NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL RELATIONS PROGRAM

THE ROLE OF INTERNATIONAL CRIMINAL COURT AND ITS EFFECTIVENESS ON WAR CRIMES IN AFRICA

CASE ANALYSIS - KENYA

RENAS IBRAHIM MOHAMMED

MASTER'S THESIS

NICOSIA
2019

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2019

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I **Renas Ibrahim Mohammed,** hereby declare that this dissertation entitled **'The Role of International Criminal Court and its Effectiveness on War Crimes is Africa: Case Analysis - Kenya'** has been prepared myself under the guidance and supervison of **Assoc. Prof. Dr. Sait AKŞİT and Assoc. Prof. Dr. Nur Koprulu**
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DEDICATION

I dedicate this work to my beloved parents who largely contributed to making me the person I am today. A special gratitude goes to my lovely wife for her continous support. I also dedicate this work to my siblings and friends who have encouraged me all the way, and whose encouragement has made it sure that I give it my best, especially my lovely friend Kawar Zaxoy.

ACKNOWLEDGEMENTS

I would like to sincerely thank whoever helped and assisted me in finishing this piece of work.

My utmost gratitude goes to my supervisor Dr. Sait Akşit for his appreciated guidance, advice, and great support in conducting my thesis.

I also thank the faculty of Economics and Administrative Sciences, the Department of International Relations, at Near East University in Nicosia for the massive efforts they have put in my academic journey of getting my Master's degree.

Finally, but by no means least, a special thanks to my supportive family for their unbelievable support and their priceless contributions. They are the most important people in my world and I dedicate this thesis to them.

ABSTRACT

THE ROLE OF INTERNATIONAL CRIMINAL COURT AND ITS EFFECTIVENES ON WAR CRIMES IN AFRICA

CASE ANALYSIS - KENYA

Being the world's first permanent court which was designed to practice jurisdiction and try individuals arraigned with crimes against humanity of genocide, war crimes, crimes of aggression, the International Criminal Court (ICC), established in 2002, has earned a universal recognition due to the disputation that characterized its relationship with countries on the African continent. In its attempt, aim, and goal to pursue justice and end impunity, the Court's application of jurisdiction has met a number of fundamental challenges that rendered its effectiveness in the eye of many. Despite the fact that the Court has been also acknowledged to have the ability to solve problems of violence associated with impunity, yet the Court has drew a tremendous attention to its efficiency in dealing with crimes resulting from prolonged conflicts emerging from societies that witnessed long periods of human rights violations of all kinds. The hostile criticism directed against the ICC by some African leaders has generated the understanding that the ICC has little support to offer in Africa. By taking the Kenyan 2007/8 post-election violence case, this thesis shall search the ICC's promotion of peace and security through its justicial mechanism. Through the data collected during the research process, I also seek to examine the role of the ICC in administrating its prosecution in the Kenyan case with all the pressuring measures it has encountered along the way.

Keywords: International Criminal Court, Jurisdiction , Prosecution, Effectiveness, Africa, Kenya.

ÖZ

THE ROLE OF INTERNATIONAL CRIMINAL COURT AND ITS EFFECTIVENES ON WAR CRIMES IN AFRICA

CASE ANALYSIS - KENYA

Yargı yetkisini uygulamak ve soykırımın insanlığına karşı işlenmiş suçlarla suçlananlar, savaş suçları, saldırganlık suçları, 2002'de kurulan Uluslararası Ceza Mahkemesi (ICC) nedeniyle dünyanın ilk daimi mahkeme olması nedeniyle, Afrika kıtasındaki ülkelerle olan ilişkisini karakterize eden tartışma. Mahkeme'nin yargı yetkisi başvurusu adaleti ve cezasızlığı sürdürme girişiminde, amacında ve amacında birçok kişinin gözünde etkinliğini sağlayan bir dizi temel zorlukla karşı karşıya kalmıştır. Mahkeme'nin ayrıca cezasızlıkla ilgili şiddet sorunlarını çözme kabiliyetine sahip olduğu kabul edilmesine rağmen, Mahkeme, uzun süredir tanık olan toplumlardan kaynaklanan uzun süreli çatışmalardan kaynaklanan suçlarla başa çıkma konusundaki etkinliğine büyük bir dikkat çekti. her türlü insan hakları ihlali. Bazı Afrika liderleri tarafından ICC'ye yöneltilen düşmanca eleştiri, ICC'nin Afrika'da sunacağı çok az desteğe sahip olduğu anlayışını yarattı. Kenya 2007/8 seçim sonrası şiddet vakasını ele alan bu tez, ICC'nin adalet aracılığıyla barışı ve güvenliği artırmayı başarıp başarmayacağını araştıracak. Araştırma sürecinde toplanan veriler sayesinde, ICC'nin Kenya'daki kovuşturmasını yürütmedeki rolünü, yol boyunca karşılaştığı tüm baskı önlemleriyle birlikte incelemeye çalışıyorum.

Anahtar Kelimeler: Uluslararası Ceza Mahkemesi, Yargılama, Kovuşturma, Etkinlik, Afrika, Kenya.

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LIST OF ABBREVIATIONS

ASP	**Assembly of States Parties**
AU	**African Union**
CAR	**Central African Republic**
CIPEV	**Commission of Inquiry into Post-Election Violence**
DRC	**Democratic Republic of Congo**
ICC	**International Criminal Court**
ICJ	**International Court of Justice**
PNU	**Party of National Unity**
UN	**United Nations**
UNGA	**United Nations Agenda Assembly**
UNSC	**United Nations Security Council**

INTRODUCTION

i. Historical Background

Following its establishment, the International Criminal Court (ICC) aimed to follow the mission of ending impunity on an international scale as a response to the increasing demand to end war crimes and violence. The ratification of the Rome Statute in 1998, has set the Court on a mission to bring justice by pursuing the rules and procedures of the Statute in aims of ending war crimes, crimes against humanity, as well as genocides. The Rome Statute, clarified that the Court was put as the first international legal body of jurisdiction to deal with issues of genocide and war crimes, as well as putting an end to the impunity of perpetrators of the most serious crimes of concern to the international community.

Over the last decade, the ICC interventions have become an issue that widely affects the sphere of international relations, especially within the aspect of the domestic politics of the states and the agenda of international conflict resolution. During the years of its existence, the Court intervened exclusively in African states. Regardless, the Court has been greatly criticized by within the international arena, and these criticisms mainly suggest that the Court's interventions may bring obstacles to the process of pursuing peace, or may encourage criminal leaders to preserve their power (Kokko, 2016). Thereby, this allows for the escalation of violence and human rights abuses.

One of the most familiar cases of the Court which brought an extensive weight of attention to the defining lines of the ICC, is the Kenyan case. Ever since the country has gained its independence in 1963, ethnic tribal tension has been an element of the Kenyan society. Kenya signed its membership of the Rome Statute in 1998 and then ratified it again in 2005 (Lugano, 2017). However, after its elections of the year 2007, inter-communal violence broke out throughout the state over the results of the elections. Basically, after the victory of the Party of National Unity (PNU) in the elections, the supporters of the Orange Democratic Movement (ODM), asserted electoral fraud (Helfer &

Showalter, 2017). This led to a serious eruption of violence including murder, rape, and forcible displacement of the Kenyan population.

At first, the Kenyan government established a commission to investigate the post-election violence. The commission gathered information that testify on a number of Kenyan politicians who could be responsible for the violence, and stated that the files and reported it gathered would be delivered to the ICC in case the government failed to cooperate in initiating a domestic Court for conducting a special tribunal to investigate the crimes committed. After the failure of the Kenyan government to settle the situation, the case was referred to the ICC by the former UN Secretary-General Kofi Annan in 2010, as the state was unwilling and unable to carry out the necessary investigations.

The Pre-Trial Chamber, in 2012, affirmed on the charges against the President Uhuru Kenyatta and Vice President William Ruto, where the Chamber charged Ruto with the crimes against humanity of murder, deportation or forcible transfer of populations, and persecution. The Court charged Kenyatta with crimes against humanity, including murder, rape, persecution, deportation or forcible transfer, and other inhumane acts (Helfer & Showalter, 2017). Despite the fact that these charges gained a momentum of support from the Kenyan population, it still did not stand a chance to push for the trial due to the allied campaign of both figures, where their cooperation with the ICC claimed to be rendering their political campaign to govern and therefore, the ICC was accused of being a device of Western interest to sabotage the Kenyan sovereignty. Correspondingly, both defendants used this to avoid their appearance before the Court, using the public's beliefs against the Court.

However, the case became troublesome when the ICC underwent a crucial battle with the Kenyan state. The Court's prosecution on war crimes that found Kenyatta and Ruto alleged, shook the Court to its fundamental core and drew a negative implication on its broad decision and behavior. The clear absence of the ICC guidelines to handle the situation that happened in Kenya, prevails the failure of the Court to hand over justice to the Kenyan

victims of the 2007/8 post-election violence. Therefore, the Kenyan case was chosen to argue the ICC's effectiveness of prosecution.

ii. Statement of the Problem

For many, the Court's jurisdictional records on a number of cases in Africa, and especially in the case of Kenya, gave the impression that it was focusing inordinately on African states, yet failing in accomplishing its mission. This, has given rise to fears of a mass egression, and raised questions of whether the ICC could remain a viable jurisdictional institution in Africa or not. Internationally, the public opinion concerning the effectiveness of the Court has been that the ICC is actually incompetent.

Right after the presidential elections of 2007 in Kenya, violence blew up resulting in the deaths of hundreds of people. The intervention of the ICC to investigate the 2007 violence embraced mixed reactions towards it. The ICC was given the responsibility of a number of challenging tasks, where it had to first, hold the perpetrators of violence accountable for their crimes, and second, ensure justice for the victims they left behind.

One of the ICC problematic elements is wrong decision-making. This has been widely agreed on concerning the case of Kenya, which inevitability undermined the Court's outer image in matters of confidence within the international criminal justice scheme (Fehl, 2004). The political consideration of Kenya has played a huge role in compromising the ICC's power to carry out its law enforcement mechanisms. As it will be closely examined later on in this thesis, the political insurgence within the ICC's freedom to exercise its capacity concerning the Kenyan case, has led to prolonged complications along the road to justice. This could definitely result in future breaches of bringing justice to victims of atrocity crimes.

The Kenyan case has raised many questions on the ICC's attitude in terms of dealing with the war crimes committed during the 2007-2008 Post-Election violence. Taking into account that the ICC is not an ordinary court, and was designed to fight impunity and human rights violations, the impact of the ICC

in Kenya needs to be analyzed. The situation in Kenya combined circumstances, events, and cases which in one way or another linked a reference to the International Criminal Court's overall involvement in its judicial functionalism and prosecutions regarding the post-election violence in Kenya. It is hence compulsory to investigate the prosecuting body of the ICC when its impotency could cripple the arrangements enshrined in its Statute which was architected to protect the innocents by fighting barbarity.

iii. Objectives of the Research

With an adequate analysis of the Kenyan case, where the Court has exercised its power and dominance, this thesis will mainly investigate the role of the ICC and its effectiveness in Africa by focusing on the Kenyan case. First of all, the work conducted in this research will secondly seek to fill the gaps around the factors that led to the ineffectiveness of the Court regarding Kenya's post-election violence. Secondly, the conditions surrounding the norms and practices of individual prosecution of political leaders committing atrocities of human rights is further to be investigated, for it frames and shapes the reputation of the judicial bodies operating under the international criminal law, such as the ICC.

The ICC's initiative and desire of fighting impunity and ending war crimes is evident in the literature of its Statute. For that, it is far more interesting to look deeper at how the Kenyan politics and chaotic situation has affected its sole preamble and proved otherwise. The troubled political sphere that Kenya has adopted for decades has set a platform for atrocities to occur. Where the ICC was chosen for its autonomous judicial body to fight political manipulation and its outcomes, thridly, this research will seek to find out to what extent has the Court been effective to operate as an alternative means of jurisdiction, replacing the national and domestic institutions in fighting impunity. Also, it is indispensable to discover whether the ICC was qualified to obtain the jurisdiction and prosecution of the Kenyan cases, as well as baring with the challenges of holding the stability of the country together.

