

A Practical and Critical Assessment of the Jurisprudence of the International Criminal Court in the Field of Individual Criminal Responsibility

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Abstract

Individual criminal responsibility, as one of the fundamental pillars of international criminal law, occupies a central position in the work of the International Criminal Court. This article aims to provide a practical and critical assessment of the Court's jurisprudence in the field of individual criminal responsibility by examining the status of this concept within the Court's criminal policy and the challenges confronting it. The study was conducted using an analytical-descriptive method and drawing on library sources, judicial decisions, and the official documents of the Court. The findings indicate that, through a systematic interpretation of Article 25 of the Rome Statute—particularly through the theory of “control over the crime” in the Lubanga case and the theory of “organizational control” in the Katanga case—the Court has been able to consolidate an advanced framework of individual criminal responsibility in customary international law. Nevertheless, the Court's case law in landmark cases such as Ntaganda, Ongwen, and Gbagbo, while successful in prosecuting high-ranking leaders and developing concepts such as “intergenerational harm,” has faced significant challenges in proving group intent, distinguishing between the sharing of intent and knowledge of the group's intent, protecting witnesses, and interacting with states. The non-cooperation of states in arresting fugitives, reflected in 31 unexecuted arrest warrants, dependence on voluntary contributions for the implementation of reparations, and political pressures are among the most important obstacles to the Court's effectiveness. By proposing reforms at legislative, structural, procedural, and international-cooperation levels, the article emphasizes the need to amend Article 25 in order to clarify the criteria distinguishing direct perpetration from participation, to reform Regulation 55 to prevent changes in the form of responsibility at the final stages of proceedings, to establish a state-support fund with mandatory resources for the implementation of reparations, and to strengthen cooperation with regional organizations.

Keywords: individual criminal responsibility, International Criminal Court, Article 25 of the Rome Statute, group participation, criminal intent

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1. Introduction

Individual criminal responsibility is one of the fundamental developments of contemporary international law, which, by moving beyond the classical state-centered model, recognizes the individual as a direct addressee of international criminal norms. According to this concept, the commission of international crimes such as genocide, crimes against humanity, and war crimes is attributable not merely to states but also to natural persons, and these persons, irrespective of their official or governmental position, may be subject to prosecution and punishment. This approach constitutes a legal response to the historical experience of the structural immunity of high-ranking state officials in the commission of grave international crimes (Ardabili & Naderi, 2019).

The historical background of individual criminal responsibility dates back to the Nuremberg and Tokyo tribunals after the Second World War. These tribunals, for the first time in history, recognized the principle of individual criminal responsibility at the international level and declared that individuals, regardless of their official status, bear direct and inexcusable responsibility for grave violations of human dignity and the international public order. However, because of their exceptional and temporary nature, the Nuremberg and Tokyo tribunals could not establish a permanent system for holding perpetrators of international crimes accountable. This gap continued until the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda in the 1990s. By developing concepts such as “joint criminal enterprise” and “command responsibility,” these tribunals took significant steps toward expanding the scope of individual criminal responsibility, yet, as temporary institutions, they still lacked permanent and universal jurisdiction (Rafiei et al., 2022).

The culmination of these efforts was the establishment of the International Criminal Court in 2002 on the basis of the 1998 Rome Statute. The Court emerged as a permanent institution with the aim of ending impunity for the perpetrators of the most serious crimes of concern to the international community. At the heart of this transnational criminal justice system lies the concept of individual criminal responsibility: a principle according to which natural persons are directly accountable before the international community for the commission of international crimes and cannot hide behind state immunities or their official capacity (Shaw, 2015). Article 25 of the Rome Statute, as the most important and comprehensive provision governing individual criminal responsibility, covers a broad range of forms of participation in international crimes, from direct perpetration to contribution to a group crime and aiding and abetting (Babaei, 2017).

The Court’s approach to individual criminal responsibility rests on several fundamental principles. The first is the principle of the personal nature of criminal responsibility, which is established in Article 25(1) of the Statute by explicitly affirming the Court’s jurisdiction over “natural persons.” The second is the principle of the irrelevance of official capacity, stipulated in Article 27 of the Statute, according to which official capacity, including the position of Head of State or government official, does not exempt a person from criminal responsibility. The third is the principle of legality of crimes and punishments, enshrined in Article 22 of the Statute. The fourth is the principle of the mental element, according to which Article 30 of the Statute makes criminal responsibility conditional upon the existence of “intent and knowledge” (Khosravani & Saeedi Geraghani, 2016). Taken together, these principles provide a coherent framework for attributing criminal responsibility to individuals at the international level.

Nevertheless, the mere existence of these provisions in the text of the Statute does not mean that criminal justice is practically achieved. What is of fundamental importance is how these provisions are interpreted and applied in the Court’s jurisprudence; a jurisprudence that has taken shape and evolved over the past two decades through the adjudication of 34 diverse cases. From the first conviction in the Lubanga case in 2012 to the latest judicial developments in 2025–2026, the Court has continuously faced the fundamental question of how to strike a balance between the collective nature of international crimes and the requirements of the individual nature of criminal responsibility (Sabouri, 2025).

The present study, with the aim of providing a practical and critical assessment of the jurisprudence of the International Criminal Court in the field of individual criminal responsibility, seeks to answer the fundamental question of what effect the Court’s policies and practices have had on the realization of individual criminal responsibility and how this effect can be analyzed and evaluated. Using an analytical-descriptive method and relying on library sources, judicial decisions, and the official documents of the Court, this article examines the status of individual criminal responsibility within the Court’s criminal policy and the challenges confronting it.

