RECOGNIZING EMBEZZLEMENT OF PUBLIC FUNDS AS AN INTERNATIONAL CRIME UNDER THE INTERNATIONAL CRIMINAL COURT (ICC) STATUTE*

Abstract

The Statute of Rome of the International Criminal Court (ICC Statute) rightly affirmed in its Preamble that "the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation." These crimes of international character recognized by the Statute of Rome and other International Statutes are "the crime of genocide", "war crimes", "crime of aggression" and "crimes against humanity". Apart from the "crimes against humanity", others are generally marked by the use of physical force or violence and easily attract international attention. There are crimes especially under the "crimes against humanity" that their perpetrators need not use physical force or violence, yet their effects are very devastating and widely felt. They are often not accorded the status of international crimes and as such the perpetrators escape accountability for the crimes. Embezzlement of public funds is an instance of this class of crime. This paper argued that embezzlement of public funds qualifies as an international crime under the category of "crimes against humanity" within the International Criminal Court's (ICC) jurisdiction. The Nigerian experience, where such crimes are treated with a kid's glove, would be used to illustrate the role of ICC among others in making the perpetrators accountable. This paper recommended that Nigeria cooperate more with the international community in combating the impunity of embezzlement of public funds and other international crimes by making these crimes their due status as international crimes. This cooperation includes domesticating the ICC Statute ratified by Nigeria and amending the Nigerian Constitution to align with Nigerian international obligations.

Keywords: accountability, international criminal court, international crimes, crimes against humanity, embezzlement of public funds

Introduction

What happens in one country easily affects other countries, especially as the world progressively becomes a global village. Indeed, "all peoples are united by common bonds."[1] When a crime that "shocks the conscience of humanity"[2] is condoned anywhere, the peace, security and well-being of the world is threatened.

Measures to end the impunity of the perpetrators of serious crimes of concern to the international community as a whole like the institution of the International Criminal Court by the ICC Statute and other measures, not only make the perpetrators take responsibility for their crimes but also contribute to the prevention of such crimes. Some terms and concepts used in this paper shall be briefly clarified. The emphasis of this paper is on the crime of embezzlement of public funds as an international crime under the class of Crimes Against Humanity (CAH). The other popularly recognized and codified crimes of international character like genocide, war crimes and crimes of aggression are not in the focus here. In arguing that embezzlement of public funds is part of

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[1] Paragraph 1, Preamble to the ICC Statute

[2] Paragraph 2, Preamble to the ICC Statute

international crimes under the class of CAH within the jurisdiction of ICC, the Nigerian experience shall be used for illustrations.

1. Clarification of Some Concepts

1.1 Accountability

Accountability in this context refers to a perpetrator of an international crime being individually held responsible for his or her crime. This entails being investigated, tried, convicted and punished for the crime committed. The ICC Statute provides that a person who commits a crime within the jurisdiction of the ICC shall be individually responsible and liable for punishment in accordance with the ICC Statute.[3] Being punished for an international crime is however just one side of accountability. The other side is justice for the victims of the crimes. The ICC Statute thus recognized reparations to the victims of international crimes as integrally constituent of accountability for international crimes.[4] Hence, the ICC

> may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.[5]

The overall essence of accountability for international crimes is to end impunity of committing such crimes and getting away without consequences. This is achieved by making the perpetrators assume responsibility for their crimes by way of being punished and remedying their crimes by way of giving justice to the victims. Subsequent reoccurrence of such crimes is believed to be deterred when those who committed such crimes are made to account for their crimes. The reign of impunity flourishes in the absence of accountability for such international crimes. Impunity in this context refers to

> the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account — whether in criminal, civil, administrative or disciplinary proceedings — since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims.[6]

The ICC Statute in its Preamble captured the above sentiments as follows:

> Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation[7]
> Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes[8]

[3] Art 25 (2)
[4] Art 75 provides for reparation to victims in form of restitution, compensation and rehabilitation.
[5] Art 75 (2)
[6] "The administration of justice and the human rights of detainees: Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)", Final Report prepared by Mr Joinet Pursuant to Sub-Commission decision 1996/119, UN Doc. E/CN.4/Sub.2/1997/20, 26 June 1997, Annex II, 13-14
[7] Paragraph 4
[8] Paragraph 5

Indeed, it is has been rightly observed that "the creation of ICC reflects, and contributes greatly to, a significant cultural turn to accountability".[9]

