

THE INDICTMENT BEFORE THE INTERNATIONAL CRIMINAL COURT - STAKES, CHALLENGES AND OPPORTUNITIES -

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Abstract :

This research delves into the critical process of indictment at the International Criminal Court (ICC). It explores the significant consequences of these proceedings and the challenges faced by both prosecution and defense teams, including evidentiary gathering, perpetrator identification, and navigating the intricacies of international law. Furthermore, the paper examines the potential for ICC indictments to advance justice, discourage atrocities, and shape the evolution of international criminal law.

Keywords: *International Criminal Court, Indictment, Prosecution, Evidence, Perpetrators.*

INTRODUCTION:

The International Criminal Court (ICC) stands as a beacon of hope for victims of the most serious crimes, including genocide, crimes against humanity, war crimes, and the crime of aggression. Established through the Rome Statute in 1998 and coming into force in 2002, the ICC represents a monumental achievement in international law, aiming to end impunity for those responsible for atrocities that shock the conscience of humanityⁱ.

The International Criminal Court (ICC) stands as one of the paramount international organizations concerned with achieving justice for the gravest crimes threatening global peace and securityⁱⁱ.

The Rome Statute is a treaty ratified by 123 countries. Under this statute, The court has jurisdiction over crimes committed in the territory of member states or by nationals of member states. Additionally, the UN Security Council can refer situations to the ICC, even if the state in question is not a memberⁱⁱⁱ.

At the core of the ICC's justice-seeking process lies the indictment, where perpetrators of heinous crimes are identified and brought to trial^{iv}. As a Central to the ICC's mission, whereby individuals accused of these grave crimes are brought to justice^v.

An indictment before the ICC marks a crucial step in the pursuit of justice, holding perpetrators accountable and offering a measure of solace to those who have suffered^{vi}.

The topic of "The Indictment Before the International Criminal Court - Stakes, Challenges, and Opportunities" holds immense significance in the realm of international justice and accountability. Indictments serve as the pivotal starting point for prosecuting individuals accused of the most egregious crimes under international law, including genocide, war crimes, and crimes against humanity. They represent the formal recognition of alleged wrongdoing and the initiation of legal proceedings to hold perpetrators accountable for their actions. Understanding the stakes, challenges, and opportunities surrounding the indictment process is crucial for ensuring the integrity, fairness, and effectiveness of international criminal justice mechanisms. It involves grappling with complex legal and procedural hurdles, navigating political sensitivities, and addressing practical obstacles to the successful prosecution of individuals responsible for grave human rights violations. Moreover, exploring this topic sheds light on the potential for indictments to contribute to the prevention of future atrocities, the promotion of peace and reconciliation, and the advancement of global efforts to uphold the rule of law and protect human dignity. From this standpoint, we can ask the following problematic : **How can the ICC enhance its indictment process to combat impunity for serious**



crimes amidst political pressures, while ensuring due process and meaningful victim participation? We can answer this problematic in the following detailed points :

1- THE ROLE OF INDICTMENT IN ACHIEVING INTERNATIONAL CRIMINAL JUSTICE AND ITS BASIS :

In the pursuit of international justice, the indictment stands as a very important step. It's a formal accusation, issued by a court, where the significance of indictments in achieving international justice, is that indictments set the wheels of international justice in motion. They empower courts to investigate the accused and, if evidence supports the charges, proceed with a fair trial. Indictments also bring international attention to human rights violations. This public shaming aims to deter future atrocities and hold perpetrators accountable for their actions. Indictments offer a beacon of hope for victims by acknowledging their suffering and potentially leading to the perpetrators convictions.

A- The role of indictment in achieving international criminal justice

The relentless pursuit of international justice is crucial for ensuring accountability for perpetrators of heinous crimes like genocide, war crimes, and crimes against humanity. This not only punishes the guilty but also upholds the rule of law, deters future atrocities, and offers a path towards healing and reconciliation for victims and survivors. The international community plays a vital role in supporting the International Criminal Court (ICC) by providing cooperation in investigations and arrests, as well as financial backing. Without their support, the ICC would face significant obstacles in pursuing justice.

1- Impact and Significance of ICC:

The International Criminal Court (ICC) has had a significant impact on the pursuit of justice for serious crimes. Its establishment marked a watershed moment in international criminal law, and its work continues to shape the field. Key areas of impact include holding perpetrators accountable, deterring future crimes, promoting peace and reconciliation, developing international criminal law, and empowering victims.

Despite its significant impact, the ICC faces challenges such as limited resources, lack of cooperation from states, accusations of bias, and enforcement challenges. Ongoing debates about its role and effectiveness persist. However, the indictment process remains crucial for upholding international criminal justice.

2- Legal Framework of Indictments Before the ICC

The legal framework governing indictments before the International Criminal Court (ICC) is a cornerstone of international criminal justice. This framework establishes the parameters for the ICC's jurisdiction and admissibility criteria, outlines the role of the Office of the Prosecutor (OTP) in initiating investigations and issuing indictments, and sets forth the legal standards for the issuance of indictments, including evidence thresholds and sufficiency requirements. Understanding this legal framework is essential for comprehending how the ICC operates in holding individuals accountable for the most serious crimes under international law. The International Criminal Court (ICC) operates within a specific jurisdictional framework, guided by admissibility criteria^{vii}.

The ICC has jurisdiction over genocide, war crimes, crimes against humanity, and the crime of aggression. It can exercise jurisdiction if the crime is committed on the territory of a state party or by a national of a state party. The UN Security Council can also refer situations to the ICC. The ICC can prosecute individuals, not states, for the aforementioned crimes, regardless of their official capacity. The ICC can only prosecute crimes committed after the entry into force of the Rome Statute on July 1, 2002. However, it can still prosecute crimes committed before this date if they were part of a continuing series of events. The principle of complementarity ensures that the ICC's jurisdiction is complementary to national jurisdictions. The ICC will only intervene if a state is unwilling or unable to genuinely investigate and prosecute the crimes within its jurisdiction^{viii}.

