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Perceptions of Lesothos Rural

Perceptions of Rural Communities

Highlights

Paradigmatic Views & Pragmatic

Demystifying the ICC: Understanding

Discovering Thoughts, Inventing Future

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Perceptions of Rural Communities on Ownership and Management of Rural Water Supply Systems (RWSSS) in Lesotho and a Summary Recommendary View

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Abstract- This is a research study that reveals some nature of the contribution of Lesotho's communities in capital and management costs and the influence of financial contributions on perceptions of ownership of rural water supply systems/RWSSs. The study is about perceptions of rural communities on ownership and management of RWSSs in Lesotho. The research further includes a summarizing recommendary view on these aspects.Research methodology encompassed semi-structured interview guides, focus group discussions and beneficiary assessment methods in Mahlabatheng, Masapong and Machache rural areas in the district of Maseru. Interviews also covered the Department of Rural Water Supply/DRWS located in Maseru city in Lesotho.

Keywords: 1. ownership of rural water supply systems, 2. rural communities, 3. rural water supply systems/rwsss, 4. management of rural water supply systems, 5. lesotho.

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Perceptions of Rural Communities on Ownership and Management of Rural Water Supply Systems (RWSSS) in Lesotho and a Summary Recommendary View

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I. General Introduction

The significance of this research study is to add to the body of knowledge on community ownership and management practices in Rural Water Supply/RWS. It further seeks to contribute to policy implementation, specifically on, capacity building of local structures for sustainable management of rural water supply systems using the case study of Lesotho as one other Southern African country. The research study adopted in-depth interviews, focus group discussion and beneficiary assessment research study methods to enhance reliability, validity, accuracy and confidence in the findings in the sense that it also used relevant multiple research methods. That is in collecting data the researcher used semi-structured interview guides, focus group discussions and beneficiary assessment methods as explained below:

The researcher conducted in-depth interviews at household level. A semi-structured interview guide was used to this effect. Bryman (2012:471) reports that in using this tool, the implication is that much interest is on the interviewee's point of view. This is because the interviewee has leeway in replying, thus shaping the content of the conversation (Babbie and Mouton, 2001:291). This data collection method is applauded for its flexibility since the interview is not based on rigid questions determined prior to the interview. Instead, open-ended questions enable the respondents to pick up issues that are not included in the guide (Bryman, 2012:471).Another advantage of this method is the high yield in response rate due to the language advantage. The researcher is able to explain questions in the interviewees' mother tongue. For this reason, this method of data collection elicits genuine information from respondents.

The study also had structured interview questions for the benefit of ease during data processing. Bryman (2012:211) maintains that since structured interviews use closed ended/fixed choice questions, facilitation into processing data is simple. Moreover, variability is reduced since the responses are recorded as they are from the interviewee. Babbie and Mouton (2001:233), concur that closed ended questions are not only easy to process but also provide uniformity of responses as well. Here the researcher asked questions and recorded responses under the themes that directly link with the study's objectives.

A focus group technique of interviewing entailed interviewing a group on a specific theme to be explored in-depth. The advantages of focus group discussion are that it facilitates group perceptions on a particular topic rather than focusing on individuals. The researcher extracts much data from many people all at once over a short period of time (Bryman, 2012:501). The embraced quantitative approach revealed how group participants viewed issues they are faced with, since the interviewer created an unstructured environment for discussion (see Bryman, 2012:501).

For this study, focus group discussions were conducted for the three Village Water Committees/VWCs and each emanated from the selected communities under study. These groups consisted of 7-9 members made up of the village Chief and the community councillor as ex-officio members. Other members are the chairperson, deputy chairperson, treasurer, secretary, deputy secretary and advisory members, known in Sesotho as 'litho baeletsi' (advisory-members). These were interviewed to get their perspectives and

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understanding on ownership and management in rural water supply systems/RWSSs for sustainable management and maintenance of water supply systems.

II. The Contribution of Lesotho's Communities Towards Capital and Management Costs and the Influence of Financial Contributions on Perceptions of Rwss Ownership

This section reflects on findings pertaining to issues around communities' contribution towards capital and management costs and the extent to which financial contributions by the community have influenced perceptions of ownership.

In Masapong, 30% of the respondents reported lack of ability to pay for management costs because these are trying times where most people are jobless. Some 70% reported that there is ability to pay based from the sale of produce from fields and income earned from community self-help projects. This boosts their ability to pay. Furthermore, this filters into the notion of contributing towards capital costs where the respondents mentioned that they were able to collect among themselves, some funds upon which they were subsidized for construction.

Upon the issue of how far the contribution towards capital costs contributed to ownership of the RWSS, 1% said they do not know because they are still young to comprehend some of the issues around water supply. Some 99% upheld that contribution towards construction has instilled a great sense of ownership and traces of this are visible in the courage around the development of the by-laws and their enforcement and the commitment from those responsible for performing maintenance function. However, the community does not have a maintenance fund to which they contribute.

At Masapong, 41.7% articulated that they do not have the ability to pay for management costs due to many hardships they have in life. They however followed this up by reporting that, in the case where they really need to make a contribution they will do all they can to get the money since they still have hope that one day this life they have led for over 2 decades without safe and clean water will come to an end. The 58.3% highlighted that there is ability to pay for management costs, unfortunately there is no functioning water supply system to work with. This also follows that this community does not have a maintenance fund.

The Machache community upheld that due to the various income generating activities that households embark on such as commercial farming and employment in towns, they have the ability to pay for management costs. Having contributed towards capital costs also, there is a collective sense of ownership towards sustainability of their water supply system. However, there is no concrete maintenance fund. The chief assured the researcher that efforts would be made to resuscitate this fund as they do realize its importance towards sustainable operation and maintenance/O&M.

III. Perceptions of Rural Communities on Ownership and Management of Rural Water Supply Systems (Rwsss) in Lesotho

Figure 1 below, illustrates perceptions on issues of ownership and management of rural water supply systems/RWSSs in the three sampled villages. Issues explored include knowledge on who owns the RWSS, who do respondents ideally believe should own the water system and who should be bestowed with the task of managing the water system.When asked who owns the system after construction was completed, 9.8% upheld the chief, 2.4% of the respondents said the village water committee/VWC; the community council was mentioned by 14.6% of the respondents while no respondents mentioned the government. Most respondents maintained that people were said to be owners of the system as based on the field interviews ofNovember 2014 here below.

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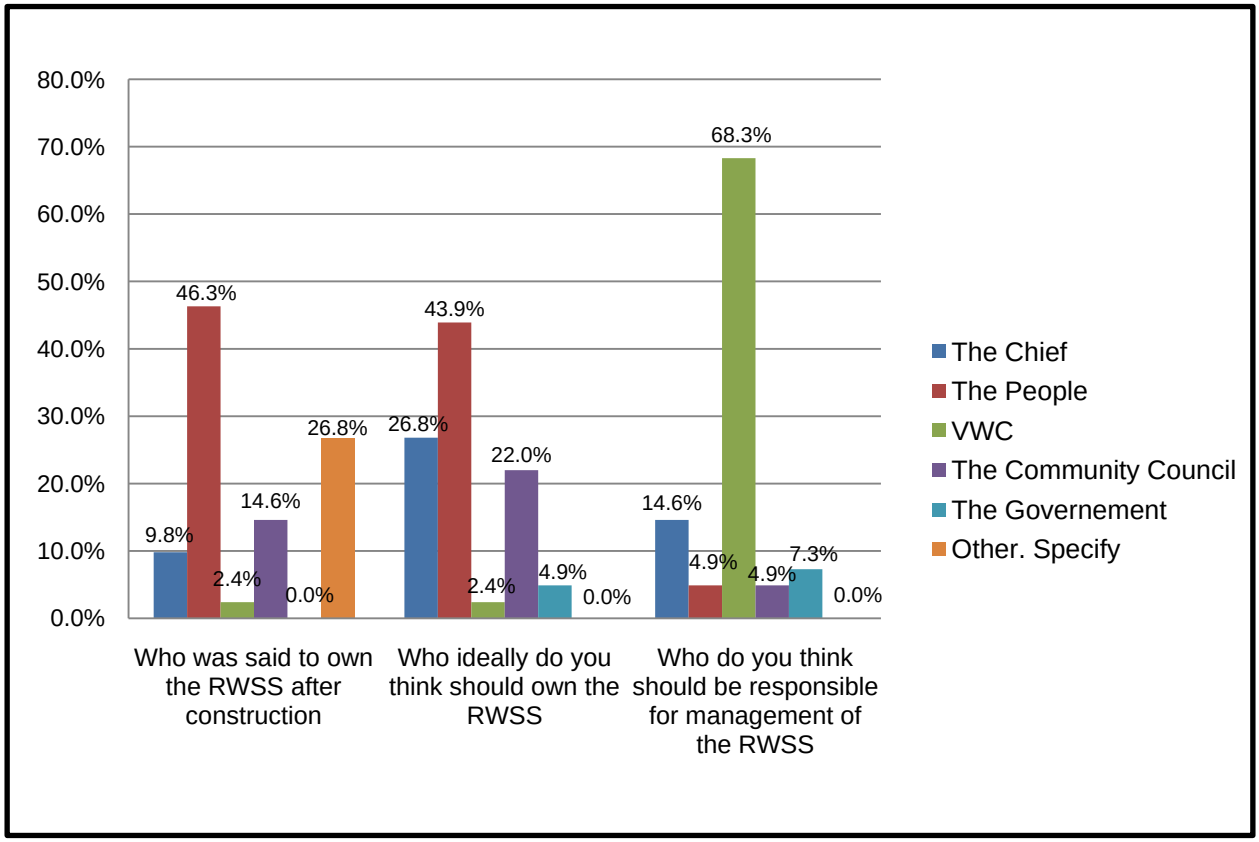


Figure 1: Perceptions on Ownership and Management of RWS

Those who specified other options mentioned that they do not know to whom it belonged, and others, especially in Mahlabathengrecall that it was said to be owned by the asparagus farmers.

