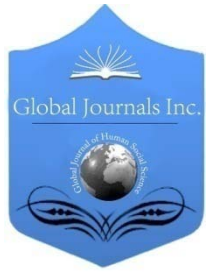
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Demystifying the ICC: Understanding the Procedures, Standards, Processes and Principles Applicable in the ICC

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Abstract- There are procedures, standards, processes, and principles that are applicable before the International Criminal Court (ICC) that need to be simplified so that they can be understood. The ICC is a very unique institution, and it is very distinct in terms of its operations, from domestic courts, international military tribunals, international criminal tribunals and hybrid international courts. There are distinct ways in which cases are referred to the ICC, as well as methods through which the ICC finds and confirms its jurisdiction over cases. There are also various ways in which suspects are brought before the ICC, and continue to interact with the ICC until their cases are finalized. The ICC also has established processes relating to the engagement and protection of witnesses' rights, and interests. There are also various standards of proof that are laid down in the ICC, which must be followed and met. This paper seeks to simplify and explain the various processes, procedures, standards and principles applicable before the ICC, so that various stakeholders to the ICC may have a better appreciation.

Keywords: icc, processes and procedures, standards, reasonable basis, sufficient basis, sufficient evidence, reasonable grounds, beyond reasonable doubt.

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I. Introduction

The procedures, standards and principles of the ICC emanate from the resolve to guarantee lasting respect for and enforcement of international justice, as alluded in the preamble.[1] In its bid to hold individuals who are most responsible for the most serious violations of international criminal law, the ICC's establishment is also resolved to guarantee essential rights of the suspects and the victims throughout the process. The court has established a lot of principles and standards to safeguard the rights of individuals and suspects. These principles are intended to address various problems that are inherent in these high profile and highly politicized prosecutions in the ICC. The Procedures adopted by the ICC are intended to balance various competing interests in international criminal prosecutions, which if not carefully done may result in serious prejudice to the rights of suspects, victims and witnesses, involved in the process. Foremost, the standards, principles and procedures are also designed to give more legitimacy to the court, as opposed to the international tribunals which came before it, which suffered heavy criticism due to the non availability of well defined and clear procedures and principles.

The ICC was established in an era of international human rights and as such there are standards, universally recognized which must be obeyed by any institution in order to effectively do justice and attain legitimacy. The effectiveness of the ICC requires that it offers adequate protection of rights of suspects and witnesses and also provide adequate remedies in the event of violations of the rights of the suspects and witnesses. The effectiveness of the ICC processes is largely evaluated from the extent to which the court observes the legal norms, standards, processes and principles applicable before the court[2]. These norms and standards are variables that help in bringing about legally consistent, predictable, accessible, enforceable and just outcomes. Therefore, these procedures, standards, processes and principles are a reflection of societal values and expectations to the court.

The ultimate goal of the ICC is to do Justice, deter further criminal activities, as well as restoration of peace. At all times, the systems of the court must ensure that both the suspects and the victims enjoy a fair process and procedure, and this is achieved through recognizing and enforcing the internationally recognized rights of stakeholders in the criminal process as a primary goal. Therefore, it is fairness of the procedure that can guarantee a fair outcome in the court's systems. The court must fully respect the rights of suspects and pay due regard to the protection of victims and witnesses.[3] There are many rights of the suspects, victims and witnesses that the ICC statute recognizes and there are also various principles, standards and procedures that have been put in place as a means of safeguarding these rights throughout the court process.

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[1] *Rome Statute of the International Criminal Court 1998: Preamble point number 11.*

[2] *Masha Fedorova, Sten Verhoeven and Jan Wonters : Safeguarding the Rights of Suspects and Accused persons in International Criminal Proceedings, working paper no.27 June 2009*

[3] *ibid 2 at page 5*

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II. Theoretical Framework

This research is informed by the institutionalism theory of international relations. This theory explains that international systems are not in practice anarchical, but that it has an implicit or explicit structure which determine how states and individuals will act within the international system.[4] The theory underpins that there are regimes, institutions or rules that determine the decision making process. Institutions are deemed to have explicit or implicit principles, norms, rules, standards, and decision making procedures around which international actors' expectations converge in a given issue-area.[5] This theory explains and emphasizes that international institutions matter in answering challenges and questions of an international nature in four different ways:

i) They structure choices;
ii) They provide incentives;
iii) They distribute power, and ;
iv) They define identities and roles.[6]

This theory assumes that when institutions are established, cooperation is possible from international actors in order to facilitate a convergence of expectations in trade, human rights and collective human and states security. It remarks that established and functional institutions are inevitable intervening variables in international relations, which are used to solve issues that go beyond nation-states.[7] This theory is founded on the assumption of the existence of international law as a body of law, and that international institutions are established, with standards and procedures, as well as principles, that can be used to solve issues and challenges that threaten the interests of humanity in the international sphere. The theory pre-supposes that, institutions, if properly managed and with clear and well understood powers, identity, and roles are very effective tools in international relations. As a result, it becomes very important and critical to analyze, assess and also understand how international institutions function, so that they can be effectively utilized.

It is therefore from this theoretical background that the ICC processes and procedures are being interrogated. The ICC systems which are in place are to be explained in a bid to understand how the ICC can be used in the international criminal justice system, as a useful and effective mechanism in international criminal law in particular and international relations in general.

III. The Jurisdiction of the ICC

The jurisdiction of the ICC is only with respect to crimes committed after the entry into force of the Rome Statute of 1998, and the effective date is 1 July 2002. The ICC has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression.[8] The preconditions for the exercise of the jurisdiction of the ICC are generally that a state must be Party to the Rome Statute.[9] The court may also exercise its jurisdiction if the State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft is a State Party.[10] The ICC also has jurisdiction if the person accused of the crime is a national of a State Party to the Rome Statute.[11]A non State Party may accept the jurisdiction of the ICC by lodging a declaration with the Registrar of the ICC accepting the jurisdiction of the ICC.[12]The ICC has no jurisdiction over any person who was under the age of eighteen years at the time of the alleged commission of a crime.[13]Therefore as a general rule the ICC does not have inherent jurisdiction to deal with every criminal case that is brought before it.

The ICC also has what is called extended jurisdiction in international criminal law. The extended jurisdiction of the ICC is exercisable in terms of Article 13 of the Rome Statute of 1998, and this is exercisable in three scenarios, thus if:

i) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with Article 14 of the Rome Statute;
ii) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
iii) The Prosecutor has initiated an investigation in respect of such a crime in accordance with Article 15 of the Rome Statute.