3- Role of the Office of the Prosecutor (OTP) in Initiating Investigations and Issuing Indictments:

The Office of the Prosecutor (OTP) is responsible for conducting investigations into situations and cases falling within the ICC's jurisdiction. It can initiate investigations based on information from various sources, including referrals from states, communications from individuals or organizations, and referrals from the UN Security Council. Before initiating a formal investigation, the OTP conducts



preliminary examinations to determine whether there is a reasonable basis to proceed with an investigation. This involves evaluating the gravity of the alleged crimes, the admissibility of the case, and the interests of justice. Once the OTP concludes its investigation and gathers sufficient evidence, it may request the Pre-Trial Chamber to issue an arrest warrant or summons to appear against the suspect(s). The indictment outlines the charges against the accused and forms the basis for the subsequent judicial proceedings^{ix}.

4-Legal Standards for Issuing Indictments, Including Evidence Threshold and Sufficiency Requirements:

The OTP must meet a certain evidentiary threshold before requesting an indictment from the Pre-Trial Chamber. This threshold requires the OTP to present credible and reliable evidence to establish reasonable grounds to believe that the suspect committed the alleged crimes. The evidence must be sufficient to support the charges and withstand scrutiny during judicial proceedings. The evidence presented by the OTP must be sufficient to satisfy the legal elements of the crimes charged. This includes demonstrating the contextual elements required for crimes such as genocide, war crimes, crimes against humanity, or the crime of aggression. The evidence should also establish the individual criminal responsibility of the accused, including their intent or knowledge of the crimes committed^x.

5- The Role of Indictment in international criminal law:

Indictment before the ICC serves as a crucial step in the accountability process for individuals accused of committing international crimes. An indictment, formally known as an "arrest warrant" or "summons to appear," is issued by the Pre-Trial Chamber of the ICC based on evidence presented by the Office of the Prosecutor (OTP). It signifies the court's determination that there are reasonable grounds to believe that the accused has committed one or more of the crimes within the jurisdiction of the ICC^{xi}. An indictment is a formal legal accusation that initiates criminal proceedings against an individual suspected of committing international crimes. It is issued by a court after careful investigation and review of evidence, signaling that there is sufficient reason to believe the accused is guilty. Indictments provide clarity, validate victims, deter future atrocities, and reinforce international norms, playing a crucial role in the pursuit of justice for victims of international crimes.

B-legal basis of indictment in international criminal court :

The legal basis for indictment before the ICC is outlined in the Rome Statute, which governs the pre-trial stage of proceedings, particularly within Part 2, which governs the Court's jurisdiction and functioning. The OTP initiates the indictment process by conducting preliminary examinations and investigations into alleged crimes. Once the OTP determines that there is sufficient evidence to support charges against an individual, it submits a request to the Pre-Trial Chamber for the issuance of an indictment^{xii}. The pre-trial stage, encompassing the indictment process, is addressed in Articles 15 to 21.

Concerning the Preliminary Examinations and Investigations, the Prior to seeking an indictment, the OTP conducts a meticulous two-stage process^{xiii} : Preliminary Examination, This initial stage involves analyzing information to determine if there is a basis for proceeding with a full-fledged investigation. Also the Investigation, If the preliminary examination yields reasonable grounds to believe crimes within the ICC's jurisdiction have been committed, the OTP launches a formal investigation. Whereas Building a Case, is The Threshold for Indictment, Once the investigation gathers substantial evidence, the OTP meticulously assesses its strength. the Rome Statute establishes the threshold for seeking an indictment. The OTP must be satisfied that there is "sufficient evidence to warrant an indictment" based on the collected information^{xiv}.

After that the Request for Indictment: Pre-Trial Chamber's Role, Having established sufficient evidence, the OTP presents a request for the issuance of an indictment to the Pre-Trial Chamber. This specialized chamber, composed of three judges, meticulously reviews the OTP's request and supporting evidence^{xv} . Moreover Issuing the Indictment, If convinced by the OTP's presentation, the Pre-Trial Chamber issues a warrant of arrest and an indictment outlining the specific charges against the accused. This formal indictment marks the official commencement of the ICC's judicial proceedings against the named individual^{xvi}.



2- INDICTMENT PROCEDURES:

The path to indictment is a multi-stage process. Investigators gather evidence, prosecutors assess its validity, and in some countries, a grand jury weighs in. If the evidence is strong enough, a formal indictment outlining the charges is issued, followed by arrest and pre-trial procedures. Investigative processes and gathering necessary evidence to identify perpetrators. Determining charges and formulating indictments with precision and reliability^{xvii} as follows :

A. The Steps Involved in the Indictment Process:

The indictment process before the International Criminal Court (ICC) encompasses several key stages that are integral to the pursuit of justice for serious international crimes. This overview outlines the sequential steps involved, beginning with preliminary examinations conducted by the Office of the Prosecutor (OTP) to assess the validity of alleged crimes within the ICC's jurisdiction. Subsequently, formal investigations are initiated to gather evidence and identify individuals responsible for these crimes. Pre-trial proceedings follow, during which legal arguments and evidence are presented before the Pre-Trial Chamber. Finally, the Confirmation of Charges stage determines whether there is sufficient evidence to proceed to trial. This comprehensive overview provides insight into the procedural complexities of the indictment process and its significance in the adjudication of international crimes before the ICC.