The structure of the article is as follows. After this introduction, the first part addresses “the status of individual criminal responsibility in the criminal policy of the Court.” This part is organized into four sections: 1) individual criminal responsibility in prosecutorial processes and the role of the Prosecutor; 2) responsibility of commanders and leaders; 3) responsibility of principal perpetrators and perpetration; and 4) group participation and other forms of responsibility. The second part, entitled “Challenges in applying the principle of individual criminal responsibility in the policy of the Court,” examines the obstacles and difficulties facing this principle in the practical jurisprudence of the Court, including: 1) evidentiary challenges and the difficulty of proving criminal intent; 2) challenges in collecting evidence and protecting witnesses; 3) political and legal challenges; and 4) non-cooperation by states. Finally, the conclusion and recommendations are presented.

2. The Status of Individual Criminal Responsibility in the Criminal Policy of the Court

The status of individual criminal responsibility in the criminal policy of the Court reflects the fundamental transformation of international law from the absolute sovereignty of states toward the direct accountability of individuals. During its two decades of activity, the Court, relying on Article 25 of the Rome Statute, has developed a coherent framework for attributing responsibility to natural persons. This criminal policy is manifested in four main areas. The first area is prosecutorial processes and the role of the Prosecutor. The second area is the responsibility of commanders and leaders. The third area is the responsibility of principal perpetrators and perpetration. The fourth area is group participation and other forms of responsibility. Understanding these dimensions is a prerequisite for comprehending the effectiveness and challenges of the international criminal justice system.

2.1. Individual Criminal Responsibility in Prosecutorial Processes and the Role of the Prosecutor

The International Criminal Court, as a transnational institution, lacks a police force and independent enforcement mechanisms, and in order to perform its functions, including initiating investigations, collecting evidence, and prosecuting accused persons, it depends on the will and cooperation of states. In this context, the Office of the Prosecutor, as the driving force of the Court, plays a decisive role in criminal policymaking and in determining prosecutorial priorities. Article 53 of the Rome Statute grants the Prosecutor the authority to initiate investigations, but the phrase “interests of justice” contained in this article has the capacity for broad and discretionary interpretations (Barzegarzadeh, 2022).

The Prosecutor’s prosecutorial policies are formulated within the framework of the Court’s policy documents. The publication of the Court’s “Policy Paper on Case Selection and Prioritisation” has been a positive step toward clarifying the criteria for selecting cases, but many ambiguities remain at the implementation stage. For example, criteria such as “impact on victims” or “gravity of the crime” are assessed qualitatively, and the absence of quantitative and measurable indicators makes it difficult to predict prosecutorial decisions (Ausserladscheider Jonas, 2021). This lack of transparency, especially in the selection of situations and cases, is considered one of the most challenging areas within the Court.

The Prosecutor’s selection of cases has always been subject to criticism. The Court’s initial focus on African cases led to accusations of “selective justice” and weakened its legitimacy in African public opinion. In cases such as Uganda or the Democratic Republic of the Congo, criticisms were raised that the Prosecution focused only on rebels and ignored the individual criminal responsibility of state officials (Razeghi Moghadam & Zolfagharian, 2021). This situation reveals the need for greater transparency in the process of case selection and for clarifying the reasons for not prosecuting certain parties to conflicts.

The role of the Prosecutor in the prosecution process is not limited to case selection; it also includes determining the prosecutorial strategy and the manner in which evidence is presented. The experience of the Lubanga case showed that the limited selection of charges by the Prosecutor can exclude other committed crimes, such as rape and sexual violence, from the scope of charges. The attempt to expand the indictment to include sexual violence was rejected by the Court, provoking anger among victim advocacy groups (Okereke & Nnawulezi, 2025). This case demonstrated that the selection of charges at the confirmation stage has a decisive impact on the scope of justice that can be administered.

Prioritizing the prosecution of high-ranking leaders has been one of the key strategies of the Office of the Prosecutor. By emphasizing Article 27 of the Statute, which concerns the “irrelevance of official capacity,” the Court has been able to set aside the traditional immunities of heads of state and hold them accountable before justice. The cases of Al-Bashir, Gaddafi, Gbagbo,

and, more recently, Duterte, are examples of this approach (Kaloko & Putra, 2025). However, the Court's inability to arrest many of these accused persons reveals the deep gap between the "legal norm" and "enforcement reality" (Serrano Caballero, 2025).

The Court's dependence on states for the arrest of accused persons is one of the most important limitations of the prosecution process. The Court's official statistics show that by November 2025, 31 public arrest warrants, along with a number of confidential warrants, remained unexecuted. This non-enforcement not only prevents the trial of accused persons but also has broad negative consequences for victims and for the credibility of the Court. The Al-Bashir case has become a symbol of state non-cooperation: a case in which the Court, in December 2011, found the Republic of Chad and the Republic of Malawi to be non-compliant, but no effective enforcement mechanism existed to compel them to cooperate (Norouzi, 2017).

In carrying out his duties, the Prosecutor faces numerous challenges in the collection of evidence. The Lubanga case revealed the challenges associated with the use of intermediaries to access witnesses and the effect of this practice on the credibility of evidence. Lubanga's defense claimed that the Prosecutor had used intermediaries who, in turn, paid witnesses to provide false testimony. Although the Court ultimately convicted Lubanga, it strongly criticized the Prosecutor's use of unreliable intermediaries in its judgment (Okereke & Nnawulezi, 2025). This issue led to the adoption of the Court's "Guidelines Governing the Relations between the Court and Intermediaries" in order to enhance transparency and effectiveness in this area.

Transparency in prosecutorial policies and case selection is one of the Court's most important concerns. Comparative experiences show that the publication of detailed guidelines for the exercise of prosecutorial discretion is an effective means of improving transparency. In recent years, the Court has taken positive steps in this direction by publishing policy documents. Nevertheless, there remains a need for greater precision in criteria such as "gravity of the crime" and "interests of justice," as well as the presentation of more objective indicators (Ausserladscheider Jonas, 2021). Enhancing transparency in this area requires the Office of the Prosecutor to clearly explain the basis of its prosecutorial strategy and explicitly state the reasons for not prosecuting certain parties to conflicts.