This research is built on the aim to investigate the ICC's failure in achieving effectiveness, especially in terms of the pursuit of bringing alleged perpetrators into justice. To reach a point of informational satisfaction regarding this matter, an examination on the Court's weaknesses is needed. Hence, this paper aims to set out its objectives as to first, look at the factors that put the ICC in dilemma and rendered its effectiveness while pursuing justice in Kenya. Second, examine the functionalism of the ICC within the principle of law, and adds to the existing literature through explaining the misconceptions of along its structure. Finally, the research will look at the challenges the ICC has faced in meeting the expectations of a promising justice to cases of the executed crimes of the 2007/8 post-election violence.

iv. Significance of the Thesis

The enormous weight of controversial opinions regarding the ICC's role in Africa, and the studies conducted in aims of reaching satisfying answers to solve the disturbance between national and international law at some point, gives this research significance. Despite the fact that the African states had a huge role in the establishment of the ICC in 1998, and regardless of the undeniable devoted work of the ICC in Africa, as well as the numerous efforts of the objectives of the Court's work on the continent to serve its duty on promoting justice and answerability, a study on the ICC's mission in Kenya seems imminent; given that the Court has failed upon preserving principles of justice. Hence, what basically makes Kenya chosen as a case study for this paper is that fact that Kenya has illustrated the downfall of the ICC in granting justice to its victims of the 2007/8 post-election violence. The Kenyan case pulled strings for years. Many complications along its timeline has made it difficult for the ICC to keep its oath to the one thing it was established for, serving justice.

Despite the fact that there is a number of academic researches conducted to analyze the investigations and the proceedings of the Court, there are yet many unanswered questions that needs an investigation of depth. The results of this thesis aim to add more to the subject matter, for it searches

among the norms and principles of justice and security. The research prepared aims to signify the matter of paving the way into forming an understanding of the conflicting interests of the ICC and the Kenyan government, and the way these interests put the entire mission and goal for justice in Kenya on a different track. From the perspective of the ICC, this paper handles subjects of jurisdiction, proceedings and prosecution. On the other hand, it also looks into matters of state sovereignty and cooperation, war crimes and breaches of human rights laws, as well as immunities of prosecutions.

v. Methodological Approach

The research method to be used in my thesis will be a qualitative method of data analysis. I choose it because it is appropriate for the type of research I am conducting. A qualitative research is known as “a scientific research consists of an investigation that: seeks answers to a question, systematically uses a predefined set of procedures to answer the question, collects evidence, produces findings that were not determined in advance, produces findings that are applicable beyond the immediate boundaries of the study” (Family Health International, n.d.). Qualitative research guides the investigation of this research because “Qualitative Research is good at simplifying and managing data without destroying complexity and context.” (Atieno, 2009).

I shall explore and investigate the ICC’s performance within the context of Kenya’s distinct case, using previous conclusions achieved from inquiries identified in earlier existing works. The Kenyan case is best to analyze the Court’s definite influence in bringing accountability of peace and justice, and therefore shape the court’s capability in achieving its goals.

Hence, and in order to conduct the research of this thesis, secondary data collection is to be acquired to sufficiently complete the required results and outcomes. I shall use sources of secondary data analysis tools which include online sources of scholarly books, articles, journals, newspapers, research

and study papers, etc. This gears up my research with existing studies done for examining the ICC's establishing set of rules, by looking at different documentations on the ICC and its extent in obtaining justice. This should serve a wide batch of perspectives on the issue, and deliver the aim of establishing a contextual analysis by consolidating existing information about the ICC's legit effectiveness in ruling as a jurisprudence body in Kenya.

CHAPTER 1

THEORITICAL FRAMEWORK AND LITERATURE REVIEW

This part of the thesis will focus on the essence of characteristics of the International Criminal Court by providing theories and concepts from inspective literature to the norms and patterns by which the ICC is set upon. To start with, it is essential to first examine the ICC as it is the main object of argument in this paper.

1.1. Introducing the International Criminal Court

To start with, it is inevitable to define a court. A court is the institution also known to be called “The Court of Law”. In the courts judicial authority or power is allotted to a body or an individual to listen to the disputes of others which are of the nature, criminal, civil, military and ecclesiastical (Federal Judicial Center, 2015).

A court is an entity generally which is an institution of government, which has been provided with the authority to resolve disputes and matters of the legal nature, among two or more parties, and carrying out the management of the justice the matters which are civil in nature, administrative and criminal as well in agreement with the rule of the law (Allsop, 2007).

According to the Human Rights Watch (2010), the International Criminal Court, which is located in The Hague/ Netherlands, is mainly a court for

prosecution of genocides, war crimes, and crimes against humanity around the world. The Court was established at a diplomatically driven conference in Rome on the 17th of July, 1998, and later entered into force and action on 1st of July, 2002. The Rome Statute treaty established the Court in 1998, and was adopted by the United Nations Diplomatic Conference of Plenipotentiaries (United Nations Diplomtic Conferences, n.d.).

According to the Rome Statute (1998), the International Criminal Court "shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute". The member states of the Court agree to the Preamble of the treaty of Rome Statute which illustrate the following of some terms:

a) Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time, b) Recognizing that such grave crimes threaten the peace, security and well-being of the world, c) Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, d) Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, e) Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, f) Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State, and, g) Emphasizing that the International Criminal Court established under this Statute shall be complementary to national

criminal jurisdictions (“Rome Statute of the International Criminal Court”, 1998).

By this, we can form an adequate understanding of the affirmed agreements and measures of the terms that the International Criminal Court confide on with its establishing and governing treaty, the Rome Statute.

1.2. Ratification of the Rome Statute in Africa

When addressing justice in Africa, and the mission that the ICC has taken up to ensure the establishment of it, it is of necessity to dwell through its core of establishment. The Rome Statute stands as a backbone that solidifies the role of the ICC in Africa. The role of the Rome Statute came into force when the member states of the African Union (AU) came in an affective role to create it (Apiko & Aggad, 2016).

Monageng (2014), argues that the African States were amidst the primary bodies to ratify the Rome Statute when it first entered into force on 1st of July, 2002, where 34 state parties among all 122 other parties were African countries. He furthermore elaborates that this reprsents Africa as the largest regional coalition to have a primary role in the Assembly of States Parties of the ICC with Senegal and Cote d’Ivoire being the first African states who ratified the Rome Statute.

Nakandha (2012), seeks to advocate on the role that the Rome Statute has added to strengthen the goal of the ICC by adding that the Statute has offered a variety of mechanisms where the ICC was given the opportunity to practice its arbitration in numerous conditions. Having said that, a fundemental benefit of this is the referral of situations to the Court by a State Party. The power of case referral is also given to the Court’s prosecutor along side to the UN Security Council, to initiate an investigation in a presentable situation.

The African States provided an extensive form of support for the ICC before, during, and after its establishment latching onto the Rome Diplomatic

Conference in 1998 (Torricelli, 2010). Plessis (2010), expresses that where the ICC had an extensive involvement of African states along the history of its establishment, then the ICC must work for the assistance and profit of African victims of crimes against humanity. Basically, there must be a respectful recognition and remembrance of the Court's establishing African states.

1.3. International Law and International Criminal Law

To better understand the functionalism of the International Criminal Court, there is a need for a theoretical approach and an understanding of the concepts that can potentially provide comprehensive insights to how the world shapes its global jurisdiction through international organizations like the ICC. There are a number of theories and concepts which provide a powerful explanatory to interpret the basis of the ideas that shaped the Court. For as long as it has been seen, the ICC has portrayed the image of its mission to the world as the need to create and maintain peace by punishing crimes of serious nature which are a threat to humanity and the international community, as well as end impunity for the perpetrators of these crimes. Thus, there is a must to follow a worldwide institutional system which establishes an acceptable law that is applied universally. A law that maintains the submission and subordination of states, without exception.

Therefore, if we are to examine the nature of the ICC's theme of work, we shall come to realize that their actions and achievements strictly confirm to an international law of rules and legal norms by which nation states organize the relations between them. These rules and norms are merely an interpretation of theories in how they become a practice through international relations.

At First, and according to the United Nations 2008 Treaty Event (2008), international law is a law that builds up a framework on the basis of states being the primary actors in the universal legal system. International law interprets states responsibilities within their own barriers. This law is known

to circle around a variety of areas including wars, organized crimes, human rights, migration, military control, environmental concerns, trade, and overall development.

According to Thomas Lee (2015), after the Second World War, international law witnessed an expansion in its subjects to include international human rights law and international law governing the role and activities of assignable organizations. The founding principles of the International Criminal Court are based upon the International Criminal Law which is defined as “the body of law that prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment of those categories of conduct, and holds perpetrators individually accountable for their commission” (“General Principle of International Criminal Law”, 2014).

Having said that, the international criminal law adjudicates the violations of international humanitarian law, particularly in certain violations that are qualified as war crimes, which is in the primary interest of the international community to punish. The significant principles which international criminal law is based upon are numerous, but they require an enhanced interaction between states, and the states must uphold these principles while respecting their own national principles of criminal law (Advisory Service on International Humanitarian Law, 2014).

Initially, International Criminal Law is defined as “a subset of public international law, and is the main subject of these materials. While international law typically concerns inter-state relations, international criminal law concerns individuals. In particular, international criminal law places responsibility on individual persons—not states or organizations—and proscribes and punishes acts that are defined as crimes by international law” (International Criminal Law Services, n.d.).

Both international law and international criminal law lay their own foundation of enrolment to eliminate crimes irritating peace and security by establishing international judicial bodies such as the ICC to bring responsible individuals into justice. According to Avocats Sans Frontières (ASF)’s Training Manual

(2016), “Without an international criminal court for dealing with individual responsibility as an enforcement mechanism, international crimes and egregious violations of human rights often go unpunished”. Where crimes are committed under the sunshade of international law, they very much require an eventual participation of a governmental power and authority. The Manual by ASF furthermore elaborates that states should collectively come along the fact that those responsible for crimes must be summoned to justice by national judicial associations. Eventhough, at times, such national assosications are either refusing or incapable of taking action towards a situation. This happens often due to the absense of a political desire to punish their own citizens regardless of their social and political status, which was seen in the case of former Yugoslavia. Other than that, the collapse of the national judicial institutions against a situation was witnessed in the case of Rwanda (Avocats Sans Frontières (ASF)’s Training Manual, 2016).

1.4. Theoretical Interpretation of the International Criminal Court (ICC):

In order to deeply investigate the nexus of the laws and politics applied through and within the ICC, it is essential to look at the strains of approaches like realism, rationalism, and constructivism, where each gives a profound explanation of the functionalism of the Court.

1.4.1. Realism

Realism, to begin with, is considered as one of the oldest and most common theories of international relations. This theory has had a major contribution to understanding states relations. Engel and Pallas (2015), in a study by the University of Wollongong, argue that war, conflict, and the powers of the states are the core focus of this theory; “Realism is a theory of international relations which is framed around the unitary sovereign state. It is primarily based around a view of humanity whereby people are purely self-interested and required to guard their interests. The realist state is intent on survival and ensuring that its national interest is maintained at any cost”.

They furthermore elaborate that realism as theory and practice mainly contains sovereignty as a key element, where sovereignty generally refers to a state's full and absolute right of authority despite its laying characteristics, and that to maintain such right, a state must own the power to run its government, defend its own people, and to have the ability to create stable relations with other states (Engel & Pallas, 2015). Therefore, realism's interpretation of a state is where one can always insure the legitimacy to maintain and preserve the survival of its own. The issues of sovereignty and power helps to explain why certain decisions were made during the negotiations of the ICC. Thus, this meets with approval that the theory of realism explains the way the relations of states regulate through the use and balance of power among them.

1.4.2. Rationalism

To further argue that the concept of international relations has worked on the generated theories that has been brought up as an enlightenment to understand international law and the way global relations work, rationalism is considered as a profound avenue to explain a state's determination of its interests.

In line with Baradaran, Findley, Nielson, and Sharman (2018), rationalism believes that nations would only choose to comply with international law when they seek to avoid and dodge sanctions, and that states pursue their interests by getting involved in foreign policy for their own gains. They also argue that "international law is merely the result of states acting rationally to maximize their interests. Rationalists explain state compliance with international law as a result of a nation's desire to profit materially or because they fear sanctions. Since states are treated like individual actors, rationalists argue that penalties motivate states to act" (Baradaran, Findley, Nielson, & Sharman, 2018). The rationalist theory assists to analyze the institutional design of the ICC in terms of understanding the position of a state and its decision making autonomy. It also focuses on the degree of control possession over institutions and the flexibility of its members.