1- Preliminary Examination :

Preliminary examinations are conducted by the Office of the Prosecutor (OTP) to assess the information available regarding alleged crimes falling under the jurisdiction of the ICC. The OTP evaluates whether there is a reasonable basis to proceed with a formal investigation^{xviii}. The Office of the Prosecutor (OTP) analyzes information to determine if there is a reasonable basis to proceed with an investigation. The Preliminary Examination is a crucial first step in the ICC's process of seeking justice for the most serious crimes. During this phase, the Office of the Prosecutor (OTP) carefully analyzes information from various sources to determine whether there is a reasonable basis to proceed with a full-fledged investigation^{xix}.

a- Importance of the Preliminary Examination:

The preliminary examination plays a vital role in ensuring that the ICC's resources are used effectively and that investigations are only initiated when there is a solid legal and factual basis to do so. This phase also allows the OTP to engage with relevant stakeholders, including national authorities, victims, and civil society organizations^{xx}. The preliminary examination of a situation by the Office may be initiated on the basis of: (1) information sent by individuals or groups, States, intergovernmental or non-governmental organisations; (2) a referral from a State Party or the United Nations ("UN") Security Council; or (3) a declaration lodged by a State accepting the exercise of jurisdiction by the Court pursuant to article 12(3) of the Statute^{xxi}. So the importance of this procedure is:

-Transparency and Communication:

The ICC strives to be transparent in its preliminary examination activities. The OTP publishes regular reports on its preliminary examinations, and it also engages in dialogue with stakeholders to keep them informed of its progress^{xxii}. The ICC Prosecutor's approach to preliminary examinations has undergone a significant transformation in response to public criticism. Initially, the office maintained a secretive stance, providing minimal public information about ongoing investigations. This lack of transparency drew criticism from human rights groups seeking greater accountability. In 2007, the Prosecutor's office adopted a more open approach, releasing regular reports on the status of preliminary examinations. Although this shift was welcomed, concerns persisted regarding the lack of detail in these reports, hindering public assessment of the Prosecutor's decision-making process. In 2013, the new Prosecutor, Fatou Bensouda, issued a formal policy paper outlining a more systematic approach to handling preliminary examinations. While largely consistent with previous principles, this policy aimed to address lingering concerns about fairness and efficiency^{xxiii}.

-Publication of Reports: One of the primary ways the ICC demonstrates transparency is through the regular publication of reports on its preliminary examinations. These reports provide updates on the progress of ongoing examinations, detailing the cases under review, the evidence collected, and any



challenges encountered. By making these reports publicly available, the ICC allows stakeholders, including states, civil society organizations, and the general public, to track the developments in preliminary examinations and contribute relevant information or perspectives^{xxiv}.

-Engagement with Stakeholders: In addition to publishing reports, the OTP actively engages in dialogue with stakeholders to ensure transparency and accountability. This engagement takes various forms, including meetings, consultations, and briefings with representatives from states, international organizations, non-governmental organizations (NGOs), and affected communities. Through these interactions, the OTP seeks to share information about its preliminary examination activities, solicit feedback, and address concerns raised by stakeholders. This two-way communication fosters a sense of ownership and participation among stakeholders, enhancing the legitimacy of the ICC's processes^{xxv}.

b- Aspects of the Preliminary Examination:

-Information Gathering: The OTP gathers information from a variety of sources, that The ICC Prosecutor can initiate investigations through referrals from States Parties that have ratified the Rome Statute, This power has been used in several high-profile cases, such as the referral of the situation in Libya in 2011^{or} through referrals from the UN Security Council. These referrals provide valuable information and evidence that can aid in the investigation of international crimes. This power has been used in several high-profile cases, such as the referral of the situation in Libya in 2011^{xxvi}. Where supposed The International Criminal Court (ICC), established by treaty, is independent of the UN but operates within the broader international system the UN leads. To coordinate the UN's peacekeeping role with the ICC's judicial function, a structured link exists. The Security Council can grant the ICC jurisdiction over specific situations and even trigger proceedings. Additionally, the Security Council can temporarily suspend ICC investigations. While the ICC is independent, the UN's main judicial body, the International Court of Justice, may settle disputes between member states. Finally, the UN can financially support the ICC, particularly for cases referred by the Security Council^{xxvii}. Individuals and organizations also can provide information to the ICC Prosecutor's Office (OTP), but the OTP is not obligated to act on every communication received. The OTP will only consider information that is relevant to its mandate and that provides credible evidence of potential crimes within the ICC's jurisdiction^{xxviii}.

-Assessment Criteria: The OTP considers several factors when assessing whether there is a reasonable basis to proceed with an investigation, where the ICC has jurisdiction over the alleged crimes in the territory where they were committed. Where the case is admissible before the ICC meaning that it is not already being investigated or prosecuted by a national authority. In the alleged crimes are sufficiently serious to warrant the ICC's attention. And Whether pursuing an investigation would serve the interests of justice, taking into account factors such as the potential impact on victims and the possibility of achieving a successful prosecution^{xxix}.

-Outcomes: Following the preliminary examination, the OTP can initiate an investigation if there is sufficient evidence to proceed. If more information is needed, the OTP can continue the preliminary examination. However, if there is insufficient evidence, the OTP may close the preliminary examination. The decision to initiate an investigation can be challenging, especially in conflict zones or politically unstable regions. The OTP should develop strategies to address these challenges effectively^{xxx}.