1.1 International Criminal Court (ICC)

ICC was established by the ICC Statute[10] as a permanent institution with the power to exercise its jurisdiction over persons for the most serious crimes of international concern and with jurisdiction complementary to national criminal jurisdictions.[11] This jurisdiction is over natural persons[12] but with the exception of any person under the age of 18 years at the time of the alleged commission of a crime.[13] Noteworthy is that the immunity from prosecution attached to official capacity as in some domestic jurisdictions is not applicable under the ICC Statute. As such, the ICC Statute applies equally to all persons without any distinction based on official capacity. ICC therefore, does not exempt a person from criminal responsibility on account of enjoying an official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official.[14] The ICC Statute also excludes the applicability of statute of limitation. As such, the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.[15]

ICC is the first permanent Court for the purpose of investigating and trying of people suspected to have committed international crimes.[16] As a significant measure in the global fight to end impunity of those who perpetrate grave crimes of international character, it has jurisdiction over persons who committed international crimes. [17] This is unlike International Court of Justice, the principal judicial organ of the United Nations that settles disputes between member States.

The following categories of crimes are within the jurisdiction of ICC that is limited to the most serious crimes of concern to the international community as a whole:
(a) The crime of genocide
(b) Crimes against humanity
(c) War crimes
(d) The crime of aggression[18]

This jurisdiction of ICC is "complementary to national criminal jurisdictions."[19] As such ICC is not intended to supplant the domestic judicial system of the States Parties. The ICC Statute rather recognized that "it is the duty of every State to exercise its criminal jurisdiction over those

[9] R Cryer and others, *An Introduction to International Criminal Law and Procedure (2nd edn, Cambridge: University Press, 2010) 582*
[10] A multilateral treaty.
[11] Art 1, ICC Statute
[12] Art 25 (1), ICC Statute
[13] Art 26, ICC Statute
[14] Art 27
[15] Art 29
[16] This is unlike *ad hoc* international criminal tribunals such as International Criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR)
[17] Paragraph 6, Preamble to the ICC Statute
[18] Art 5, ICC Statute
[19] Art 1, ICC Statute

responsible for international crimes"[20] and emphasized that the International Criminal Court established under the Statute shall be complementary to national criminal jurisdictions.[21]

The four justifications for this complementary jurisdiction of ICC have been summarized by Seils as follows:

(1) it protects the accused if they have already been tried by national courts;
(2) it upholds national sovereignty in the exercise of criminal jurisdiction;
(3) it might foster greater efficiency because the ICC cannot handle all serious crime cases; and
(4) it places responsibility for conducting investigations and bringing cases of alleged serious crimes to justice on states under international and domestic law.[22]

The instances where the complementary jurisdiction of ICC are invoked include:

(a) where the case is not being investigated or prosecuted by a State which has jurisdiction over it;
(b) where the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, on account of the unwillingness or inability of the State genuinely to prosecute;
(c) where the person concerned has not already been tried for conduct which is the subject of the complaint;
(d) where the case is of sufficient gravity to justify further action by the ICC.[23]

The then president of the ICC, Chile Eboe-Osuji, succinctly summarized this role of ICC by asserting that the ICC "is only a court of last resort" and that it is "only when questions of accountability for international crimes have remained unaddressed that international law allows" the ICC to get involved. [24]

1.1 International Crimes

1.1.1 Crimes of Genocide

Genocide, according to the ICC Statute, is defined to mean the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a. Killing members of the group;
b. Causing serious bodily or mental harm to members of the group;
c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d. Imposing measures intended to prevent births within the group;
e. Forcibly transferring children of the group to another group.[25]

[20] Art 1, ICC Statute
[21] Paragraph 10, Preamble to the ICC Statute. Art 1 specifically stated that ICC shall be complementary to national criminal jurisdictions.
[22] P Seils, *Handbook on Complementarity: An Introduction to the Role of National Courts and the ICC on Prosecuting International Crimes* (International Centre for Transnational Justice 2016) 3
[23] Art 17, ICC Statute
[24] 18 June 2020 *New York Times* <https://www.nytimes.com/2020/06/18/opinion/trump-icc.html> accessed 20 August 2023
[25] Art 6, ICC Statute

1.1.2 War Crimes

War Crimes, according to the ICC Statute, are grave breaches of the Geneva Conventions, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Willful killing;
(ii) Torture or inhuman treatment, including biological experiments;
(iii) Willfully causing great suffering or serious injury to body or health;
(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
(vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
(vii) Unlawful deportation or transfer or unlawful confinement;
(viii) Taking of hostages;
(ix) and other serious violations of the laws and customs applicable in international armed conflict.[26]