Financial and budgetary constraints also have a direct impact on prosecutorial processes. The Court is highly dependent on the budget provided by States Parties, and budget reductions may lead to fewer investigations, limitations on the recruitment of experienced experts, and a reduced capacity to conduct extensive field investigations. These limitations ultimately affect prosecutorial case selection and the setting of priorities by the Prosecutor (van den Buijs, 2025). In their November 2025 statement, the Baltic states announced that in 2024 the Trust Fund for Victims received more than €5.7 million from 29 countries, the highest amount since 2004, but that there was still a need to attract more resources.

Ultimately, the role of the Prosecutor in prosecutorial processes is a key and decisive role in the realization of individual criminal responsibility. Nevertheless, numerous challenges, including financial constraints, dependence on state cooperation, ambiguity in the criteria for case selection, and political pressures, have affected the effectiveness of this role.

2.2. *Responsibility of Commanders and Leaders*

The responsibility of commanders and other superiors is one of the most important forms of individual criminal responsibility in international criminal law and is specifically addressed in Article 28 of the Rome Statute. This article, which was drafted under the influence of the jurisprudence of the Nuremberg tribunals and particularly the International Criminal Tribunal for the former Yugoslavia, recognizes the responsibility of commanders and civilian superiors for crimes committed by their subordinates. Under this article, command responsibility arises when the commander has "effective control" over his forces and, despite knowing or having reason to know that crimes were being committed, fails to take necessary and reasonable measures to prevent the crimes or punish the perpetrators (Khosravani & Saeedi Geraghani, 2016).

The theory of "effective control," as the essential condition of command responsibility, has been emphasized in the Court's jurisprudence. The Bemba case is the most important and controversial example of the application of Article 28 in the Court's practice. Bemba, the former Vice-President of the Democratic Republic of the Congo, was charged with war crimes and crimes against humanity committed by his forces in the Central African Republic. In 2016, the Trial Chamber convicted Bemba under Article 28, reasoning that, despite being in another country, he had "effective control" over his forces and had failed to take the necessary measures to prevent the crimes (Amaral, 2023).

However, on June 8, 2018, the Appeals Chamber of the Court, in an unexpected judgment by a narrow majority of three to two, overturned the trial judgment and acquitted Bemba. The majority's reasoning was that Bemba had done everything within his power, such as sending a commission of inquiry, and that a remote commander could not be expected to exercise moment-by-moment control. The Appeals Chamber found that Bemba had taken "necessary and reasonable" measures to prevent the crimes of his forces and could not be held responsible merely because of his command position (Ivana, 2025).

This judgment sent a major shock through the doctrine of command responsibility and significantly raised the evidentiary standard for proving "failure to take necessary measures." Critics argue that this judgment made it very difficult to prove the responsibility of commanders who are distant from the scene in future cases. In their dissenting opinion, the minority judges emphasized that this interpretation effectively empties Article 28 of its content and makes proving the responsibility of commanders almost impossible (Van der Wilt, 2025).

The Ntaganda case, in contrast to the Bemba case, is an example of the Court's success in applying command responsibility and indirect perpetration. Ntaganda, nicknamed "the Terminator," as Deputy Chief of Staff for operations of the Patriotic Forces for the Liberation of Congo, was charged with 18 counts of war crimes and crimes against humanity in the Ituri region. In 2019, the Court convicted Ntaganda on 18 counts and sentenced him to 30 years' imprisonment. The legal innovation in this case was the combination of Article 25(3)(a) in two forms: "co-perpetration" through cooperation with other commanders and "indirect perpetration" through the use of soldiers as instruments (Amaral, 2023).

In the Ntaganda case, the Court stated that a commander may simultaneously be a "co-perpetrator" with his peers and an "indirect perpetrator" in relation to his subordinates. The importance of this case lay in the rejection of Ntaganda's defense that chaos on the battlefield had deprived him of effective control. By carefully examining the communications network, the Court proved that Ntaganda's orders had been the "efficient cause" of the crimes (Amaral, 2023). This approach demonstrated the Court's capacity to identify and prosecute commanders who direct crimes through organizational structures under their control.

The Ongwen case is also significant from the perspective of command responsibility and its challenges. Ongwen, who had been abducted by the Lord's Resistance Army as a child, played a key role as commander of the Sinia Brigade in attacks on internally displaced persons' camps in northern Uganda. In its historic 2021 judgment, confirmed in 2024, the Court rejected defenses based on duress and mental illness and convicted Ongwen of 61 crimes (Rigney, 2025). The Court's reasoning was that a "history of victimhood" does not negate "criminal responsibility for subsequent acts." The judges emphasized that, at the time of committing the crimes as a commander, Ongwen had opportunities to escape or disobey but consciously chose to participate in criminal conduct (Bassiouni & Schabas, 2021).

The Al Hassan case is also of particular importance from the perspective of commanders' responsibility, especially in relation to gender-based crimes. Al Hassan served as the de facto head of the Islamic police during the occupation of Timbuktu in Mali by two Islamist groups, Ansar Dine and Al-Qaeda in the Islamic Maghreb. One of the most important aspects of this case was the charge of "gender-based persecution," which, for the first time in the Court's history, advanced to the trial stage. Although Al Hassan was ultimately acquitted by the majority of judges of the charge of gender persecution, the separate opinions of the judges reveal the complexity of the issue.

The main challenge in the responsibility of commanders and leaders is proving "effective control" and "knowledge" or "reason to know." The Bemba case showed that the Appeals Chamber raised the evidentiary standard so high that, in practice, command responsibility for remote commanders became extremely difficult to establish. This fluctuation in judicial practice has made the Court's judgments difficult to predict for both accused persons and victims. It appears that the determining factor in this fluctuation is not the text of Article 28, but rather the composition of the Chamber and the personal legal philosophy of the judges.