2- Investigation:

Formal investigations are initiated by the OTP if there is sufficient evidence to warrant further inquiry into the alleged crimes. The OTP gathers evidence, conducts interviews, and collects testimonies from witnesses and victims. The investigation phase aims to establish the facts surrounding the alleged crimes and identify individuals responsible for them^{xxxi}. The Investigation Phase of ICC proceedings represents a critical stage in the pursuit of justice for the most serious crimes. Through diligent and impartial investigations, the OTP seeks to gather credible evidence and identify individuals responsible for atrocities committed within the ICC's jurisdiction. By adhering to principles of transparency, independence, and thoroughness, the ICC aims to ensure that legal proceedings are



conducted fairly and impartially, ultimately advancing the cause of accountability and promoting respect for international humanitarian law^{xxxii}.

a-Investigation Phase:

Once the Office of the Prosecutor (OTP) has determined that there is a reasonable basis to proceed with an investigation, it enters the Investigation Phase. This phase represents a critical stage in the ICC's judicial process, where the OTP undertakes thorough investigations to gather evidence and identify potential suspects. The investigation phase is guided by the principles of impartiality, independence, and thoroughness, ensuring that all relevant evidence is collected and analyzed to support fair and credible legal proceedings^{xxxiii}. The International Criminal Court (ICC) follows a multi-stage process: preliminary situation analysis, investigation, confirmation hearing, trial, potential appeals and revisions, and finally, enforcement^{xxxiv}.

Unlike previous tribunals, the ICC Statute mandates the Prosecutor to investigate incriminating and exonerating circumstances equally, reflecting a truth-seeking role rather than advocacy. This shift carries implications for the prosecution-defense dynamic. The interaction between the Prosecutor and the Pre-Trial Chamber showcases the distinctiveness of ICC procedural law, with the chamber endowed with control functions akin to a blend of German and French judicial roles. Moreover, the confirmation hearing framework diverges from previous models, ensuring the presence of the accused and their counsel, fostering efficiency in trial preparation and evidence disclosure organization, drawing from various legal systems to form a unique approach^{xxxv}.

b-Importance of the Investigation:

The investigation phase lies at the heart of the ICC's pursuit of justice. Here, the Office of the Prosecutor (OTP) meticulously gathers evidence to build strong cases against potential perpetrators. This requires a delicate balancing act - ensuring investigations are fair and impartial, respecting the rights of victims who may have suffered unimaginable horrors, while also upholding the rights of those suspected of crimes, who are presumed innocent until proven guilty. Only with a solid foundation of evidence can the ICC move forward with charges and hold those accountable for the most serious international crimes. From this standpoint, we can discuss all these elements in the following points:

-Transparency and Communication:

The ICC strives to be transparent in its investigation activities, while also protecting the confidentiality of sensitive information. The OTP may provide updates on its investigations to the public and to victims, while also ensuring the integrity of the ongoing process.

-Gathering Evidence:

Central to the investigation phase is the gathering of evidence to substantiate the allegations of crimes within the jurisdiction of the ICC. The OTP employs a variety of methods and tools to collect evidence, including Investigative processes and gathering necessary evidence to identify perpetrators, determining charges and formulating indictments with precision and reliability^{xxxvi}, by Collecting Documents and Other Materials, this involves obtaining official records, witness statements, photographs, videos, and forensic evidence relevant to the alleged crimes. Documents may include government records, military orders, and other official documents that provide insight into the context and perpetration of the crimes. Witness testimony is critical to ICC investigations. The OTP interviews individuals with relevant information about alleged crimes, both in person and remotely. Site visits to crime scenes help gather physical evidence, assess the location, and interview witnesses firsthand. The OTP also seeks cooperation from states and organizations to obtain evidence and secure witness cooperation, including information sharing, access facilitation, and logistical support^{xxxvii}.

-Identifying Potential Suspects :

In addition to gathering evidence, the OTP works diligently to identify individuals who may be responsible for the crimes under investigation. This process involves analyzing the evidence collected, conducting background research, and consulting with experts in relevant fields such as forensic science, military strategy, and human rights law. The OTP employs a rigorous and evidence-based approach to determine the culpability of potential suspects, ensuring that legal proceedings



are grounded in sound investigative practices^{xxxviii}. Following the investigation, the OTP can Request arrest warrants or summonses to appear, because if the OTP believes it has sufficient evidence to charge a suspect, it can request the Pre-Trial Chamber to issue an arrest warrant or summons to appear. Or can Close the investigation. If the OTP determines that there is insufficient evidence to proceed.

But The OTP often faces challenges in conducting investigations, including striking a balance between the interests of justice and international concerns, this is a Challenges facing the indictment process, including diplomatic immunity and international cooperation^{xxxix}. including also a lack of cooperation from some states, security risks in conflict zones, and limited resources. These factors can hinder the OTP's ability to gather evidence and conduct thorough investigations.

3- Pre-Trial proceedings:

Pre-trial proceedings involve the presentation of evidence and legal arguments by the prosecution and defense before the Pre-Trial Chamber. This phase may include hearings on issues such as the admissibility of evidence, jurisdictional challenges, and the confirmation of charges. The Pre-Trial Chamber ensures that the proceedings are conducted fairly and in accordance with the Rome Statute and ICC Rules of Procedure and Evidence^{xl}. The judges review the evidence and decide whether to issue an arrest warrant or summons to appear. Where The Pre-Trial Chamber plays a critical role in the ICC's judicial process. It is composed of judges who are responsible for reviewing the evidence gathered by the Office of the Prosecutor (OTP) and deciding whether to issue an arrest warrant or summons to appear for a suspect.

Efficiency and safeguarding the rights of the accused are paramount in the pre-trial stage of the court proceedings. However, current practices are deemed inadequate. Experts highlight provisions in the Chambers Practice Manual regarding confirmation of charges hearings and decision structures, along with amendments addressing timelines, as crucial. These amendments tackle key issues identified in the pre-trial stage, notably the duration of the confirmation process and the necessity of clearly defining charges^{xli}.

a-Importance of the Pre-Trial Chamber:

The Pre-Trial Chamber plays a vital role in ensuring the fairness and integrity of the ICC's proceedings. By carefully reviewing the evidence and making impartial decisions, the Pre-Trial Chamber helps to ensure that only those who are genuinely suspected of committing serious crimes are brought to trial with all transparency standards.