Perceptions on who ideally should own the RWSSs were less on the VWC and the government; these were represented by 2.4% and 4.9% respectively. Those who perceive the community council to be the rightful owner of the systems said lawfully, these institutions have been hailed as owners of all development initiatives in their jurisdiction. The community council has a mandate to be in contact with the central government pertaining to issues of development, as it is the one that mobilized relevant agencies and facilitated construction of the water supply system. These make up 22.0% of the respondents.

Some 26.8% said that ideally the chief should be the owner of the water supply system because he is the authority in the village responsible for maintaining law and order, as well as the protector of all developments in the village. Others argued that the chief lives very close to the system and hence it could be easy for him to exercise authority conveniently. Respondents that make up 43.9% hailed the people as a group that ideally should own the water supply system. This was supported by reasons including that people are the primary whistle-blowers on any issue that needs attention on the system. By virtue of being users of the system, they are supposed to take responsibility upon maintenance; the system has been constructed among them and for them; care taking of the system rests on them; when there is breakdown, they are the key group that is affected and that suffers the most.

Perceptions on management of water supply system mainly leaned towards the VWC as shown by a representation of 68.3% in figure 1. Reasons for this are that this group has been elected solely to perform the management function of water systems, they have been given capacity by DRWS on management and maintenance; they conveniently live close to the infrastructure; there is trust in the committee to execute their mandate and they facilitate enforcement of by-laws. Some 14.6% reported the chief as the one responsible for management because he is the authority in the village; he is responsible for protection of the system against damage; the chief is the one whom all who enter the village have to report to first; at all times s/he is always with the people and their developments. The 7.3% who mentioned the government said it is because they are the ones who give funds for construction and they are at the apex of all development issues.

To further investigate the perceptions on ownership and management of RWS, respondents were asked to give details on first steps the community takes when the tap is broken. This information is useful to the researcher since it illuminates on the understanding of

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who is responsible for the management of RWSSs. It also sheds light upon a sense of ownership for minor repairs by the community. Table 1 below outlines the responses.

Table 1 : First Steps Taken by the Community When the Tap does not Work.

Characteristic	Variable	Frequency	Percentage (%)
First step taken when the tap does not work	Report to the committee	28	68.3
	Report to the DRWS district office	0	0
	Repair the tap ourselves	3	7.3
	Leave it until it is completely damaged	0	0
	Other. Specify	10	24.4
Total		41	100

Field interviews, November, 2014.

As reflected in table 1 above, 7.3% mentioned that they repair the tap themselves. This came out especially in Masapong in the area where they suffer lack of water in the dry season. The 24.4% specified that they follow hierarchy, therefore they first report to the chief who then, by authority, alerts the committee. Up to 68.3% mentioned their first step as reporting to the committee.

IV. Summary: Recommendary Views

Respondents reported that having trained committees and water minders would enhance better performance in measures for sustainable management. About the effective supervision of VWCs and monitoring of water supply Assets: The researcher recommends that in line with the Lesotho national decentralization policy, there should be a position within DRWS fully devolved to community councils to work as a technical advisory arm for local authorities and community organizations. Such a position could play a supervisory and monitoring role to ensure adherence to standards and prerequisites for sustainable management of RWSSs.

With regard to consideration of social factors inRWSSs management at local level, theresearcher recommends that the following social aspects be regarded if RWS infrastructure is to be sustainably managed at local level:

- Public awareness raising campaigns need to be undertaken to promote knowledge of the population on their contribution towards sustainable management of water supply facilities. Such campaigns will also level the ground for common perceptions and understanding on all issues within a decentralized RWS management system.
- The researcher recommends improving participation of local authorities, as gateways for development initiatives in their jurisdictions, in processes that lead to selection of maintenance contractors so that, they may own the process fully.
- Consideration of all groups in the community in pre and post construction phases to have well informed decisions is paramount.

Furthermore, a summary of recommendations deemed to be factors that could salvage the sustainability gaps in Lesotho's RWS sector are sketched in Figure 2 below. The diagram reflects on how sharing of responsibilities among multiple actors may contribute towards sustainable management of RWS facilities in Lesotho.

As depicted in figure 2 below, there needs to be clear lines of responsibility for all stakeholders in RWS. The community as the ultimate owners of the water supply infrastructure needs to be mobilized towards understanding of policies and strategies that guide management of these.

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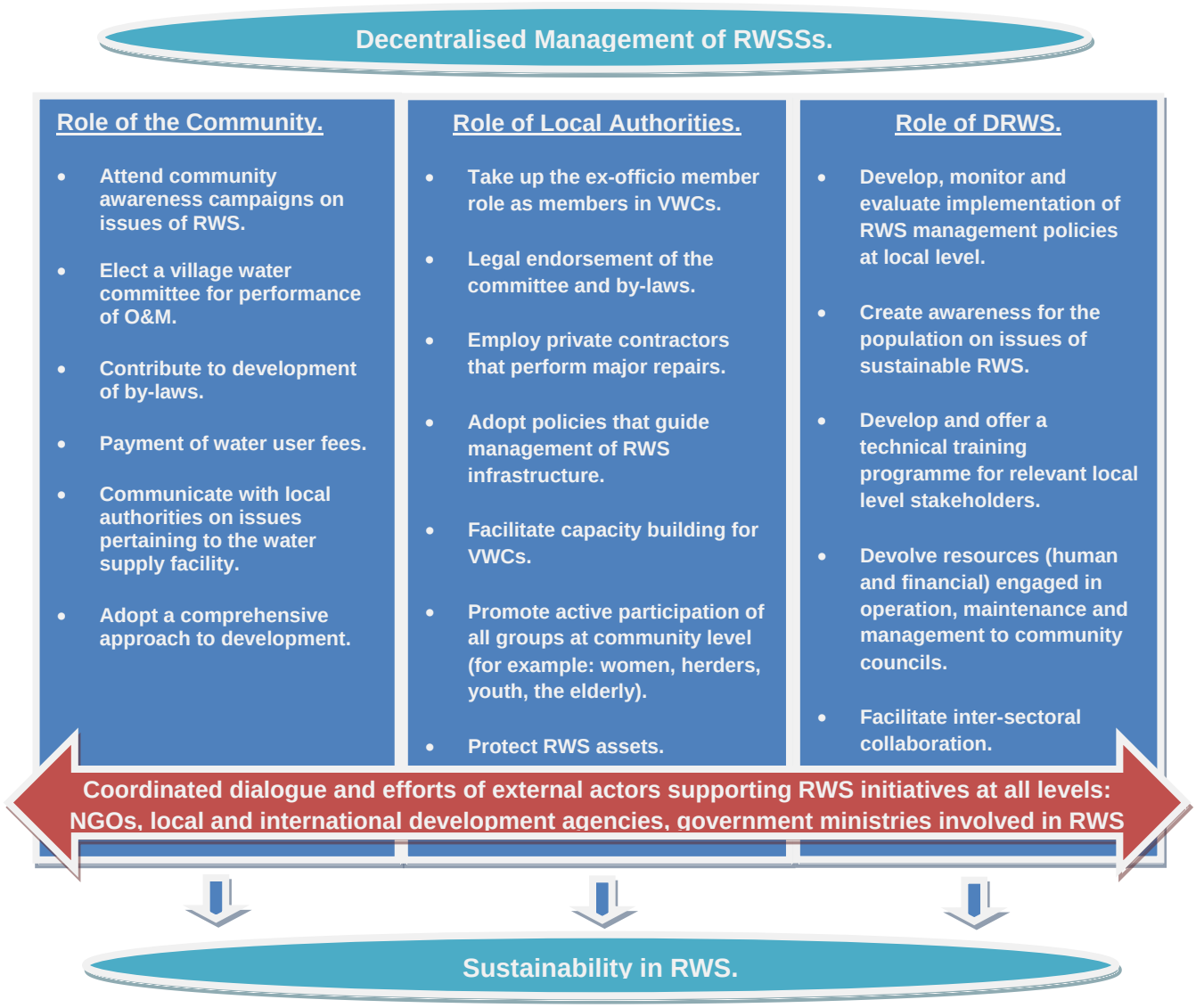


Figure 2 : Recommended Factors for Sustainable RWSSs Management in Lesotho.

Field Interviews, November, 2014.

Assets, local authorities also need to attain confidence in taking up the leadership role in development initiatives. The RWS agency needs to also introspect so that internal gaps in the implementation of policies are identified; for example, develop a programme for disseminating standard information on prerequisites for sustainable RWS. External actors whose initiatives influence the RWS sector need to be anchored in the project cycle to avoid having parallel structures and efforts in RWS.

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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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Paradigmatic Views and Pragmatic Requirements for Sustainable Rural Water Supply in the Developing World: The Analytic-Review-Recommendary Study in Rural Water Suppy

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Abstract- This paradigmatic and pragmatic analytic-reviewing-recommendarystudy aims at entrenching the notion of participatory development/community participation and community capacity building for sustainability in rural water supply. The study's review covers introductory background in participatory development/community participation and community capacity building that lead towards sustainability in rural water supply. The study reviews Southern African Development Community (SADC) and Lesotho context, community participation in rural water supply, participatory development and capacity building for sustainability and community based management (CBM) for rural water supply systems.

Keywords: 1. participatory development/community participation, 2. community capacity building, 3. sustainability, 4. rural water supply/rws, 5. community based management/ (cbm), 6. operation and maintenance/o&m.

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Abstract- This paradigmatic and pragmatic analytic-reviewing-recommendarystudy aims at entrenching the notion of participatory development/community participation and community capacity building for sustainability in rural water supply. The study's review covers introductory background in participatory development/community participation and community capacity building that lead towards sustainability in rural water supply. The study reviews Southern African Development Community (SADC) and Lesotho context, community participation in rural water supply, participatory development and capacity building for sustainability and community based management (CBM) for rural water supply systems. Furthermore, the participatory role of communities in rural water supply/RWS, prerequisites for community preparedness to take over full operation and maintenance/O&M responsibility, indicators for sustainability in rural water supply/RWS, capacity needs for local structures in community-based Rural Water Supply Systems/RWSSs management and lastly the summary.