In relation to the application of Article 13 of the Rome Statute, the ICC is given universal jurisdiction, and the ICC is bestowed with jurisdiction over non State Parties to the Rome Statute without their consent. In this regard, the establishment of the ICC is merged with the general international morality and power game. Anything outside Article 12 and 13 of the Rome Statute, the ICC

[4] *Kresner, Stephen D. (1982): "Structural Causes and Regime Consequences; Regimes as Intervening Variables." International Organisation 36/2 (spring).*
[5] *Ibid 4*
[6] *Ibid 4*
[7] *Haas Erast. (1964): Beyond the Nation-State; Functionalism and International Organisations. Stanford University Press.*
[8] *Article 5 of the Rome Statute 1998.*
[9] *Article 12 (1) of the Rome Statute 1998.*
[10] *Article 12 (2) (a) of the Rome Statute 1998.*
[11] *Article 12 (2) (b) of the Rome Statute 1998.*
[12] *Article 12 (3) of the Rome Statute 1998.*
[13] *Article 26 of the Rome Statute 1998.*

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does not have jurisdiction. There is a general misconception that the ICC is going to solve all international criminal elements, but it must be clearly understood that the ICC has limited jurisdiction only to the four crimes in the Statute and to individuals and situations covered under Article 12 and 13 of the Rome Statute. There is therefore need to verify whether the issue at hand qualifies for the ICC to have Jurisdiction.

The ICC has jurisdiction over any adult person regardless of their official status. It has jurisdiction over Heads of States, senior members of Governments or Parliament, or elected representatives.[14] Therefore immunities and special rules, attached to the official capacity of a person whether under national law or international law are not a bar to the ICC exercising jurisdiction over such a person.[15] The provision relating to non availability of immunity as a bar to the ICC jurisdiction is clear and straight forward and every individual must know that they are subject to the ICC jurisdiction if they are charged with any crime which falls within the ICC jurisdiction. This must never be confused with Article 98 of the Rome Statute, because the later refers to arrests and surrender of suspects not being peremptory norms (*jus cogens*) under international law and not the jurisdiction of the court. Article 98 of the Rome Statute explains exceptions to the obligations of states in cooperating with the ICC's request to surrender or extradite suspects to the ICC and not the aspect of jurisdiction. The ICC has jurisdiction over every person who is over eighteen years of age who is charged with any crime under Article 5 of the Rome Statute as long as that person has been brought before the ICC, and the plea of immunity does not apply.

In order for the ICC to have jurisdiction, there must be consideration of the admissibility of the situation in terms of Articles 17-20 of the Rome Statute. The considerations for admissibility are:

i) Whether under the complimentarity principle, the same case is being investigated or prosecuted by any state which has jurisdiction over the case;

ii) When the case has already been investigated by a state which has jurisdiction, and the said state has decided not to prosecute, the ICC will not pursue that case unless it is satisfied that the decision not to prosecute by the respective state is as a result of unwillingness or inability to prosecute. The ICC will not take up the matter unless it is satisfied that the state with jurisdiction over the case is genuinely incapable or unwilling to prosecute;[16]

iii) When a person being brought before the ICC has already appeared for the same charges before a competent court, the ICC does not have jurisdiction, unless the proceedings before the said court are regarded as a shame or façade undertaken only for purposes of shielding the suspect from criminal accountability;[17]

iv) The ICC will only assume jurisdiction under the complimentarity principle when facts have been presented to the effect of total or substantial collapse or unavailability of independent judicial system, or when the responsible state is unable to carry out its proceedings, including failing to hold the accused person(s);

v) The ICC must ascertain its jurisdiction on its own, but in some instances the accused or the respective state may challenge the jurisdiction of the ICC on the basis of admissibility of the case.[18]

Everyone who wants to have a case tried before the ICC must be able to clearly understand the jurisdictional issues of the ICC from the dimension relating to the subject matter as well as the complementary nature of the establishment of the court. By and large states are allowed to prosecute cases that concern subject matters where they have jurisdiction. The ICC is a stop gap measure aimed at dealing with impunity, when it becomes clear and apparent that there is no desire by the concerned states to do justice to a particular situation within their jurisdiction.

a) Procedure For The Bringing Of Suspects Before The Icc

When a situation has been considered by the prosecutor to justify any investigations and for the suspect to be brought before the ICC for consideration, the identified suspect must be brought to court. In the ICC, the suspect is brought to court in two different ways, which are:

i. The suspect may be summoned to appear in court; or

ii. The prosecutor may apply for a warrant of arrest.[19]

If there is no risk of non-cooperation or abscondment, a suspect may be summoned to appear in court at a given date and time as in the Kenyan situation where all the six (6) suspects who had cooperated with preliminary investigations were summoned to appear before the ICC and they complied. This cooperation is necessary because the ICC has no police of its own and would depend on the cooperation of the suspects. It is therefore advisable for any person with integrity to cooperate with the ICC and get summoned, as this enables such suspects to be

[14] *Article 27 of the Rome Statute 1998.*
[15] *Article 27(2) of the Rome Statute 1998.*
[16] *See the Kenyan Situation of 2008/ ICC Cases no 01/09-01/11 and 02/11-01/11.*
[17] *Article 20 (3) of the Rome Statute 1998.*
[18] *Ibid 16*
[19] *Article 58 of the Rome Statute 1998.*

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indulged by the ICC and be allowed to carry on with their life, whilst at the same time enabling the court to do its job. The Kenyan politicians were summoned and they cooperated and in the end Uhuru Kenyatta and Ruto managed to form a political party and won the Kenyan elections to become the President and Vice President of Kenya when they are still appearing before the ICC for their trials.[20]

If there is a risk of non-cooperation like in the Sudanese situation, the court has resorted to issuing of warrants of arrest for non cooperating individuals. However, this option faces great risk of bringing the court into difficulties since the court, without a police force of its own will depend on member states to cooperate and arrest the suspect which cooperation has not always been forthcoming.[21] So far there are outstanding warrants of arrests in respect of suspects in the Sudanese situation, Uganda situation, DRC situation, to mention but a few in demonstrating how warrants of arrests have been resorted to as a means to attempt to bring suspects before the ICC. In the case of Bemba, Belgium cooperated and arrested him and he was brought to court.[22] This situation is different from the Sudanese case, where the African member states have defied their obligation to arrest and surrender the suspect as they have remained in solidarity with Al Bashir, thereby undermining the effectiveness of ICC and thereby seriously denting its reputation.[23]

b) Principles on the Protection of Individuals/Suspects Before the Icc

i. *Non-Retrospectivity.*

The general application of the ICC statute has recognized a fundamental principle of law in Article 11 (i), which states that; *"The Court has jurisdiction only with respect to crimes committed after the entry into force of this statute".* This provision recognizes the doctrine of non-retrospectively. This is a realization that law must be in place first for it to be binding on the suspects. This has removed the general fears and deficiencies of the International Criminal Tribunals, such as the ICTY and ICTR, whose statutes empowered them to try cases retrospectively, which resulted in a lot of criticisms of bias and political persecution and victor's justice handicaps.

