

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**A COMPARATIVE ASSESSMENT OF THE INTERNATIONAL CRIMINAL COURT
AS MODE OF CONFLICT MANAGEMENT IN THE EAST AFRICAN REGION**

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DECLARATION

I, Ombati O. Justus hereby declare that this research proposal is my original work and has not been presented for a degree in any other university.

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I wholeheartedly acknowledge the encouragement I received from my colleagues at the Criminal Investigation Department Headquarters and Kenya Revenue Authority-Times Towers office.

DEDICATION

I dedicate this research work to my joyous and lovely children namely: - Messrs, Joyce and Fraciah Ongwenyi. In a special way, I posthumously dedicate all this research work to my late mother-Omongina Yobensia Mokeira Ombati who has been a strong pillar where I have been leaning on.

ABSTRACT

Conflicts have been permanent feature in the East African region despite the spirited efforts by the respective Governments to deal with them. Such conflicts lead to massive destruction of property, deaths and breakdown of infrastructure. Conflicts in East Africa are often assumed to have a state sponsored perspective and thus since the state is the creator of the National Legal Institutions, it apparently becomes difficult to have state officers and Heads of governments/state to be tried by the same institutions that they created. The International Criminal Court aims at assisting the National Jurisdiction of respective nation-state that have failed to offer justice to the victims. Indeed the feelings of the affected communities are that the International Criminal court is a panacea to the failure of the National courts that have persistently denied the victims justice. The emergence of the International Criminal Court thus changed the perception of the victims who from far see the light at the end of the tunnel. The study carries out a comparative analysis of the International Criminal Court as a mode of conflict management in East Africa region. The study seeks to assess how the intervention of the International Criminal Court in the region has either reduced or increased conflict. To achieve this objective, the study examines and compares the reaction of the people of East Africa region on how the International Criminal Court has led to conflict management in East Africa. The Study will be undertaken using both the Qualitative and Quantitative research methods with the sample person chosen across East Africa. The study seeks to test the following hypothesis: The International criminal court does not have any effect on the conflict management in the East African region, the International criminal court is a mode of conflict management in the East Africa region and that the International criminal Court is not a mode of conflict management in the East Africa.

Finally, having evaluated the objectives of the study of the ICC, its role in the conflict management the study zeroed in and sought to find out whether it has helped to reduce conflict within the East Africa Region. This is one of the reasons as to why leaders in the political realm both cling to power and continue unleashing terror to the citizens and bar the international community from intervening. Due to notion of safeguarding the National sovereignty and the clause of complementarily it gives the persons behind the attacks a chance to protection in disguise that the national interest comes first. Additionally, owing to the fact that the International Court does not have a police of its own it depends on those governments that it is investigating thus it becomes a big problem when the inductees are the state officers. This has been largely due to the weak political institutions, legislative and constitutional offices like electoral bodies and the Judiciary. There has been a concern by the relevant bodies and the International community to come up with measures so as to prevent or rather mitigate such occurrences of conflict where they lead to civil war like the Rwanda 1994 where there is systemic killing of civilians by either the Government officials or fellow neighbours. Failure by the respective National institutions to either investigate and prosecute the perpetrators of the said violence led to the invitation of the International criminal Court to investigate and prosecute the persons behind the conflicts in Northern Uganda and the violence that broke out in Kenya following the disputed 2007/2008 post-election violence where the Government of Kenya failed to institute a special tribunal to prosecute the persons behind the violence. Consequently, a warrant of arrest has been issued against the top leadership of the LRA by the International Criminal Court and also three Kenyans are facing trial before the International Criminal Court. It is thus due to the involvement of the ICC in the region that this research will seek to find out whether it will serve as a mode of conflict management in the region.