1.1.3 Crimes of Aggression

Crime of Aggression, according to the ICC Statute, means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression [that is, the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations] which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. [27]

1.1.4 Crimes against Humanity (CAH)

The ICC Statute defines CAH to mean any of the following acts when committed as part of a widespread or systematic attack against any civilian population with knowledge of the attack:

a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation or forcible transfer of population;
e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
f. Torture;
g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
i. Enforced disappearance of persons;

[26] Art 8, ICC Statute
[27] Art 5, ICC Statute

j. The crime of apartheid;
k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[28]

It is under the last paragraph (k) that the crime of embezzlement of public funds belongs. Of course, it is on purpose that Article 7 of the ICC Statute contains a residual paragraph as items that constitute CAH are in no way exhausted in paragraphs "a" to "j". An analysis of core components of the definition of CAH under the ICC Statute shall be done in arguing that embezzlement of public funds is an instant of CAH.

2 Embezzlement of Public Funds as a Crime Against Humanity

The list and details of the crimes of international character under the Rome Statute are not closed. The residual clause in art 7 (1), "other inhumane acts…", points to the open-endedness of the list of items under CAH. The list is not exhaustive and continues to evolve. The crime of apartheid contained in paragraph "j" surely would not have been contemplated some years back.

To buttress the point that embezzlement of public funds which leaves the public including children, women and the vulnerable deprived of good life or even life itself is a Crime Against Humanity, it is good to do some exploration of the provisions of the following relevant provisions of the Rome Statute on CAH as parameters for judging whether embezzlement of public funds qualifies as CAH:

> *…acts when committed as part of a widespread or systematic attack against any civilian population with knowledge of the attack…*
> *… Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health…*

a. Attack

The acts contemplated in this context, notwithstanding the use of the expression "attack", need not constitute the use of armed force or a military attack. It is noteworthy that the ICC Statute in considering the contextual threshold for crimes under CAH rejected both the armed conflict requirement and the requirement of discriminatory grounds.[29] These two requirements were in the Nuremberg Charter.[30] The inhumane acts envisaged in CAH must be in the context of a widespread or systematic attack directed against a civilian population. The contextual thresholds of CAH contemplated in the ICC Statute is distinguished from those of the ICTY[31] and ICTR.[32] While that of ICTY is that the acts must be the context of armed conflict [armed conflict ground],[33] that of ICTR is the acts must be against any civilian population on national, political, ethnic or religious grounds [discriminatory grounds].[34] Even below historical comment on the making of the ICC Statute is revelatory that "attack" cannot be correctly interpreted to exclude acts outside of armed conflict or physical violence:

[28] Art 7, ICC Statute
[29] (fn 10) 233
[30] Art 6(c)
[31] Adopted in 1993 by the Security Council
[32] Adopted in 1994 by the Security Council
[33] ART 5, ICTY
[34] Art 3, ICTR

> After extensive debates at the 1998 Rome Conference, agreement was reached on a definition of crimes against humanity rejecting armed conflict or requirement of discriminatory ground.[35]

b. Civilian Population

The target of the inhumane acts in CAH is the **civilian population** which connotes a large body of non-combatants as victims. Thus the attack or mistreatment constituting the inhumane acts must at least be multiple acts or multiple victims in order to warrant the label "attack directed against a civilian population".[36] Being widespread or systematic refers to its "large scale nature" and "high degree of organization", respectively.

c. Other Inhumane Acts

The residual clause: "other inhumane acts", of course, is necessary because

> however much care were taken in establishing all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; and who wished to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes.[37]

This open-endedness guaranteed by the residual clause recognizes that the law may continue to develop.[38] Embezzlement of public funds meets the above threshold for CAH. It is an inhumane act targeted at a large population of people, whether combatants or not, and even outside of armed conflict. Embezzlement of public funds also meets the requirement contemplated in the residual clause "*Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health*". It causes both great suffering and serious injury to body or to mental or physical health and as such it of a similar character to other prohibited acts specifically mention in the ICC Statute. The criminal law principle of legality is thus respected in tagging "embezzlement of public fund" a Crime Against Humanity.

3 The Nigerian Experience

3.1 Non Domestication of the ICC Statute

Nigeria has ratified the ICC Statute and thereby became a State Party to the ICC Statute.[39] By so doing, it has accepted the jurisdiction of the ICC and agreed to be bound by its rulings and verdicts. But has Nigeria done enough to benefit significantly from this undertaking? Has Nigeria disposed herself to cooperate with ICC in the fight against the impunity of international crimes, including embezzlement of public funds, in the face of which Nigeria remains helpless? The answer is in the negative.