In the trial of *Slobodan Milosevic*[24], the Court's jurisdiction was seriously challenged and the suspect regarded the whole process as an attempt to persecute him and his government members on political grounds. The ICTR has also been criticized for this retrospective application of the law, resulting in the selection of the members of the former government only and the shielding of members of the new government who were allegedly equally guilty of genocide and crimes against humanity.

The debate on non-retrospectively in international criminal law has been raging on for a long time, since it was initially raised by Netherlands in its refusal to surrender the former Germany Emperor after the World War 1.[25] The argument was precisely that there was no law in existence that allowed for the prosecution of the Emperor for offences which were not specifically offences before. This same argument arose in the Nuremberg and Tokyo Trials[26], where Germany and Japan's former officials were challenging the validity of their charges which were based on issues or allegations which were not offences specified or prescribed in any law, and whose Court has been specifically created to deal with a particular historical event, basing on no prior law.

The Rome Statute specifically prescribes the crimes which the Court has jurisdiction to preside over and these are, Genocide, Crimes against Humanity, War Crimes and Aggressions.[27] The statute in turn proceeds to give details of the essential elements of each of those crimes in Articles 6, 7, 8 and 9 of the Rome Statute. This is in conformity with the notions of justice in the sense that a suspect must be charged of a well known offence, whose elements are clearly explained and pronounced.

The Principle of non-retrospectivity has helped a great deal in shielding the ICC from criticisms and fears that were inherent in the Ad hoc Tribunals, which were created to deal with specific historic events, and have been criticized as political trials. The law in the ICC has been clearly laid down in advance, and permanently and not targeting a specific event and as such suspects are protected against being prosecuted for actions that did not constitute a crime, at the time it was committed, and the court's legitimacy is also preserved.

IV. The Principle of ne Bis in Dem

Except as provided for in the Statute, the ICC recognizes the principle of avoiding double jeopardy. The Rome Statute prohibits a person from being tried before it, in respect of conduct which formed the basis of crimes for which the person has already been convicted or acquitted by another Court.[28] The only exception to this rule is where the initial proceedings are deemed to have been a sham and for purposes of shielding the person concerned from criminal

[20] *Prosecutor vs Uhuru Kenyatta and others case no ICC 01/09-01/11.*
[21] *Prosecutor vs Al Bashir case number ICC 05-01/09*
[22] *Prosecutor vs Bemba case no. ICC 01/05-01-08*
[23] *AU Decision of the meeting of Heads of States of July 2009 and October 2013.*
[24] *Prosecutor vs Slobodan Milosevic case no. [IT-02-54].*
[25] *Article 227 of the Versailles Treaty 1918.*
[26] *The Charter of the International Military Tribunal 1945 UNTS.82.*
[27] *Article 5 of the Rome Statute 1998.*
[28] *Article 20 of the Rome Statute 1998.*

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responsibility or was not conducted independently or impartially.[29] The Court protects the individual suspects from persecution and ensures that a fair and impartial trial is conducted. This principle preserves the complimentarily principle and acknowledges the existence and usefulness of the judicial bodies which are competent to deal with some of the offences in domestic systems.

a) The principle of Non-retroactivity

'No person shall be criminally responsible under the statute for conduct prior to the entry into force of statute'.[30] In this instance, suspects are protected from having to be punished in terms of a statute that was not binding on them at the time of the offence was allegedly committed. A suspect is also allowed to benefit from the existence of more favorable law that may be applicable to them any time before a final judgment. [31]If there is a new development in law that is more favorable to a suspect being investigated, prosecuted or convicted, such law shall apply to the benefit of the suspect. The existence of this standard has gone a long way to present the ICC as a genuine court and a real judicial body as opposed to international tribunals which were created to deal with situations that happened prior to their existence. The tribunals appeared as if they were targeting particularly individuals and its rules of procedure enabled the prosecution to identify and fish a particular group in the history of a specific country, for prosecution. A pronouncement was done first by the United National Security Council acknowledging that both in Rwanda and Yugoslavia, the historical event constituted a crime or crimes and thereafter the United Nations Security Council created the court and empowered it to prosecute. To the contrary, in the ICC a situation is referred for investigation on the basis and standards of already existing laws.

In Rwanda it was only after the international community had acknowledged that genocide had been committed that the United Nations Security Council then authorized the creation of the tribunal and beginning of investigations. This resulted in criticism of the court on the basis that it was politically motivated. This situation is different from the reference of situations in the DRC, Uganda, Darfur and Kenya, where the investigation was designed to establish first and foremost, whether any crimes had been committed. This principle has shielded the court greatly from purely politically motivated prosecution and provided for fairly genuine investigation and prosecution. In the ICTY and ICTR trials, because pronouncements had already been made at the highest level of international politics, that is at the UN and UNSC level, any acquittals of the averagely good number of suspects by the courts that had been established by the same political players would have been contradictory and denial of the political history that was under review.

b) The Principle of Nullum crimen sine lege

In terms of Article 22 of the Rome Statute, a person shall not be criminally responsible unless the conduct in question constituted a crime at the time it took place. The provisions further elaborates that the crime charged must be strictly construed and shall not be extended by analogy and that in the event of any ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.[32] This point is a mile stone from the Nuremberg trials and the international tribunals where the definition of crimes were vague and ambiguous and the suspects were then convicted on the basis of analogy and subjective satisfaction of the judges, who seemed very determined to convict suspects at all costs, as a means of judging international historic events as opposed to genuine legal trials.

c) The Principle of Nulla poena sine lege

The trials before the ICC usually attracts great attention from various political players whose considerations are usually non legal. There are some sectors of the international community who mistakenly perceive the ICC as an opportunity for revenge and they usually want to convict and sentence suspects in the media. They usually want to put undue pressure to the bench by employing inflammatory remarks as a means of irregularly persuading the ICC to be vengeful in sentencing. With regards to the Nuremberg trials as well as ad hoc tribunals, arguably, the shockingly harsh sentences imposed on the convicts were as a result of the political statements uttered by stakeholders condemning the suspects and calling on the courts to make sure that the said people were either executed as in the case of the convicts in the Nuremberg trials or given life imprisonments or very long decades in prison. To guard against this handicap, Article 23 of the ICC Statute mandates that the convicted person is supposed to be punished only in accordance with the Statute. This provision provides that in sentencing the convict the court must be guided solely by the record of proceedings on aggravations, extenuations and mitigatory factors in terms of Articles 77-79 of the Rome Statute.