LIST OF ABBREVIATIONS

AU	-	African Union
ASP	-	Assembly of State Parties
CBF	-	Committee on Budget and Finance
CAR	-	Central African Republic
CHS	-	Commission on Human Security
CIPEV	-	Commission on Post Election Violence
DRC	-	Democratic Republic of Congo
ECOWAS	-	Economic Community of West Africa
ECOMOG	-	ECOWAS Monitoring Group
EA	-	East Africa
EAC	-	East Africa Community
ICC	-	International Criminal Court
IDP	-	Internationally Displaced Persons
ICTR	-	International Criminal Tribunal for Rwanda
ICTY	-	International Criminal Tribunal for Yugoslavia
IGADD	-	Inter-Governmental Authority on Drought and Development
IGAD	-	Inter-Governmental Authority and Development
IMT	-	International Military Tribunal
TJRC	-	Truth Justice and Reconciliation Commission
LRA	-	Lord Resistance Army
LON	-	League of Nations
NGO	-	Non-governmental organizations

OAU	-	Organization of the African Union
OTP	-	Office of the Prosecutor
PEV	-	Post Election Violence
RPF	-	Rwanda Patriotic Front
SADC	-	Southern Africa Development Co-operation
SPLA/M	-	Sudanese People Liberation Army/Movement
UN	-	United Nations
UNSC	-	United Nations Security Council
WB	-	World Bank
WWI	-	World War One
WWII	-	World War Two
WTO	-	World Trade Organization

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CHAPTER ONE

BACKGROUND TO THE INVOLVEMENT OF THE INTERNATIONAL CRIMINAL COURT AS A MODE OF CONFLICT IN EAST AFRICA.

1.1 Background of the study

This paper will endeavour to carry out comparative assessment on whether the International Criminal Court (ICC) is assisting in conflict management in the region or the conflicts are still on the rise. The paper will start by giving an introduction on the genesis of the conflicts and the subsequent intervention of the International Criminal Court (ICC) in conflict management. The research will seek to establish whether since the introduction of the International Criminal Court in the region conflicts have dropped or they are on the increase. Besides the research will seek to find out whether by prosecuting the key individuals who are suspected to be behind the conflicts at the International Criminal court conflicts are on the decline. The research paper will start by giving a brief background of conflicts in the East African Region and the how the various conflicts have been resolved by the respective governments in the East Africa Region.

In this chapter, the researcher states the statement of the research problem, the objectives of the study, the justification of the study, the literature review of the research topic. The literature review will illustrate the various literatures that captures the International Criminal Court in the field of conflict management and expressly identify the gap. The chapter further will construct and illustrate the conceptual framework to be applied in the research. The hypothesis for the study, the research methodology and design to be applied in carrying out the study. Finally the chapter will point out the scope and limitations of the study.

1.2 Introduction

Indeed the persistent occurrence of conflicts in the East African region has attracted a number of interventions all aimed at eradicating the conflicts from the region. Conflicts within the East African region usually assumes a state sponsored perspective and thus the leaders of the respective Governments tends to bar any progressive investigations and prosecution that might expose the bad deeds of the leaders.

Though the intervention of the International Criminal Court is welcome in East Africa region, critics of the ICC are of the view that the court should step aside and allow African to resolve the conflicts in accordance with the African traditions and criminal justice systems. Ironically, the republics of Uganda and Kenya are state parties to the Rome statute and one could expect that outbreak of conflicts will be minimal or not take place at all, but there has been continued fighting and invasion of the LRA in Northern Uganda despite the presence of the court since the year 2005. Besides also, the republic of Kenya has been experiencing small levels of conflicts in Kenya prior to 2002 when it ratified the Rome statute and it could be expected that there could not be a major outbreak of high levels of violence as the one that was witnessed during the 2007/2008 post-election violence. Then the big questions arises why could conflicts happen when the nation especially the political leaders were well aware of the consequences of instigating the violence? This leads us the question as to whether the ICC is a mode of conflict management in the East Africa region.

The prevalence and persistence of conflict in some of the world's poorest areas have both frustrated development efforts and inspired a desire to manage these conflicts¹. Occurrence of

¹ Makumi Mwangi 2000, Conflicts in Africa, Theory, Processes and Institutions of Management, contextualizing conflict page 1

conflicts² tends to attract different reactions from the conflicting parties and the large group of interested parties. Usually recourse to coercive and forceful means is preferred though it is not the best since it may escalate the conflicts. A number of countries that have in one way or another experienced conflict have come up with strategies to be peaceful after such conflicts³. More often than not, conflict is channeled into non-violent means by the institutions for both its expression and resolution⁴.