[35] D Robinson, "Defining Crimes Against Humanity at the Rome Conference (1998) 93 AJIL, 43
[36] ICC Elements of Crimes, Introduction paragraph 3
[37] (fn 10) 264
[38] Art 10
[39] Nigeria signed the Rome Statute on 1 June 2000 and deposited its instrument of ratification the following year, on 27 September 2001. See <https://www.pgaction.org/ilhr/rome-statute/nigeria.html> accessed on 12 September 2023; <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&clang=_en> accessed on 12 September 2023

Nigeria being a dualist State needs to domesticate a treaty by enacting a domestic statute to make a treaty she signed and ratified locally applicable. [40] On account of the complementarity jurisdiction of the ICC, as Anya rightly observed, "For there to be complementarity, Nigeria needs to domesticate the Rome Statute and cooperate with the ICC."[41]

It is unfortunate that more than two decades after ratifying the Rome Statute, Nigeria has yet to domesticate the Treaty that she voluntarily signed and ratified. The implication is that the Rome Statute are yet to be incorporated into the Nigerian domestic legal system without which the complementary jurisdiction of the ICC will be so limited or weakened. Indeed, a State has to domesticate the ICC Statute to provide sufficient safeguards for international cooperation and judicial assistance.[42] For instance, the ICC Statute demands that States Parties shall, in accordance with the Statute, cooperate fully with the ICC in its investigation and prosecution of international crimes[43] and also that States Parties shall ensure they have the procedure under their national law to facilitate cooperation with the ICC.[44] Nigeria is yet to comply with these demands.

All the loud calls for the domestication of the ICC Statute in Nigeria,[45] have only received unsuccessful attempts at doing the needful in respect of these stagnant bills:

i. "Crimes against Humanity, Genocide and Related Offences Bill 2012" (an executive bill) and "A Bill for an Act to Provide for the Enforcement and Punishment of Crimes Against Humanity, War Crimes, Genocide and Related Offences and to Give Effect to Certain Provisions of the Rome Statute of the International Criminal Court in Nigeria, 2013".[46]
ii. 'The Crimes against Humanity, War Crimes, Genocide and Related Offences Bill 2016'. A bill proposed by the Nigerian Coalition for the ICC (NCICC), [47] the objectives which are to provide measures under Nigerian law for the punishment and enforcement of measures to prevent genocide, crimes against humanity and war crime; give effect to certain provisions of the Statute; and enable Nigeria to cooperate with the ICC in the performance of its functions under the Statute.

The failure to pass these bills has been attributed to many factors including lack of political will because government actors complicit in the perpetration of core crimes are afraid that the ICC will hunt them if Nigeria domesticates the Statute. Note that ICC was established to complement national jurisdictions in prosecuting international criminals to end impunity.[48] It is in this vein that Anya with respect of *Boko haram* insurgency rightly observed

> The criminal justice system in Nigeria seems unable or unwilling to prosecute the alleged international criminals because of the underlying breakdown of law and

[40] See S 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[41] S Anya and others, "Eradicating Boko Haram Insurgency in Nigeria through the Complementarity of the ICC" in South African Yearbook of International Law (2023) 26
[42] Arts 86–93, Rome Statue.
[43] Art 86
[44] Art 88
[45] https://www.premiumtimesng.com/news/more-news/276944-icc-group-urges-nigeria-to-domesticate-rome-statute.html?tztc=1 accessed 12 September 2023
[46] https://www.pgaction.org/ilhr/rome-statute/nigeria.html accessed 12 September 2023
[47] HB. 16.05.593
[48] ICC Statute Preamble 10 and Art 1; SN Anya, 'Optimising the Role of the International Criminal Court in Global Security' (2011–2012) 10 The Nigerian Juridical Review 198, 220.

> order, a lack of political will, and endemic weakness of the law enforcement mechanism in the country. This inability of Nigeria to investigate the core crime is a condition that should trigger the complementary jurisdiction of the ICC.[49]

The other experience of Nigeria is a demonstration of unwillingness and inability to hold perpetrators of CAH exemplified in the embezzlement of public funds accountable.