d) The Presumption of Innocence

Presumption of innocence is the cornerstone of modern international criminal law. It is a fundamental principle that must prevail throughout the court proceedings. In general, the presumption of innocence has three consequences, which are:

[29] *Article 20 (3) of the Rome Statute 1998.*
[30] *Article 20 of the Rome Statute 1998.*
[31] *Article 24 of the Rome Statute 1998.*
[32] *Article 22 (2) of the Rome Statute 1998.*

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(i) It affects the overall treatment of the suspect;

(ii) The burden of proof rests with the prosecution; and

(iii) The presumption carries a certain burden of proof, on the prosecution that is "proof beyond reasonable doubt" for any charges to succeed against a suspect.[33]

In order for the ICC to convict any person on any crime, the prosecution must prove its case beyond reasonable doubt and there is no reverse onus on the suspect[34]. This presumption is the backbone of a fair trial. The ICC has not been established to deal with a specific event and the prosecution and ICC are not guided by the United Nations Security Council, like special tribunals. There is no prior declaration of crimes and guilty before investigations and full in the ICC regime. In taking up a case the ICC processes and procedures are based on the principles which are in place, to make sure that only those with a case to answer may be brought to trial. In the Kenyan situation as well as the Darfur situation, the pre-trial chamber of the ICC released some of the suspects on the basis that there was no sufficient basis to link them to the particular offence.[35] This is contrary to the special tribunals like the International Criminal Tribunal for Rwanda and Yugoslavia, where virtually every person brought before the said courts were prosecuted because of the fears connected with the political perceptions, for example any acquitted for ICTR would have been mistakenly viewed as denial of genocide.[36]

e) Defenses

The suspect is entitled to defenses or grounds which exclude criminal liability in terms of Articles 31, 32 and 33 of the Statute, and these include mental incapacity intoxication, self defence, mistake of fact and law and obedience to superior orders. The suspect under the ICC does not have strict liability, but is entitled to defenses available in their situation, as qualified by the Statute. No suspect shall therefore be held responsible unless they fail to establish a defence recognized by the Statute. From Nuremburg trials through to the ICTR and ICTY the processes and procedures connoted more of a strict liability. It was very difficult to raise any defense in these special tribunals, mainly because the courts were established after pronouncements that offences had already been committed and the court's duty was to simply identify the suspect and punish them.[37]

f) Procedures

In terms of Article 13 of the Rome Statute, the Court shall exercise its jurisdiction on matters referred to the prosecutor by State parties, UN Security Council or *proprio motu* investigations by the prosecutor. The prosecutor is mandated to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes[38]. The Prosecutor must analyze all information supplied to him by his sources, such as States, UN organs, Inter-governmental and non-governmental organizations or any other reliable source[39], in order to formulate an opinion whether to take up the situation or not. To avoid harassment and unnecessary humiliation of people, the Prosecutor is prohibited from proceeding with investigations, unless an authorization has been made by the Pre-trial Chamber of the ICC in accordance with the ICC Rules of Procedure and Evidence. An investigation will only be authorized when there is a reasonable basis to proceed with an investigation[40]. In order to determine whether there is a reasonable basis to proceed with investigations, the Prosecutor shall consider factors set out in Article 53 of the Rome Statute, and these are:

i) The information available to the Prosecutor provides reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

ii) The case is or would be admissible under Article 17;

iii) Taking into account the gravity of the crime and interests of victims, there are nonetheless substantial reasons to believe that an investigation would serve the interests of justice.

It is the Pre-Trial Chamber which after examination of the request and supporting material, must find that there is a reasonable basis to proceed with an investigation and only if the Court considers that the case falls within its jurisdiction, taking with account admissibility issues which include but are not limited to the complementarily principle. Because usually international crimes are committed in highly political environments, the court must come up with safeguards to preserve its independence, impartiality and integrity. This procedure is designed to make sure that only those matters which qualify for prosecution are investigated and brought to trial.

It is this pre-trial procedure that serves the court and preserves its legitimacy in the midst of criticism by African States that it is targeting African leaders only. When the prosecutor of the ICC brought the charges

[33] *Ibid 2 pages 6.*
[34] *Article 67 (1) (i) of the Rome Statute 1998.*
[35] *The Prosecutor vs. Ruto and others case no. ICC 02-09/2011.*
[36] *The Prosecutor vs. Nayambanje ICTR 98-42.T.*
[37] *John Loughland History of Political Trials from Charles 1 to Saddam Hussein; Book review .Spring 2009.*
[38] *Article 13 (1) of the Rome Statute 1998.*
[39] *Article 15 (2) of the Rome Statute 1998.*
[40] *Article 15 (3) of the Rome Statute 1998.*

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against Al Bashir for confirmation of charges, the court refused to confirm charges of genocide on the basis that facts did not prove the charges.[41]This independent finding of the court was made despite statement from NGOs, USA and other players referring the situation in Darfur as genocide. This standard of proof has greatly improved international criminal law from the position of Special Tribunals which depended on political pronouncement to start prosecuting. This standard helps to keep the court up with its mandate and avoid acting on non-legal political rhetoric.

V. Admissibility and Complimentarity

A case is only admissible before the ICC in terms of Article 17 of the Rome Statute. A case is inadmissible before the ICC if it is being adequately investigated or prosecuted by the state which has jurisdiction over it. In the Lubanga Case[42] , it was held that the Court must satisfy itself that the state with primary jurisdiction is genuinely unable and incapable to handle the case. In the case of Salif Gaddaffi[43] the prosecutor of the ICC insisted that the suspect be surrendered on the basis that the state of Libya which has primary jurisdiction is unable to genuinely try the suspect and that the suspect may not be able to get a fair trial in Libya.

When a case has already been investigated by the state with primary jurisdiction, which has decided not to prosecute, the Court may authorize investigations, if it is satisfied that the non-prosecution is as a result of unwillingness or inability to prosecute. This position is clearly elaborated in the Kenyan situation[44], where after violent post elections, where international crimes were committed, a commission was set to look into the issue and thereafter the State of Kenya did not act to prosecute the suspects and the ICC initiated investigations and prosecutions of the suspects. In these circumstances the Court considers the collapse of time or attitude of the state towards holding the suspects accountable but in a fair, impartial, and independent competent court.

a) Right to bail for individuals charged with international crimes before the ICC

Pursuant to the presumption of innocence doctrine, is the right of a suspect to be granted bail pending trial. Since a person is presumed innocent, they must be free, unless there are compelling reasons to justify that the suspect be incarcerated pending their trial before the ICC.