According to the former UN Secretary Koffi Annan⁵ noted that since the 1970's, 30 wars had erupted in Africa and in 1996 alone 4 out of 53 countries were affected by armed conflicts.⁶ Africa has had its share of violent conflict, and at one point had the highest casualty rate in the world. In addition, conflict has almost acquired a fairly permanent feature in the continent with regional conflict formations such as those in East Africa experiencing protracted conflict. These conflicts have provided conflict practitioners and scholars a lot of experience in refining the theory and practice of conflict management.

In this regard therefore the East Africa region has not been an exception. Each of the countries in East Africa is independent and as such they have their national institutions like Judiciary, Police, Executive, National Assembly and commissions (e.g. electoral Commissions) that are expected to deal with conflicts whenever they occur. The conflicts are either intrastate or interstate which are due to leadership wrangles, control of natural resources (Migingo island), cattle rustling (Pokot of Kenya and Karamojong of Uganda), inter and intra-ethnic disputes.

² Francis K.Mulu,2008,The Role of Regional Organizations in Conflict Management: IGAD and the Sudanese Civil war page xiii

³Mitchell C R.,The structure of international conflict,London:Macmillan,1998 pg 18

⁴ Murshed, Mansoob. "Conflict, Civil War and Underdevelopment: An Introduction." *Journal of Peace Research* 39, no. 4 (2002): 387-393

⁵ Annan, Koffi. (1998), Keynote Address to the Conferences on Preventing Deadly Conflict Among Nations in the Twenty First Century. 1998

Indeed all triggers of conflict i.e. structural, political, economic, social and cultural are all at play within the region i.e. violent and non-violent, sporadic or occasional, epidemic or intractable. Equally, the internalization of small arms and light weapons and its consequences are fuelling conflict in the region⁷.

Owing to the nature of conflicts it is impossible to adequately prevent occurrence of conflict or resolve fully the recurrence of conflicts in the society. This is largely due to the human nature and the varied continued advancement in political, economic and social spheres. In this regard therefore conflicts will only be managed since it is not possible to eradicate them. The countries in the region have been trying to deal with the outbreak of conflicts by prosecuting the culprits or forming up commissions to address the main causes but they keep re-occurring.

In Kenyan conflicts have been periodically re-occurring during election period especially from 1992. During such conflicts people are killed, property destroyed and others are displaced from some parts of the country. In 2007/2008 during post election violence (PEV) more than 1500 persons were killed, more than 300,000 people were displaced and properties destroyed. Due to the failure of the Government to institute a local judicial process to look into circumstances that led to the intervention of the international community⁸ which has led to the investigation and subsequent prosecution of key suspects by the International Criminal Court.

Relatedly also, following years of tensions between the Tutsi and Hutu that led to the 1994 civil war which started with the killing of President Habriyamana of Rwanda and president of Burundi there has been efforts to re-built the two countries through various processes and institutions especially in Rwanda where we have the Gacaca courts and the international Tribunal which makes the Republic of Rwanda to be relatively peaceful in the region. The long

⁷ Annie Barbara Chikwamba, The Anatomy of conflict in the east African, a Linking security with development

⁸ Workshop report, September 2005, "rebuilding post-conflict societies: lessons from a decade of global experience, newyork pg 2

standing differences in Rwanda was essentially a domestic conflict between the two majority tribes the majority Hutu and minority Tutsi.⁹

On the other hand, in Northern Uganda there has been protracted conflict between the LRA and the government of Uganda for more than 20 years¹⁰. Despite the spirited attempts by the government to deal with such conflicts still there has not been fruitful results. The LRA leadership led by Joseph Kony is claiming to be fighting for the marginalized and economically backward Northern Uganda.

Following the above situations where conflicts have been on the surface of the region without reasonable resolution or reduction by the respective government and joint efforts by the sub-regional, regional or continental efforts the international community through the international criminal court got involved with a view of investigating and prosecuting the key suspects. This was among others the realization that for international peace to prevail there was need for an International Criminal Court.