3.2 Shielding Embezzlers of Public Funds with Executive Pardon

It is unfortunate that as the fight to end the impunity of perpetrators of all forms of CAH and other international crimes is being waged by the ICC and other International bodies, Nigeria appears to be condoning the crimes of those who embezzle funds meant for the welfare of the public without any regards to the devastating effects on the healthcare, social amenities and infrastructures, general welfare of the populace. There are instances of Presidents arbitrarily granting pardons to these enemies of humanity. An instance is the controversial pardon granted to Chief D.S.P. Alamieyesigha by then-President Goodluck Jonathan in 2013. Alamieyesigha was a former Governor of Bayelsa State who was convicted of several cases involving embezzlement of public funds.[50]

Other notorious instances are the pardons granted by President Buhari in April 2022 to Senator Joshua Dariye (former Governor of Plateau State) and Rev Jolly Nyame (former Governor of Taraba State). Both were convicted and were serving jail terms for corruption and both unsuccessfully appealed to the Supreme Court. In these pardons, there appears no consideration for reparations for the public whose funds were embezzled. And as evidence of condemnation of the undeserved pardon by the public, the Socio-Economic Rights and Accountability Project (SERAP) among others, seriously urged the President to use his good offices to review and withdraw the pardon granted to the duo.[51]

These grants of pardons manifestly violate Nigeria's international legal duties to hold perpetrators of crimes CAH accountable for their crimes. They are not only injurious to the victims but also embolden the perpetuation of such atrocities. Another issue is the conflict between the immunity granted under the Nigerian Constitution to the President, the Vice President, the Governors and the Deputy Governors which is in conflict with Nigeria's obligation as a State Party to the ICC Statute, which Statute does not recognize such immunity.[52] The competing arguments are between amending the Constitution to align it with the position of the ICC Statute or for Nigeria to withdraw as a State Party from the ICC Statute. In support of the argument for the amendment of the Constitution to remove the immunity clause which this paper supports, Oluigbo argues thus:

> It would sound a strong signal to those who commit internal crimes and serve as a deterrent to potential dictators in the country.[53]

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[49] SN Anya and others, 'Credible Commitment or Sham Devotion to the International Criminal Court: whither Nigeria, Kenya and Uganda?' (2023) 15 African J of Legal Studies 242, 269. See also Art 17(1)(a), ICC Statute.

[50] Alamieyesiegha v FRN (2006) 16 NWLR (pt 1004) 41

[51] **Olasunkanmi Akoni,** Anti-corruption: SERAP asks Buhari to withdraw pardon for Dariye, Nyame in Vanguard News, 17 April, 2022 available at <https://www.vanguardngr.com/2022/04/anti-corruption-serap-asks-buhari-to-withdraw-pardon-for-dariye-nyame/> accessed 24 September 2023

[52] Art 27, ICC Statute.

[53] BC Olugo, 'Acceptance of International Criminal Justice in Nigeria: Legal Compliance, Myth or Reality?' in Susanne Buckley-Zistel, Friederike Mieth and Marjana Papa (eds), *After Nuremberg: Exploring Multiple*

The third option of making a reservation in respect of the particular section 27 of the ICC Statute is not applicable as the Statute does not admit any reservation.[54]
Nigeria having voluntarily ratified the ICC Statute is by so doing bound by its obligation, notwithstanding the provisions of her Constitution. Nigeria needs to modify her Constitution to enable her to keep to the agreements that are for her overall good.

4 Manifest Unwillingness and Inability to Prosecute the Embezzlers of Public Funds

Nigeria has manifestly demonstrated her unwillingness or inability to prosecute the embezzlers of public funds. An instance is the case of Chief James Onanefe Ibori, the former Governor of Delta, who could not be prosecuted in Nigeria for the offences bordering on embezzlement of the funds of Delta State. A man who was untouchable in Nigeria was eventually prosecuted, convicted and jailed in the UK for crimes perpetrated against humanity in Nigeria. The Crown Prosecution Service (CPS) recently on 24 July 2023 announced that this former Governor of Delta State in Nigeria who systematically defrauded the state and its citizens of millions of pounds, has been ordered to pay £101,514,315.21 or face an additional 8 years in prison. CPS News had these uncomplimentary words for him

> Corrupt James Ibori, 61, used his position as Governor to steal millions to fund a lavish and luxurious lifestyle, buying properties in London, Washington DC, and Texas, as well as a Mercedes and a Bentley.[55]

"By prosecuting Ibori", according to Daniel Bekele, Africa director at Human Rights Watch, "the UK authorities have struck a blow not only against financial crimes at home but also against impunity for corruption around the globe." He continued,