2.3. Responsibility of Principal Perpetrators and Perpetration

Article 25(3)(a) of the Rome Statute considers a person responsible when that person "commits such a crime, whether as an individual, jointly with another, or through another person, regardless of whether that other person is criminally responsible." This provision envisages three forms of perpetration: individual perpetration, co-perpetration, and perpetration through another person. In its jurisprudence, the Court, by adopting the theory of "control over the crime" derived from German criminal law,

sought to distinguish co-perpetration under Article 25(3)(a) from simple participation under Articles 25(3)(b)–(d) (Babaei, 2017).

The theory of control over the crime regards the main criterion for identifying a “perpetrator” as whether the accused had control over the course of the crime. According to this theory, a perpetrator is someone who has “control” over the commission of the crime, whereas a participant merely “assists” in the commission of a crime by another. In the Lubanga case, the Trial Chamber held that co-perpetration requires “joint control over the crime” and considered an “essential contribution” necessary for its realization (Okereke & Nnawulezi, 2025).

The Lubanga case, as the Court’s first conviction in 2012, constitutes a turning point in modern international criminal law. The central challenge here was attributing responsibility for the conscription and use of child soldiers to a political leader who may never personally have armed a child. Rejecting the doctrine of “joint criminal enterprise,” which had a mental-element orientation, the Trial Chamber turned to the theory of “control over the crime.” The Court reasoned that, under Article 25(3)(a), Lubanga was a “co-perpetrator” because he had played an “essential” role in implementing the “common plan.” The judgment emphasized that if an accused has the power to stop or frustrate the commission of the crime by withholding his participation, he has control over the crime (Okereke & Nnawulezi, 2025).

Nevertheless, this approach faced serious criticism. In his separate opinion in the Lubanga case, Judge Fulford argued that the text of Article 25 creates no hierarchy among the various forms of responsibility and that the control theory lacks support in the text of the Statute. Judge Van den Wyngaert, in the Ngudjolo Chui case, also described the control theory as a “complex and unnecessary theory” that increases ambiguity rather than clarifies concepts (Van der Wilt, 2025). The Appeals Chamber in the Lubanga case confirmed the control theory but refrained from providing a substantive analysis of it, thereby effectively intensifying the ambiguities.

The Ntaganda case was another turning point in the development of the theory of control over the crime. In this case, the Court applied a combination of “co-perpetration” and “indirect perpetration.” Ntaganda, as Deputy Chief of Staff for operations of the Patriotic Forces for the Liberation of Congo, was charged with 18 counts of war crimes and crimes against humanity. At the confirmation stage, after reviewing 69,000 pages of documents, the Trial Chamber concluded that a “widespread and systematic attack against the civilian population” had occurred (Amaral, 2023). In this case, the Court stated that a commander may simultaneously be a “co-perpetrator” with his peers and an “indirect perpetrator” in relation to his subordinates.

The Ongwen case is also significant from the perspective of the theory of control over the crime. Ongwen, who had been abducted by the Lord’s Resistance Army as a child, played a key role as commander of the Sinia Brigade in attacks on internally displaced persons’ camps. In its historic 2021 judgment, the Court rejected defenses based on duress and mental illness and convicted Ongwen of 61 crimes (Rigney, 2025). The Court’s reasoning was that a “history of victimhood” does not negate “criminal responsibility for subsequent acts.” The judges emphasized that, at the time of the crimes as a commander, Ongwen had opportunities to escape or disobey but consciously chose to participate in the crimes.

The Abd-Al-Rahman case, also known as Ali Kushayb, whose judgment became final in 2025, represented the Court’s return to success in proving Darfur-related crimes. The legal significance of this case lay in the Court’s ability to prove the link between a “militia leader” and “state policy.” In this judgment, the Court stated that, for the application of Article 25(3)(a), it is not necessary for the individual to be part of the formal military structure; rather, “actual influence” over irregular forces is sufficient to establish perpetration. This judgment sent a clear message to leaders of proxy groups (Stahn, 2015).

The theory of control over the crime became consolidated in the Court’s jurisprudence, especially in the first-generation cases. Nevertheless, the ambiguities within this theory and the criticisms directed against it demonstrate the need for greater clarification of the criteria distinguishing perpetration from participation. Some jurists argue that although the control theory is useful in identifying principal perpetrators, its conceptual complexity reduces the predictability of judgments.

2.4. *Group Participation and Other Forms of Responsibility under Article 25(3)(b)–(d)*

Article 25(3)(b) to (d) of the Rome Statute covers various forms of participation in crime that go beyond direct perpetration. Subparagraph (b) concerns “ordering, soliciting, or inducing.” Subparagraph (c) refers to “aiding, abetting, or otherwise assisting.” Subparagraph (d) covers contribution to “a crime committed by a group of persons acting with a common purpose.”

These forms encompass a complex network of actors who operate on the margins, behind the scenes, or at the logistical and intellectual levels of crimes (Hosseini & Zandian, 2025).

Article 25(3)(b) addresses the forms of “ordering,” “soliciting,” and “inducing.” The Ntaganda case is an example of the application of this provision. Although Ntaganda was mainly convicted as a perpetrator, the 2019 judgment against him contains precise points concerning “ordering.” In this case, the Court stated that, for responsibility based on an order to arise, the order need not be issued in written or formal form. Within the structure of militias in the Democratic Republic of the Congo, a nod of the head or an oral command to “cleanse the area” was regarded as a clear instance of an “order” (Amaral, 2023).