Keywords: 1. participatory development/community participation, 2. community capacity building, 3. sustainability, 4. rural water supply/rws, 5. community based management/ (cbm), 6. operation and maintenance/o&m.

I. Introductory Background

This analytic-review-recommendary study intends to entrench the notion of participatory development/community participation and community capacity building for sustainability in rural water supply. The study argues and reveals that participatory development/community participation and community capacity building are crucial for sustainability in rural water supply. Firstly, the study's review covers introductory background in participatory development/community participation and community capacity building that lead towards sustainability in rural water supply. The study also reviews Southern African Development Community (SADC) and Lesotho context. Secondly, the study's review encompasses community participation in rural water supply, participatory development and capacity building for sustainability and community based management (CBM) for rural water supply systems. Thirdly, furthermore, the participatory role of communities in rural water supply/RWS, prerequisites for community preparedness to take over full operation and maintenance/O& M responsibility, indicators for sustainability in rural water supply/RWS, capacity needs for local structures in community-based Rural Water Supply Systems/RWSSs management and lastly the summary.

The current wave of international movement towards sustainable rural water supply manifested itself in, among other ways, making it as one of the top priorities of the Millennium Development Goals (MDGs). The goal, it is indicated, is to reduce by 50 percent of the number of people without access to domestic water, whether the lack is due to technical or social causes. Lack of access to household water has been recognized as a violation of internationally upheld human rights (Bock,et al, 2008:2). Moreover, vision 21 of the World Water Council, developed in March 2000, recognizes the dire need for populations to clean, adequate and reliable water in the home, against the premise that people aspire to meet their human right to clean and healthy world (Sportel, 2002:3). Further, Sportel (2002:6) submits that while in the past there have been efforts to institutionalize sustainable access to water in rural India, the recent ongoing processes towards realizing sustainable rural water supply rests at the end of the 20th century when the Department of Drinking Water Supply was established. This department was set up as part of the objective to achieve goals outlined in their national plans on "human development through capacity building of local communities and operation and maintenance training, specifically for women (Sportel, 2002:6)."

In the African context, governments have taken bold strides towards sustainable rural water supply. This brings to light the ratification by most Southern African Development Community (SADC) countries to the SADC

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Regional Water Policy of August 2005. This policy pays homage to some of the following principles pertaining to community participation and capacity building for sustainable management of water supply systems: (1) A participatory approach shall form the bone marrow of water resources' development and management. (2) Efforts shall be made across all levels (local, district and national) to build capacities of relevant stakeholders such that they are enabled to perform their tasks efficiently and effectively (SADC, 2005: xvi).

The Southern African Vision for Water, Life and Environment of 2009 also reiterates that in order to realize the vision of equitable access to water of acceptable quantity and quality for all, there are existing potentials. These relate to decentralization of water provision services to the most appropriate local level, as well as the empowerment of local communities by involving them in making strategic decisions that pertain to provision of these services. These prospects may also be achieved when ownership and management of water supply is at the local level and when policies that ensure sustainability in this sector are put in place (SADC, 2009:12).

Reference may be made to the Namibian context as an example of SADC countries that have undergone the decentralized rural water supply reform. Under the auspices of the Water Supply and Sanitation Sector Policy of 1993, it was acknowledged that improved service delivery in rural water supply principally entails community participation and involvement. This rests on principles of utmost involvement of users as well as decentralization of responsibilities to lower tiers of governance (Bock, et al, 2008:6).

a) Lesotho Context

According to Feachem (1978:27), since the 1930s Lesotho has been engaged in forms of village water supply (mainly protection of springs), which however proved detrimental to communities due to the health hazard reputation that they carried. Rural villages' water supply construction commenced between the 1960s and 1970s under the auspices of post-colonial District Councils, which supported communities with technical assistance (Feachem, 1978:27 and Department of Rural Water Supply, 2005:1). With time, rural village water supply became the responsibility of the Department of Community Development, which progressed to being the Department of Community Rural Development (Feachem, 1978:28).

The current road to decentralized rural water supply, by virtue of community-based management and maintenance is reinforced by the stipulation contained in the Local Government Act of 1997. Here, the second schedule of local government responsibilities points to community councils. It states that maintenance of rural water supply systems is the custodian of community councils. The Department of Rural Water Supply (DRWS) to this effect developed a policy paper to set a stage for the implementation of community-based rural water supply by defining communities as drivers of this development. These lower tiers of governance shall then carry out the mandate of facilitating the process of establishing the democratically elected village water committees/VWCs to assist in managing and maintaining the water supply systems in respective localities (Aftercare Strategy, 2005:3).

II. Community Participation/Participatory Development and Community Capacity Building for Sustainability in Rural Water Supply

Community Participation in Rural Water Supply: This is a notion that gained popularity in the early 1990s as a consensus reached to engage a Demand-Responsive Approach (DRA) in water supply (Schweitzer, 2009:27). Katz and Sara (1998:3-4), contribute to this idea as they maintain that DRA subscribes to the conception on community empowerment in enabling people to contribute meaningfully towards decisions pertaining to sustainable management and maintenance of rural water supply systems in their localities. For this reason, Koryang (2011:9) submits that community participation is "aimed at inculcating a sense of self-reliance and ownership..." In thisreview study, the idea of community participation in rural water supply is hinged on active participation of communities in sustainable management and maintenance of water supply systems as well as capacities they possess, enabling them to perform tasks related to minor and major repairs.

The call for clean and safe water has increasingly been a priority within national policies around the world. The issue of coverage has also been deeply rooted in the water sector such that governments (in other cases with the assistance of development agencies) have undertaken the responsibility to harness the water resource through RWS projects in order to improve equity in access to water.

Just as the above RWS traits pronounce, community participation is crucial in the water sector. It essentially constitutes the bone marrow for sustenance of water structures. Popularity for this notion gained more ground in the early 1990s with a conclusion to engage Demand-Responsive Approach/DRA in water supply, after research results and conclusions pertaining to the rural water sector development in the 1980s (Schweitzer, 2009:27). Katz and Sara (1998:3-4) report that this DRA to service delivery subscribes to the conception on community empowerment. In the empowerment realm, people are enabled to contribute meaningfully in decisions pertaining to rural water

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supply structures management. In addition to adding to the guiding policy and preferences on technology for their water supply system, they also add value to the location of the structure, by virtue of their convenient location to resources. They are in a much better position to relate their needs to solutions. Peltz (2008:22), says that

"the idea that community should be actively involved in the provision of water supply has become widely recognized as critical to the long-term sustainability of any water supply system...Participation by community members in the identification, design, implementation and especially management stages can be understood in terms of the need and motivation of the community..."

On the basis of these perspectives on community participation and RWS, some expected levels to which communities may contribute towards sustainable water supply systems can be adopted as depicted in the work of Koryang (2011:12-14) that there is need for the communities to put the following measures in place.

- Capacitation of Water Users for Sustainability: Koryang (2011:12) subscribes to the idea that RWS systems management lies in the hands of communities. This is why it is crucial to invest in building their capacity to better perform O&M functions in order to attain sustainability. Capacity building, for instance, may involve technical training for village water committees (VWCs) to fix broken pipes or hand pumps. This will result in moving maintenance that for a long time has perpetuated non-functioning away from the top-down approach of the central government arms. These tend to be too short to address problems of multiple villages at once.
- Financial Resource Mobilization and Contribution by Beneficiaries: The ability of communities to pay for management costs is important to establish. Communities ought to contribute towards O&M and capital costs at the inception phase of the project. These play a significant role in promoting ownership and sustainability. Their significance is attested to by DRWS (2011:2), where their roles in RWS projects include contributing towards capital and maintenance fund as well as payment for water services and O&M related costs. Koryang (2011:14) posits that although the noble aim of promoting ownership is upheld, hurdles of poverty and very low income-earning circumstances persist and therefore, inhibit participation.
- Beneficiaries' Participation in the Project Cycle: For water supply projects to be sustainable, it is imperative for communities to become involved in post-construction phases of the project and other early stages of contracting and construction. They should be involved in the decision-making process pertaining to such issues as the final selection of a contractor to build the system. DRWS (2011:2) intensifies this view by proposing that communities should be involved in decisions such as the identification of the needs of women, the elderly and the disabled groups in relation to the water supply system structure.

It is, therefore, crucial to have all groups of the community participating in the RWS collectively or through a cross-section of the whole community such as water committees, representing the needs of the whole.

Further, we can conclude that in order to have sustainability in the provision of water supply service, communities ought to be consulted on their need for a water supply system as well as the type of technology that they see fitting to their context and O&M muscle. Demand should come from the people, as opposed to local authorities (only) taking decisions that might be subjective on issues such as the location of water taps; capacity building on O&M for water committees and protection measures by communities should all be clarified (Katz and Sara, 1998:4 and Peltz, 2008:22).

The focus on popular participation in rural water supply in this study review hinges on models of human development conceiving that popular participation and capacity building are essential to the success of development programmes aimed at the betterment of the livelihoods of rural dwellers.

a) Participatory Development:

Participation emancipates people not only from passiveness but also from dependency. A genuine effort to engage people in development that directly affects them, calls for a sense of ownership of development programmes in place. Kumar (2002:23) also suggests that one of the advantages entailed in popular participation pertains to the idea that it triggers a community's self-esteem and enables for control over the process. This will then make it possible for an ownership sense to surface together with many other positive notions such as effective use of available local resources and indigenous knowledge in the implementation of such programmes.