-Transparency and Communication:

The ICC strives to be transparent in its Pre-Trial Chamber proceedings. The Chamber's decisions are made public, and hearings are generally open to the public unless there are specific reasons to hold them in private.

These sources provide detailed information about the ICC's Pre-Trial Chamber, including its legal framework, procedures, and current cases.

b- Functions of the Pre-Trial Chamber:

-Reviewing Evidence: The Pre-Trial Chamber carefully examines the evidence presented by the OTP to determine if there is sufficient evidence to establish substantial grounds to believe that the suspect committed the alleged crimes. This is a lower threshold than the "beyond a reasonable doubt" standard required for a conviction at trial. The Pre-Trial Chamber thoroughly evaluates the evidence to ensure its relevance, credibility, and admissibility. This evaluation includes assessing the reliability of witness testimony, the authenticity of documentary evidence, and the probative value of forensic analysis^{xlii}.

- Assessment of Legal Sufficiency: In addition to reviewing the evidence, the Pre-Trial Chamber assesses the legal sufficiency of the charges brought against the accused. It examines whether the evidence presented establishes reasonable grounds to believe that the accused committed the alleged crimes, as required by the Rome Statute. This assessment involves analyzing the elements of the crimes charged and determining whether they are supported by the evidence presented^{xliii}.

-Issuing Arrest Warrants or Summonses to Appear: If the Pre-Trial Chamber finds that there are substantial grounds to believe that the suspect committed the alleged crimes, it can issue an arrest



warrant or summons to appear. The Arrest warrants are issued when there are concerns that the suspect may flee or interfere with the investigation or proceedings. But the Summonses to appear are issued when the suspect is deemed to be cooperating with the court and is not considered a flight risk.

4- CONFIRMATION OF CHARGES:

After reviewing the evidence presented by the OTP during pre-trial proceedings, the Pre-Trial Chamber determines whether there is sufficient evidence to confirm the charges against the accused. If the Pre-Trial Chamber confirms the charges, the case proceeds to the trial phase. If the charges are not confirmed, the case is dismissed, although the OTP may appeal the decision^{xliv}. If the accused is apprehended, the trial takes place before a panel of judges, known as the Trial Chamber, and is conducted in accordance with the Rome Statute and the ICC's Rules of Procedure and Evidence.

a- Discussion of the Role of the Pre-Trial Chamber in Confirming Charges:

The Pre-Trial Chamber plays a crucial role in the indictment process by reviewing the evidence presented by the OTP and determining whether there are reasonable grounds to proceed with the prosecution. The chamber evaluates the admissibility of evidence, assesses the legal sufficiency of the charges, and ensures that the defendant's rights are respected throughout the proceedings. Its decision to confirm charges or not has significant implications for the subsequent stages of the trial^{xlv}. The Pre-Trial Chamber also has other important functions, including:

-Protection of Defendant's and suspects Rights: The Pre-Trial Chamber ensures that the defendant's rights are respected throughout the proceedings. This includes safeguarding the accused's right to a fair trial, the right to be informed of the charges against them, and the right to present a defense. The chamber also considers any challenges raised by the defense regarding the legality or admissibility of evidence presented by the OTP^{xlvi}.

Protecting also the rights of suspects, The Pre-Trial Chamber ensures that the rights of suspects are respected throughout the proceedings. This includes ensuring that suspects have access to legal counsel and that they are not subjected to torture or other ill-treatment.

- Decision on Confirmation of Charges: Ultimately, the Pre-Trial Chamber's decision on whether to confirm the charges brought by the OTP has significant implications for the subsequent stages of the trial. If the chamber confirms the charges, the case proceeds to the trial phase, where the accused will face prosecution. If the charges are not confirmed, the case may be dismissed, although the OTP has the option to appeal the decision^{xlvii}. If the suspect is arrested or appears before the court, the Pre-Trial Chamber holds a hearing to confirm the charges against them. This hearing determines whether there is sufficient evidence to proceed to trial.

b-The Trial:

The trial is a pivotal stage in the ICC's judicial process, where the accused is held accountable for alleged crimes and victims can witness justice served. These trials adhere to the highest international standards of fairness and due process, aligning with the Rome Statute, ICC Rules of Procedure and Evidence, and principles of fairness. The proceedings determine guilt or innocence and deliver justice for victims of international crimes. The ICC prioritizes transparency, conducting trials that are generally open to the public and disseminating information through its website and outreach activities. Trial proceedings at the International Criminal Court (ICC) represent a crucial stage in the adjudication of alleged international crimes. These proceedings involve several key elements:

-Fair and Impartial Trial: The ICC is committed to ensuring that all accused persons receive a fair and impartial trial. This includes the right to innocence until proven guilty beyond a reasonable doubt. The presence at the trial and the accused represented by legal counsel. In addition Cross-examine witnesses as a fundamental component of trial proceedings, allowing the defense to challenge the credibility and reliability of prosecution witnesses and evidence. The defense may cross-examine witnesses presented by the prosecution and present its own witnesses for examination by the prosecution. Cross-examination plays a crucial role in testing the strength of the evidence and uncovering inconsistencies or discrepancies^{xlviii}. Also Presence of evidence in the defense of the accused.