1.4.3. Constructivism

The appliance of a theoretical argument from the constructivist literature view is also important. The ICC's establishment can be explained through the constructivist view for it provides an alternative argument focusing on legitimacy concerns. Constructivism basically asserts that states are obligated to obey international law due to the legality of norms. According to Anas Milly (2015), the constructivist scholar Martha Finnemore (1996), argues that international institutions can tutor states on how to act.

Finnemore (1996), finds that norms of international society are automatically transmitted to states though international institutions as nation states learn from other states on how to act and react to international institutions. International institutions themselves also have the capacity to teach states about problems and how to best resolve them. Briefly, institutions are perceived as the instructors who shape the attitudes of the states and shape and formulate their actions in order to follow and abide to norms (Anas Milly 2015; Finnemore 1996).

1.5. Jurisdiction

Beckman and Butte (2009), seek to provide a definition of jurisdiction. They state that jurisdiction **"**refers to the power of a State to prescribe and enforce criminal and regulatory laws and is ordinarily based on the territorial principle, under which a State has jurisdiction over activities within its territory". Basically, and under international law, "jurisdiction is primarily territorial or based on the nationality of the subject; however, it may go beyond that. Each state may exercise jurisdiction over crimes against its security and integrity or its vital economic interests" (Federal Judicial Center, n.d.).

Ryngaert (2014), argues that jurisdiction as a concept has always had a strong bond with the approach of sovereignty in public international law. He

also argues that jurisdiction grants states the right to practice their sovereign independence especially when it comes to practicing legal activities, regardless of them being a part of universal system that believes in equal states.

In the light of Olubokun's thesis on The Future of Prosecutions under the International Criminal Court (2015), jurisdiction is defined as "the power of a sovereign to regulate or otherwise impact upon people, property and circumstances and reflects basic principles of states sovereignty". Olubokun adds that jurisdiction is an essential element of any sovereignty, where it is presented as an action of a higher power which may change judicial relations and obligations. Despite the fact that jurisdiction is known to be territorial, it is not necessarily attached, and can be may based on other strands.

1.5.1. Jurisdiction within the ICC

For the ICC was established based on a treaty, and where the member states own the right to decide whether to join it or not, the Court does not hold the authority to exercise a universal form of jurisdiction. Barbour and Weed (2010), highlight Article 12 of Preconditions to the Exercise of Jurisdiction. They argue that according to this Article, "the ICC can only exercise jurisdiction over crimes that were either (1) committed on the territory of a country that has accepted the ICC's jurisdiction; (2) committed by nationals of a country that has accepted jurisdiction; or (3) referred to the ICC by the United Nations Security Council". However, they furtherly extend that "The only exception to this rule permits ICC jurisdiction over situations when both (1) a non-State Party has accepted the exercise of jurisdiction by the ICC with respect to the crime in question; and (2) the alleged crime either took place in the consenting country's territory or was committed by a national of that country" (Barbour & Weed, 2010).

On another note, Seils and Wierda (2005) argue that "A non-State Party may make a declaration accepting the exercise of the jurisdiction of the Court over a crime committed by its nationals or that occurred on its territory after July 1,

2002”. Having said that, the ICC, and following this date, is eligible to investigate individuals responsible of crimes that are within the consideration of the international community, like crimes of war, genocide, and aggression, where the Court meets the required conditions to exercise its jurisdiction (Understanding the International Criminal Court, n.d.).

1.5.2. Complementarity of the Court

When the ICC was first established, there was a crystal clear realization that the world’s severe crimes were far from impunity. It was then a notable recognition that the ICC would not allow room from amnesties not immunities, even for those in authority and power. In order to understand the meaning of complementary, Zawati (2016), argues that "Despite being a fundamental principle open to interpretation, complementarity served as a keyword in the establishment of the ICC”. Zawati adds that complementarity includes a significant component that determines the relation between the ICC and the mechanisms of criminal answeribility. Hence, those responsibile of serious crimes are to be presented and prosecuted in the Court.

An article published by the Seils and Wierda (2005), argues that when the ICC was set up, the international community had to choose in between creating either a primary or a complementary court. The primary system basically would have given the ICC the power and authority to deal with any and every case, even if the national courts were already perusing them. An example of such system was used in the International Military Tribunal at Nuremberg (1945), as well the International Criminal Tribunal for Rwanda’s genocide during the 90’s. However, since the member states held a grip on their right to practice state sovereignty, the complementary system for the ICC was achieved. The article furtherly provides that “Another reason for giving primacy to national courts was efficiency: It is typically more practical and less expensive for courts trying cases to be near the alleged victims, perpetrators, and crime scenes and to use local languages” (Seils and Wierda, 2005).

In the light of this, Lam (2014), argues that “Article 17 of the ICC limits the Court’s interventions to only those cases where a State is ‘unable or unwilling’ to prosecute, speaks to the fact that the ICC is supposed to support domestic proceedings, not circumvent them”. So, the Court is not expected to replace or overthrow national systems of judiciary. Actually, the intervention of the ICC should come in as a ‘last resort’, where an involvement of the Court is needed and required under remarkable conditions, and that is when a state is either refusing to prosecute or unable to try prepetrators of serious crimes (Lam, 2014).

1.5.3. Ratione Personae

Naujilj (2012) provides a definition for Ratione Personae by stating “Ratione personae is a Latin term. It is otherwise known as personal jurisdiction. It literally means by reason of his person or by reason of the person concerned”. A personal jurisdiction indicates the Court’s exercised authority over suspects. İt entails the Court’s right to receive a case forwarded in opposition of a an absent within specific boundaries of a state (Naujili, 2012).

The ICC has adopted Ratione Personae within its jurisdiction. Kaur (2006), argues that in line with Article 12 (2) (b) of the Rome Statute, “the ICC will have jurisdiction over nationals of a State party who are accused of a crime. The Court can also have jurisdiction over nationals of a State not party to the Statute on ad hoc basis i.e. when the State by declaration accepts jurisdiction of the Court for that particular crime”. Kaur (2006) adds that “It is important to mention that jurisdiction of the ICC is complementary to the national jurisdiction of the state, i.e. the ICC will have jurisdiction only when the state party is unwilling or unable to exercise its jurisdiction”.

Ratione Personae has been a fundamental element within the jurisdiction of the ICC. Kayitana (2015), elaborates more on this by stating that “In order to avoid the impunity often caused by the failure of States to take action against their own officials and other persons acting on their behalf, states adopted in 1998 the Rome Statute of the International Criminal Court”. Following to that,

the ICC was granted the right of jurisdiction over suspects accused of crimes against humanity, including war crimes, crimes of aggression, and genocide (Kayitana, 2015).

1.5.4. Ratione Materiae

Proells (2018), illustrates on this term by providing “ratione materiae, i.e., subject-matter jurisdiction, with regard to which an international court or tribunal may only decide those cases “that raise those factual and legal questions which the constitutive instruments have defined and/or that one or more of the parties have agreed to refer to adjudication.”

Basically, ratione materiae jurisdiction, or what is also known as the Subject –matter jurisdiction, is applied when certain crimes are carried out. Kaur (2006), provides:

> The subject-matter jurisdiction refers to the crimes within the jurisdiction of the court. According to article 5 of the Rome Statute, the Court shall have jurisdiction over the following crimes: (i) The Crime of Genocide (ii) Crimes against Humanity (iii) War crimes (iv) The Crime of Aggression. The subject-matter jurisdiction of the Court is limited to the above four categories of crimes.

1.5.5. Immunity from Jurisdiction

The way that some of the cases that are associated with genocide and war crimes came before the court, has paved the way for a problems associated with the mechanisms of the Court’s credibility. The ICC has, and through the Articles of the Rome Statute, affirmed that justice shall be proceeded by the Court to punish those responsible of the crimes they commit, with no exception or distinguish of any kind. Kayitana (2015) equip on this by Article 27 of the Statute which provides:

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

However, Sweep (2013) argues “The immunity applies to all claims made before a court (foreign national courts and international courts such as the ICC and the Tribunals) within and throughout all jurisdictions”. Sweep adds that breaches of law are enough reason to bring in state representatives for trial, though immunity is automatically provoked.

Fueled by discussion and debate, the issue of immunity has arisen previously within the sphere of personally granted immunities when international crimes against humanity were committed in different parts around Africa. Here, a distinction must be made between the two types of immunities given to officials. To start with, the personal immunity, which is also known as ‘immunity ratione personae’, refers to the immunity given to officials which still functioning their political status in an office. King (2006), provide that “Personal immunities attach to certain State officials by virtue of their office. Heads of State, Heads of Government and foreign ministers all fall within this category”.

Kolodkin (2008), states that “Immunity ratione personae or personal immunity is derived from the official’s status and the post occupied by him in government service and from the State functions which the official is required to perform in that post”. This form of immunity is fancied by officials who hold

high governmental positions and by diplomats certified within the host nation or state (Kolodkin, 2008).

In the case of functional immunity, which is also referred to as immunity ratione materiae, Akande and Shah (2011), demonstrate that “this type of immunity attaches to the official act rather than the status of the official, it may be relied on by all who have acted on behalf of the state with respect to their official acts”. Therefore, this type of immunity can be resorted to by officials who were previously deployed in governmental offices. Persons who have served and acted on behalf of the state, can also rely on this form of immunity.

CHAPTER 2

AN OVERVIEW ON THE ICC'S ORGANS AND PROCEDURES

2.1. The International Criminal Court (ICC)

The ICC is an international court of permanent nature, which has been established for the purpose of prosecuting, investigating as well as trying the cases of individuals who have been accused the crimes of serious natures, which are related to the international communities in general. Such criminal activities include crime against humanity, genocide, crime of aggression and war crimes (ICC, 2008). ICC is an international level legal body, which was established by a treaty that is multidimensional, termed as "Rome Statute" (ICC, 1998). The ICC is the organization which is not associated with the United States and is located in Netherlands, in Hague. The primary organs of the ICC are in total four in number, include (ICC, 1998):

- The Presidency
- The Chambers
- The Office of the Prosecutor
- The Registry

The Assembly of States Parties assists as The Court's oversight body, instead of acting as the Court's organ (Draper, 1958).

2.1.1. The Outset of the (ICC)

Among the most shocking & inhumane crime of history had been committed in the twentieth century (Kersten, 2017). However, it was unfortunate that a various number of such crimes remained and passed without any sort of punishments (Kaberia, 2014). In the year 1948, the convention was adopted regarding the punishment of Genocides (American Bar Association, 2016). At that time, the general assembly of United States felt and recognized the requirement for international courts dealing on permanent basis, with such kind of carnages and prepared in advance (Cannon, Pkalya, & Maragia, 2017). After the end of the Cold war, the concept associated to having an international system for criminal justice re-emerged (Aksar, 2004).

But, while dialogues on the ICC Law were proceeding at the United Nations, the entire world was seeing the command of atrocious crimes in the areas of Rwanda and Yugoslavia (Fischer, 1980). For this purpose as a reaction to such mayhems, the Security Council of the United Nations developed an ad hoc authority to deal with such terrible situations (Koh, 2015). This was undoubtedly one of the most important decisions for summoning the conference that was formed in the year 1998, the ICC in Rome (White, 2014).

It is of need to mention that the ICC is a permanent autonomous court, whereas the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as other similar courts established within the framework of the United Nations, deal with specific situations and only have a limited mandate and jurisdiction (Annan, 2008). The ICC, which tries individuals, is also different from the International Court of Justice, which is the principal judicial organ of the United Nations for the settlement of disputes between States (Aksar, 2004). The ad hoc tribunal for the former Yugoslavia and the International Court of Justice also have their seats in The Hague (James, 2007).

2.1.2. The Structure of the ICC

As mentioned above there are four organs of the ICC, which are: the Presidency, the Chambers, the Office of Prosecutor and the Registry. All these organs have their own distinctive and different mandate and role (American Bar Association, 2016).

- **Presidency**

The presidency is the highest level in the ICC, which comprises of three judges (Draper, 1958). There is one president and two Vice-Presidents, who get elected by the majority of judges in absolute numbers of 18, which is for maximum terms of two to three years (Brandeis Institute for International Judges, 2016). Only by the exception of the Prosecutor office, the responsibility of the Presidency is the administration of the courts (Kersten, 2017). It also embodies the court, denotes it to the outside world, and also facilitates and aids the work and its organization for the judges (Laulainen, 2018). Other related task of which the presidency is responsible for is making sure that the sentences verdicts by the court are enforced (Jo, Asparouhov, & Muthén, 2007).