In the Participatory Development model (PD), Daemane (2012:111), maintains that it is highly important that within the process of decentralization that in essence embeds aspects of promoting popular participation in development, citizens are made well aware of opportunities for participation. These poor grass roots ought to be given understanding on the role of local government structures and responsibilities. Nevertheless, this is not demonstrated by Lesotho's current decentralization; there are significantly few people who participated in the local government elections because of inadequate sensitization

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mechanisms for people to fully absorb the idea of decentralization. This poor turnout did not only characterize the first 2005 elections, but the second round in 2010 as well (Common Wealth, 2005:15 and Lesotho Council of NGOs, 2011:6). This is most probably, why Lesotho's decentralization is moving slowly. The beneficiaries are not actively participating to improve their growth and self-reliance (Kumar, 2002:27). Another issue relates to the appalling numbers of rural water supply systems that do not function due to, among other reasons, lack of management since beneficiaries lack ownership of these resources (Department of Rural Water Supply, 2007:1).

These examples are clear indications that, overall, people still do not embrace the concept of decentralization. They do not own it and they are not aware that it is within their rights to actively participate in strategic decisions that affect them directly in their respective localities, just as the concept of decentralization intends.

b) Capacity Building

Organizations regularly point to challenges of capacity within institutional, organizational or individual settings as barriers to the achievement of performance targets. For this reason, this study hinges on a definition given at the FIG XXII International Conference of Washington (2002) as "the development of knowledge, skills and attitudes in individuals and groups of people relevant in the design, development and maintenance of institutional and operational infrastructures and processes that are locally meaningful."

c) Sustainability

Camagni, Capello and Nijkamp (1998:105), posit that efforts to define sustainability have really triggered a lot of debate. Different scholars have made efforts to define sustainability variously. For instance, Hope and Lekorwe (1999:838) coined it as the ability for current generations to efficiently utilize resources available to them, mainstreaming within their efforts the view that future generations ought to similarly meet their needs from those very resources. Camagni, et al (1998:105), further claim that the middle ground reached by different scholars in unpacking the concept of sustainability sheds light to the fact that it is a whole encompassing notion that covers aspects of the environment, economy and society. For this reason, on the social plane (especially looking at rural water supply) Peltz (2008:22) maintains that "the idea that communities should be actively involved in the provision of water supply has become widely recognized as critical to the long-term sustainability of any water supply system". Against these, this research review study aligns itself with Musonda (2004:11), corroborating that sustainability in rural water supply pertains to the maintenance of water supply systems such that reliable and adequate domestic water supply is served for a prolonged period of time. Peltz (2008:20) submits pointers that ought to be visible in order for a water supply to be deemed sustainable. The table below reflects on indicators for sustainable rural water supply systems/RWSSs management.

Table 1 : Indicators for sustainable Rural Water Supply systems.

Indicator	Link to sustainability in rural water supply
Reliability	Accessibility of spare parts and local capacity for conducting minor repairs.
Human Capacity	National and district staff of the Department of Rural Water Supply is competent in giving technical support for building capacity of local structures on operation, maintenance and management of water systems.
Local Institutional Capacity	Need for autonomous institutions, at local level, to flexibly put in place preventive solutions while implementing development programmes that promote popular participation.
Operation, Maintenance and Management	Whatever resources served communities contribute, ought to be within their capacities of operation, maintenance and management.
Inter-sectoral collaboration for cross-fertilization of skills, ideas and resources	Exchange of information with other sectors such as NGOs, is needed to build a broad and thick knowledge base for sustainable water supply management at local level.

Peltz, 2008:20.

In a study conducted in India by Sportel (2002:18), it is revealed that active involvement and empowerment of communities, especially in rural water supply, promotes sustainability. Koryang (2011:12), in a similar Ugandan study submits that,

"Participation enhances community ownership, control and involvement in decision-making process and other operation and maintenance (O&M) activities for improved water provision among others. Accordingly, shot of these may not lead to attainment of sustainability of rural water provision and maintenance."

Musonda (2004:32), in a study based in Zambia, concurs by pointing out that involving communities in the management of water supply systems in their areas,

"is aimed at strengthening the capacities and willingness of the community to take ownership and responsibility of managing their water supply systems,

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after the implementing agency has left the community." A similar study conducted by Odaro (2012:37-38), in Nigeria, evidences the effects against lack of community participation in the provision of rural water and sanitation. Further, Odaro (2012:37-38) observes that such lack of popular participation results in, "The lack of accountability and community ownership in the planning and implementation of infrastructure projects, poor management and sustainability, low quality and limited options. A major challenge for provision of water and sanitation is capacity constraints with respect to planning, management and implementation, especially at local level."

Lockwood (2004:7) submits that primary standards in community-managed rural water supply pertain to community strategic decision-making, not only on issues such as the desired level of service but also on the preferred mode of payment for such services as well. Further, the principles relate to the daily involvement of the people in operation and maintenance of the system, especially focusing on collection of subscriptions from water users, purchase of spare parts for carrying out minor repairs themselves. While this is the case, communities require the capacity to source out professionals to do major repairs on their behalf. Musonda (2004:37) supports this opinion by referring to sustainability that comes with community management of RWSS by maintaining that

"Sustainability of rural water supply facilities is dependent on many factors. These factors include, policy, legal and institutional framework, social factors such as demand for water, community participation and community organisations; economic factors such as ability to meet the cost of maintenance and ability to pay for services; technological factors such as technology choice, availability of spare parts and operations and maintenance; and lastly management factors".

Against this background, this study puts that evidence of imperative pillars of community participation in managing rural water supply systems (ability by communities to make strategic decisions in relation to the sustainable functioning of their system, high levels of ownership and capacities as well as the ability and willingness to contribute towards operation and maintenance costs) is lacking.

The lacking is backed by a conversational interview with the Principal Sociologist of the Department of Rural Water Supply (DRWS) on the 6th February 2014 in Maseru, Lesotho. She maintained that there is a high number of non-functioning RWSSs in Lesotho caused by, among other reasons, lack of ownership of the systems by communities since they perceive these resources as the property of the government. There are also unclear roles of community-based maintenance between DRWS and the communities, hence long periods between reporting on the need for repair and the actual repair taking place. She further reported that although efforts are being made to sensitize and promote community-based management of the systems, financial constraints delay the process of covering the whole country. This is why the problems of lack of community participation and lack of ownership towards the systems by communities persist.

III. Community based Management (CBM) of Rural Water Supply Systems

The notion of Community Based Management (CBM) came with the International Decade for Drinking Water and Sanitation. It is an approach that favours community participation in RWS affairs by promoting placement of responsibilities related to O&M upon the local people (Lockwood, 2011:75). The root to the development of this approach is the inability of central governments to maintain water supply infrastructure, hence unsustainability. The approach's mandate was to use participatory methods in providing guidance and information on its strategies. This participatory approach to community sensitization and education on issues of RWS ensures active community involvement that culminates in sustainable development (RSU, 2000:3 and Sportel, 2002:20).

For RSU (2000:4), the concept of CBM in RWS is a process aimed at developing "a true sense of ownership and continued development for community gain and benefit". Community participation discussed herein is a series of activities that entail community engagement. These activities may be in the form of contribution of labour, collection of river sand, collecting contributions towards maintenance of water supply systems as well as attending public gatherings that seek to promote participatory decision-making.

In essence, therefore, basic components of community management are (i) community responsibility which refers to the act of the community assuming ownership, not only for the water supply system, but its minor operation and maintenance as well. (ii) The aspect of community authority relating to the fact that communities have the right to take decisions on interventions for adequate access to water. (iii) Community accountability in which local people uphold the idea of being bearers of all consequences for decisions that they took towards the development interventions. (iv) and Community control that bestows power upon the people to implement their decisions (RSU, 2000:4).

In a similar light, Lockwood (2004:8) attests to these when submitting common principles of community management, in the context of RWS tabulated below in table 2.

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Table 2 : Common Principles of Community Management

Participation	Indefinite community involvement that entails supporting the implementation of community management process.
Control	Communities being directly/indirectly in control of O&M of their water supply systems. This control, however being understood as the ability to take strategic decisions within the project cycle from designing phase through to the long-term O&M.
Ownership	A sense of or perception of ownership of the water supply system by the general population of water users.
Cost-sharing	Any form of contribution in the direction of recurrent cost for O&M. The form of contribution may be determined by individual circumstances.

Adopted from Lockwood, 2004:8.

Lockwood (2004:8) further maintains that CBM aims to accomplish three objectives. Firstly, it empowers communities and promotes self-improvement since water supply projects are often seen as entry points to the general community capacity building. Secondly, it promotes efficiency in service delivery through employment of human capacity, volunteer time and local material inputs. Lastly, it sustains RWS services by charging communities with control; they acquire indefinite interest in prospective benefits out of the project.

Against these, it can be concluded that Lesotho's DRWS upholds CBM within its project cycle, based on the current implementation of the Aftercare strategy paper as a document supporting the said approach. A community management handbook is used to this effect. Here the concept of community management is upheld as an, "…approach that influences the community to make the best of the resources available within their jurisdiction... For any effective community management system, community participation forms an integral part. This is not only a moral and political issue, but is also an important development principle. Experience throughout the world has shown that where local people are not participating and responsible for local services, sustainability of such services is not achievable (DRWS, 2011:2)."

IV. The Participatory Role of Communities in RWS

Community level ownership and control over RWSSs has a profound impact on active participation by water users. For this reason, here we shall consider the role that communities should play towards sustainable RWS.

- Participation in Needs Assessment Public Gathering: This a gathering; out of which a priority list of needs is developed by the community. This is done in the presence of local government authorities, as drivers for local developments and link between the people and service providers. Assuming that a need for construction of a water supply system arises, this will be expressed to the relevant agency for consideration (DRWS, 2011:10).
- Participation in Informative Awareness Raising and Sensitization Assemblies: RWS agency or department raises awareness to local citizens on prerequisites, procedures and requirements for submission of an application for construction of a water supply system. Moreover, the community is sensitized on different types of systems (such as the gravity system, diesel engine pumped system, solar energy pumped system, etc.) for water supply available for consideration. After deliberations, it is expected that the community will give feedback on its preferred water supply system (DRWS, 2011:11). Through the support of the technocrats, communities make an informed selection of a water supply technology that matches water use patterns in their context. However, there may be occasions where geographic aspects hinder feasibility of certain types of technology, leaving limited or one option(s) to choose for construction (IRC, 1989:8).
- Partake in Community Capacity Building Workshops: Based on the agreed technology of the water supply system, the community is to immerse itself in discussions of the O&M plan of the particular water supply system. Implications and benefits are tabled. It is here, again, that willingness and ability to pay for sustainability of the RWSS is established. Community members, ideally voice out issues such as contribution to recurrent costs (DRWS, 2011:14).