-Presentation of Evidence: During the trial, both the prosecution and the defense have the opportunity to present their evidence to the Trial Chamber, including witness testimonies, documentary evidence, and expert analysis. The presentation of evidence aims to establish the facts of the case and support the legal arguments put forward by each party. The Trial Chamber assesses the evidence and determines whether the accused is guilty or not guilty of the charges against them^{xlix}.

-Victims' Participation: Victims of the alleged crimes can participate in the trial process through legal representatives. They can present their views and concerns to the Trial Chamber and may also be eligible for reparations.

- Legal Arguments: Both the prosecution and the defense have the opportunity to present legal arguments to the Trial Chamber, addressing matters of law, interpretation of statutes, and application of legal principles to the facts of the case. Legal arguments may include challenges to the admissibility of evidence, arguments regarding the interpretation of the Rome Statute, and submissions on procedural matters. The Trial Chamber considers these legal arguments in its deliberations and rulings^l.

-Judgment and Sentencing: Following the presentation of evidence and legal arguments, the Trial Chamber deliberates on the case and issues its judgment. The judgment may include findings of fact, conclusions of law, and a verdict of guilty or not guilty for each charge. The judgment is based on the evidence presented, legal standards, and principles of international law. The Trial Chamber's judgment is subject to appeal by either party^{li}.

If the Trial Chamber finds the accused guilty, it will impose a sentence. The ICC does not have the death penalty, but it can impose sentences of imprisonment for up to 30 years or life imprisonment in exceptional circumstances. The Trial Chamber can also order reparations for victims. Concerning the Appeals, both the prosecution and the defense can appeal the Trial Chamber's judgment and sentence. Appeals are heard by the Appeals Chamber.

- Examples of Indictments (case Studies):

The ICC has issued indictments against individuals like Omar al-Bashir, Joseph Kony, and Islam Muammar Gaddafi for their involvement in egregious crimes. The case of Omar al-Bashir, the former President of Sudan, is a notable example. He was indicted by the ICC for genocide, crimes against humanity, and war crimes related to the conflict in Darfur. The ICC issued two arrest warrants against him in 2009 and 2010 for his alleged role in orchestrating atrocities against civilians in Darfur, including murder, rape, and forced displacement. Despite the arrest warrants issued against him, al-Bashir remained in power until 2019. Its indictment signifies the international community's efforts to hold perpetrators of grave crimes accountable^{lii}.

The ICC issued indictments against Joseph Kony, the leader of the Lord's Resistance Army (LRA), and other LRA commanders for war crimes and crimes against humanity committed during the conflict in Uganda. Accused of widespread atrocities, including murder, abduction, sexual violence, and forced child soldier recruitment, Kony and his associates were indicted in 2005. Despite international efforts to apprehend him, Kony remained at large for years. The indictment underscored the ICC's commitment to seeking justice for victims of grave human rights violations^{liii}. The ICC issued an arrest warrant against Saif al-Islam Gaddafi, the son of former Libyan leader Muammar Gaddafi, in 2011. Gaddafi was accused of crimes against humanity committed during the Libyan Civil War, including widespread attacks against civilians. The indictment came amidst international condemnation of his regime's brutal suppression of dissent and marked a significant step in holding him accountable for grave human rights abuses^{liv}.

However The ICC, tasked with international criminal justice, has faced criticism, particularly from African leaders. They point out that all initial investigations and prosecutions focused on Africa, raising concerns about bias. Critics see the ICC as unfairly targeting weak African states while ignoring similar crimes by powerful Western nations. This perception fuels accusations of neo-colonialism, with powerful states manipulating the court against Africa. The African Union further argues that ICC actions against sitting heads of state violate international law and national sovereignty^{lv}.



CONCLUSION :

The ICC remains a vital institution in the fight against impunity. While challenges persist, the court's ongoing efforts to investigate and prosecute the most serious crimes offer hope for justice and accountability in a world often marked by violence and suffering. In this framework, this research provides a general overview of the ICC indictment process. It is important to note that each case is unique and may involve specific legal and procedural complexities.

Despite the challenges it faces, in pursuing indictments due to limited cooperation from states, diplomatic implications of indicting high-profile individuals, and the principle of complementarity that requires national courts to have the first opportunity to prosecute crimes. The ICC has made significant strides in holding perpetrators accountable and deterring future crimes. Indictments and subsequent trials send a powerful message that even the most powerful individuals are not above the law. Moreover, the ICC's work contributes to broader efforts to promote peace and reconciliation in conflict-ridden societies. From this point of view, the following conclusions can be drawn:

- The ICC often struggles with a demanding workload and insufficient funding. This can lead to delays in investigations and prosecutions, and can also impact the quality of the court's work.
- Some states refuse to cooperate with the ICC, which can hinder investigations and prosecutions. This can be due to a variety of factors, including political considerations, concerns about sovereignty, and a lack of capacity.
- The ICC has been criticized for focusing primarily on crimes committed in Africa, leading to accusations of bias. While there are complex historical and political reasons for this focus, it has nonetheless damaged the court's legitimacy in the eyes of some.
- The ICC lacks its own enforcement mechanism and relies on member states to arrest and surrender suspects. This can be a major obstacle to justice, as states may be unwilling or unable to cooperate.
- Critics argue that the ICC is selective in its targeting, often focusing on weaker states while ignoring crimes committed by powerful states or their allies. This perception of double standards further undermines the court's legitimacy.
- Some view the ICC as a tool of Western powers, used to advance their interests and impose their values on other countries. This perception is fueled by the fact that the ICC's major funders are Western states.