- **Registry**

The purpose of Registry is to make certain that the course of the court conduct goes impartial, unbiased, fair, and on public trial (American Bar Association, 2016). The main function of the Registry organ is to provide support in the areas of operation and administration for the Office of the Prosecutors and the Chambers (Cannon, Pkalya, & Maragia, 2017). The port is not only for the other two organs but for the activities of Registrars as well in association to supporting the victims, their defense, matters of security and communication (Jo, Asparouhov, & Muthén, 2007).

Registry also makes it certain that the court is servicing properly, developing and running through an effective system for the purpose of facilitating the victims defense and witnesses, and ensuring the safeguarding of the Rules of the Evidence and the Procedure (Aksar, 2004). Being the official channel

of communication, for the ICC, the fundamental responsibility of Registry is related to outreaching activities of the public information (Draper, 1958).

- **Chambers**

Three judicial divisions are assigned. These comprise of the three Presidency judges and eighteen judges of the panel. The three judicial divisions assigned are (Aksar, 2004):

- The Pre-Trail Division (consists of seven judges).
- The Trial Division (consists of six judges).
- The Appeals Division (consists of five judges).

First of all, the Pre-Trial Chamber consists of one or a maximum of three judges, and their basic responsibility is to solve all the issues and problems which may rise before the beginning of the trial phase (American Bar Association, 2016). Apart from this responsibility, they have the duty of supervising the activities and investigations, which are conducted by the Office of the Prosecutor (Cannon, Pkalya, & Maragia, 2017). This is done for the purpose of guaranteeing the suspects rights during the phase of investigation, the right of witnesses and victims, and majorly making sure of the proceedings integrity (Fischer, 1980). After the entire observation, the Pre-Trial Chamber is the one who decides where or not should a case be proceeded and arrest warrants are to be given or not, and if the case to be proceeded to the Office of the Prosecutor and so on (Annan, 2008).

Second is, the Trial Division Chamber. After the Pre-Trial Chamber transfers the case to the Trial Chamber, the responsibility of the Trial Chamber starts, where the Trial Chamber consists of three judges who handle the case (Federal Judicial Center, 2015). The primary or the basic function of the Trial Chamber is to make sure of the aspect that the proceeding of the case is quick, fair to the involved parties, and being conducted along the complete rights of the suspect, as well as providing and making certain of the victim's protection as well as the case witnesses (Human Rights Watch, 2004).

The case is evaluated on the basis of all the facts and evidences along with the aspect and witness reports and then verdict is passed (Bbc News, 2015).

If the accused is guilty, then the sentence of the punishment is given. The imprisonment for a specific period of time in jail behind the bars, does not exceed from the sentence of 30 years which is also known as the life imprisonment (Aksar, 2004). Other forms of punishments are monetary penalties which in some cases makes an arrangements for the victims or the sufferers for compensation, rehabilitation and restitution (U.S Courts, 2015).

Lastly, there is the Appeals Division Chamber, which consists of in total four judges (Aksar, 2004). In this court, the appeal can be made against the verdicts of Pre-Trial and Trial Chambers (Brandeis Institute for International Judges, 2016). The Appeal Chamber holds the right to reverse the decisions of the Pre-Trial and Trial Chambers, and may as well amend or change the punishment sentence, and may even ask for the case to reopen and go for a new Trial Chamber (Tolbert, 2015).

- **The Office of the Prosecutor (OTP)**

Office of the Prosecutor is the fourth organ of the court, which is independent in nature (Annan, 2008). Within the ICC jurisdiction, the mandate of this organ is analyzing and receiving the accused crimes and situations (Aksar, 2004). The Office of Prosecutor analyze, as well as determines the basis for the purpose of initiating the investigation associated to genocide crime, war related crimes, humanity related crimes, and crimes associated with aggression. After the evaluation in brining these cases, suspects are brought in front if the court to pay the price of their crimes (ICC, 1998). The Office of the Prosecutors consists of three divisions, which are:

1. The Investigation Division
2. The Prosecution Division
3. The Jurisdiction

The Office of the Prosecutors works through all these divisions and after detailed analysis and investigations on the basis of the evidences, witness statements and final verdict is given (ICC, 2017).

2.2. The ICC's Guideline of Investigations and Arrests

2.2.1. The Demonstration of Cases before the Court

Office of the Prosecutor can be requested by any party of the state to conduct an investigation (American Bar Association, 2016). Even if a country is not a member of the Statute, it may as well accept the ICC's authority to jurisdict in association of committing the crime in the respective area or territory, or even if an atrocity is done by one of the nationals of that country, it is allowed for it then to make a request to the Prosecutor's office for carrying out the investigation (Cannon, Pkalya, & Maragia, 2017). A situation may also be referred to the ICC by the United Nations Security Council (Human Rights Watch, 2004).

However, the prosecutor can also decide on his own initiative to open an investigation. If a solid and a believable information is received by the Office of Prosecutor regarding a crime related to the nationals of the party of the State, which is part of the ICC's authority, or if the crime has been committed in the state lands or its territory, once a reasonable and realizable reason is found, then a case is directly proceeded for investigation (Federal Judicial Center, 2015). This kind of information can be provided or submitted by different governmental and non-governmental organizations, individuals, and it can be through any other reliable sources (James, 2007). However, permission from the Pre-Trial Chamber is required by the Office of Prosecution for starting up or reopening a case or a situation for investigation, in these circumstances (Nooruddin, 2010).

2.2.2. Case Referral for Investigation

The prosecutor establishes their own opinion regarding the jurisdiction of the Court in association with the alleged crime (American Bar Association, 2016). After going through a detailed evaluation from the present or given information, it is decided by the Prosecutor whether there exists a solid and a

reasonable foundation to move further with the present information towards investigation (Aksar, 2004). It is important to establish the type of crime, whether it is a war crime, a genocide crime, or a humanity crime, of which has been committed. Nonetheless, it is also essential to evaluate whether this crime has been committed after the date of July, 2002 (Kersten, 2017). There is also a need to evaluate the national level's authority that is conducting any investigation, and insure that the case is under trial for the respective crime. Finally, the parties of the states will be informed and other countries which may have the authority regarding investigation initiation (Bbc News, 2015).

Next, and after the finalization of the investigation, the Office of the Prosecutor sends representatives for the purpose of collecting the evidence in the area where the crime was committed (Grant & Hamilton, 2016). It is very important that the investigation being conducted is done in such a way that it does not put risk upon the witnesses and the victims of the case (Human Rights Watch, 2004). The cooperation of different international corporations and organizations, along with the assistance of the state, is requested by the Office of the Prosecutors (Brandeis Institute for International Judges, 2016). In the investigation, evidence is to be found regarding the suspect who can either prove their innocence or their crime (Tolbert, 2015).

Inevitably, it is not possible for the Court to provide justice to each and every individual being accused of the crime conduction to the international community (American Bar Association, 2016). The policy of the prosecutor at the Office of the Prosecutor is to concentrate upon the investigation as well as the prosecution on the individuals or organizations with regards to the gathered facts and evidences, and with respect to the crimes (Annan, 2008).

2.2.3. Execution of Arrest Warrant

The power of issuing a warrant resides only after the investigation has been initiated, and only by the Chamber of Pre-Trial, which can be issued by the

request of the prosecutor, or can be summoned for the reason of believing that the crime has been committed by the person in the jurisdiction of the ICC (White, 2014). When the request is made by the prosecutor for the issuance of the arrest warrant or summoning to appear, following is the required information that must be provided to the judges before they can issue a warrant of arrests or a defendant to appear (Aksar, 2004):

- The person's name,
- The crime's description, as in what is the person accused for,
- A brief summary of the proof (the actions purported to be criminalities);
- Evidence summary with respect to the accused individual,
- The core reason which lays the foundation as to why it is important that the accused gets arrested. (James, 2007).

For the issue of warrant of arrest to be issued, it deems as necessary to make certain that for the trial, the accused person will actually appear, and that the Court's proceedings or the investigation will not be obstructed or jeopardized by that individual, and majorly to stop the individual from committing the crimes again and again (Nooruddin, 2010).

After the issuance of warrant of arrest, the Registrar communicates appeals for collaboration by looking for the purpose of arrest and surrender of the suspicious accused individual to the respective state or to different States. This when the Registrar is contingent upon the choice of the judges for each situation or case (Bbc News, 2015). When the individual is arrested and the Court is updated regarding it, the Court guarantees that the individual gets a duplicate copy of the arrest warrant in a dialect (Kersten, 2017).

The arresting and surrender of the accused suspect is done with the collaboration of the state with the Court, as the Court does not possess its own force or police (Draper, 1958). In accordance with Rome Statute, within the jurisdiction of the Court, the state party needs to show the fullest of corporation with the Court's process of investigation and the prosecution of the crime (Koh, 2015).

It is the responsibility of the state to force and make sure of the arrests whose warrants have been issued (Cannon, Pkalya, & Maragia, 2017). The system of the state is reliant on two pillars for the establishment of the ICC. Among others one of the judicial pillars is the Court itself (Brandeis Institute for International Judges, 2016). Comprising of the Court orders enforcement, all operational pillars are part of the State (ICC, 1998).

It is a legal obligation of the State parties towards the Rome Statue to be in full cooperation with the ICC. If the State party's compliance fails with respect to the request of cooperation, the Court may find a way to directly approach the State Party's assembly to take further actions (ICC, 2008). The duty of cooperation may extend to all the states of the UN council, for the Court's jurisdiction is prompted by the Security Council, irrespective of them being statute party or not (James, 2007).

In the jurisdiction of the Court, the crimes committed are recognized as the severest known to humanity. As mentioned in the Statute's article 29, they may not be subjected to any restriction or limitation (Kersten, 2017). The warrants issued by the Court are for the lifetime and even if someone escapes from the arrest for the current time, they will eventually have to face the Court's jurisdiction (Kaberia, 2014).

2.3. ICC's Conditions for a Trial

It has been highlighted before in this chapter as to how the ICC takes actions and what conditions would require to do so. However, with the changing times, a review conference was conducted which evaluated the conditions under which the ICC's position will take actions regarding the processes of investigation and the prosecution of crimes of aggression (Jo, Asparouhov, & Muthén, 2007).

This is a very complex legal establishment which comprises of the articles in Rome Statute, reflecting the differences and the compromise in various aspects of the establishment for the three most severe crimes, which are crimes against humanity, genocide, and war crimes (Kaberia, 2014). In

simple words, now the ICC is allowed to be active and to take action in the future against the crimes of aggression, after the Statute was ratified by 2/3rd majority of State parties (Draper, 1958).

After the ratification concering the crimes of aggression, the ICC was given the capacity to proceed towards investigations and prosecutions related to these crimes, under the condition that the ICC has referred to the situation by the Security Council itself, and that there are no other relating conditions which have been applied. In another scenario, if a situation or a case has been reffered for prosecution by a party state, the prosecution proceeds and initiates the investigation process, where the involved ones in such cases are the Rome Statute parties, and the ratification for the amendment has been made by at least one of them (Tolbert, 2015).

There have been some changes, which have incorporated in the year 2017 at the Review conference, and in association with the ICC and its conditions for actions (Jo, Asparouhov, & Muthén, 2007). The ICC can only implement its authority, when the state parties have separately decided one-time for the activation of the jurisdiction (Aksar, 2004).

2.3.1. ICC's Action Following a Referral by the Security Council

After the Court's jurisdiction has been activated, with respect to the crime of aggression, no further conditions are applicable, and the Court can then exercise its jurisdiction in collaboration with the Security Council. To simplify, it can be said that when the Security Council suggests to the ICC to look into a situation, the process will be same for crimes associated with war, aggression related crimes, genocide, and crimes against humanity (Grand & Hamilton, 2016). Article 15 of the Statute states that there is no need for any further requirements of the involvement of States for the consent of the investigation process. The ICC can take action by having the initiative of the prosecutor or reference of the State (Laulainen, 2018).

Once the activation of the jurisdiction is done, the Court, and with respect to the crime of aggression committed, will then be able to go into the

investigation process on the initiative of the prosecutor's office, or on the basis of the reference delivered by the State party (White, 2014). For such scenarios, various conditions are applicable limiting the jurisdiction of the Court, in comparison to other major crimes (Tolbert, 2015).

These added circumstances are intended to guarantee that where the Security Council does not elude the circumstance, the Court just continues based on the assent of the States concerned (Aksar, 2004). This is a genuine constraint and one that was vital for the Review Conference to discover a concurrence on this vexing issue (Koh, 2015).