Bail or provisional release is a fundamental right granted to suspects appearing before the ICC. This right is enshrined in the International Covenant on Civil and Political Rights[45]. Article 58 and 60 of the Rome Statute, provides for interim release of accused persons detained for the ICC. After a person's initial appearance and confirmation of charges against them, by the ICC, a person who is subject of a warrant of arrest or who voluntarily appeared or appeared pursuant to summons may apply for interim release.[46]

Where a person has been arrested and is in a custodial state pending transfer to the ICC, they have a right to be granted interim release pending surrender by the competent authority of that state[47]. The state hosting a suspect has an obligation to determine the liberty of that suspect, pending surrender to the ICC. In the Kenyan situation, the suspects were never arrested or detained by the Kenyan authorities. When they were required to appear before the ICC for confirmation of their charges they voluntarily surrendered themselves and appeared before the ICC together with their legal representatives, and in turn they were allowed to return back to Kenya and wait for the communication of the court on further proceedings and were granted conditional bail. This position is a great improvement from the ICTY AND ICTY era, where virtually all suspects were held in custody and were treated as if they had already been convicted even before their trial.

The provisions in the ICTR Statute were similar to those of the ICTY and SCSL Statutes and they all were very strict on how a suspect could be released.[48] The rules stated that:

"Once detained, an accused may not be released except upon an order of a Trial Chamber. Provided release may be ordered by a Trial Chamber only in exceptional circumstances after hearing the host country and only if it is satisfied that the accused will appear for trial and if released will not pose a danger to any victims witness or other person."

The general rule on bail or provisional release in the special tribunals was that suspects had no right to bail and as a matter of fact, the ICTR never granted a single of the suspects appearing before it bail. The provisions of the special tribunals on bail are different from those of the ICC in that, Articles 57-61 of the Rome Statute, provides the right to apply for bail and gives the ICC and other competent courts in whose jurisdiction suspects are held or reside full discretion to determine whether or not they should be held in or out of custody

[41] *Prosecutor vs. Al Bashir Confirmation of Charges case no ICC-02/05-01-01/09.*
[42] *Prosecutor vs. Thomas Lubanga Confirmation of Charges Case number ICC-01/04-01/06.*
[43] *ICC Prosecutor Press Statement on the situation in Libya, October 2012.*
[44] *The prosecutor vs Uhuru Kenyatta and other case no. – ICC-01-09-/09-02/2011 and Prosecutor vs Ruto and Sany case no. ICC-02-09/2011.*
[45] *Article 9 (3) – (4) of ICCPR 1966*
[46] *Article 60 of the Rome Statute*
[47] *Article 59 paragraph 3 of the Rome Statute*
[48] *Rule 65 of The Rules of Procedure of the ICTR,ICTY and SCSL*

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and any other conditions thereof. The status of suspects before the ICC relating to their being in or out of custody is under continuous review by the court, so that there is sustained justice to the suspects and the victims. Contrary to the procedures of Tribunals, the ICC has developed a rights based approach in dealing with suspects brought before it.

In the ICC, the trial chamber once decided that Thomas Lubanga Dyilo be released, although this decision was later changed by the same trial chamber after a suspensive order by the Appeals chamber[49]. In a sense, this shows that the ICC has been very objective in determining circumstances under which a suspect's right to liberty may be considered. This is a clear reflection of the respect of the presumption of innocence of a suspect until they are convicted by a competent court of law. When he appeared before the ICC, Jean-Pierre Bemba Gombo, made Applications for bail in the ICC[50] after he initially appeared in court. He was granted although it was later reversed, his interim release by the Pre-trial Chamber II of the ICC when in considering the bail application, the judge stressed the fact that;

"When dealing with the right to liberty, one should be mindful of the fundamental principle that deprivation of liberty should be an exception and not a rule"[51].

In looking at the appropriateness of pre-trial detention, the judge observed that, "*it should not be regarded as pre-trial punishment and must not be used for punitive purposes*".[52] The Court ruled that continued detention of Bemba could not be maintained and observed that the suspect had shown good behavior in detention and had not tried to interfere with the proceedings of the Court in any way. In the foregoing, the single Judge went on to conclude that; *"Paying due regard to the particular circumstances of the present case, the single Judge is not convinced that Mr Jean-Pierre Bemba would interfere with witnesses or victims. The identity of victims has not been disclosed to the defence, a fact which makes Jean Pierre Bemba's interference unlikely. Even though the identities of 21 witnesses have been disclosed to the defence, Mr Jean Pierre Bemba has not tried to contact or threaten any of them or even the entire year of pre-trial detention……"[53]*

The single judge concluded that the continued detention of Bemba was not necessary in terms of Article 58 (i) (b) (ii) and (iii) of the Rome Statute and observed that;

"Recalling that the decision on continued detention or release is not of a discretionary nature and mindful of the underlying principle that deprivation of liberty is the exception and not the rule, the single Judge decides that Mr Jean Pierre Bemba shall there be released, albeit under conditions."[54]

However, the appeals Chamber reversed the pre-trial chamber II decision to release Bemba and ruled that there were no changed circumstances to allow for the release of the suspect. The Appeals Chamber concluded that there was risk of abscondment due to Bemba's Political position, his international contacts, networks and financial positions and determined that;

"The pre-trial Chamber erred in granting conditional releases without specifying the appropriate conditions that the state to which Mr Bemba would be released and whether that State would be able to enforce the conditions imposed by the Court"[55].

As a result, the Appeals Chamber reversed the decision of the Pre-trial chamber which had granted him bail and ever since Bemba has been detained by the ICC to date. The Precedent of the ICC is however clear that, if certain conditions are met, the suspect may be granted bail and enjoys liberty pending their trial. It also seems clear that if a suspect co-operates with the ICC and voluntarily surrender themselves to the ICC pursuant to a summons to appear, they are likely to be granted bail[56]. Bahr Adriss Abu Garda appeared voluntarily before the pre-trial chamber of the ICC on the 18th May 2009 pursuant to a summons to appear[57]. This voluntary surrender was followed by that of Saleh Jamus and Abdullah Nourain, who were allowed to travel back to Sudan after their initial appearance[58]. Six Kenyan individuals charged with crimes against humanity were given a conditional release[59]. They voluntarily appeared in response to summons to appear issued by the Pre-trial chamber of the ICC, which indicates that at least the Court may in future consider granting bail to persons who surrender voluntarily to the jurisdiction of the Court.