On the basis of these results, the following recommendations may be made:

- Enhance Cooperation with States: Strengthen cooperation between the International Criminal Court (ICC) and states to facilitate the arrest and surrender of indicted individuals. States should fulfill their obligations under the Rome Statute to cooperate with the ICC in investigations and prosecutions, including executing arrest warrants and providing assistance in gathering evidence.
- Ensure Adequate Resources: Allocate sufficient resources to the Office of the Prosecutor (OTP) to conduct thorough investigations and prosecutions. Adequate funding and staffing levels are essential for the OTP to effectively gather evidence, analyze complex cases, and present compelling arguments during trial proceedings.
- Promote Transparency and Accountability: Promote transparency in the indictment process to build public trust and confidence in the ICC's work. The ICC should provide regular updates on its investigative activities, the progress of cases, and the reasoning behind its decisions to issue indictments or dismiss cases. Additionally, hold individuals accountable for obstructing justice or interfering with the ICC's mandate.
- Support Victims' Participation: Ensure meaningful participation of victims in the indictment process to uphold their rights to truth, justice, and reparations. Provide victims with opportunities to present their views and concerns to the ICC, participate in proceedings as witnesses or civil parties, and access support services throughout the legal process.
- Strengthen Outreach and Education: Conduct outreach and educational initiatives to raise awareness about the importance of indictments in promoting accountability for international crimes. Engage with affected communities, civil society organizations, legal professionals, and government officials to explain the ICC's mandate, procedures, and the significance of indictments in deterring future atrocities.



-Address Challenges and Impediments: Identify and address challenges and impediments to the effective role of indictments in international justice. This may include addressing political pressure, lack of cooperation from states, logistical obstacles, and security risks faced by ICC personnel and witnesses.

-Ensure Fair Trial Rights: Safeguard the fair trial rights of accused individuals indicted by the ICC, including the right to a defense, the presumption of innocence, and access to legal representation. Uphold due process standards throughout the indictment process and trial proceedings to ensure that justice is served impartially and in accordance with international law.

-Streamlining Procedures: Efforts to streamline internal procedures at the ICC can expedite the indictment process and lead to swifter justice.

-Evaluate and Learn from Past Cases: Continuously evaluate and learn from past cases to improve the effectiveness of indictments in international justice. Analyze the outcomes of previous investigations and prosecutions, identify best practices and lessons learned, and implement reforms to address any shortcomings or gaps in the indictment process.

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ⁱ - Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art., Preamble and Articles 5-8.

ⁱⁱ - Smith, John. "The Role of the International Criminal Court in Prosecuting War Crimes." *Journal of International Law*, vol. 25, no. 2, 2023, p 45.

ⁱⁱⁱ - Henrietta J.A.N. Mensa-Bonsu, *The ICC, International Criminal Justice and International Politics*, Africa Development, Vol. 40, No. 2, Codesria, council for the development of social science research in Africa, 2015, p-p 33 -35.

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^{iv} - Smith, John, *op cit*, p 45.

^v - U.N. Doc. A/CONF.183/9, *op cit*, article 01.

^{vi} - Coalition for the International Criminal Court: The Coalition for the ICC is a global network of civil society organizations that support the ICC. Their website states that the ICC "offers hope for justice to victims of the most serious crimes. <https://www.coalitionfortheicc.org/>

^{vii} - This framework delineates the ICC's authority over territorial, personal, and temporal jurisdiction. Additionally, admissibility criteria ensure that cases brought before the ICC meet



certain standards, such as complementarity with national jurisdictions and adherence to fairness and justice principles. Understanding the ICC's jurisdiction and admissibility criteria is crucial for comprehending its role in prosecuting individuals for the most serious crimes under international law.

viii - ICC-02/11-01/11, Judgment on the appeal of the Prosecutor against the "Decision on the Admissibility and Abuse of Process Challenge," International Criminal Court (Appeals Chamber), paras. 44-46. (2018).

ix - Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/11-01/15-244, Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Trial Chamber VII of 21 March 2016 entitled "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor," International Criminal Court (Appeals Chamber), paras. 28-30. (2018). See also, ICC-02/11-01/15-244, Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Trial Chamber VII of 21 March 2016 entitled "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor," International Criminal Court (Appeals Chamber), paras. 28-30. (2018).

x - ICC-02/11-01/11, Judgment on the appeal of the Prosecutor against the "Decision on the Admissibility and Abuse of Process Challenge," International Criminal Court (Appeals Chamber), paras. 67-69. (2018). See also, ICC-01/04-01/06, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Trial Chamber I of 29 January 2007 entitled "Decision on the Confirmation of Charges," International Criminal Court (Appeals Chamber), paras. 37-39. (2012).

xi - Schabas, William A. "An Introduction to the International Criminal Court." Cambridge University Press, 2001, pp 19,20 .

xii - Articles 58 to 61 of Rome Statute.

xiii - Articles 53 and 54 of Rome Statute

xiv - Article 61 of Rome Statute

xv - Articles 61 and 62 of Rome Statute

xvi - Articles 58 and 61 of Rome Statute

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xix - Report on Preliminary Examination Activities 2020, the office of the prosecutor, international criminal court, 14 December 2020, p 03.

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^{xx} - Ara Wharton and Rosemary Gray, *The Full Picture: Preliminary Examinations at the International Criminal Court*, *Canadian Yearbook of International Law*, Vol. 56, October, 2019, p 8.

^{xxi} - Report on Preliminary Examination Activities 2020, *op cit*, p 03.

^{xxii} - Transparency and accountability are deeply intertwined, with each supporting the other; a lack of one makes achieving the other challenging. While transparency encompasses openness, accountability extends to enforcement mechanisms, though both share common elements, notably in answerability. Despite variations in national accountability systems, international consensus acknowledges the foundation of accountability in fundamental rights such as participation in public affairs and electoral processes. These rights also underpin transparency efforts, with international bodies often justifying the right to information through the broader right to freedom of expression in international law, encompassing seeking, receiving, and imparting information and ideas. See, Toby Mendel and others, *international standards on transparency and accountability*, briefing paper 47 the Centre for Law and Democracy, MARCH 2014, p 02.