In solid terms, this implies that the Court does not have ward over violations of hostility or crime of aggression including States not being Rome Statute's party. It does not make a difference whether such a non-State Party was the victim in the case or the aggressor, or contained the casualty of hostility (ICC, 1998). Responsibility and obstruction impacts are along these lines restricted to the hover of States Parties just – which can likewise be viewed as an impetus for non-States Parties to join the Statute in its 2010 execution (Grant & Hamilton, 2016).

Moreover, to guarantee a routine that is completely based on the consent, Rome Statute parties have the likelihood of quitting the Court's authority over the wrongdoing of animosity. Regardless of the way of sanctioning the 1998 variant of the Rome Statute, they effectively acknowledged the Court's authority over the yet-to-be-characterized aggression related crimes (Roach, 2009). State parties can do as such by devising an announcement or declaration with the Registrar, and also they are urged to consider pulling back such an affirmation in the duration of three years (Nooruddin, 2010).

An added factor to endure at the top of the priority list is something like when one of the State parties include the victim in the case of the accused aggressor, more likely to not confirm the changes on the wrongdoing of hostility (Draper, 1958). This requirement should fill in as a motivator for State parties to confirm in light of the fact that their approval allows the probability that the ICC would have authority over criminal conducts emerging from the unlawful utilization of power against such States, and

hence have the capacity to help dissuade such acts (American Bar Association, 2016).

CHAPTER 3

DEFINITION OF EFFECTIVENESS

Following the establishment of the Court, the ICC has faced numerous challenges while dealing with the prosecution of individuals responsible for committing was crimes. This issue has been widely debated and criticized by many, considering a number of war crime cases around Africa. This chapter will attempt to pursue the criticism that have been raised up against the court by searching through the gaps and breaches where the court has failed its functionalism and credibility while deterring the individuals committing brutalities and atrocities.

3.1. Implications on the Behavior of the Court

There are arguments on the track record of effectiveness of the court on to what extent it has been successful in bringing justice to individuals involved in criminal acts. Khan and Marwat (2016), argue that “The ICC under the guidance of the ad hoc tribunals, which were established previously, developed the concept of accountability”. The Security Council, and as a mandate, has granted the ICC the authority to practice jurisdiction over human rights. Having said that, and despite the fact that the ICC was offered resources to soothe its operations, it has yet failed to accomplish a professional level of prosecution (Khan & Marwat, 2016).

One of the criticisms that shadowed the ICC in its inability to carry out prosecutions was the case of Omar Al- Bashir, the president of Sudan. The

court has lined up a number of charges against Al-Bashir for the accusation of committing heinous crimes in Darfur. When the charges were announced, Al-Bashir have managed to resort to a number of states, those of which were members of the ICC, where he received support and protection from prosecution and judgement. Here, is where the ICC was insufficient enough to stress on these states to arrest him, and thus damage its character (Khan & Marwat, 2016).

Hoon (2017), demonstrates that the legitimacy of the ICC is undermined when the majority of the people raise too much expectations in relying on the court to achieve its legal duty, while it actually leads to disappointment. For that, Hoon (2017) offers a number of reasons including:

> i) an oversimplification and unhelpful generalization of what justice means for different people and societies in different conflicts and circumstances and the related inability to 'deliver' justice in a one-size-fits-all and top-down manner, and ii) a misconception of what a criminal trial is able to do and not do. Moreover, they are iii) exponents of a misunderstanding that international criminal justice is and could in some way be detached from political decision making, choice and prioritization.

The fact that the ICC can only prosecute crimes that have taken place after the Rome Statute came into action on 1st of July, 2002; its jurisdiction is active only after this date. Rodman (2016), argues that in the case of Democratic Republic of Congo (DRC), its peace agreement was announced official in December 2002, this basically cleared the way for the prevarication of the crimes committed in its civil war. For that, the ICC was far from reaching the cases of human rights abuses within this period.

3.2. ICC's Dependence on States

One way or another, the success of the ICC is measured by the degree of participation and contribution it gains from States. Without the cooperation of states in terms of collecting evidence for example, as well as arresting criminals, and bringing them to the court for investigation, the ICC will confront major difficulties in handling its responsibilities and functioning its proceedings.

OOsterveld, Perry, and McManus (2001), argue that "The duty to cooperate with the ICC imposed on States Parties' by the Rome Statute is twofold: a general commitment to cooperate, and an obligation to amend their domestic laws to permit cooperation with the Court". They furthermore argue that Articles 86 and 88 create a foundation of the obligations that state parties are expected to follow along side to the ICC.

Schaack (2011), stresses on the ICC's absence of a complete enforcement instrument, rather its dependence on States to assist in carrying out a number of it its foundational objectives. Shaack (2011) adds "As former ICC President Philippe Kirsch has noted —Like any judicial system, the ICC system is based on two pillars. The Court is one pillar, the judicial pillar. The operational pillar belongs to States, international organizations, and civil society". As for part nine of the Statute, it is mainly assigned to state cooperation concerns. As found in Article 88, states parties are obliged to amend their legal agreements in relation to the ratification of the Rome Statute (Schaack, 2011).

Danner (2005), tries to address the issues considering the judicial process and procedure of the court. He argues that state control and authority over the prosecution of the ICC decreases the autonomy given to the prosecutor by the Rome Statute. The fact that the court is largely dependent on the state's engagement in terms of investigation, arrests, and conviction of individuals, can burden the fluidity of the court's decisions and judgments. The ICC is far different from domestic criminal systems where it is not correlated with a military force that could have the power of bringing felons directly for investigation. Therefore, the court's mission of prosecution is often

facing defiance from its associated states whose compliance is necessary to obtain conviction and justice (Danner, 2005).

Despite the fact that the court's cooperation with states is somehow essential concerning its judicial phases of proceedings, Durdevic (2016), argues that "The ICC's cooperation with states is absolutely crucial, for its functioning at all stages of the proceedings: before and during the investigation into a situation and into a case". Nevertheless, the ICC's prosecutors hold a considerable amount of capabilities to initiate trials. As for when the investigation is weak, the Court's proceeding becomes absolutely reliant on states cooperation (Durdevic, 2016).

3.3. Selective Prosecution

In the light of the ICC's jurisdiction, and the Rome Statute's preamble, when a case is selected for an investigation and a prosecution, it is to be summoned for the ultimate goal of combating impunity and reassuring the end of violence, regardless of the court's complementary system of justice. Basically, the Office at the court selects a case for investigation according to a number of criteria that depend on facts and circumstances to prepare a case for prosecution.

According to the Policy Paper on Case Selection and Prioritization published by the Office of Prosecutor of the International Criminal Court (2016), one of the criterion used for the aim of conducting a prosecution process is the Gravity of Crimes, where it stands "as a case selection criterion refers to the Office's strategic objective to focus its investigations and prosecutions, in principle, on the most serious crimes within a given situation that are of concern to the international community as a whole". The paper additionally express that "The scale of the crimes may be assessed in light of, *inter alia*, the number of direct and indirect victims, the extent of the damage caused by the crimes, in particular the bodily or psychological harm caused to the victims and their families, and their geographical or temporal spread (high

intensity of the crimes over a brief period or low intensity of crimes over an extended period)" (Office of Prosecutor, 2016).

The ICC here comes across a remarkable matter where it is enticing to look at the mechanisms of prosecution that question and debate the primacy of its work. There is a broad agreement that the prosecution of the ICC has been, at some point, and considering a number of cases, highly selective, where the majority of perpetrators went unprosecuted.

In the light of this, one of the most recognizable problems of the ICC's jurisdiction is the issue of selective prosecution. This problems poses a threat to the extent of effectiveness of the ICC and its legitimacy. Christiano (2015) argues that "The main problem of selective prosecution is that it seems to violate a basic principle of natural justice namely that like cases ought to be treated alike". In other words, the Court apparently fails to acknowledge the impartiality of its operations within national judicial systems of criminal justice (Christiano, 2015).

Now, Deguzman (2012), closely examines the problem of selective prosecution. Deguzman demonstrates that to open an investigation, can happen in three ways. Either through the Security Council's referral, through a member state of the ICC, or through the prosecutor once he or she receives information from any source. However, regardless of which ever mechanism was used to bring about an investigation, the prosecutor own the active role in determining the eligibility to proceed an investigation. Having said that, if any situation, the prosecutor of the law refuses to investigate a case based on his or her assessment on the information gathered, the Pre-Tiral Chamber then have the right to abolish the decision to investigate (Deguzman, 2012).

Arieff, Margesson, and Browne (2008), draw an example on the questionable prosecution of the court by stating that "The Prosecutor's selection of cases also has proven controversial. ICC prosecutions in Sudan had, prior to the request for a warrant against President Bashir, drawn criticism for targeting mid-level officials rather than those with alleged higher-order responsibility for abuses in Darfur". The ICC's prosecutions have been greatly criticized in the

cases of Uganda, DRC, and CAR, where the Court has devoted its concerns on the crimes committed by rebels rather than also focusing on the assaults committed by military troops (Arieff, Margesson, & Browne, 2008).

3.4. Unwillingness and Inability

The expression of unwillingness is defined in Article 17 (2) of the statute. According to Trahan (2012) unwillingness interprets whether the following exist:

> (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5; (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

Béres (2016), mentions a paper drafted on complementarity by the Office of the Prosecutor in 2003, which states that the “political interference into national procedures, intentional obstruction or delaying of national procedures, insufficient institutional structures of the state of jurisdiction, violations of rules of national procedures and the combination of the above mentioned features unambiguously refer to the unwillingness of the state”. Hence, at a case of unwillingness, the State holds a position of making a deliberate decision that prevents the submission of perpetrators to the court.

As been instituted under the principle of complementarity, the court only exercises its jurisdictional mechanisms when a State is found unwilling or unable to execute an investigation. Inability, as unwillingness, has a very much of a detailed definition. McNeal (2007), mentions the Article 17 (3) of the Rome Statute where the principle is defined as “to determine inability in a

particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings". So basically, the principle of complementarity is constructed to make sure that the ICC shall not operate jurisdiction when a State is able to investigate or prosecute a crime case.

When states fail to prosecute crimes within its national jurisdictional systems, they therefor render these cases to become admissible for the court. But, in what terms, conditions, or factors is the state considered unable? In quotation of Béres (2016) to the report of UNSC:

> "the state is unable to carry out the criminal procedures, when its national judicial system does not exist, or is interweaved by social discontent, war or corruption. Thus, the inability of the state comes from the lack of necessary personnel, judges, investigators, prosecutors; the lack of judicial infrastructure; the lack of substantive or procedural penal legislation rendering system "unavailable"; the lack of rendering system "unavailable"; obstruction by uncontrolled elements rendering system "unavailable"; amnesties, immunities rendering system "unavailable"; or when its system of law and administration is substantially collapsed".

Konforta and Vaija (2013), seek to provide an example of a state's inability and unwillingness to announce its decision to prosecute by mentioning the Pre-Chamber's decision on Libya's case. They argue that the decision allowed for the opening of a number of issues and restrained the practice of complementary of the court. While the court was to hold a twofold test of case recognition and examination, it rather argued that Libya enjoys the ability of carrying out a trial's proceedings, even though the court was far aware that Libya was not demonstrated an investigation for the same case (Konforta & Vaija, 2013).

Furthermore, the Australian web journal The Conversation (2015), reports on how Libya is the latest failure of the ICC. The report demonstrates that after

the fall of Gaddafi in 2011, the Libyan government failed to hold its nation together. When the ICC issued a warrant arrest for Gaddafi, Libya dishonored it. However, the principle of complementarity allowed the Gaddafi case to not go before the court since Libya claimed to be willing to prosecute it in a national domestic court, even though he and the other defendant al-Senussi wished to be tried by the ICC arguing to avoid the death penalty (since the Court is not authorized to issue it). When the ICC finally decided to initiate trial for Gaddafi in The Hague, he was never transmitted to stand for trial. This illustrates the court's failure and weakness, for first, it faced a lot of tension from Libya and could not inforce its jurisdiction at a time of necessity. Second, it obviously lacked an autonomous mechanism of law enforcement and rather largely relied on its cooperation with Libya to insure defendants transfer for investigation (The Conversation, 2015).

3.5. Challenges Facing the ICC's Prosecution of War Crimes

After the ICC has laid its foundations for the institution of its policies that ensure its essential tools for the investigation of atrocities of international concern and matter, its Office of Prosecution (OTP), has faced a number of challenges of misconception that raised a number of severe criticism regarding its efficiency and communications. Despite the fact the OTP has accomplished progress and success in several areas during its time of duty, yet some concerns regarding its investigations, the implementation of its jurisdictional policies, and the pursuit of justice for the victimization of the innocents.