Accused persons before the ICC may be granted bail subject to meeting standards set by law. Since the ICC is a contemporary international court and is supposed to uphold the persons rights including the right to bail and the presumptions of innocence[60] It will be very unfair to deny the suspects bail before the ICC simply on the basis of the seriousness of the offence, since all the cases before the ICC are serious offences

[49] *Prosecutor vs Thomas Lubanga Dyilo case no. ICC-01/04-01/06*
[50] *Prosecutor vs Bemba case no. ICC-01/05-01/08*
[51] *Ibid 50 para 36*
[52] *Ibid 50 para 38*
[53] *Ibid 50 paragraph 74*
[54] *Ibid 50 paragraph 77*
[55] *Ibid 50 paragraph 109.*
[56] *W. A Schabas: An introduction to International Criminal Court. Cambridge University press, Cambridge 2007 @ 270.*
[57] *Prosecutor vs Gardu case no. ICC 02/05-02/09.*
[58] *Prosecutor vs Nourain and Jamus case no. ICC-02/05-03/09.*
[59] *Prosecutor vs Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali, case no. ICC-01/09-02/11:Pre-trial chamber, Prosecutor vs William Samoel Ruto and Joshua Jang case no. ICC-1/09-21*
[60] *Chacha Bhoke Murungu: The Right to Bail for individuals charged with international crimes before the international criminal court and tribunals*

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and such consideration will amount to a pre-judgment of the suspect appearing before the Court[61].In the foregoing it is clear that the ICC is prepared to grant bail to those suspects who voluntarily appear before it and this encourages cooperation from suspects and also helps the court to deal with cases conveniently.

Previous tribunals, for example, the Nuremberg and Tokyo tribunals kept in detention pending trial all defendants serve for a few like Gustav Krupp Und Halbach, who was kept outside due to his very poor health[62]. The only right that was recognized precisely in Nuremburg charter was that of a fair trial in Article 16 (a) – (e) and no mention was made specifically on bail. In these proceedings detention was the rule, and not an exception, and the suspects were to stay in detention until they are convicted or acquitted. In the ICTY, bail was granted only on exceptional circumstances[63] and onus to prove the existence of such circumstances rested on the accused persons. Upon detention, an accused was not to be released except upon order of the chamber and such release had to be granted only on exceptional grounds such as serious medical conditions[64]. Only on rare circumstances did the tribunals grant release, as in the case of Prosecutor vs Blaskit[65], who surrendered voluntarily to the tribunal and was released and placed under house arrest. The ICTR has applied the strict exceptional circumstances and the majority of bail applications have failed as indicated in the case of Prosecutor vs Ndanayabashi[66] and Prosecutor vs Rutaganda[67].

b) Right to legal representation and to presence in Court.

A suspect before the ICC is entitled to legal representation of his choice. In accordance with Article 43 paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the statute[68]. The Registrar must facilitate the protection of confidentiality, provide support, assistance and information to all defence counsel and support for professional investigators necessary for the efficient conduct of the defence. Foremost, the Registrar must assist arrested persons to whom Article 55 paragraph 2 applies and assist them in obtaining legal advice and assistance. The Registrar must also facilitate the dissemination of information and case law of the Court to the defence counsel and co-operate with national defence and bar associations and relevant representative body of counsel and legal associations to promote the specialization and training of lawyers in the law of the statute and the legal rules.

This procedure has assisted the court to deliver substantial justice to matters before it. This is an improvement to domestic trials of former state officials like Charles 1 of England, Nicholas XV1 of France and Saddam Hussein of Iraq whose trial were criticized for injustices that arose as a result of intimidations and at times assassination of lawyers who were representing the suspects.[69] A suspect is free to choose his or her counsel from the list prepared by the Registrar in terms of Rule 21 and 22 of the Rules of Procedure and evidence. When a person claims to have insufficient means to pay for legal assistance, they may be assisted through the Registrar. This allows persons appearing before the ICC to get legal assistance for the fair and effective administration of justice.

c) General standards of the Court from Investigation to Conviction

The first stage after a matter has been put before the prosecutor is that the prosecutor will be required to make a request with the pre-trial chamber to be allowed to proceed and investigate a particular situation and determine whether crimes have been or are being committed in the situation before it. In this case, the prosecutor will have to prove to the chamber that there is a reasonable basis to believe that a crime has been committed to which the Court has no jurisdiction and that the matter is very serious and the gravity of the offence is of a higher magnitude. This is provided for in terms of Article 53 paragraph 1 of the Rome Statute. Reasonable basis is a legal standard which calls for an exercise of due diligence, independence and thoroughness in the analysis of the situation before hand. Reasonably adequate facts, supported by appropriate research and investigations are required to meet this standard. The information so presented must provide a reasonable belief that there are offences being committed or already committed. If the court is satisfied, the request is granted, and the prosecutor will be given permission to proceed and investigate all facts, including incriminating and exonerating facts. In terms of Article 55 paragraph 1 (a) a suspect is protected against self incrimination, just like in domestic courts and as such, during the investigation, a suspect is not compelled to give incriminating evidence to the Prosecutor.

The investigation of a case is only allowed to go ahead if the court is satisfied after preliminary

[61] *Ibid at page 474*
[62] *S. Zappala "Provisional Release". In A. Cassese. (Ed). The Oxford Companion to International Criminal Justice. Oxford University Press 2009, page 474-476*
[63] *Prosecutor vs Bradanin Case no. IT-99-36-PT*
[64] *Prosecutor vs Semic case no. IT-95-9-PT. 4 April 2000.*
[65] *Prosecutor vs Blaskit case no. IT-95-14IT.96*
[66] *Case no. ICTR-96-15IT*
[67] *Case no. ICTR-98-41-T*
[68] *Rule 20 of Rules of Procedure and Evidence of 3-10 September 2003*
[69] *John Loughland. A History of Political Trials from Charles 1 to Saddam Hussein; book review Spring 2008*

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investigations, that sufficient basis exists which calls on the case to be taken further and that the matter is admissible, under Article 53 paragraph 2. A prosecutor will only proceed if there is sufficient legal and factual basis to seek a warrant or summon s under Article 58 and the prosecution taking into account all the circumstances including the gravity of the crime, the interest of victims and the age as well as infirmity of the alleged perpetrator, it is in the interest of justice to proceed with the case. This is intend to protect suspects from malicious prosecutions and only allows for the court to proceed with cases which are prima-face; admissible in terms of both facts and law. If the pre-trial chamber rules in any manner on these preliminary proceedings, the prosecutor may appeal to the Appeals Chamber whose decisions can only be reviewed by a full composition of the full chamber. Sufficient basis standard connotes the availability of information inherent and enough to assist in the formulation of opinions based on investigations and facts. The information is contextualized to give a real link between the facts found through investigations and the individuals identified as suspects.[70] The thresh hold is higher than that of reasonable basis.