> It was about acknowledging global responsibility for helping to stop the devastating human cost of corruption in Nigeria." Across Nigeria, ordinary citizens have seen little benefit from the country's tremendous oil wealth. Maternal mortality rates are among the world's highest, and poverty rates continue to climb. "This case demonstrates the urgency of doing more to ensure that Nigeria's oil wealth goes to help its citizens and not to line the pockets of corrupt politicians." [56]

Another instance is the case of Chief Orji Uzor Kalu, the former Governor of Abia State, who along with his company (Slok Nigeria Ltd) and one Jones Udeogu was charged before the Federal High Court Lagos[57] for offences bordering on diverting funds belonging to Abia State to the account of his Company. The 2007 case protracted till 2018 when Orji Uzor Kalu and Udeogu were convicted. Then came an appeal by Jones Udeogu on the technical ground that the Presiding trial judge[58] was promoted to the Court of Appeal and following a fiat issued by the President of the Court of Appeal

Dimensions of the Acceptance of International Criminal Justice (International Nuremberg Principles Academy 2016) 9

[54] Art 120, ICC Statute

[55] The Crown Prosecution Service , 24 July 2023 <https://www.cps.gov.uk/cps/news/former-governor-nigerias-delta-state-has-been-ordered-pay-over-ps100-million-and-his> accessed 24 September 2023

[56] Human Rights Watch, April 17, 2012 <https://www.hrw.org/news/2012/04/17/nigeria-uk-conviction-blow-against-corruption?gclid=Cj0KCQjwpc-oBhCGARIsAH6ote8wnujVJt4OIjqO0iOCY33CV-JkjuboSPxYepJn-TSN4GTepwrT3w8aAjW-EALw_wcB> accessed 24 September 2023

[57] FHC/ABJ/C/56/07

[58] Hon Justice Idris

under s 396(7) of the Administration of Criminal Justice Act, the Judge concluded the trial and convicted Kalu and Udeogu. The Supreme Court[59] on 8 May 2020 upheld the appeal[60] and remitted to the Chief Judge of the Federal High Court for re-assignment to another Judge of the Federal High Court for trial *de novo*. Without getting into the merits of the decision of the Supreme Court, what is obvious is that the said trial *de novo* ordered in 2020 has not begun. Meanwhile, the masses in Abia State whose funds were embezzled still wallow in poverty and deprivations without anybody accountable for the crime against humanity meted out to them. Curiously, Orji Uzor Kalu is still a Senator representing a part of the victimized Abia State and the retrial is yet to begin in any Court.

5. Conclusion and Recommendations

ICC has variously been criticized that it is selective in its operations by targeting mainly Africans. For instance, Mugabe (then President of Zimbabwe) was credited to have remarked:

> The leaders of the powerful Western States guilty of international crime, like Bush and Blair are routinely given the blind eye. Such selective justice has eroded the credibility of the ICC on the African continent.[61]

Though this criticism of selective justice and perception of bias against Africa might contain some elements of truth as Robert Cryer appears to concede,[62] he rightly remarked that "selective justice is probably preferable to no justice at all, even though the legitimacy of international criminal law will be ensured only when it is clear that such crimes are prosecuted wherever, and by whomever, they are committed."[63] Accountability for international crimes can start anywhere it is needed.

In the light of the above discussions, this paper recommends that the embezzlement of public funds prevalent in Nigerian society should be numbered among the CAH because its cancerous effects on the helpless population are inhumane and deadly. It is sending many to their early graves even more than known cases of genocide. It is progressively undermining development and driving many into exile all over the globe. It is recommended that Nigeria should cooperate with the ICC towards the realization of the dream of ending the impunity of committing international crimes including embezzlement of public funds by domesticating the ICC Statute and amending the Constitution to enable any President, Vice President, Governor or Deputy Governor face justice under ICC for committing an international crime even while still in office.

[59] SC.622C/2019

[60] On the ground that grant of dispensation pursuant to s 396(7) of ACJA to a Judge who had been promoted to the Court of Appeal to conclude the trial in Federal High Court was inconsistent with s 290 (1) 0f the 1999Constituion of the Federal Republic of Nigeria.

[61] William Gumede, The International Criminal Court and Accountability in Africa, 31 Jan 2018 <https://blogs.lse.ac.uk/africaatlse/2018/01/31/the-international-criminal-court-and-accountability-in-africa/> accessed 20 September 2023

[62] R Cryer, Prosecuting International Crimes: Selectivity and the International Criminal Law Regime (Cambridge, 2005) 327-330.

[63] (fn 10) 583-584