The International Federation for Human Rights (FIDH) issued a report demonstrating some of the challenges facing the ICC. According to FIDH (2018), the lack of cooperation among states, as well as the weak security of the ICC in a number of situations, has limited the OTP's capacity to run its investigations, as has been seen in cases of Sudan, Libya, and Burundi. Also, with the OTP's budget being restrained, the OTP often fails to balance its resources, which negatively affects the strength of its investigations.

One of the challenges facing the ICC's fluidity of prosecutions is the poor support that it receives from other judicial institutions. The Rome Statute clearly declares and solidifies that State participation to the efforts made by the court is very essential in carrying out its jurisdiction.

Therefore, national authorities and institutions play a huge role when examining a situation of a case once it is referred to the court. However, there has been many situations where the cooperation of States did not stand along the court's proceedings. Bensouda (2013), argues that the ICC alone cannot handle the fight against impunity, therefore it needs all the support it can get from the national levels, especially when it comes to carrying out its investigations. Transitional justice is also considered to be of great significance when it comes to the prosecution of mass crimes.

On another note, the ICC is an international court, however, it does not obtain the right to exercise jurisdiction wherever it is committed. Also, the court is based on a treaty, for that it does not enjoy a universal jurisdiction. This has created a number of weaknesses, for the fact that some cases cannot be referred to the court unless it is done by the United Nations Security Council.

The ICC's large dependence on the Security Council can broadly influence the flexibility of jurisdiction. Kowalski (2011), elaborates more on the control of the Security Council on the ICC's flexibility of jurisdiction:

> "This power granted to the Security Council has, since the preparatory work behind the ICC Statute, met with several objections, ranging from the loss of independence and credibility of the Court, to the argument that the Security Council has no competence in matters of international criminal justice under the terms of the United Nations Charter and to the accusation that this creates a situation of selectivity in the establishment of jurisdiction".

The court carries a huge responsibility when it comes to epitomizing the principle of justice, but since it is a court of last resort, it can only focus its

efforts on a restricted number of cases, those which bring about the utmost of gravity. Hence, one of the challenges facing the ICC, one which expressed a number of criticism against the court, is political bias allegation. This generates from the admissibility of the court's jurisdiction when it comes to crime gravity in case referral.

Deguzman (2013), states that "Cases of war crimes, crimes against humanity, and genocide will almost always present some features of gravity, whether in terms of the number of victims, the nature of the crimes, or the broader impact on the community". With that being said, it is actually hard to witness cases of serious international crimes being unpunished. Judges sometimes refuse to admit some cases due to their gravity threshold, and as judge Pikis argued, such cases then become of a small scale, which in fact they are not. When such an act does happen, a crime's gravity becomes absolutely uncertain (Deguzman, 2013).

The Court faces difficulties of apprehension. War criminals usually do not hand themselves over when they are suspects of an investigation. Here, and if the national cooperation expected from States fail to support, the ICC then faces this problem, for the ICC has no military force or police officers to arrest and hand over the suspects. Burke-White (2003), mentions "many of the likely target states for investigations have very limited national police forces to arrest suspects themselves or may be undergoing political transition and unwilling to apprehend suspects because of the potential for political destabilization".

To sum up, from the mentioned above, an understanding could be concluded that the challenges that face the ICC reflects weaknesses of it too. There are a lot of limitations to the legitimacy, admissibility, jurisdiction, apprehension, and capacity of the court. It faces challenges not only within its own structure, but also from the surrounding environment of States. The fact that it owns a limited mechanism in matters of prosecution, makes the fight for justice by the court extremely difficult and sometimes, disappointing.

CHAPTER 4

CASE ANALYSIS – KENYA

4.1. Defining War Crimes and Crimes of Aggression

The term War Crime was defined by the Geneva Convention in 1949 and it comprises of Grave breaches that include killing someone deliberately, or instigating suffering to the extreme level, as well as hurting or injuring someone both mentally and physically (Dormann, 2003). The term War Crime with respect to the international law is the highest level of violation of the set of customs and laws as described by international treaties and international law (Kenyans for Peace with Truth and Justice, 2016). War Crimes can be comprehended better as a serious level of violations of the law by international level humanitarians, upon the prisoners and civilians in a war or combat of either a domestic or an international level (Times News, 2008).

The types of war crimes can fundamentally be found in the 1949 Geneva Convention which was passed on the 12th of August, and from the years 1899 and 1907 of the Hague Convention. In the Rome Statute, the most recent codification can be found in the year 1998 in Article 8 of the ICC (Musau, 2017). War crimes include inhumane torturing methods, murder or brutal killing, causing suffering to the others willfully, injuring others bodies as well as their health, attacking the population of the civilians, and the destruction of civilian goods intentionally which include the goods and properties that are vital for their survival (Dormann, 2003). Since war crimes are crimes conducted in the war duration, it is then described as unjustified

actions full of brutality, violence, and abolition, governed by the conflicts of military. The crimes conducted in war time are generally committed by the military soldiers or personals, and sometimes are also committed by the civilians and politicians (Global Legal Research Center, 2016).

On the other hand, there has been a number of attempts to define the crimes of aggression, until it was broadly recognized among the participant members of the Rome Conference in 1998, when it was added as a fundamental extension to the ICC's jurisdiction of ratione materiae (Boas, 2013). In 2010, member states of the Rome Statute met in Kampala, Uganda, to acknowledge the new amendments to the Court's Statute. These amendments basically included the insertion of the definition of crimes of aggression, as well as the conditions for the ICC to practice jurisdiction and prosecute these crimes, under Article 5 of the Statute (Smith, 2010).

The crimes of aggression were better identified and reached out to after the Kampala amendments in 2010, where Article 8 *bis* of the statute provided the definition of crimes of aggression to be "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations" (Coalition for the International Criminal Court, 2017).

However, in 2015, Kenya declared its rejection of the ICC's jurisdiction in referral to crimes of aggression. Kenya declared that the contextual definition of the crimes of aggression is cryptic and puzzling, therefore it creates the risk of exploitation by state members. Kenya strongly refused the provisions of Article 8 *bis*, where it is believed that its application will strict states cooperation towards the goal of preserving peace. For this, Kenya established a formal declaration of rejection to the ICC's jurisdiction over crimes of aggression for it considers itself as "not bound" by the arrangements of Article 8 *bis* (The Registrar ICC, 2015).

4.2. Historical Background of the 2007/8 Post-Election Violence

Since the unprecedented violence of the 2007/8 post-elections, Kenya's foundations were rocked and everything became worse than ever (Zyberi, 2013). An enormous number of articles, analysis papers, and researches have been conducted in the aim of explaining the causes of this mayhem, and comprehending the entire scenario to avert from such situations in the future of Kenya (Pillai, 2018). The crisis of Kenya, in the year 2007 to 2008 was one of a humanitarian, political and economic nature, which took place after Mwai Kibaki, the former President of Kenya and the leader of the Party of National Unity (PNU), has been announced to be the winner of the 2007 elections (Block, 2014). The supporters of the other party, the Orange Democratic Movement (ODM) by Raila Odinga, accused the winning party of manipulation in the results of the elections. International observers confirmed these allegations on a wide scale, of both parties being perpetrators for the elections (Branch, 2017). Soon after the announcement of the results of the elections in Kenya in the year 2007-2008, a wave of political disruptions took place all across Kenyan state (Some, 2017). This state of unrest led to making the situation even more tense and violent, which resulted in multiple damages of valuable property, massive loss of the livestock, as well as the deaths of 1200 individuals (Pillai, 2018).

To a limited extent, and because of the ethnic and geographic variety of Kenyan legislative issues, no solitary story can clarify the response of the resistance supporters to the declaration of Kibaki's swearing-in, which was done on December 30th, 2007 at night (Murunga, 2011). Raila Odinga urged his supporters to participate in mass dissents which he announced on TV and radio stations, most discernibly in Mombasa, Eldoret, Kericho, Kisumu, Nakuru and parts of Nairobi. Police shot several demonstrators incorporating violence before TV news cameras, causing more savagery (Opondo, 2013).

During the post-election period in Kenya, different types of violence occurred. However, every picture of violence was planned, spontaneous, state directed or premeditated. All of them are associated with human rights abuses

(Ong'ayo, 2008). In any case, the undertaking of democratization in Kenya gives a setting to understanding the violence events (Dormann, 2003). Accessible investigations have inspected viciousness as a cataclysmic result of exemption inside the decision class and the state; as due to the 'standardization of savagery' in the public arena and furthermore as an outcome of frail establishments that have been more than once manhandled. These are in one-way or another, identified with maltreatment of discretionary procedures and methodology which, for some, was the last trigger for the brutal blast (Global Legal Research, 2016).

A number of different studies have been able to take the trail with respect to the impact, the rise, as well as the transformation of the post-election violence in Kenya (Schwarz, 2018). Basically, it can be clearly seen that the dispossession of lands due to the 1992 and 1997 ethnic clashes, as well as the general propagation of activities that are illegal in both urban and rural areas, have been major contributing factors in providing a voice for the hostility that associated the 2007/8 elections (Ong'ayo, 2008). Intra-state conflicts have always been a part of Kenya's political environment. Leonard and Owuor (2009), argue that Kenya's attempt of transition from an authoritarian-led regime to a regime that believes in multi-party politics in the 1991 elections, has been seen as a huge turning point for the political landmark of the country. With President Moi winning the 1991 elections, so as the 1992 and 1997 elections, where a promising change was predicted for the lives of many Kenyans, violence associated the Kenyan society around this entire period of time. Also later in 2002, when the opposition led by Kibaki won the elections, his government promised to offer the Kenyan citizens solutions to many of the problems centered around their state, land disputes, social inequalities, corruption, deprivation, and violence. The betrayal of the promise of Kibaki's government, lit the fire under the stirring pot that later was known as the 2007-2008 post-election violence (Leonard & Owuor, 2009).

According to Payne (2013), what can also be associated politically with the history basis of the violence are both contemporary and historical state capacity issues. There are a number of underlying triggering mechanisms for

the 2007-2008 post-election conflict. Even though the violence erupted right after the announcement of the elections results, yet, the violent actions came in as a consequence of a deeply rooted political stigma. The most obvious factor making all the issues even more difficult to be dealt with is the consistent drama associated with democratization that comprise the social justice area (UN. Org, 2015). Kenya, and since the 1990s, has been one of the African countries that sought for state democratization, for it has been conceived by Kenyans to be a great support behind achieving a legitimized state that could insure that peace and agreement is dominant among its different ethnic groups (Dercon & Gutiérrez-Romero, 2010). Regardless of these attempts, the 2007-2008 elections have raised concerns that the competitiveness would actually undermine and diminish the equality of the multiple divisions of social groups, making democracy a goal that is far from reach (Dercon & Gutiérrez-Romero, 2010). Mohammed (2015), argues that "In Kenya, the tendency by politicians to sensationalize and politicize existing differences along ethnic lines, hence pitting communities against each other is intricately related to the democratization and the electoral cycle". The 2007 elections obviously failed miserably in focusing and addressing welfare and social policy related issues. Unfortunately, these kinds of problems are dealt with and treated as measures used for belt-tightening purposes (Payne, 2013).

This further breaks points of potential outcomes of decision within a race by encouraging estrangement of the poor from administration (Ong'ayo, 2008). Political context played a huge role in formulating much of the roots of violence during the post-election period. Murunga (2011), argues that the dominance of any form of violence in a society is by far connected to the nature and personality of that society's elites, as well as the fragile institutions responsible for the enforcement of law. Hansen (2009) demonstrates that political violence has always been a part of the Kenyan society, where it comes more observed during election periods. He furthermore adds that "Assassinations of political leaders, prominent businessmen, civil society leaders, and other figures that possess significant influence on the allocation of resources or political developments in the

country are far from exceptional” (Hansen, 2009). At the end of the day, races are not by any stretch of imagination destined of settling on decisions in the strict feeling of introducing famous power (Some, 2017). Where a similarity to rivalry is kept, decision is surrounded by the world class battle over crude power (Allison & Reid, 2015).