The Blé Goudé case was one of the Court’s most important tests concerning the concepts of “soliciting” and “inducing.” Blé Goudé, as the leader of the “Young Patriots” in Côte d’Ivoire, was accused of inciting youth through his inflammatory speeches to commit violent acts against supporters of the political rival. Although he was ultimately acquitted in 2019 because of the Prosecution’s weak evidence in proving the existence of a common criminal plan, the legal debates raised at the confirmation of charges stage clarified the Court’s doctrine (Block, 2023). The Court drew a subtle distinction between “soliciting,” in the sense of a direct request or insistence on committing a crime, and “inducing,” a broader concept that includes creating motivation or strengthening another person’s criminal resolve (Block, 2023).

Article 25(3)(c) concerns “aiding, abetting, or otherwise assisting” in the commission of a crime. One criticism directed at the Court is the absence of cases concerning the complicity of multinational corporations or arms brokers under this provision. The high standard of “specific intent” has prevented the Prosecution from pursuing those who merely provide weapons or financial resources without necessarily having the commission of a war crime as their purpose, their purpose instead being profit (Payami, 2022). Comparing this situation with the Charles Taylor case before the Special Court for Sierra Leone, in which conviction was based on customary law and knowledge, reveals the structural limitation of Article 25(3)(c) in the Rome Statute.

Article 25(3)(d), often described as “residual responsibility,” is applied when the Prosecution cannot prove “control over the crime” as perpetration or “purpose to facilitate” as aiding and abetting. Undoubtedly, the most important case in the history of the Court for understanding this provision is the Katanga case. As noted, Katanga’s mode of liability was changed in the middle of the trial from Article 25(3)(a), perpetration, to Article 25(3)(d) (Van der Wilt, 2025).

Why was this change crucial? The Court found that although Katanga was the leader of the Patriotic Resistance Force, he did not have “effective control” over every individual soldier who massacred the village of Bogoro. He had stored weapons, coordinated routes, and facilitated the alliance with other militias. In its 2014 judgment, the Court reasoned that these acts constituted an “essential contribution” to the activity of the criminal group. The Court’s interpretation of Article 25(3)(d) highlighted two main criteria: the material element, meaning that the accused’s contribution must have an impact on the commission of the crime, and the mental element, meaning that the accused must know that the group intended to commit the crime (Amaral, 2023).

The Mbarushimana case stands in contrast to Katanga. Mbarushimana was the Executive Secretary of the Democratic Forces for the Liberation of Rwanda, operating from Paris. The Prosecution charged him under Article 25(3)(d), alleging that by issuing press releases and denying crimes, he had contributed to the group’s crimes. In 2011, the Pre-Trial Chamber declined to confirm the charges and held that his contribution did not reach the threshold of “substantial” contribution (van Sliedregt, 2025). The Court stated that mere “spokesmanship” or “political support” for a group, if it has no tangible effect on the commission of physical crimes on the battlefield, does not fall within criminal responsibility.

An examination of these cases reveals an implicit hierarchy in the minds of the Court’s judges. The highest level, perpetration under Article 25(3)(a), is reserved for those who have full control, such as Lubanga, Ntaganda, and Ongwen. The intermediate level, ordering and inducing under Article 25(3)(b), is reserved for those who have psychological influence but not necessarily physical control, such as Blé Goudé. The basic level, contribution to a common purpose under Article 25(3)(d), is reserved for those who fuel the machinery of crime, such as Katanga. The difficult level, aiding and abetting under Article 25(3)(c), has in practice been neglected in the main cases because of the strict “purpose” requirement and has largely been absorbed by Article 25(3)(d).

3. Challenges in Applying the Principle of Individual Criminal Responsibility in the Policy of the Court

Despite the Court's significant advances in consolidating the framework of individual criminal responsibility, the application of this principle in practice faces numerous challenges. These challenges can be classified into four main areas. The first area concerns evidentiary challenges and the difficulty of establishing criminal intent. The second concerns problems in collecting evidence and protecting witnesses. The third concerns political and legal pressures exerted on the Court. The fourth concerns state non-cooperation in arresting accused persons and enforcing judgments. Understanding these obstacles is essential for a realistic assessment of the Court's effectiveness.

3.1. *Evidentiary Challenges and the Difficulty of Proving Criminal Intent*

The mental element in international crimes is particularly complex because of the collective nature of these crimes. Article 30 of the Rome Statute establishes the general rule governing the mental element, according to which a person is responsible when he or she commits the material elements of the crime "with intent and knowledge." However, the various forms of criminal responsibility under Article 25 each have their own specific mental requirements. This diversity and complexity, especially in the context of "group participation" under Article 25(3)(d) and the proof of "group intent," have led to serious challenges in the Court's jurisprudence (Sabouri, 2025).

The Ngudjolo Chui case is a prominent example of evidentiary challenges in establishing criminal intent. Ngudjolo, a Lendu commander, was charged with war crimes and crimes against humanity in the attack on Bogoro. On December 18, 2012, the Trial Chamber, by majority, acquitted Ngudjolo. The Chamber's main reasoning was that the Prosecutor had failed to prove his responsibility "beyond reasonable doubt." The judges emphasized that, although horrific crimes had occurred in Bogoro, the evidence presented by the Prosecutor was insufficient to prove Ngudjolo's direct role in commanding, directing, or planning these attacks (Van der Wilt, 2025).

The review showed that three key prosecution witnesses lacked sufficient credibility and that their testimonies contained fundamental inconsistencies. The Prosecutor had failed to convincingly prove the chain of command. The Appeals Chamber also confirmed this judgment on February 27, 2015, and Ngudjolo's acquittal became final. This acquittal was met with different reactions. On the one hand, human rights organizations criticized the poor quality of the Prosecution's investigations and regarded it as a "major failure" for victims. On the other hand, international lawyers considered the judgment a sign of the Court's judicial independence and its adherence to the presumption of innocence (Sabouri, 2025).