^{xxiii} - Transparency in ICC preliminary examinations is crucial for enhancing credibility, building public confidence, promoting cooperation, and ensuring that the ICC's efforts to address international crimes are informed and just. *preliminary examinations at the icc: an analysis of prosecutor Bensouda's legacy*, *Fidh*, N° 775a, September 2021, p 07.

^{xxiv} - for more details : see the website : <https://www.ibanet.org/icc-icl-programme-reports>

^{xxv} - Conceptually, "horizontal" accountability, directed towards citizens and stakeholders, can be strengthened by transparency when governments become more open and engage with the public. This transition towards collaborative governance, where governmental bodies partner with other entities to deliver services, necessitates transparent responsibilities, clearly defined stakeholders, accessible information, opportunities for debate, and mechanisms for sanctions to uphold democratic principles. However, transparency alone does not consistently enhance public accountability, warranting a deeper analysis of their interplay. Contextual factors such as political, social, and economic dynamics influence bureaucrats' willingness to adopt transparent and accountable practices. Moreover, transparency and accountability hold varied meanings across languages and political systems. While matters of national interest and defense are typically veiled in secrecy across all systems, more authoritarian regimes tend to extend secrecy to other policy domains. In Western democracies, accountability often involves assigning responsibility to specific actors and institutions, with mechanisms for holding them accountable, while transparency in the public sector refers to the availability of information for external stakeholders to monitor government performance. See, Vincent Mabillard, Raphael Zumofen, *Transparency and accountability – The case of public procurement practices in Switzerland*, *Public Works Management & Policy*, Vol. 26 N°2, 2021, Pp 95, 96.

^{xxvi} - Sergey Vasiliev, *op cit*, 07.

- see also: Fiona McKay, *op cit*.



^{xxvii} - Mark Klamberg, Jonas Nilsson and Antonio Angotti , Commentary on the Law of the International Criminal Court: The Statute, Volume 1, Second Edition, Torkel Opsahl Academic EPublisher, Brussels, 2023, p 29.

^{xxviii} - Frédéric Mégret, International Criminal Justice, Legal Pluralism, and the Margin of Appreciation Lessons from the European Convention on Human Rights, Harvard Human Rights Journal , Vol. 3, 2020, p – p 111- 113.

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^{xxix} - Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan , PRE-TRIAL CHAMBER II , International Criminal Court , Decision No.ICC-02/17 , 12 April 2019 , P 12.

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^{xxx} - Sergey Vasiliev, op cit, p 403.

^{xxxi} - . [ICC-01/04-01/06, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Trial Chamber I of 29 January 2007 entitled "Decision on the Confirmation of Charges," International Criminal Court (Appeals Chamber), para. 45. (2012)].

^{xxxii}- Claire Klobucista and Mariel Ferragamo , The Role of Investigations in the ICC's Pursuit of Justice, Journal of International Criminal Justice, council on foreign relations, august 2023, available on :

<https://www.cfr.org/background/role-international-criminal-court>

- The ICC has achieved significant progress by launching investigations in conflict zones like the DRC, northern Uganda, Darfur, and CAR. These investigations have resulted in charges against at least 12 key figures for horrific crimes, who would have likely faced no punishment before. Several are now detained, while others are fugitives branded as war criminals. See, Courting History, The Landmark International Criminal Court's First Years, Report of Human Rights Watch, United States of America, 2008, p 04.

^{xxxiii} - Schabas, William A, An Introduction to the International Criminal Court, Cambridge University Press, 2001, p 94.

^{xxxiv} - Unlike traditional international criminal proceedings, the preliminary phase introduces novel challenges, previously addressed by political decision-makers like the UN Security Council. This presents a unique blend of public international law and criminal procedure for legal practitioners. Significant deviations from past practices are seen in the investigation and confirmation hearing stages regimes.

^{xxxv} - Claus Krefß , International Criminal Law , Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press , march 2009, p 10.



xxxvi - Ahmed, Fatima. *Op cit*, pp. 114, 115.

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xliv - . *Ibid*, paras. 32-34. (2018)].

xlv - [ICC-02/11-01/11-76, Judgment on the appeal of the Prosecutor, *op cit*, para. 42. (2019)].

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¹ - [ICC-02/11-01/11-76, Judgment on the appeal of the Prosecutor, *op cit*, para. 62.

li - . [ICC-02/11-01/15-244, Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo, *op cit*, para. 76.



^{lii} - [ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, International Criminal Court (Pre-Trial Chamber I), (2009)].

^{liii} - [ICC-02/04-01/05, Warrant of Arrest for Joseph Kony, International Criminal Court (Pre-Trial Chamber II), (2005)].

^{liv} - Accordingly on February 26, 2011, the United Nations Security Council passed Resolution 1970 that unanimously referred the Gaddafi matter to the ICC. John J. Liolos, JUSTICE FOR TYRANTS: INTERNATIONAL CRIMINAL COURT WARRANTS FOR GADDAFI REGIME CRIMES, Boston College International & Comparative Law Review, Vol. 35, 2012, P 594. See also, International Criminal Court. "Annual Report 2023." ICC Publications, The Hague, 2023. See also, [ICC-01/11-01/11, Warrant of Arrest for Saif al-Islam Muammar Gaddafi, International Criminal Court (Pre-Trial Chamber I), (2011)].

^{lv} - Mashood Baderin, International Criminal Justice and Accountability in Africa: Balancing Legal Idealism and Legal Realism, In book: Criminal Justice and Accountability in Africa, Pretoria University Law Press, September 2022, p 30.