A warrant of arrest or summons to appear before the ICC is issued in terms of Article 58 of the Rome Stature. At this stage, the Registrar shall explain all the rights of the suspect and verification of the status of the suspect. The suspect has an opportunity to challenge the indictment. This incident is only allowed when there is in existence reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court and the arrest of the person is necessary for the interest of justice. At this stage, the name of the suspect and summary of evidence relied upon is presented in terms of Article 58 paragraph 2 of the statute[71]. In terms of Rule 104 of the Rules of Procedure and Evidence, if the Court is not satisfied the suspect will be released or conditionally released and this decision shall be subjected to review. The pre-trial chamber must make sure that the suspect is not unreasonably delayed. Reasonable grounds are also a higher threshold than sufficient basis, as it relates to the total assessment of circumstances including specific characteristics of the suspect and the contextual factors relating to the crime alleged. This threshold is equated to reasonable suspicion in domestic jurisdictions. It refers to an engagement of reasonable possibilities rather than probabilities of a crime. The constellation of the facts in this situation is based on evidence tied to the individual capable of supporting a logical inference of criminal behavior.[72] At this point, the prosecutor must establish the link between the constellation and criminality through connecting the circumstances of criminality and the individual, through logical inferences, either through empirical or statistical evidence. Reasonable grounds therefore refer to the sincerely held subjective belief in the link between the individual and the crime(s) allegedly committed.

Confirmation of charges is then done in terms of Article 61, where the suspect is required to appear in person unless there is a waiver. The suspect is served with sufficient material in addition to the indictment papers. At this point the prosecutor has a burden to prove that his charge contains sufficient evidence to satisfy the requirements of Article 61 paragraph 7[73] and Rule 121[74]. Sufficient evidence must be established, creating substantial grounds to confirm the charges and refer the matter to the matter to trial. In the Sudanese situation[75], the suspects like Abu Garda were released and sent back to Sudan after the prosecution failed to establish sufficient evidence against the suspects. Again in the case of Al Bashir[76] confirmation of charges on genocide was rejected. At this stage the prosecution must lead evidence to show that in the particular situation, the named suspect has a case to answer. Sufficient material is presented, which points to the suspect as a Potential accused responsible for committing the crime, facts which establishes the offence must also be proven at this stage. As indicated in the Al Bashir Case, the prosecutor failed to establish that the situation in Darfur had an element of an intention to *'destroy in whole or in the part*", a particular group, which falls within the categories of the protected persons in terms of Article 6 of Rome Statute.

In the Kenyan case, during the stage of the confirmation of charges, two of the suspects namely Henry Kiprono Kosgey and Mohammed Hussein Ali had charges dropped against them on the basis that there was no '*sufficient evidence to establish substantial grounds to believe that the persons referred committed the crimes against humanity, charged against them'*.[77] This process is intended to make sure that the ICC proceeds with a trial only against the prime suspects, were there is sufficient evidence that they are linked to the charges. This stage is important in that it enables the court to proceed against only those suspects where there is a nexus that points to the effect that the particular suspect has a case to answer. Sufficient

[70] *Kenyan Situation, Confirmation of Charges cases no ICC 01/09-02/11.*
[71] *Rome Statute of 1998*
[72] *R vs Chehil, 2013 SCC 49 (September 2013).*
[73] *Ibid 72*
[74] *ICC Rules of Procedure and Evidence*
[75] *Ibid 24*
[76] *Prosecutor vs Al Bashir case no. ICC-05-01/09.*
[77] *Prosecutor vs Kenyatta and others, Confirmation of Charges Case no ICC -01/09-02/11 and ICC-01/09-21/11.*

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evidence refers to evidence of such a probative value to support certain findings of facts. The term does not mean conclusive evidence, but refers to such evidence as may be necessary to establish facts which are satisfactory to an unprejudiced mind.[78]

In terms of Article 66 paragraph 3 of the Rome Statute a full trial is conducted where the prosecution must prove its case 'beyond reasonable doubt'. All relevant evidence that supports the suspects or incriminate them shall be presented to the trial court to make a determination of the guilt or innocence of the accused. In the Rome Statute an accused must only be convicted of the crime if convinced that the Accused person is guilty beyond reasonable doubt. The burden of proof is very strict and is applied generally applicable in the domestic court of law. In the Lubanga case, the court convicted the accused on the finding that, the prosecution had gathered sufficient evidence beyond reasonable doubt to show that the accused was guilty of recruiting child soldiers, which is a war crime.[79] In the Tribunals a suspect was convicted when the court was 'satisfied' that the suspect was guilty, which was a lower standard than domestic trials and posed a great risk of conviction of innocent people.

VI. Sentencing Procedure

The sentencing procedure of the ICC takes into account all factors peculiar to the accused. In the Lubanga case, the court in arriving at an appropriate sentence took account of all the personal circumstances of the accused, including his pre-trial incarceration and in turn sentenced him to 13 years imprisonment and subtracted the 6 years of pre-trial detention as sentence already served. The sentencing trend of the ICC reflects some lenience and gives a guideline of a prison sentence of not exceeding 30 years.[80]The ICC has been criticized as too lenient in sentencing suspects considering the gravity of the cases before it, as compared to Tribunals which gave life sentences and more particularly the Nuremberg Tribunal which sentenced some of the convicts to death. It should be noted however that the ICC sentencing is in line with contemporary human rights trend. It is important to note that the ICC may not exceed a sentence of 30 years imprisonment as a general rule. This means that the ICC's general limit on sentencing is 30 years , with an allowance to exceed that only if there are justifications for a longer sentence, such as life imprisonment in terms of Article 77 (1) (b) of the Rome Statute. There is no peremptory limit to the sentencing powers of the ICC but, strong guidelines. The ICC has powers to even fine a suspect and also to forfeit proceeds, property, and assets derived directly or indirectly from the crime.[81]

a) Right to Compensation for Suspects

A person, who has been unlawfully arrested and detained, has a right to a redress or compensation in terms of Article 9(5) of the International Covenant on Civil and Political Rights. Article 85 (1) of the Rome Statute provides that: *"Anyone who has been the victim of unlawful arrest or detention shall have an enforcement right to compensation".* The ICC provides for a remedy or recourse to people who have been victims of grave and manifest miscarriage of Justice. This is a new and positive development in the ICC era, which is in contrast with the process and procedures of the *Ad hoc* Tribunals, which never recognized any such process and had no provisions for such rights.