The involvement of the International Criminal court in the East African region has been received with mixed reactions from the citizens and the Governments of the day. Victims of crime are optimistic that they will get justice where the governments have failed while the suspects/perpetrators who oftenly happen to be state officials are not happy with the presence of the international Criminal court in the region. For example during the inauguration of Kenya's Fourth president Hon. Uhuru Kenyatta, President Yoweri Museveni of Uganda argued that the prosecutions at The Hague were an indication of Western re-invasion on the region. Additionally, currently there is spirited effort to have the trials brought back home from The Hague by the African Union (AU) and Eastern African heads of state i.e. Uganda and South

⁹ Lilian Barria and Steven roper,2005,"how effective are International Criminal tribunals? An analysis of the ICTY and the ICTR ,page 2

¹⁰ Courting conflict?justice,peace and the Icc in Africa page 14

Sudan. By referring the cases to the International Criminal Court it meant that the national institutions were incapable to deal with the 2007/8 post election violence in Kenya, why then a change of mind to have the case brought back to Arusha Tanzania.? Will it still have the international picture and impact it could have if the proceedings continue to take place in the Netherlands (Hague)? The idea behind the prosecution at The Hague is to have a deterrent effect to those who might be thinking that the National government might be out to protect them.

1.3 Statement of the Problem

Indeed the creation of the International Criminal Court may be seen as a response to the extreme atrocities perpetrated in the last century. Owing to the fact the world is becoming a global village there is a concern for them to contain conflicts that spill from one nation state to another and especially when respective national Governments are suspected to be behind the conflicts.

According to Philip Kirch¹¹ 2000 he argues that the International Criminal Court was the most necessary International body to give victims and suspects a fair hearing. Indeed the creation of the ICC comes at right moment to address the issues of conflicts in the world. From the above sentiments of Phillip Kirch that the ICC is the right international institution that needs international support, it sometimes does not mean that it is the right institution that may intervene during conflicts because the ICC has not done well from the few cases it has involved itself with. For example, since its involvement in Uganda in 2005 the conflicts are still on-going. Equally despite the issuance of the Warrant of arrest against Sudan President Omar Al-Bashir by the ICC the arrest has not been effected nor have the conflicts been managed between the two republics

¹¹ Philip Kirch, 2000 “The International criminal count: A New necessary institution meriting continued international Support”

of Sudan and South Sudan. All this point out the fact the ICC may not ultimately help in the management of conflicts.

Nevertheless, the ICC is welcome to the East Africa region as a Panacea to conflicts that see the perpetrators go unpunished. However, despite it's presence in the region from 2005 still conflicts continue to occur. One could have expected the continued invasion of LRA in Northern Uganda could have been the thing of the past but still the LRA is fighting in the region where they claim to be on a spiritual mission to cleanse Northern Uganda and rule the country according to the ten commandments where they are arguing that they are championing for the rights of the marginalized northern population.¹² In the year 2005 the Uganda government under leadership of president Kaguta Museveni that referred the case to the ICC is giving mixed reactions and the people of Uganda are of the opinion that the International criminal Court is too far from their reach and it may not promote the recovery of the society since it is not promoting or based on reconciliation and it has the feeling that ICC is not helping in the situation. President Kaguta Museveni of Uganda is on record arguing that ICC is a creation of the Western world, this then means the people of Uganda do not have any faith in the ICC investigations and prosecutions. In fact they could prefer community based judicial system that encompasses reconciliation that is key to recovery and continuity of the society.

Related to the international Criminal Court in dealing with the international crime in East Africa is the International Tribunal for Rwanda (ICTR) which has since then seen relative peace in the country. Opinion of the East African citizens are for the establishment of local tribunals/courts to deal with conflicts since oftenly the International Criminal Court may not at the end of the day promote reconciliation since the attackers and the victims are in close proximity. It is only the local courts like the "GACACA COURTS" that lays good ground for the

¹² Courting conflict? justice ,peace and the Icc pg 14

recovery of the society. The major problem is when the attacks are state sponsored and thus the state will not ensure justice for the victims and thus the call for the International Criminal Court.¹³

Relatedly, also the presence of the ICC in Uganda is received with mixed feelings that it is seen as a method of interfering with the peace process. This is due to the fact that regardless of its presence for five years it is an impediment to what it was created to promote peace. The presence of ICC in Northern Uganda is controversial and has prompted criticisms from both sides. According to Assion and Murshed (2005) he claims that it's difficulty to convince a rebel to come to the negotiating table and to be prosecuted later when the war ends¹⁴.

