30; in line 3 of sub clause (4);delete the word “magistrate” and replace it with the word “registrar”
- vi. Clause 35 on page 31; in line 1 of sub clause (5) delete the word “magistrate”; and replace it with the word “registrar”

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

~~16. Clause 44~~

- i. Clause 44 on page 35; in line 3 of sub clause (1); delete the word “magistrate” and replace it with the word “registrar”
- ii. Clause 44 on page 35; in line 2 of sub clause (2);delete the word “magistrate” and replace it with the word “registrar”
- iii. Clause 44 on page 36; in lines 1 and 2 of sub clause (4) (a); delete the word “magistrate” and replace it with the word “registrar”
- iv. Clause 44 on page 36; in line 1 of sub clause (5); delete the word “magistrate” and replace it with the word “registrar”

- v. Clause 44 on page 36; in line 1 of sub clause (6) delete the word “magistrate” and replace it with the word “registrar”
- vi. Clause 44 on page 36; in line 1 of sub clause (8);delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

17. Clause 45

- i. Clause 45 on pages 36; in line 4 of sub clause (1);delete the word “magistrate” and replace it with the word “registrar”
- ii. Clause 45 on pages 37; in line 2 of sub clause (2);delete the word “magistrate” and replace it with the word “registrar”
- iii. Clause 45 on pages 37; in lines 1 and 3 of sub clause (4)delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

18. Clause 46

Clause 46 on pages 37; in line 2 of sub clause (1) delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate’s court in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

19. Clause 57

- i. Clause 57 on page 43; in line 4 of sub clause (1), delete the word “magistrate” and replace it with the word “registrar”

- ii. Clause 57 on page 43 ; in lines 1 and 2 of sub clause (2) delete the word “magistrate” and replace it with the word “registrar”
- iii. Clause 57 on page 43; in line 1 of sub clause (3) delete the word “magistrate” and replace it with the word “registrar”

Justification

The jurisdiction of magistrate’s court in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

20. Clause 57 on page 44; in line 2 of sub clause (9) delete the words “Magistrate Courts Act” with the words “Trial on Indictment Act”

Justification

The law applicable with regard to searches conducted on the orders of the Registrar is the Trial on Indictments Act.

21. Clause 59

- i. Clause 59 on page 45; in line 1 of sub clause (2)(b) delete the word “magistrate” and replace it with the word “registrar”.
- ii. Clause 59 on page 45; in line 1 of sub clause (4) delete the word “magistrate” and replace it with the word “registrar”.
- iii. Clause 59 on page 46; in lines 1 and 2 of sub clause (7) delete the word “magistrate” and replace it with the word “registrar”.

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

22. Clause 66,

- i. Clause 66 on page 51; in the second last line of sub clause (1) delete the words "Director of Public Prosecutions" and replace them with the words "the registrar".
- ii. Clause 66 on page 51; in line 1 of sub clause (2) delete the words "Director of Public Prosecutions" and replace them with the words "the registrar".
- iii. Clause 66 on page 52; in line (2) of sub clause (3) delete the words "Director of Public Prosecutions" and replace them with the words "the registrar".
- iv. Clause 66 on page 52; in line 4 of sub clause (6) delete the words "Director of Public Prosecutions" and replace them with the words "the registrar".

Justification

The Director of Public Prosecutions does not handle the enforcement of civil orders such as forfeiture orders.

~~23. Clause 75~~

Clause 75 on page 58; in line 3 of sub clause (2), delete the words "21 days" and replace with the words "15 days".

Justification

It is inconsistent with the Trial on Indictment Act which provides for a period not more than fifteen days.

24. Clause 75

- i. Clause 75 on page 58; in line 2 of sub clause 2, delete the word "magistrate" and replace it with the word "registrar".
- ii. Clause 75 on page 58; in line 1 and 2 of sub clause 3, delete the word "magistrate" and replace it with the word "registrar".

- iii. Clause 75 on page 58; in line 2 of sub clause 3(b), delete the word “magistrate” and replace it with the word “registrar”.

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.

25. Clause 77

- i. Clause 77 on page 59; in line 3 of sub clause 1, delete the word “magistrate” and replace it with the word “registrar”.
- ii. Clause 77 on page 59; in line 1 of sub clause 2, delete the word “magistrate” and replace it with the word “registrar”.
- iii. Clause 77 on page 59; in line 2 of sub clause 2(a), delete the word “magistrate” and replace it with the word “registrar”.
- iv. Clause 77 on page 59; in line 2 of sub clause 2(b), delete the word “magistrate” and replace it with the word “registrar”.

Justification

The jurisdiction of magistrate’s courts in Uganda’s judicial system is too low to be bestowed with such powers by this Bill.