4.3. Jurisdiction of the ICC in Kenya

William Ruto, as well as Uhuru Kenyatta, were the candidates running for the position of presidency. As indicated by the ICC, the core strategy inducted by them included insulating themselves and deflecting the Court from the power it has when the elections were over with (Schwarz, 2018). The presidential elections where followed by the Kenyan crisis from 2007 to 2008. After the Kenyan election’s commission officially announced the re-election of the current or serving President Mwai Kibaki, the opposition party supporters raised voice and accused the government body of conducting the elections as a fraudulent, and did not accept the results (Murunga, 2011). This opposition elections result soon took a drastic turn and various protests of the opposition supporters led to various injuries, deaths and displacements (Some, 2017).

After fizzled endeavors to lead a criminal examination of the key culprits in Kenya, the issue was eluded to the ICC in The Hague (Joseph, 2014). In 2010, the Prosecutor of the ICC Luis Moreno Ocampo, reported the summoning of six individuals, these were: the Deputy Prime Minister Uhuru Kenyatta, Industrialization Minister Henry Kosgey, Education Minister William Ruto, Cabinet Secretary Francis Muthaura, radio official Joshua Arap Sang and previous police chief Mohammed Hussein Ali, all blamed for the violations against Kenyan civilians. The six suspects, referred to conversationally as the "Ocampo six", those who were arraigned by the ICC's Pre-Trial Chamber II on 8 March 2011 and gathered to show up under the steady gaze of the Court (Amnesty, 2013).

As a part of the negotiations of political nature which led to the crisis of the 2007/8 post-election violence coming to an end, governmental entities such

as ODM and PNU decided towards establishing certain commissions which will investigate and inquire about the matter. This also comprised of the CIPEV (Commission of Inquiry into Post-Election Violence) which was answerable to the panel of AU committee (Dormann, 2003). After going through the process of investigation based on the documentation presented at that time, the CIPEV came to the conclusion that even though the violence of post-election was impulsive in certain areas and geographic locations, in other places and areas it was preplanned and organized (Blackburn, 2017). In other words, the post-election violence started as impulsive or spontaneous opposition, which soon was transformed into a properly planned and organized series of coordinated attacks (Dzenisevich, 2016). Furthermore, the CIPEV declared that the institutions and agencies of State security could not prepare themselves to deal with such situations in the country. Therefore they failed, and were found guilty of violent related conducts as well as human rights violation at gross level in Kenya (Human Rights Watch, 2010).

It was recommended by the commission that a tribunal should specially be established having the mandate of crime prosecution for the purpose of overcoming the long-lasting impunity that is being seen as the core of the violence occurrence (Block, 2014). The report that was provided by the CIPEV, included a clause of safety and specified that while setting a default Tribunal, the considerations will also be taken from the AU panel of Eminent African Personalities, for the purpose of names forwarding of the suspected or accused individuals towards the special prosecutors of ICC (Mueller, 2014).

After following various attempts to establish a Tribunal specifically for this purpose by the parliament of Kenya, the names of the individuals or groups, who came out to be the main responsible crime committers, were transferred to the ICC in the year of 2009, for their act of spreading and conducting violent activities during the 2007/8 post-election period (Joseph, 2014). After a deep evaluation of the CIPEV's provided information, the ICC's Office of Prosecutor, and for the first time in the history, used its power and authority towards initiating an investigation on its own, without taking any referrals from

the Rome Statute of the United Nations Security Council (Zyberi, 2013). On the 31st of March, 2010, the ICC's prosecutor ordered a proceeding process with respect to the investigation authorized through a majority of decision making at the Pre-Trial Chamber. The ICC's judges panel confirmed the accusations and thus the arrest warrants were issued and the committers were summoned to the Court for appearance (Jalloh, 2012).

Lugano (2016), argues that while Kenya was chasing a legal breach against the ICC to terminate both cases against Kenyatta and Ruto, both defendants adopted the type of politics that aimed to highjack justice. By this, they would guarantee to haze the linkage between a judicial and a political process. Furthermore, Lugano (2016) adds that during the Pre-Trial and trial level of jurisdiction, the Court, unwillingly became an element of the national political struggle in Kenya. When this was spreading, an alliance called the Jubilee Alliance was formed in the Kenyan government, in aims of delegitimizing the ICC and push for noncompliance with its agenda.

In the year 2012, the ICC's Pre-trial Chamber confirmed the charges regarding the four suspects out of the six, with respect to their involvement in the post-election violence, which fell under the category of crimes against humanity. Among the suspects, the names Ruto and Kenyatta were included too (Global Legal Research Center, 2016). The conformation made by the Court triggered massive pressure from the public side towards the suspects. This pressure was so intense that Kenyatta and Francis Muthaura had to put resign and quit their positions on the ministerial levels (Schwarz, 2018 It was deemed that such actions will bring ease to the unsettling volatile conditions, and to the tension of the political ambiance in Kenya, to assist in putting a stop for further violence escalation (Ong'ayo, 2008). However, this did not do much, and Kenyatta was able to retain his position in the government, where also both Ruto and Kenyatta assured and confirmed that they will be running in presidential elections of 2013 (Blackburn, 2017).

The broad decision of the ICC regarding the prosecution of both defendants stirred the situation in Kenya and it got way worse than getting better. It was alleged by the AU that the conduct of the ICC was unfair and racist towards

the African leaders (Akande, 2012). The cooperation of Kenya with the ICC has reached a stalemate and has impacted the persecutor of the Court in a negative manner, thus hindered its ability to run this case justly and effectively (Dzenisevich, 2016). It can be said that due to the lack of necessary measurements, the ICC had to testify in contradiction to the accused and charges were dropped against Kenyatta and Ruto.

4.4. The Implications of the AU on the ICC's Decision in Kenya

In 2013, Kenya voted for its withdrawal from the ICC by Kenyan parliament, as this was the second time this move was made by Kenya (Dormann, 2003). The opposition of Kenya towards the Court has led to the biggest contribution of directing the stressed relationship among the ICC and the AU. Kenya's aggression for the ICC was elevated along the elections of Uhuru Kenyatta, the President, and William Ruto, the Deputy President, who were both prosecuted even before the ICC had finished their investigation and suspected their involvement in the 2007/8 post-election violence in Kenya (Jalloh, 2012).

Those winning the elections actually arouse their influence, power and position. The AU has been determinedly equipped by Kenya for attacking the ICC, and has even provoked it by the attempt of removing Kenya from the ICC (Dersso, 2013). It was suggested by some that the withdrawal of Kenya from the ICC is a conclusion of a predetermined and inevitable decision; however, the question of its implementation for the removal is still hanging in between (Branch, 2017). There are believers that the withdrawal threat is being utilized by Kenya for negotiation purposes to strengthen their agenda in the ICC (Blackburn, 2017). It is also believed that it might not be in the best of interest for Kenya to make the withdrawal move, as they still have certain pending matters with respect to the Court, precisely the recommendation of Kenya by the ICC to the Assembly of States Parties (ASP) for the reason of cooperation failure (Block, 2014).

The ICC's termination of the case against Kenyatta and Ruto in the years 2015 and 2016, manifested and made it clear to the world that this is the end of the case, and no further action will be taken by the ICC to give justice to

the cases of brutal violence committed against victims during the events of the post-election violence (Musau, 2017). The AU created a major hindrance by playing a negative role in the justice quest of the Kenyan people. It was seen that the complexity in the case was high due to the involvement of political elites in the criminal activities. The cooperation of the state with the ICC was also challenging and difficult. Concluding from the Kenyan case, it was obvious that the framework of international bodies is weak with regards to providing justice to the victims, and thus requires changes. It should also realize that the bodies or institutions of the UNSC and the ASP are quite vulnerable towards the calculations and the pressures of geopolitical aspects, as these bodies are there to hold states accountable for their crimes and actions if they violate the international law of human rights that is passed under the body of the Rome Statute (Some, 2017).

According to Helfer and Showalter (2017), an attempt of requesting the deferral of the Kenyan defendants for the UNSC has failed. The Kenyan government requested the deferral claiming its concern on their prosecutions as it is a threat to national concerns. The fact that the UNSC rejected the deferral was seen by Kenya as a step forward to a biter relationship between the Court and the ICC. Accordingly in 2013, the AU adopted a decision of the relationship between Africa and the ICC to fabric the prosecutions of the Kenyan defendants as an abuse to the sovereignty of Africa. They additionally argue that “The Decision emphasizes “the need for international justice to be conducted in a transparent and fair manner, in order to avoid any perception of double standard” and notes that the prosecutions pose a threat to regional peace and security”. In October 2013, the AU announced that President Kenyatta will not appear before the ICC unless the UNSC considered Kenya’s request of deferral (Helfer & Showalter, 2017).

In January, 2018, and at the occasion of the 30th summit of the AU, the United Nations General Assembly (UNGA) was approached by the AU for the purpose of seeking advisory opinion from International Court of Justice (ICJ). A formal request has been made by Kenya in September 2018 regarding presenting the matter as the agenda of UNGA. This legal subject is associated with the immunities of the heads of the states in front of the ICC

(Pillai, 2018). For the ICC, this is the time period which requires intense level of scrutiny, as it is the Rome Statute's 20th anniversary (Zyberi, 2013).

4.5. ICC's Deficiency of Prosecution

Following to the establishment of the ICC, a lot of people and institutions feared that this will be an entity which will have too much power and authority (Haddad, 2017). However, it turned out to be completely opposite, and the problem associated with the ICC is not that It is highly powerful, rather the reality of it being quite weak (Malombe, 2011). On another note, one of the main reasons for the government of the United States to being reluctant towards signing the treaty for the Court's establishment, was their fear that the soldiers of American armed forces may get tied by the Court's orders with respect to the activities associated with war crimes. Even a country like Israel had the same type of concerns (Mueller, 2014). Many others feared that the process of having an international court means that the Court can utilize the forces of other country for the purpose of going after the crime committers in another country, and then be taken in a third country for trial, and may be convicted and imprisoned in another. This will be like having a vast worldwide government. There was another fear that if the countries of these tribunals may adopt a process which is hybrid in nature for the purpose of railroading the defendants, as well as freeing and serving the new law for mega criminals (Haddad, 2017).

At many occasions, it can be seen that international courts are generally hesitant towards the step of taking away the rights of the defendants without realizing that they are already diluted (Schwarz, 2018). They expect that taking rights from the charged (notwithstanding for good motivation) will only de-legitimize the legal procedure, which is actually what the obstructive denounced is looking for (Ong'ayo, 2008). These councils argue that "the trustworthiness of the procedures" should at last be secured "to guarantee that the organization of equity isn't brought into offensiveness" (Malombe, 2011). They additionally and frequently necessitate that reactions to troublesome conduct must be relative to the offense. As such, checking the obstructive respondent is dependably a sensitive harmony between de-

legitimizing the procedure and enduring deferral and preoccupation (Jalloh, 2012).

Over time, the ICC proved to be incompetent towards providing justice to the victims in the complex situations due it its limitations and lack of availability of proof (Allison and Reid, 2015). The effectiveness, as well as the relevance of the ICC, has been under constant criticism by the legal experts from all across the globe, as this body reaches the maturity of 20 years in the making (Haddad, 2017). In an international conference held at the University of Kenyatta, concerns and worries were obvious regarding the capability, legitimacy, and effectiveness of the ICC after the results were obtained regarding dealing with various cases (Kenyans for Peace with Truth and Justice, 2016). In the conference, is was highlighted that it is time that measures need to be taken, for the members of the states may devise ways and options which would lead to a better relevancy and legitimacy of the ICC, among the claims regarding it being a failure and a bias organization when it comes to serving justice (Gachie, 2013). The attacks and criticisms towards the ICC can be taken as a reflection regarding the influence of the Court for the purpose of promoting the rule of law of international nature, as well as the capability towards deliverance, which is wanted by the states (Dzenisevich, 2016).

Deficiencies of the ICC's prosecution were highlighted in the same conference of University of Kenyatta, and the famous cases of Kenya's post-election violence, as well as the Sudanese case of Al-Bashir, were the proof of ineffectiveness and incapability of the ICC's body (Haddad, 2017). For 20 years now, the ICC has been associated with accusations of being highly ineffective and illegitimate. This can be then based up with its failure to provide justice to the victims of 2007/8 post-election violence in Kenya (Dormann, 2003). It was stated, that if no measures will be taken, the ICC may reach its death sooner than later because of its conditions (Akande, 2012).