IRC (1989:11), adds that

> "…the attitude of the agency staff is very important in this process. The temptation is sometimes strong for external technicians to behave as superior experts who are going to build an improved system for ignorant villagers. However, the community will determine the ultimate success of this technical expertise, by maintaining and managing the community water supply largely with local funds and human resources. Community members should therefore from the beginning be treated as partners, not simply as beneficiaries".

It is at this same stage that awareness for electing a community based management committee is made. This is a democratically elected cross-section of

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the community to act voluntarily in the management of the water supply system. The community has a duty to develop terms of reference for the committee. The technocrats chip in to assist the community in thinking critically about the qualities and attributes that make a good candidate for election (RSU, 2000:27).

V. Prerequisites for Community Preparedness to take Over full O&M Responsibility

The widely acknowledged conception of CBM of rural water systems is consistent with the notion that decentralization is an acceptable organizational approach for locally managed RWSSs (Schweitzer, 2009:32). For this reason, it is fitting that in preparing communities for the ultimate handing over of maintenance responsibilities, institutionalization of local administration be in the fore.

In order to widen channels for technical assistance at local level, RWS agencies find it convenient to work through existing local administrative structures. For this reason, strong and autonomous local structures have to be readily available as an indication for preparedness by the community to take over the management responsibility. The IRC (1989:5) contributes by stating that, community councils are often custodians for local maintenance of infrastructure, administrators and bearers of recurrent costs. This statement is in line with the Lesotho's Local Government Act of 1997, as it bestows the function of maintaining water supply resources upon community councils. The DRWS community management handbook submits more intensity to this statement for village water committees, as it identifies local government structures within RWS stakeholders. The handbook goes further to bequeath responsibilities of such structures as, "overseeing the planning, implementation and management of water supplies in rural areas, approve applications for developments in the village, sign agreements of proposed (water supply) systems on behalf of the community, sign rural water supply hand-over certificates (DRWS, 2011:3)."

Nonetheless, local councils have been entrusted with various tasks delegated from different government ministries. These tasks are likely to compete with those of water supply through time-consumption and their financial requisites. Hence, preference is to have local organizations directly involved in the day-to-day management of the water supply system (IRC, 1989:54-55).

The said preference is however, not meant to rob community councils of their mandated role of facilitating planning for developments. The rural water supply agency through its community development advisors supports organization of such committees for management of water supply systems on behalf of the community council. The committee becomes responsible for such tasks as the upkeep of hygiene around the tap, preventive maintenance and basic repairs, collection of water rates and purchase of spare parts for minor repairs. Moreover, since they are closest to the people, they are well versed on issues such as family size and composition, payment capacity of people as well as information important for equitable rate payment (IRC, 1989:60 and Training Network Centre, n.d:23).

Evidently, there are handful actors in RWS. It is highly important that these actors understand their role in order to avoid conflict of interest. Table 3 below demarcates such stakeholders and matches them with their various responsibilities.

Table 3 : Responsibilities Between Various Levels of Administration in Rural Water Supply/RWS.

Level	Type of administration	Responsibilities
Village	Water users, village water committees	Management of communal water points, minor operation and maintenance of water supply system, collection of water rates, communication with high-level stakeholders such as community councils.
Constituency	Community council	Management of community water supply system, rate/tariff setting, organization and financing of maintenance, employment of the private sector for major repairs, communication with all relevant stakeholders.
District	Government department of rural water supply	Support to organizing community committees, technical training for village water committees on maintenance, monitoring and evaluation.
National	Government department of rural water supply	Legislation, programme and policy development, delegation of maintenance funds for major repairs, evaluation.

Adopted from IRC, 1989:56.

In order to effectively carry out their mandate, village water committees/VWCs need a legal status. This is drawn from the community council under whose authority the committee operates. This status makes the committee reputable, regulates its functioning and guards against defaulters. This setting is also a medium through which training reaches the committee, since the community council channels requests to relevant agencies (Training Network Centre, n.d:25).

One example of an aspect that gives VWCs majesty is the by-laws. The development of which has included opinions of all relevant stakeholders (community, local authorities and RWS agency), and ultimately ratified by community council. Below is a

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reflection of some common issues covered in these by-laws.

Table 4 : Issues Commonly Covered in the VWC By-laws

General characteristics	Name, place of residence and purpose of the organization, date of establishment, legal status.
Membership	Eligibility for membership, acceptance and cancellation as member of the organization.
Sources of income	Contributions, rates, subsidies, loans and other rightful revenues.
Committee	Composition: number and function of individual committee members, composition of executive committee, sub-committees where relevant. Election: occasion, procedure, length of term of office, possibility of re-election in case of resignation. Representation: interest of all user groups including women and low-income households. Functions: responsibilities and authority of each function, nature of the work (voluntary or paid; type of remuneration).
Meetings	Committee: frequency, purpose and authority of meetings. General public gatherings/assemblies: frequency, period between announcement and occasion of such an assembly, user information on time, place, purpose. Purposes of the meeting: rendering an account of the preceding period, recruitment and appointment of committee candidates, any other relevant business. Validity of meetings: representation of various water user groups, voting rights, quorum for important decisions, conditions for a general meeting on the request of the users.
Changes	Procedures for changing statuses and procedures for winding up the committee.

Adopted from IRC, 1989:62.

VI. Indicators for Sustainability in Ruralr Water Supply/rws

In an effort to contribute to defining sustainability, Narayan (1993:27) submits that it is an "ability to maintain services and benefits both at community and agency levels, without detrimental effects on the environment, even after 'special assistance' has phased out". Achievement of sustainability rests on developing problem-solving capacities at community level. Such capacities delve into solutions to problems as they arise. To this effect, it is essential to employ participatory approaches that acknowledge the people as the heart of decision-making.

In order to realize sustainability, people's capacity and confidence have to be built. Such capacities should be in the direction of administration, knowledge generation and management, as well as technical skills. Linkages between local structures that manage water supply systems and other relevant agencies are needed in order to usher in an airtight process (Narayan, 1993:27 and UNDP, 1990:9). Awoke (2012:15), concurs that the

"World Bank evaluation report states that sustainability can only be ensured if tariffs generate enough resources to operate the system, finance the expansion of the service to new customers and ultimately replace the infrastructure after its useful life".

The importance of the notion of sustainability in RWS projects is intensified by SDS (1991:13-16) when they advise that, within the community beneficiaries ought to weave in project activities into their broader social life, a capable local organization has to be available and that, social compatibility of water supply system to community needs is mandatory.

- Reliability of Water Supply System: A water supply system is deemed reliable when it has a high probability of yielding the results of expected quality, in the right quantity, at the required time. This indicator has three sub-indicators: (i) quality of water at the source, the target of which is to increase the number of water supply systems that give out water of acceptable quality at all times. This can be done through site visits and technical water quality tests. (ii) The number of functioning facilities has to be established in order to map out the total coverage on water supply. (iii) Operation and maintenance of water supply systems have to be determined by community capacity, availability of spare parts and government support systems. The target here is to establish the management of systems in order to have as few cases of breakdowns as possible (Narayan, 1993:4 and UNDP, 1991:10).

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- Human Capacity Development: Human development follows self-reliance. Therefore, communities ought to acquire self-confidence and competence to perform tasks within CBM of RWSSs. Competence emanate from experience in management and exposure to knowledge and new skills (Narayan, 1993:43). Katz and Sara (1998:5) concur that training local stakeholders ensures sustainability of water supply systems. This is also supported by the notion that training informs people about expectations from the system, identification of minor problems and solutions to such.
- This indicator upholds optimum involvement of the general population in decision-making, empowerment for all relevant social groups in problem-solving and broad management issues. Improving self-esteem and confidence among men and women in planning and implementation of water supply projects is also contained in this indicator. These can be evident when, for instance, there are visible changes in improved capacities and new leadership with the community (Narayan, 1991:48-50 and UNDP, 1991:10).
- Local Institutional Capacity: Strong and autonomous local structures are necessary for sustenance of efforts and results of participatory projects. Autonomy pertains to formation of community organizations that have control over resources and that manage goals and procedures for sustainable RWS. These organized groups do not only function autonomously but accountably as well. Since part of their mandate is to keep financial records and to undertake O&M, it is expected that clear horizontal and vertical, reporting lines should be established locally (Narayan, 1991:56 and Katz and Sara, 1998:5).

In addition, at community level, it is imperative to have visionary, facilitative and strong leadership that supports human capacity development coupled with self-reliance. There also needs to be institutionalization of learning systems through information flow and, self-monitoring as well as evaluation for learning experiences (Narayan, 1991:58-59).

- Cost Sharing and Recovery for Capital and Recurrent Costs: This impression draws popularity from DRA. It posits that water users are not only expected to express their needs but must also exhibit commitment to sharing capital and recurrent costs towards construction and the following maintenance of the water supply system (Narayan, 1991:63). Koryang (2011:13-14) is of the same mind when upholding that,

> "…community contribution to initial capital costs and O&M plays a major role in ownership and sustainability of water projects... It is widely believed that, inability by communities to contribute towards project sustainability through co-funding hampers the crucial objective of participation".

Contribution from the users is necessary for establishment of commitment from the water users, with the long-term vision of increasing the intended level of sustainability for existing infrastructure. In addition, costs for capital investment in RWS ought to be recovered if sustainability is to be achieved. The recovered costs comprise operation costs, repair and maintenance costs and replacement and/or rehabilitation costs (Awoke, 2012:14-15).