The Gbagbo case is one of the most important and controversial examples of the challenge of proving criminal intent. Gbagbo, the former President of Côte d'Ivoire, and Blé Goudé, the leader of the youth movement supporting him, were charged with crimes against humanity. After the Prosecutor completed the presentation of evidence, the defense requested an acquittal without the need to present its case. On January 15, 2019, the Trial Chamber, by majority, accepted this request and acquitted the accused. The Chamber reasoned that the Prosecutor had not even presented evidence that, if rebutted by the defense, could justify the conviction of the accused (Block, 2023).

On March 31, 2021, the Appeals Chamber, by majority, confirmed the trial judgment, and the acquittal of Gbagbo and Blé Goudé became final. This case is significant in several respects. First, the timing of the judgment, namely the acquittal of the accused before the presentation of the defense case and at the end of the Prosecutor's evidence, displayed the highest level of protection for defense rights. Second, the evidentiary standard was very high, as the Trial Chamber concluded that the Prosecutor's evidence did not even reach the minimum standard necessary for referring the case to the defense stage. Third, the reactions to the judgment, including severe criticism by victims and some states and even accusations of politicization against the Court, demonstrated the high sensitivity of this case (Rezazadeh, 2024).

The Mbarushimana case is also an example of the challenges of proving group intent. Mbarushimana, the Executive Secretary of the Democratic Forces for the Liberation of Rwanda, was accused of contributing to their crimes by issuing press releases and denying the crimes. In 2011, the Pre-Trial Chamber declined to confirm the charges and held that his contribution did not reach the "substantial" threshold (van Sliedregt, 2025). The Court stated that mere "spokesmanship" or "political support" for a group, if it has no tangible effect on the commission of physical crimes on the battlefield, does not entail criminal responsibility.

The two-layered structure of the mental element in Article 25(3)(d) is itself a source of evidentiary challenges. In the Katanga case, the Trial Chamber clearly explained this structure: the first layer is the intentional nature of the contribution itself; the second layer is the existence of one of the two mental states set out in subparagraphs (i), namely the purpose of furthering the criminal aim of the group, or (ii), namely knowledge of the group's intention to commit the crime. The Court emphasized that "knowledge of the group's intention to commit the crime" must be proven for each specific crime and that knowledge of a general criminal intention is not sufficient. This interpretation created an important distinction from the jurisprudence of the ICTY, which, in the third form of "joint criminal enterprise," extended responsibility to foreseeable consequences as well (Van der Wilt, 2025).

Another challenge in proving criminal intent concerns cases in which the accused was himself a victim of the criminal structure. The Ongwen case is an example of this challenge. Ongwen, who had been abducted by the Lord's Resistance Army as a child, played a key role as commander of the Sinia Brigade in attacks on internally displaced persons' camps. His lawyers, relying on Article 31(1)(d), duress, and Article 31(1)(a), mental disease or defect, argued that he lacked the free will necessary for criminal responsibility (Rigney, 2025). In its historic 2021 judgment, the Court rejected these defenses and convicted Ongwen of 61 crimes. The Court's reasoning was that a "history of victimhood" does not negate "criminal responsibility for subsequent acts."

3.2. Challenges in Collecting Evidence and Protecting Witnesses

Witness protection is one of the Court's most sensitive and challenging duties. Witnesses in international cases are often exposed to serious risks of retaliation, and ensuring their security, especially in conflict-affected areas, is difficult and costly. In addition, witness interference and inducement directly threaten the effectiveness of justice (Khosravani & Saeedi Geraghani, 2016).

The Lubanga case revealed another challenge in the field of witnesses: the use of intermediaries to communicate with witnesses and the problems arising from this practice. Lubanga's defense claimed that the Prosecutor had used intermediaries who, in turn, paid witnesses to give false testimony. Although the Court ultimately convicted Lubanga, it strongly criticized the Prosecutor's reliance on unreliable intermediaries in its judgment (Okereke & Nnawulezi, 2025). This issue led to the development of the Court's "Guidelines Governing the Relations between the Court and Intermediaries" in order to increase transparency and effectiveness in this area.

The Bemba case exposed alarming dimensions of witness interference. Bemba, together with his lawyers, was convicted of bribing witnesses, presenting false testimony, and interfering with the proceedings in the main Bemba case. In October 2016, the Trial Chamber found all of them guilty, and in March 2018 the Appeals Chamber confirmed these convictions. This case showed that threats to witnesses may sometimes come from the accused and their lawyers themselves, and that the Court requires strong judicial tools to confront this phenomenon (Amaral, 2023).

The conviction of Bemba's defense counsel for witness interference sent a clear message that legal practice before the Court does not create absolute immunity from ethical and legal violations. The Bemba et al. case, which was brought under Article 70 concerning offenses against the administration of justice, showed that the Court is serious about confronting witness interference and regards this phenomenon as a fundamental threat to the effectiveness of justice (Rezaeinejad, 2024).

The Ruto and Sang case is a clear example of the challenges of witness protection in Kenya. On September 18, 2013, the presiding judge of Trial Chamber V, at the beginning of the court session, issued a special warning regarding the importance of witness protection and the penalties applicable to witness interference. The judge stated that interfering with witnesses, preventing them from appearing, or retaliating against them constitutes "offenses against the administration of justice" under Article 70 of the Statute and may result in imprisonment of up to five years or a fine (Zaker Hossein, 2016).

The judge emphasized that disclosing the identity of witnesses under the Court's protection is also a crime and called on all persons, including the media and users of social networks, to refrain from any action that could lead to the identification of these witnesses. This warning reflected the seriousness of the threats against witnesses in the Kenya case and the Court's concern regarding their impact on the proceedings. Ultimately, the Ruto and Sang case was terminated in April 2016 because of deficiencies in the evidence and witness interference (Zaker Hossein, 2016).