b) Protection of victims and witnesses

The ICC recognizes victims and witnesses as important stakeholders in the proceedings. They are accorded protection, security and right to reparations for any damage resulting from the criminal act. Article 54 paragraph 1 (b) mandates the prosecutor to respect the interests and personal circumstances of victims and witnesses in taking appropriate measures to ensure an effective investigation. In the ICC processes, Witnesses and victims have a huge stake, and are involved, throughout the proceedings and are regarded as participants in the prosecution of any case where their rights are involved. The Victims and witnesses are also protected in terms of Article 68 of the Rome Statute. Their safety, physical and psychological well being, dignity and privacy are protected in Article 68 paragraph 1.

c) Rights to Participate

The most significant rights of the victims are provided in Article 68 paragraph 3 which provides that where the personal interests of victims are affected, the Court shall allow their views and concerns to be presented and considered at any stage of the proceedings and measures are taken by the ICC which may be appropriate, but in the manner not prejudicial to the sights of the accused. Such views may be presented by the legal representatives of the victims where the Court considers it appropriate. In the Kenyan situation[82] the victims' legal representatives participated at the confirmation of charges and led evidence which assisted the prosecution to successfully have charges confirmed. The victims have a right to fully participate in the proceedings in terms of Rule 94 of the ICC Rules of Procedure and Evidence, as well as Rule 95 of the same. The participation of victims enables the court to

[78] *Estate of Cruson vs Long 189 Ore 537(Ore 1950).*
[79] *Prosecutor vs Lubanga ICC-01/04-01/06.*
[80] *Article 77 (1) (a) 0f the Rome Statute 1998.*
[81] *Article 77 (2) of the Rome Statute 1998.*
[82] *Ibid 23.*
[83] *Ibid 23.*

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get some important facts directly and formulate proper decisions.

The Court distinguished between victims appearing in person, registration and general participation[83]. Victims who wish to present their views and concerns will need to follow the procedure under Rule 89 of the ICC Rules of Procedure and Evidence, and may present their views and concerns in person or via a video link.[84] They only express their views and not provide evidence. A victim is distinguished from a witness. Those victims needing to appear in person or via a video link need to disclose their identity to the parties (Prosecution and the defence).

Some victims may be commonly represented and may not be required to disclose their identity, but only some personal data including harm suffered. In this process Rule 85 of the ICC Rules of Procedure and Evidence apply, where victims are defined as natural persons having suffered harm following the commission of a crime within the ICC Jurisdiction, and organizations or institutions having suffered direct harm to any of their property and that the harm suffered is related to the charges against the accused.[85]

The Trial Chamber will recognize all the victims who were already authorized to participate at the pre-trial stage as having registered to participate. The victims will have the right to express themselves, share their experience, give their inputs, and receive feedback on the proceedings and direct and constant periodic reports from the court. Victim's participation is in line with contemporary international human rights discourse and the court is employed to make decisions that do not prejudice any rights or interests of victims who are important stake holders.

d) Rights to Legal Representatives

Victims in the ICC are entitled to legal representation in terms of Rule 90 of the ICC Rules of Procedure and Evidence through a common legal representative as well as by court-in-house office of the public counsel for victims. The legal representatives act as the main point of contact for victims and may formulate and present victims views in hearings and will be allowed to make opening and closing statements at trials. In the Kenyan case, there has been an establishment of the common legal representatives for victims to be based in Kenya, closer to the victims, which works hand in hand with the office of the Public Counsel and the Chamber in everyday proceedings and attending the hearing. This is important to make sure that victim's views and concerns are taken into account throughout the proceedings.

e) Victims' Rights to Reparations

The victims also have a right to receive reparations for harm done. The victims' oriented goal was clearly highlighted in the case of the Prosecutor vs Thomas Lubanga Dyilo, decision on victims' reparations, No. ICC-01/04-01/06 of 18 January 2008, where the Court recalled that one of its mandates was to provide justice to victims by ordering measures geared towards full repair of harm suffered by the victims as a result of the criminal act. Article 75 of the Rome Statute provides for restitution, compensation and rehabilitation of victims either upon request or on its own initiative. If the suspect is unable to pay restitution or compensation, the Court may order that the money be paid through the Trust Fund provided for in Article 79 of the Rome Statute. These reparations are governed by provisions of Rule 94 and 95, pursuant to Rule 97, of the Rules of Procedure and Evidence, and the compensation may be ordered on a collective basis. This is designed to repair or restore victims' lost property and prevent unjust enrichment of convicts.

VII. Conclusion

In the foregoing, the ICC as a permanent Court has established guarantees for suspects and victims in its proceedings and has come up with procedures and mechanisms that enable the court to administer the interests of justice in a more transparent, human rights oriented and balanced manner. Conflicting interests of suspects and victims and witnesses are well balanced to enable the Court to deal effectively with some deficiencies of the Ad hoc special Tribunal that came before it. The Court has managed to establish new principles which have enabled it to handle these high profile and delicate cases, which have a very high political and moral texture. Although the court has faced criticism and has been regarded as a political institution, it has developed standards, processes, principles and procedures which have gone a long way in developing the character and content of international criminal law.

The ICC processes and procedures have structured choices for the judges, prosecutor, suspects, and victims alike. The institution provides incentives for cooperation, such as conditional release for suspects who cooperate with its processes. There is a clear distribution of power between the UNSC, States Parties to the Rome Statute, the prosecutor, the PTC Chamber, the Trial Chamber, and the Appeal Chamber, as well as defined and identified roles designed to converge various expectations of different stakeholders to the court. If everyone clearly understands how the ICC operates, they can fully and effectively utilize it as a tool to fight against impunity and injustice at the international level. There is need to continue demystifying the ICC by clearly outlining its methods of operation so that the work of the ICC can be clearly understood and supported.

[84] *Rules of Procedure of the ICC 2002.*
[85] *Article 57 of the Rome Statute 1998.*

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The establishment and functions of the ICC can be best understood through the institutionalism theory of international relations. From the ICC processes and procedures, it becomes apparently clear that international systems, though facing serious challenges in enforcement, are not in practice anarchical. There are structures and rules which determine how states within the international system act, through established rules, norms principles, standards and procedures in decision making around which international actors are expected to function. International relations are therefore not all about international politics, but also about international law, and international players must understand both the politics and the laws relevant to the particular international situation, so that they are able to find either a political and legal solution or both such political or legal solution to a given situation.

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