IRC (1989:19) takes the baton further to advice on options for community fund-raising. Such mechanisms are exemplified by voluntary contribution by community members and general community revenue owing to cash crops from communal fields and flour mills. However, the above can only be a reality if efforts are influenced by the level of support given to local structures through re-training and guidance in tariff structures and financial management. The absence of such guidance puts a frown on the yearned sustainability (Awoke, 2012:15).

- Inter-Sectoral Collaboration: Information sharing between the water sector and other agencies is vital if sustainability is to be realized. It is to this effect that national, district or community plans become mutually supportive (Narayan, 1991:65). An example may be drawn from the necessary collaboration between RWS and rural roads sectors. In road construction, it is inevitable that these two sectors conduct joint planning lest construction by the latter agency destructs water supply infrastructure.

VII. Capacity needs for Local Structures in Community-based RWSSs Management

- Rate/Tariff Setting: A national rural water tariff system may be put in place to guide communities on tariff setting for household contributions to O&M. However, other programmes let out this task to legal local structures such as community councils and VWCs. Although these can perform the said task autonomously, some direction from the RWS agency to this effect is indispensable. Local administration structures are to be able to determine the most practical time and frequency for rate payments in their respective communities (Davis and Brikke, 1995:67 and IRC, 1989:63).
- Accounting and Financial Control: There needs to be a simple, yet watertight system for financial management for a community operated and maintained water supply (IRC, 1989:70). Davis and Brikke (1995:68) add that "a simple but reliable system of financial records can greatly improve

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communities of piped water supplies". It is necessary, therefore, to build the capacity of local structures on administration of O&M funds. Good record keeping promotes transparency, facilitates corrective action and justifies actions of bookkeepers to water users to whom they are responsible. IRC (1989:72) further intensifies this aspect by stating that "a training course in simple bookkeeping and financial management is one of the crucial elements for successfully implementing community based water supplies".

- O&M Technical Training: DRWS (2011:26) in its Community Management Handbook for VWC bestows the functions of occasional inspection of water supply systems, preventive maintenance and undertaking of minor repairs (such as tap fixing and tank washing) upon VWCs. To this effect, therefore, local capacity building has to be in the fore. Davis and Brikké (1995:29) agree that these tasks must be capable of undertaking, using tools that are commonly available and that can be handled by men and women equally.
- Selection and Remuneration of External Contractors for Major Repairs: To carry out major repairs, one needs to have high-level technical expertise. These mechanical candidates need to not only master the technical task but also possess standard spare parts. There also must be the ability to report to community councils and committees to whom they are responsible (IRC, 1989:73).

VIII. Summary

In order to combat unsustainability the CBM model for RWSSs management has been identified as a credible solution. This is because it advocates for meaningful and active participation of water users at grassroots. The basis of this is the belief that it is possible to transcend lack of access to safe domestic water, caused by non-functioning of water supply systems, by adopting decisions taken indigenously. Such decisions tend to be compatible with the environment and problems at hand.

In addition, participation by communities is conceived in decision-making and in many other respects. Communities are entrusted with the responsibility of electing local structures that will be responsible for administrative and technical management of the water supply system. Such responsibility ought to be coupled with capacities to execute them. This is where national and sub-national level agencies give technical support for training and developing guidelines for sustainable management of RWSSs when handing over takes place.

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Perceptions of Lesotho's Rural Communities on their Contribution Towards Sustainable Rural Water Supply Systems

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Abstract- This is a research study examining the perceptions of Lesotho's rural communities on their contribution towards sustainable rural water supply/RWSsystems. It is a Beneficiary Assessment Approach study and observatory study. In an effort to improve the quality of results that development interventions exhibit, development practitioners engage in beneficiary assessment. The approach gives researchers information that assists in assessing the value on an activity as perceived by its prime users (Salmen, 1995:1). Kumasarisi (2009:2) submits that beneficiary assessment enhances the sustainability of demand-driven development interventions; therefore, it is useful in pointing out bottlenecks to participation faced by target groups. It also uncovers reactions and views that beneficiaries have on the implemented interventions as well as opening up new information that would otherwise not be known.

Keywords: 1. lesotho, 2. rural communities, 3. sustainable rural water supply systems, 4. beneficiary assessment approach study, 5. sustainability.

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Abstract- This is a research study examining the perceptions of Lesotho's rural communities on their contribution towards sustainable rural water supply/RWSsystems. It is a Beneficiary Assessment Approach study and observatory study. In an effort to improve the quality of results that development interventions exhibit, development practitioners engage in beneficiary assessment. The approach gives researchers information that assists in assessing the value on an activity as perceived by its prime users (Salmen, 1995:1). Kumasarisi (2009:2) submits that beneficiary assessment enhances the sustainability of demand-driven development interventions; therefore, it is useful in pointing out bottlenecks to participation faced by target groups. It also uncovers reactions and views that beneficiaries have on the implemented interventions as well as opening up new information that would otherwise not be known. The study covers conceptual issues in sustainability, that is some aspects and indicators for sustainability. It also identifies perceptions of rural communities on their role in the broader RWSsystems and perceptions of rural communities on their contribution towards sustainable RWSsystems. Specific villages researched upon in this study include Ha-Ntsi, Nazaretha and Ha-Makotoko rural communities based in the foothills of Maseru district in Lesotho. Interviews also covered the Department of Rural Water Supply/DRWS.

Keywords: 1. lesotho, 2. rural communities, 3. sustainable rural water supply systems, 4. beneficiary assessment approach study, 5. sustainability.



Figure 1 : Map Indicating the Location of Lesotho in Southern Africa

Source: Department of Lands Survey and Physical Planning, Lesotho, 2015.

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I. Introductory Background

This study aims at establishing how Lesotho rural communities perceive the significance of their active participation in a decentralized system of managing rural water supply/RWS systems or sources towards sustainable water supply. The study discusses some aspects of sustainability in rural water supply and the perceptions of rural communities on their contribution towards sustainable rural water supply systems within the context of Lesotho. Assessing communities' perspectives focuses on the role that communities play in the management of the water supply systems, also indirectly the negative impacts that social exclusion may have on development initiatives, specifically on rural water supply, and prospects for sustainable custodianship of decentralized functions. Social exclusion refers to the segregation of other groups of society, especially the poor, in areas where they could meaningfully participate and access opportunities. This study regards exclusion as a process that deprives individuals and families, groups and neighbour hoods of the resources required for participation in the social, economic and political activity of society as a whole. This process is primarily a consequence of poverty and low income but other factors such as discrimination, low educational attainment and depleted living environment also underpin it. Through this process, people are cut off for a significant period of their lives from institutions and services, social networks and developmental opportunities that the great majority of society enjoys.

The research study adopts a beneficiary assessment and observatory approach. Salmen (1995:1) mentions that the key assumption of beneficiary assessment is that "the people for whom development is intended, the beneficiaries, too often lack a voice loud enough to be heard by the managers of development activities". Beneficiary assessment has three main techniques: direct observation in which information is gathered by noting noticeable facets of the status quo in development. The potential to quantify the observed phenomena is major and immediate (Salmen, 1995:7 and Kumasarisi, 2009:2). Conversational interview is another technique, where researchers use a well-guided conversation revealing feelings, thoughts and beliefs that beneficiaries bestow upon a particular issue (Kumasarisi, 2009:2).Observation further involves the researcher building rapport with the target group by residing with them for a short period to gain a picture of the representation of their living conditions. There is use of case studies of households in collecting such information (Salmen, 1995:9 and Kumasarisi, 2009:2).

II. Some Aspects of Sustainability in Rural Water Supply

Sustainability in the RWScontext has been defined as "the maintenance of an acceptable level of services throughout the design life of the water supply system (Sara and Katz, 1998: 30)". Sustainability in RWSalso refers to maintenance of water supply facilities such that they remain in a condition that guarantees a reliability and adequacy of potable water supply. Further, benefits of water supply continue to be realised over a prolonged period of time (Musonda, 2004:36).

Hope and Lekorwe (1999:838) coined it as the ability for current generations to efficiently utilize resources available to them, mainstreaming within their efforts the view that future generations ought to similarly meet their needs from those very resources. Camagni, et al (1998:105), further claim that the middle ground reached by different scholars in unpacking the concept of sustainability sheds light to the fact that it is a whole encompassing notion that covers aspects of the environment, economy and society. For this reason, on the social plane (especially looking at rural water supply) Peltz (2008:22) maintains "the idea that communities should be actively involved in the provision of water supply has become widely recognized as critical to the long-term sustainability of any water supply system". Against these, this research aligns itself with Musonda (2004:11), corroborating that sustainability in RWS pertains to the maintenance of water supply systems such that reliable and adequate domestic water supply is served for a prolonged period of time. Indicators for sustainability include the following aspects as also found in the Ha-Ntsi, Nazaretha and Ha-Makotoko rural communities in Maseru district:

- **Reliability:** Due to the little or no supply of water in the dry seasons, water committees decided to conclude that efforts towards achieving the standard of 30 litres per capita per day are futile. The water committees carry out precautionary inspections every two weeks. Action for repairing minor breakdowns sometimes delays for weeks or months due to failure by other community members to contribute on time, financially. Contributions from community members buy spare parts from town but some community members voluntarily provide them. Capacity for minor repairs is minimal due to lack of formal training of the water minders.
- **Human Capacity:** Committees could not assess the human capacity of the department of rural water supply/DRWS at national and district levels based on the explanation that they have not been in contact with them at any point in time.
- **Local Institutional Capacity:** There only are the water committees and the community councils involved in the management of the water supplying facilities

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(covered springs, boreholes and limited faucets). There are no autonomous entities collaborating with the communities in terms of RWS.

- Operation and maintenance: "The communities contribute money for maintenance and there is willingness to make such contributions, it just so happens that other households do not have funds at the time of need to contribute, hence delays in repairs for maintenance (Field interviews, October 2014)".