Another challenge in evidence collection concerns limitations on access to war zones. The Court lacks a police force and an independent enforcement arm, and for collecting evidence in conflict areas, it depends on the cooperation of states and international organizations. In cases concerning Darfur in Sudan and Uganda, access to crime scenes and the collection of field evidence faced serious difficulties. The Government of Sudan refused to cooperate with the Court in the Darfur investigations, which made evidence collection extremely difficult (Razeghi Moghadam & Zolfagharian, 2021).

The quality of evidence and the credibility of witnesses are also among the Court's fundamental challenges. In the Lubanga case, the Court encountered numerous instances of inconsistent testimony and even evidence that later proved to have been affected by problems connected to local intermediaries. Although the Court ultimately convicted Lubanga, it strongly criticized the Prosecutor's use of these intermediaries in its judgment and emphasized that this issue could have led to a violation of the accused's defense rights.

3.3. *Political and Legal Challenges*

The International Criminal Court, as a judicial institution, has always been exposed to political pressures and even direct threats. These pressures have challenged the Court's effectiveness and restricted the space in which it operates. The accusation of bias against Africa has been one of the Court's most persistent and serious political challenges. The African Union has repeatedly emphasized that the Court prosecutes only Africans and overlooks crimes committed in other parts of the world (Razeghi Moghadam & Zolfagharian, 2021).

The Court's initial focus on African cases fueled a legitimacy crisis on the continent. At its July 2011 summit in Malabo, Equatorial Guinea, the African Union formally announced that Member States would not cooperate in executing the arrest warrant for Gaddafi. The African Union Commission argued that the International Criminal Court was unfairly prosecuting only Africans and asked: "Does nothing happen in Pakistan, Afghanistan, Gaza, and Chechnya?" (Moradi, 2023). Although this accusation has been partly moderated in recent years by the opening of cases in Georgia, Palestine, Afghanistan, and the Philippines, it remains a fundamental challenge.

The legitimacy crisis in Africa led to efforts toward collective withdrawal from the Rome Statute. Some countries, such as Burundi and South Africa temporarily, took steps toward withdrawal. Although this crisis was managed to some extent, it still affects the Court's effectiveness as a political limitation. The African Union even threatened to establish an alternative regional court, which was reflected in the 2014 Malabo Protocol (Moradi, 2023).

In their November 2025 statement, the Baltic states explicitly referred to "threats and sanctions against the Court's judges and officials" and called for an end to these measures. Although the statement did not name the country or countries imposing the sanctions, the reference to this matter in the United Nations General Assembly indicates the seriousness of the issue and the international community's concern about the impact of these sanctions on the Court's independence. The Baltic states' statement emphasized that the Court must "remain immune from political pressures" and that all States Parties must unite in supporting the Court against any attempt to obstruct its activities (van den Buijs, 2025).

One of the new threats against the Court is cyberattacks. In their statement, the Baltic states condemned the "recent cyberattacks against the Court" and described them as "an attack not only on the Court, but on international justice." In response to this threat, the Court conducted a comprehensive assessment of the security of its information technology infrastructure and developed a new security program. These attacks demonstrate new dimensions of the operational challenges that the Court faces in the digital age (Serrano Caballero, 2025).

Another political challenge concerns the Court's interaction with the United Nations Security Council. Article 16 of the Rome Statute allows the Security Council, by adopting a resolution under Chapter VII of the Charter, to defer the initiation or continuation of an investigation or prosecution before the Court for 12 months, renewable. This power, sometimes described as the "dark point" in the relationship between the Court and the Council, challenges the judicial independence of the Court. The Security Council has so far faced several requests to use Article 16. The most important of these were the African Union's requests to suspend the prosecution of Kenyan officials and to suspend the prosecution of Omar Al-Bashir (Norouzi, 2017).

The Assembly of States Parties, as the "political organ" of the Court, is a field of interaction and sometimes conflict between "justice" and "cooperation." The amendment of procedural rules in favor of Kenyan officials was an example of prioritizing

state cooperation over the requirements of criminal justice. Kenyan state leaders William Samoei Ruto and Joshua Arap Sang, who were being prosecuted before the Court for crimes against humanity, requested that the Court exempt them from continuous attendance at trial hearings so that they could perform their governmental duties. The Government of Kenya succeeded, at the 2013 session of the Assembly of States Parties, in turning its demands into law by proposing amendments to the Rules of Procedure and Evidence.

3.4. *Non-Cooperation by States*

The most important and fundamental enforcement limitation of the Court is its dependence on states for the arrest and surrender of accused persons. Article 86 of the Rome Statute obliges States Parties to cooperate fully with the Court, but in practice these obligations are often violated because of political, diplomatic, and regional considerations. The Court's official statistics show that by November 2025, 31 public arrest warrants, along with a number of confidential warrants, remained unexecuted. This non-enforcement not only prevents the trial of accused persons but also has broad negative consequences for victims and the credibility of the Court (Norouzi, 2017).

The case of Omar Hassan Ahmad Al-Bashir, the former President of Sudan, is the most prominent example of state non-cooperation with the Court. On March 4, 2009, the Court issued its first arrest warrant for Al-Bashir on charges of crimes against humanity and war crimes in Darfur, and on July 12, 2010, it added a second warrant for genocide charges. Despite this, Al-Bashir continued for years to travel freely regionally and internationally, and many States Parties refused to arrest him (Razeghi Moghadam & Zolfagharian, 2021).

In December 2011, Pre-Trial Chamber I of the Court, in two separate decisions, found that the Republic of Chad and the Republic of Malawi had failed to cooperate in arresting and surrendering Al-Bashir during his visits to those countries. The Court reported these instances to the United Nations Security Council and the Assembly of States Parties. The Chamber emphasized that the obligations of States Parties under the Rome Statute take precedence and that they cannot rely on the immunity of heads of state or decisions of the African Union to justify non-cooperation (Sartipi, 2012).