4.6. The ICC in the Post-Conflict peacebuilding in Kenya

There can be seen a quite small re-evaluation regarding the Kenya's post-election violence, since the government has not done much of an effort towards discussing, devising, and finding an appropriate solution towards the land settlement of the internally displaced persons with respect to distribution unsettlement (Times News, 2008). Moreover, and after the post-election violence, the coastal region was facing problems too. In this region, people wanted to become separated from the Kenyan government, desired independence, and also aimed to abolish the gap among the rich and the poor. Unfortunately, it has not yet been accomplished (Okoth, 2017). Highly elevated level of unemployment, as well as the lack of prosperity particularly specifying the young individuals, shows that circumstances of unrest and tension can be present in the country (Allison & Reid, 2015).

After the government of Kenya failed to push efforts to come up with a solution, and while the ICC issued arrest warrants for the officials sitting on top levels of the government positions, the AU raised voices and accused the ICC for being a racist organization, backing it up with the claims that the ICC is only arresting and targeting leaders who were African.

Later on, the results of the 2013 elections were in the favor of Ruto and Kenyatta and they were elected president and vice president of the Republic of Kenya. Even though Ruto and Kenyatta won the 2013 elections in Kenya, the ICC still prosecuted them. This call made by the ICC led to the 2013 governmental instability, as the government started having different political related issues (Opondo, 2013). At that time Kenya needed a peaceful solution paved through the leadership and governance of the elected government, as well as resolving the challenges in the country, the move made by the ICC, led to destabilizing the authority of the government (Payne, 2013). The actions taken by the ICC created hindrances in the journey of Kenya in its search and efforts for peace. It also raised questions regarding the actions of the ICC whether its move was for the betterment of the Kenyan political conditions, or was it just actually the ICC's self-interest (Amnesty, 2013).

Although the ICC ideals tend to look as being noble, the rational demands the reason that it is quite challenging to run a court on international domains (Dzenisevich, 2016). However, this led to hindrances and challenges in political considerations, impacting the domains of the finance and logistics in the country. It is also anticipated that if the ICC continues to be this powerless, it will become nothing but a toothless bulldog similar to various other organizations on an international level (Dersso, 2013). The ICC could not provide justice to the victims of the Kenyan post-election violence by falling short on collecting evidence and proof to sentence the accused. Hence, it can be stated that the ICC failed in building peace in Kenya, following the 2007/8 post-election violence (Allison & Reid, 2015).

4.7. Impunity as a Barrier to Human Rights Protection

The efforts in the present day world has led to chipping away the process of impunity which previously protected the executors and made them immune to violations of human rights (UN. Org, 2015). Putting a stop to impunity and guaranteeing that individuals and communities with authentic complaints can get to legal systems that address their objections in a proficient and compelling way, remains a test for some African states (Joseph, 2014).

In Kenya, the 2010 Constitution unequivocally perceives this test by giving that "equity will be done to all, regardless of status" and "will not be postponed". This arrangement mirrors a boundless disappointment with Kenya's legal framework under the past Constitution (Blackburn, 2017). In 2010, a report found that public trust in the legal framework has practically fell. Inclination and an absence of autonomy in the legal executive, legal defilement and dishonest conduct, wastefulness and deferrals in court forms, an absence of familiarity with court strategies and activities, and the money related expense related with getting to the court framework have, among different components, served to propagate a broadly held conviction among Kenyans (Block, 2014).

Accessibility towards fair justice for every individual, regardless of them being poor or rich, marginalize that it is an essential element for any system or

ruling authority reliant on the law and its rules and regulations (Times News, 2008). Accessibility towards the fair dealing and justice comprehended in this approach is expanded and broadened then the conventional comprehension, which emphasizes the right of every individual to obtain accessibility of the courts and presume their rights with regards to it being automatically protected (Branch, 2017).The concept of not having accessibility to justice and impunity are the two approaches which are related closely but not are identical (Allison & Reid, 2015). The states where no action is taken against the crime committers of their wrong doings is a reason being the victims inability to have access to the courts and judicial tribunals or getting sufficient redress, prevailing the impunity (International Center for Policy and Conflict, 2012).

Despite the fact that the impacts of impunity on people, groups, and societies everywhere is minimally comprehended, its negative effects are progressively identifiable (Gachie, 2013). Impunity undermines the authenticity of the state and its administration. It also undermines great forms of governance (Malombe, 2011). It is identified by the government of Kenya that the accessibility towards obtaining justice is restricted or limited, and impunity is always prevailing (Helbing, Kaelin, & Nobirabo, 2015). The Kenyan Constitution of 2010, and the redesigned framework developed by the authorities of judiciary for the duration of 2012 to 2016, predicted the redeveloped measures aiding the accessibility towards the establishment of the tribunals in the areas which were previously in the places that had accessibility of remote nature, leading to the simplification and reduction in cost, as well as the accessibility of courts to all (UN. Org, 2015).

Moreover, it is important to understand and comprehend that when there are communities where people are from different backgrounds and ethnicities, one type of court only cannot operate, as the nature of disputes, as well as the conflicts, may vary in urban and rural areas (Blackburn, 2017). In the case of Kenya, even though the ICC was involved, it was still difficult to provide justice to the victims of the post-election violence due to the ICC’s restrictions, lack of availability of proof, and self-interest (Payne, 2013).

CONCLUSION

Throughout the past decade, African countries have been seeking to end human rights violations through the use of jurisdictional mechanisms, including the prosecution of responsible perpetrators, reconciliation, and the adaption of efficient reforms. As per having their support to the establishment of the ICC, it on the other hand, and as a judicial institution, aggravated its efforts to fight the atrocities and impunity that took place in countries who are member states of the Rome Statute, most of which are African states. As an alternative judicial body replacing the failure of state members to secure human rights, a part of its mission aimed to apply justice through its judicial instruments, in hopes of promoting individual responsibility of criminal actions.

As mentioned in the Theoritical Framework of this thesis in Chapter One, the ICC was set up in 1998 to operate as a court that is responsible for the prosecution of crimes committed against humanity around the globe, with the Rome Statute being its governing backbone that asserts on the power given to the ICC to exercise jurisdiction of those responsible of crimes of serious scale. At the very peak of its establishment, African states stood as significant primary bodies behind the Court outset. Thus, the ICC was to look for the benefit of African states when it comes to practicing its jurisdiction for their great participation in bringing the Rome Statuts into life.

With international law and international criminal law being considered as the founding principles of the Court, they laid out its establishment rights, and allowed it to practice its assigned duties in what prohibits the conduct of serious crimes, and gave it the power and authority to bring in those accountable for them. However, the ICC does not have the authority to excersize its jurisdiction universally, rather only over crimes committed by a country who ratified the Statute, crimes committed by that country’s officials, along the exception of a non-state party who accepts the jurisdiction of the Court on its lands. In addition, the ICC was established with complementarity being an essential element that ensures states’ sovereignty while maintaining the mechanisms of criminal accountability. However, the ICC’s intervention is

limited to only when states are unwilling or unable to act and prosecute individuals of suspected international crimes.

There are definitely numerous shapes of shortcomings that associates when prosecuting perpetrators of crimes and atrocities. Such conditions include the limited capacity of these institutions, exploitation and political interventions. However, these challenges extended to the ICC, where it rocked its institutionalism back and forth during its judicial process concerning many cases and especially in Kenya's 2007/8 post-electione violence. The ICC has faced challenges while dealing with the individuals responsible for committing crimes which terribly hindred the functionalism and credibility of the Court, one being the immunity of jurisdiction. Despite the fact that the Court has made it clear in Article 27 of the Statute that law shall be applied on all persons without distinguihing them by their governmental representation, the immunity granted by the Court paved the way for many criminals to go unpunished. The issue of illegitimacy became apparent also when the Court was found to have limited jurisdiction in numerous areas such as its jurisdiction being only effective as of July 2002.

For the Court being a treaty-based institution, the participation of states is essential. However, the ICC confronted major obstacles when states failed to cooperate in soothing the process of its proceedings, even though they are expected to cooperate fully in all levels of the investigation and the prosecution of suspected criminals. With the ICC lacking a military force for example, it has burdened the Court's conviction of individuls. While the ICC depends heavily on state cooperation, it could stir up the outcome for justice since at some point the states are unwilling to proscute and rather hold a position of preventing the prepetrators from showing up before the court, and when the states fail to prosecute crimes on their own, they eventually render the cases from being permissible for the Court.

Other than that, and for when the ICC's office of prosecutor selects a case depending on certain circumstances, the ICC has been criticized of being highly selective in prosecution, where a majority of perpetrators went

unpunished. This is considered to be one of the biggest threats to the Court's effectiveness and legitimay.

Based on the analysis conducted on the effectiveness of the Court, this study found that Kenya's case has had a fundamental influence on the ICC. Way before its 2007/8 post-election violence, Kenya always had the reputation of extensive impunity and unrest. Even though it was one of the countries who ratified the Rome Statute for the purpose of realizing that in order to establish an accountable political society, it has to first prioritize the past atrocities committed towards its people, however, a number of challenging legal confrontations have affected on the operational mechanism of the Court, and enviably induced questions and debates on its preservation of its justice mission in Kenya. This thesis has revealed the problems that associated the jurisdiction of the ICC in Kenya, keeping in mind that these problems were suffered from on both ends, the ICC's and the Kenyan government.

The Kenyan case brought on the attention that those holding the upper hand in power are very much unlikely to be delivered to justice. One of the reasons behind this, and as it has been witnessed during the prosecution trials of both Kenyatta and Ruto, is that the ICC has failed regarding its decision making of the length of trials, where their cases got stalled until justice was provided to victims. On the other hand, both of the accused made benefit out of this by shielding their security through the use of their political status to postpone the furtherance of the Court's proceedings against them. This, by far, comes in line with the famous legal maxim of "Justice delayed is justice denied". The long journey that resides in between the ICC's rules and regulations and it assurance of justice, makes the outcome almost far from reach.

On a general note, when examining the role of the prosecutor of the ICC in the Kenyan case, there are still many questions that need to be answered and situations that need to be examined. The admissibility of the prosecutor's role was associated with the potency of the cases regarding its situational background and gravity. The prosecutor did have a capacity to open its investigations once the factors proposed by the Statute were made.

However, the evidence of ineffectiveness came after, when the ICC lost track of its defendants and could not maintain a solid positions along the end of it jurisdictional tunnel.

During the ICC's proceedings in Kenya, the prosecutorial discretion regarding the cases was rather weak. As a result, the prosecutor's initiation while conducting an investigation of the Kenyan case was based on interpretations of gravity and justice that were not clear. The lack of these perceptions opened up room for prosecutorial discretion and thus affected on its effectiveness in decision making. The failure of the ICC to bring in the convicted persons for trial has lessened the amount of respect which most Kenyans had for the potency of the Court in preserving them justice.

Regarding the ICC's broad role in reconciliation, this thesis has demonstrated that no matter how much the Court can be instituted on the basis of instruments to abolish and end impunity in a state, it still cannot build up and advocate a comprehensive amicable coexistence among members of different communities and ethnical backgrounds. As it has been argued, the existence of diversity in ethnic demographics has put the Court in a continuous struggle while trying to settle and balance its perception among all. But not only diversity acts as an obstacle, principles of state sovereignty took part during the Kenyan case. Ever since sovereignty was fixed up within the framework of international law, state authority was minimized, and was forcibly engaged with international legal obligation. This was hard to be accepted by the Kenyan people, where they perceived the ICC at some point to be a promotional tool of Western powers trying to get involved in Kenya's internal issues. This was, and as it has been mentioned in Chapter Four, one of the two defendants' biggest arguments against the ICC, when they refused to comply with its jurisdictions.

All in all, this thesis attempted to explain how the ICC may have failed to impose its effectiveness and pursue its intended goals in Kenya, due to the existing research it has provided. It is of ultimate desire that this thesis will have the chance to contribute greatly to achieve a better understanding of the Court, its relationship with war crimes, and the law and politics of the

countries where it had operated. The study has attempted to draw attention on the ICC's role and effectiveness in the journey of gaining justice in Kenya, which was both, exalted or rendered in the process.

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YAKIN DOĞU ÜNİVERSİTESİ

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12.03.2019

Dear Renas Ibrahim Mohammed

Your project **"The Role of International Criminal Court and its Effectiveness on War Crimes is Africa: Case Analysis - Kenya "** has been evaluated. Since only secondary data will be used the project it does not need to go through the ethics committee. You can start your research on the condition that you will use only secondary data.

Assoc. Prof. Dr. Direnç Kanol

Rapporteur of the Scientific Research Ethics Committee

Direnç Kanol

Note: If you need to provide an official letter to an institution with the signature of the Head of NEU Scientific Research Ethics Committee, please apply to the secretariat of the ethics committee by showing this document.