On the human capacity indicator, respondents in Nazaretha and Ha-Makotoko maintained that they could not assess the capacity of personnel of the DRWS due to lack of contact between communities and such a personnel. All three rural villages maintained that monitoring for functionality of water supply facilities by the DRWS is not carried out.

In all the three villages, atleast a water committee, chieftaincy and local government authorities have been reported as existing local institutions. Nazaretha and Ha-Ntsi residents contribute labour, tools and money for operation and maintenance. There is also willingness, across the board, to make these contributions. Ha-Makotokohas willingness to make any form of contributions that will emancipate them from their lack of access to safe and clean water.

All the three villages do not have NGOs that they link with on issues of RWS.All respondents are unaware of inter-sectoral collaboration at national level. There, however is a recommendation from the respondents for promotion of dialogue between and among all institutions that are involved in RWS.

III. Perceptions of Rural Communities on Their Contribution Towards Sustainable Rural Water Supplys Systems

Below are general views on the extent to which the respondents feel that the water supply infrastructure is in the hands of the community, collective contributions in pre and post-construction phases as well as perceptions on the idea of co-financing for construction.

On the extent to which the RWS system lies in the hands of the community, 20% of the respondents in Nazaretha reported that by virtue of having a Village Water and Health Committee/VWHC democratically elected by the community to run day-to-day operation and maintenance of the infrastructure; that is enough evidence for ownership. Another 20% of respondents maintained that the responsibility for minor repairs as a community meant the water supply system is in their hands. Some 60% uphold that as a community they feel responsible for the management of their RWS system because they provided resources during construction and perform the responsibility ofwhistle blowing whenever there is a problem with the system. They also contribute resources from their homes (if available) whenever there is need for minor repairs. Some 70% of the respondents reported that nothing is done on the issue of investing in building the community's capacity to better perform operation and maintenance for sustainability.

In pre-construction phases, 70% of the respondents recall that they contributed labour, where they dug trenches for pipes and collected stones for the construction of tanks. There also was co-financing for construction between the community and the government. Some 20% said they were very young during construction, hence could not recall the form of involvement of the community, however in post-construction they are involved in making financial contributions for maintenance.

In explaining their views on the notion of making financial contribution towards construction all respondents uphold that it is important for the community to contribute because it builds a sense of responsibility and ownership of the water supply investment. Another issue that came out very strongly was that there is willingness to make such contributions across the board because people yearn for safe and clean water.

Respondents in Ha-Makotoko collectively report that because there is no efficiently functioning water supply system in their community, there is no facility to make reference to on issues of capacity building for operation and maintenance and sustainability. In essence, therefore, there is little or no action in the area of water supply in this village.

In the pre-construction and post-construction phases of the existing, but non-functioning, infrastructure that was constructed, respondents are adamant that no form of community involvement was done. Some 16.6% of respondents have forgotten what happened because construction took place a very long time ago. Respondents constituting 66.6% however, maintain that they provided both labour and money.

All respondents agree that communities should make financial contributions towards construction of the water supply infrastructure for their villages. They claim that it is only just to do this since people are the ones with the need for water, therefore should do something to solve their problems instead of waiting helplessly for the government. Furthermore, it is claimed that such contribution intensifies a sense of ownership for sustainable management. There is also a high sense of willingness to contribute; more so because this village has been without water for over two decades and are willing to go at lengths to get safe and clean water.

Ha-Ntsi villagers are very satisfied with the service they get from the water supply infrastructure. For this reason, they feel that the system belongs to them

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since they undertake management activities contained in the by-laws. These include communal cleaning of tanks and surrounding areas, attendance of public gatherings on issues related to the water supply system, enforcement of the law upon defaulters and collective action on inhibiting any acts that may impose damage on the infrastructure. Part of the reason for so much energy and ownership of this investment lies in the fact that in the pre-construction phase the community contributed to co-financing. In post-construction phase, they continue to contribute not only labour, but also money for conducting minor repairs. Moreover, the committee and the chief are very dedicated to investing in building the community's capacity in operation and maintenance by having monthly public gatherings to share reports and carry out sensitizations to promote equitable access and knowledge on all issues pertaining to water supply.

In addition, all respondents exhibited a lot of support on the idea of co-financing between government and the community for construction. The impression was that this concept builds a sense of responsibility for protection of development initiatives among the community. It further promotes the zeal to know more about sustainable management of these assets.

The overall perception of who owns the water supplying facility is that it is for the people. This is demonstrated by the effort the community takes when making contributions advised to make towards construction of new promised systems. Democratically elected rural water committees collect funds from the households.

Respondents acknowledge the importance for their human resource and financial contributions in pre and post construction phases as a way of promoting ownership. Generally, perceptions on ideal ownership and management of water supply systems are centered on local structures. Respondents mentioned the chief, the committee and community council as options ideal for sustainable management of water supply systems. However, responses vary so much that there is no one clear local structure agreed upon as responsible for the management function. There was community satisfaction on the involvement in the election of a community organization (village water committee/VWC) responsible for day-to-day management of the water facility. The research found that in some communities, people played a key role in determining the need for a water supply system. Some respondents uphold that their needs are not represented in the rural water projects cycle; some revealed that the chief is the one that represents them but others did not know whether they were represented.

IV. Summary

Community participation in the RWSproject cycle is perceived as important. Evidence for these perceptions is gathered from firm support by respondents for the importance of co-financing for construction, contributing water user fees, their appreciation for involvement in pre-construction and during construction and being afforded the liberty to elect the water committees. However, while communities deem their participation as essential, findings reveal that there is still more that still needs to be done in involving communities in the rural water project cycle. This is due to confirmation by data that participation in some areas was passively limited to providing labour and money for construction. There is need to expand community participation to other realms such as selection of contractors for major repairs and building capacity on all underlying issues for rural water supply. These will culminate in communities that are better prepared to take over the responsibility of sustainable management of the water supply infrastructure.

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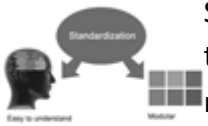


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4. Manuscript's Category,

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22. Never start in last minute: Always start at right time and give enough time to research work. Leaving everything to the last minute will degrade your paper and spoil your work.

23. Multitasking in research is not good: Doing several things at the same time proves bad habit in case of research activity. Research is an area, where everything has a particular time slot. Divide your research work in parts and do particular part in particular time slot.

24. Never copy others' work: Never copy others' work and give it your name because if evaluator has seen it anywhere you will be in trouble.

25. Take proper rest and food: No matter how many hours you spend for your research activity, if you are not taking care of your health then all your efforts will be in vain. For a quality research, study is must, and this can be done by taking proper rest and food.

26. Go for seminars: Attend seminars if the topic is relevant to your research area. Utilize all your resources.



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27. Refresh your mind after intervals: Try to give rest to your mind by listening to soft music or by sleeping in intervals. This will also improve your memory.

28. Make colleagues: Always try to make colleagues. No matter how sharper or intelligent you are, if you make colleagues you can have several ideas, which will be helpful for your research.

29. Think technically: Always think technically. If anything happens, then search its reasons, its benefits, and demerits.

30. Think and then print: When you will go to print your paper, notice that tables are not be split, headings are not detached from their descriptions, and page sequence is maintained.

31. Adding unnecessary information: Do not add unnecessary information, like, I have used MS Excel to draw graph. Do not add irrelevant and inappropriate material. These all will create superfluous. Foreign terminology and phrases are not apropos. One should NEVER take a broad view. Analogy in script is like feathers on a snake. Not at all use a large word when a very small one would be sufficient. Use words properly, regardless of how others use them. Remove quotations. Puns are for kids, not grunt readers. Amplification is a billion times of inferior quality than sarcasm.

32. Never oversimplify everything: To add material in your research paper, never go for oversimplification. This will definitely irritate the evaluator. Be more or less specific. Also too, by no means, ever use rhythmic redundancies. Contractions aren't essential and shouldn't be there used. Comparisons are as terrible as clichés. Give up ampersands and abbreviations, and so on. Remove commas, that are, not necessary. Parenthetical words however should be together with this in commas. Understatement is all the time the complete best way to put onward earth-shaking thoughts. Give a detailed literary review.

33. Report concluded results: Use concluded results. From raw data, filter the results and then conclude your studies based on measurements and observations taken. Significant figures and appropriate number of decimal places should be used. Parenthetical remarks are prohibitive. Proofread carefully at final stage. In the end give outline to your arguments. Spot out perspectives of further study of this subject. Justify your conclusion by at the bottom of them with sufficient justifications and examples.

34. After conclusion: Once you have concluded your research, the next most important step is to present your findings. Presentation is extremely important as it is the definite medium though which your research is going to be in print to the rest of the crowd. Care should be taken to categorize your thoughts well and present them in a logical and neat manner. A good quality research paper format is essential because it serves to highlight your research paper and bring to light all necessary aspects in your research.

Informal Guidelines of Research Paper Writing

Key points to remember:

- Submit all work in its final form.
- Write your paper in the form, which is presented in the guidelines using the template.
- Please note the criterion for grading the final paper by peer-reviewers.

Final Points:

A purpose of organizing a research paper is to let people to interpret your effort selectively. The journal requires the following sections, submitted in the order listed, each section to start on a new page.

The introduction will be compiled from reference matter and will reflect the design processes or outline of basis that direct you to make study. As you will carry out the process of study, the method and process section will be constructed as like that. The result segment will show related statistics in nearly sequential order and will direct the reviewers next to the similar intellectual paths throughout the data that you took to carry out your study. The discussion section will provide understanding of the data and projections as to the implication of the results. The use of good quality references all through the paper will give the effort trustworthiness by representing an alertness of prior workings.

Writing a research paper is not an easy job no matter how trouble-free the actual research or concept. Practice, excellent preparation, and controlled record keeping are the only means to make straightforward the progression.

General style:

Specific editorial column necessities for compliance of a manuscript will always take over from directions in these general guidelines.