The position of the African Union regarding the Al-Bashir arrest warrant created a serious challenge for the Court. At its July 2011 summit in Malabo, the African Union formally announced that Member States would not cooperate in executing the arrest warrant for Gaddafi. The Al-Bashir case clearly shows that the effectiveness of the Court depends on the political will of states. Although the Rome Statute provides mechanisms for reporting non-cooperation to the Security Council and the Assembly of States Parties, these institutions have thus far taken no effective action to compel states to cooperate. Because of the veto power of some permanent members that themselves do not fully cooperate with the Court, the Security Council has effectively been paralyzed (Razeghi Moghadam & Zolfagharian, 2021).

The case of Saif Al-Islam Gaddafi, the son of Muammar Gaddafi, revealed other dimensions of the challenge of state cooperation. On June 27, 2011, the Court issued an arrest warrant for Saif Al-Islam. After the fall of the Gaddafi regime, Saif Al-Islam was arrested by Libyan forces, but the Libyan government refused to surrender him to the Court and insisted that he be tried in Libya. In October 2013, the Court declared the case of Abdullah Al-Senussi inadmissible because he was being tried in Libya, but rejected Libya's request to try Saif Al-Islam. Nevertheless, Saif Al-Islam was never surrendered to the Court and was released under an amnesty in 2017 (Moradi, 2023).

The case of Joseph Kony, the leader of the Lord's Resistance Army, who has been wanted by the Court since July 2005, is another example of enforcement limitations in accessing accused persons. For two decades, Kony has hidden in hard-to-reach areas of Central Africa, and the states of the region have been unable or unwilling to arrest him. In September 2025, despite the absence of the accused, the Court held the confirmation of charges hearing in absentia and confirmed 39 charges. However, the final trial requires Kony's physical presence before the Court. This case shows that enforcement limitations continue not only at the pre-trial stage but at all stages, including after the confirmation of charges (Okereke & Nnawulezi, 2025).

State non-cooperation is not limited to the arrest of accused persons; it also creates challenges for the implementation of reparations orders. The Ongwen case, with reparations amounting to €52.4 million, is an example of this challenge. The convicted person, Ongwen, lacks financial means, and the Court depends on voluntary contributions from states and international organizations to implement restorative justice. In June 2024, the Trust Fund issued its first funding request to

solicit voluntary contributions amounting to €5 million. However, by October 2024, no state had responded positively to this request (van den Buijs, 2025). The Executive Director of the Trust Fund emphasized that “the inability to implement reparations endangers the legitimacy of the Court.”

4. Conclusion and Recommendations

A practical and critical assessment of the jurisprudence of the International Criminal Court in the field of individual criminal responsibility shows that this institution, despite significant successes in consolidating the legal framework of individual criminal responsibility and developing concepts such as the theory of control over the crime and organizational control, faces fundamental structural, evidentiary, and political challenges. In landmark cases such as Lubanga, Ntaganda, and Ongwen, the Court has been able to prosecute and convict high-ranking leaders and institutionalize concepts such as “intergenerational harm” in international criminal law. Nevertheless, fluctuations in judicial practice, particularly the controversial acquittal in Bemba and the contentious use of Regulation 55 in Katanga, have reduced the predictability of judgments.

Evidentiary challenges in establishing group intent, which led to acquittals in Ngudjolo and Gbagbo, demonstrate the Court’s strict approach to evidentiary standards. Although this approach is defensible from the perspective of protecting the defense rights of accused persons, it has challenged the Court’s ability to effectively prosecute political and military leaders. In addition, problems of witness protection and interference with witnesses in the Bemba and Ruto cases have endangered the effectiveness of the trial process.

The most important obstacle facing the Court is state non-cooperation, reflected in 31 unexecuted arrest warrants. The Al-Bashir, Gaddafi, and Kony cases show that, without the political will of states, the Court lacks the capacity to enforce its judgments. Political pressures, sanctions against judges, and cyberattacks threaten the Court’s independence. The accusation of bias against Africa and the legitimacy crisis arising from the initial concentration of cases on that continent are other serious challenges. Furthermore, the Court’s dependence on voluntary contributions for the implementation of reparations, especially in the Ongwen case with reparations amounting to €52.4 million, endangers the Court’s legitimacy.

In this regard, the following recommendations may be proposed.

Legislative recommendations: amending Article 25(1) to include legal persons through the creation of an additional protocol; clarifying the criteria distinguishing perpetration from participation in Article 25(3); amending Article 30 to clarify the mental element in group participation; amending Article 75 to extend responsibility to states in compensation for harm; and amending Regulation 55 to prevent changes in the form of responsibility at the final stages of proceedings.

Structural recommendations: establishing a state-support fund with mandatory resources for the implementation of reparations; establishing a community reconstruction fund for the economic empowerment of local communities; strengthening the Office of Public Counsel for the Defence; establishing a special unit for the prosecution of legal persons; and creating a transitional justice and development network in cooperation with international institutions.

Procedural recommendations: drafting “Elements of Crimes” for Article 25(3)(d); creating an analytical case-law database to increase transparency and predictability in judicial practice; requiring consultation with victims in the design and implementation of reparations; accelerating proceedings by setting more precise deadlines; and strengthening witness protection measures through the use of modern technologies.

Recommendations for international cooperation: establishing follow-up working groups in the Security Council to monitor the enforcement of arrest warrants; automatically linking sanctions to the Court’s arrest warrants; concluding memoranda of understanding with regional human rights courts; strengthening operational cooperation with Interpol and Europol; and establishing special reparations funds in cases referred by the Security Council.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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