

UNIVERSITY OF SEVILLA  
European Master's Degree in Human Rights and Democratisation

2015/2016

**The International Criminal Court and Human Rights : an unsettled relationship.**

From the jurisprudence of the Court to its impacts on Sudan, Kenya and the Democratic  
Republic of the Congo.

Author : **Elise Rondin.**

Supervisor : **Cesar Villegas.**

## **Abstract :**

*The International Criminal Court is the first permanent international criminal tribunal. Evolving in a world which faces the globalisation, the ICC is confronted to different fields of law which are interacting : international law, criminal law, human rights law and humanitarian law. Focusing on human rights and the ICC, this work will study the influence of the Court on human rights law and on some human rights in Sudan, in the Democratic Republic of the Congo and in Kenya. The Rome Statute is a key element of the first part of this work, as its article 21 (3) is a really innovative article which can be really powerful, depending on its use by the Court. However the unclear approach taken by the Court undermined its power. On the second part, the comparative analysis of the impacts of the ICC on human rights in Kenya, Sudan and the DRC will give a broader and more concrete view on the real and mitigated impact of the ICC on the ground.*

## Table of content

<b>Introduction :</b> .....	1
Title I – The International Criminal Court and Human Rights Law .....	8
A/ International Criminal law at the heart of an emergent global legal system.....	8
1) From Nuremberg to the ICC : the development of inter-relations between ICL and human rights. ....	8
2) Tensions arising within the international criminal law system.....	14
B/ A Human Rights based analysis of the ICC Jurisprudence .....	18
1) The Rome Statute and Human Rights .....	19
a) Basic human rights’ principles.....	19
b) Pre-trial rights.....	21
c) The article 21 (3) of the Rome statute. ....	21
2) The definition of ‘internationally recognized Human Rights’ by the Court’s chambers. ....	25
3) The incoherent use of article 21(3) by the chambers of the Court.....	28
a) International Human Rights law as interpretative guidelines.....	28
b) International Human Rights law as an additional source of law.....	30
c) A schizophrenic Court : between the will to stick to its criminal nature or to use extensively human rights’ principles.....	33
i) An extensive interpretation of Human Rights principles .....	33
ii) The refusal to be a human rights’ Court. ....	34
Title II : The ICC Human Rights’ impact in Sudan, Kenya and Democratic Republic of the Congo .....	38
A/ Sudan, Kenya and DRC : three different referrals. ....	38
1) Darfur, Sudan : one of the world’s worst humanitarian crisis .....	39
a) A brief overview of the conflict in Darfur, Sudan.....	39
b) The UNSC referral to the ICC.....	41
2) The violent election process in Kenya.....	42
a) The bloody postelection process in 2007/2008.....	42
b) The prosecutor initiative to refer the conflict to the ICC.....	44
3) The issue of child soldier in the Democratic Republic of the Congo.....	45
a) An overview of the Congolese war. ....	45
b) The self-referral to the ICC. ....	47

B/ The different impacts of ICC proceedings on the ground. ....	49
1) The positive impacts on human rights record.....	49
a) A right to vote more respected in Kenya ?.....	49
b) A good impact for child soldier worldwide ? .....	51
2) The negative impacts on human rights record. ....	52
a) A short term impact in the DRC. ....	52
b) An increasing restriction of the freedom of the press. ....	53
c) An increasing pressure on Human Rights Defender. ....	54
<b>General Conclusion :</b> .....	56
<b>Bibliography</b> .....	58