To make a paper clear

· Adhere to recommended page limits

Mistakes to evade

- Insertion a title at the foot of a page with the subsequent text on the next page
- Separating a table/chart or figure - impound each figure/table to a single page
- Submitting a manuscript with pages out of sequence

In every sections of your document

· Use standard writing style including articles ("a", "the," etc.)

· Keep on paying attention on the research topic of the paper

· Use paragraphs to split each significant point (excluding for the abstract)

· Align the primary line of each section

· Present your points in sound order

· Use present tense to report well accepted

· Use past tense to describe specific results

· Shun familiar wording, don't address the reviewer directly, and don't use slang, slang language, or superlatives

· Shun use of extra pictures - include only those figures essential to presenting results

Title Page:

Choose a revealing title. It should be short. It should not have non-standard acronyms or abbreviations. It should not exceed two printed lines. It should include the name(s) and address (es) of all authors.



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Abstract:

The summary should be two hundred words or less. It should briefly and clearly explain the key findings reported in the manuscript--must have precise statistics. It should not have abnormal acronyms or abbreviations. It should be logical in itself. Shun citing references at this point.

An abstract is a brief distinct paragraph summary of finished work or work in development. In a minute or less a reviewer can be taught the foundation behind the study, common approach to the problem, relevant results, and significant conclusions or new questions.

Write your summary when your paper is completed because how can you write the summary of anything which is not yet written? Wealth of terminology is very essential in abstract. Yet, use comprehensive sentences and do not let go readability for briefness. You can maintain it succinct by phrasing sentences so that they provide more than lone rationale. The author can at this moment go straight to shortening the outcome. Sum up the study, with the subsequent elements in any summary. Try to maintain the initial two items to no more than one ruling each.

- Reason of the study - theory, overall issue, purpose
- Fundamental goal
- To the point depiction of the research
- Consequences, including definite statistics - if the consequences are quantitative in nature, account quantitative data; results of any numerical analysis should be reported
- Significant conclusions or questions that track from the research(es)

Approach:

- Single section, and succinct
- As a outline of job done, it is always written in past tense
- A conceptual should situate on its own, and not submit to any other part of the paper such as a form or table
- Center on shortening results - bound background information to a verdict or two, if completely necessary
- What you account in an conceptual must be regular with what you reported in the manuscript
- Exact spelling, clearness of sentences and phrases, and appropriate reporting of quantities (proper units, important statistics) are just as significant in an abstract as they are anywhere else

Introduction:

The **Introduction** should "introduce" the manuscript. The reviewer should be presented with sufficient background information to be capable to comprehend and calculate the purpose of your study without having to submit to other works. The basis for the study should be offered. Give most important references but shun difficult to make a comprehensive appraisal of the topic. In the introduction, describe the problem visibly. If the problem is not acknowledged in a logical, reasonable way, the reviewer will have no attention in your result. Speak in common terms about techniques used to explain the problem, if needed, but do not present any particulars about the protocols here. Following approach can create a valuable beginning:

- Explain the value (significance) of the study
- Shield the model - why did you employ this particular system or method? What is its compensation? You strength remark on its appropriateness from a abstract point of vision as well as point out sensible reasons for using it.
- Present a justification. Status your particular theory (es) or aim(s), and describe the logic that led you to choose them.
- Very for a short time explain the tentative propose and how it skilled the declared objectives.

Approach:

- Use past tense except for when referring to recognized facts. After all, the manuscript will be submitted after the entire job is done.
- Sort out your thoughts; manufacture one key point with every section. If you make the four points listed above, you will need a least of four paragraphs.

- Present surroundings information only as desirable in order hold up a situation. The reviewer does not desire to read the whole thing you know about a topic.
- Shape the theory/purpose specifically - do not take a broad view.
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This part is supposed to be the easiest to carve if you have good skills. A sound written Procedures segment allows a capable scientist to replacement your results. Present precise information about your supplies. The suppliers and clarity of reagents can be helpful bits of information. Present methods in sequential order but linked methodologies can be grouped as a segment. Be concise when relating the protocols. Attempt for the least amount of information that would permit another capable scientist to spare your outcome but be cautious that vital information is integrated. The use of subheadings is suggested and ought to be synchronized with the results section. When a technique is used that has been well described in another object, mention the specific item describing a way but draw the basic principle while stating the situation. The purpose is to text all particular resources and broad procedures, so that another person may use some or all of the methods in one more study or referee the scientific value of your work. It is not to be a step by step report of the whole thing you did, nor is a methods section a set of orders.

Materials:

- Explain materials individually only if the study is so complex that it saves liberty this way.
- Embrace particular materials, and any tools or provisions that are not frequently found in laboratories.
- Do not take in frequently found.
- If use of a definite type of tools.
- Materials may be reported in a part section or else they may be recognized along with your measures.

Methods:

- Report the method (not particulars of each process that engaged the same methodology)
- Describe the method entirely
- To be succinct, present methods under headings dedicated to specific dealings or groups of measures
- Simplify - details how procedures were completed not how they were exclusively performed on a particular day.
- If well known procedures were used, account the procedure by name, possibly with reference, and that's all.

Approach:

- It is embarrassed or not possible to use vigorous voice when documenting methods with no using first person, which would focus the reviewer's interest on the researcher rather than the job. As a result when script up the methods most authors use third person passive voice.
- Use standard style in this and in every other part of the paper - avoid familiar lists, and use full sentences.

What to keep away from

- Resources and methods are not a set of information.
- Skip all descriptive information and surroundings - save it for the argument.
- Leave out information that is immaterial to a third party.

Results:

The principle of a results segment is to present and demonstrate your conclusion. Create this part a entirely objective details of the outcome, and save all understanding for the discussion.

The page length of this segment is set by the sum and types of data to be reported. Carry on to be to the point, by means of statistics and tables, if suitable, to present consequences most efficiently.You must obviously differentiate material that would usually be incorporated in a study editorial from any unprocessed data or additional appendix matter that would not be available. In fact, such matter should not be submitted at all except requested by the instructor.



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Content

- Sum up your conclusion in text and demonstrate them, if suitable, with figures and tables.
- In manuscript, explain each of your consequences, point the reader to remarks that are most appropriate.
- Present a background, such as by describing the question that was addressed by creation an exacting study.
- Explain results of control experiments and comprise remarks that are not accessible in a prescribed figure or table, if appropriate.
- Examine your data, then prepare the analyzed (transformed) data in the form of a figure (graph), table, or in manuscript form.

What to stay away from

- Do not discuss or infer your outcome, report surroundings information, or try to explain anything.
- Not at all, take in raw data or intermediate calculations in a research manuscript.
- Do not present the similar data more than once.
- Manuscript should complement any figures or tables, not duplicate the identical information.
- Never confuse figures with tables - there is a difference.

Approach

- As forever, use past tense when you submit to your results, and put the whole thing in a reasonable order.
- Put figures and tables, appropriately numbered, in order at the end of the report
- If you desire, you may place your figures and tables properly within the text of your results part.

Figures and tables

- If you put figures and tables at the end of the details, make certain that they are visibly distinguished from any attach appendix materials, such as raw facts
- Despite of position, each figure must be numbered one after the other and complete with subtitle
- In spite of position, each table must be titled, numbered one after the other and complete with heading
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Discussion:

The Discussion is expected the trickiest segment to write and describe. A lot of papers submitted for journal are discarded based on problems with the Discussion. There is no head of state for how long a argument should be. Position your understanding of the outcome visibly to lead the reviewer through your conclusions, and then finish the paper with a summing up of the implication of the study. The purpose here is to offer an understanding of your results and hold up for all of your conclusions, using facts from your research and generally accepted information, if suitable. The implication of result should be visibly described. Infer your data in the conversation in suitable depth. This means that when you clarify an observable fact you must explain mechanisms that may account for the observation. If your results vary from your prospect, make clear why that may have happened. If your results agree, then explain the theory that the proof supported. It is never suitable to just state that the data approved with prospect, and let it drop at that.

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- Research papers are not acknowledged if the work is imperfect. Draw what conclusions you can based upon the results that you have, and take care of the study as a finished work
- You may propose future guidelines, such as how the experiment might be personalized to accomplish a new idea.
- Give details all of your remarks as much as possible, focus on mechanisms.
- Make a decision if the tentative design sufficiently addressed the theory, and whether or not it was correctly restricted.
- Try to present substitute explanations if sensible alternatives be present.
- One research will not counter an overall question, so maintain the large picture in mind, where do you go next? The best studies unlock new avenues of study. What questions remain?
- Recommendations for detailed papers will offer supplementary suggestions.

Approach:

- When you refer to information, differentiate data generated by your own studies from available information
- Submit to work done by specific persons (including you) in past tense.
- Submit to generally acknowledged facts and main beliefs in present tense.

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Topics	Grades		
	A-B	**C-D**	**E-F**
Abstract	Clear and concise with appropriate content, Correct format. 200 words or below	Unclear summary and no specific data, Incorrect form Above 200 words	No specific data with ambiguous information Above 250 words
Introduction	Containing all background details with clear goal and appropriate details, flow specification, no grammar and spelling mistake, well organized sentence and paragraph, reference cited	Unclear and confusing data, appropriate format, grammar and spelling errors with unorganized matter	Out of place depth and content, hazy format
Methods and Procedures	Clear and to the point with well arranged paragraph, precision and accuracy of facts and figures, well organized subheads	Difficult to comprehend with embarrassed text, too much explanation but completed	Incorrect and unorganized structure with hazy meaning
Result	Well organized, Clear and specific, Correct units with precision, correct data, well structuring of paragraph, no grammar and spelling mistake	Complete and embarrassed text, difficult to comprehend	Irregular format with wrong facts and figures
Discussion	Well organized, meaningful specification, sound conclusion, logical and concise explanation, highly structured paragraph reference cited	Wordy, unclear conclusion, spurious	Conclusion is not cited, unorganized, difficult to comprehend
References	Complete and correct format, well organized	Beside the point, Incomplete	Wrong format and structuring

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