There is a feeling in Northern Uganda that ICC is imposing a western notion of retributive justice which clashes with the local tradition and desire for restorative justice. As Katherine Southwick, laments the ICC in Uganda is widely opposed by those groups the Rome statute is designed to serve the victims. According to his view, Acholi victims of LRA-violence want reconciliation and reintegration of perpetrators into their communities. This can be achieved via local mechanisms of reconciliation but not subjecting suspects to a far away court at Netherlands (Hague).

In regard to the mixed reactions on the ICC in Kenya, the picture being presented is one of indecision, confusion and a conspicuous lack of legal and political direction on this issue. This is not only worrying but equally embarrassing the county. It is for instance, embarrassing for the president to send statements to the ICC or to be let to make public announcements touching on the ongoing ICC process or take other actions that have implications on the entire ICC legal process, without appropriate legal and political advice.

¹³ The international criminal court in apolitically divided world

¹⁴ David lanz,2007 The international criminal court intervention in Uganda:Beyond the simplicity of peace vs justice pg 1

Accordingly also as the international community welcomes the intervention of the International Criminal Court, there is an impending challenge of “peace versus justice” which one comes before the other one? The victims want to see justice whilst the neighbourhood and the rest of the international community wants to have a peaceful environment. The conflicting parties may prefer a peace deal than a long wait of the international criminal prosecutions. Immediate peace is problematic in the sense that it may lead to more conflicts if the underlying issues have not been properly addressed to. Such Amnesty agreements have more often than not led to outbreak of more violence as was experienced in the republic of Sierra Leone under leadership of Fodah Sangoh and in the Republic of Angola under the leadership of Jonas Savimbi. It is thus better to get justice in the judicial process and thus the international Criminal Court takes preference. However in certain cases Amnesty agreements have led to peace especially in Mozambique after 16 years of civil wars also when Charles Taylor was moved out of Liberia it is now peaceful.

It is in this respect that the research will seek to carry out a comparative assessment of the ICC on conflict management in E. African region. The guiding question will thus be, “have conflicts reduced in the E. Africa region due to the presence of the ICC or are conflicts on the increase?”

1.4 Objectives of the Study.

The main objective of the study is to carry out a comparative assessment of the International Criminal Court as a mode of conflict management in the East African Region.

1.4.1 The Specific Objectives

- a) To examine the connection between efforts by local, regional and international Criminal Court in resolving the conflict in East Africa.

- b) To understand strategy and operational challenges faced in the implementation of the approaches in conflict management by the international Criminal Court in East Africa.
- c) To assess whether the presence of the International Criminal Court investigations and prosecutions in the East Africa region is reducing conflicts

1.5 Justification and Significance of the Study

A series of costly civil wars many of them ethnic have dominated the national security agenda in the East African region. Alan and Tidwell¹⁵ indicated that Global and regional governments should be concerned so that the trends of conflict in Africa be stopped. The mixed records of incomplete successes, failures and in some cases counterproductive interventions suggests an urgent need to extort lessons from these experiences with a view towards developing a better conceptual framework to guide future policy choices. In this regard, the research paper has both academic and policy justifications. Therefore, in academic terms, it is important to carry out a comparative assessment of the International Criminal Court to find out whether it's a mode of conflict management in the region and come up with lessons to assist the scholars and practitioners come up with appropriate measures to enhance the involvement of the ICC and the resultant reduction of the conflicts in Africa.

In policy terms the study is justified on the grounds that the East African Conflict has had great implications on the regional and international system especially in conflict management which needs to be closely analyzed in order to institute successful measures for the management of conflicts. The study envisions that having knowledge of conflict spirals and cycles is useful in

¹⁵ Alan C. Tidwell, (1998) *Conflict Resolved? A Critical Assessment of Conflict Resolution*, London and New York: Pinter Publishers

designing adequate management strategies for conflict practitioners in prolonged conflicts and also add to existing knowledge and capabilities in the area of conflict management to enhance global security policy.

1.6 Literature Review

The literature review seeks to analyze the scholarly literature in regards to the International Criminal Court as a mode of conflict management. The first thematic section discusses evolution of the international crime in the international community and seeks to find out at what stage a crime committed within a nation state becomes an international crime, the second thematic section discusses the International Criminal Court, its evolution and how it is intervening in international crimes. In theme three, the researcher analyses the International Crime management and how crime is being managed internationally. The various arguments advanced by the different scholars will be analyzed in regard to the comparative assessment of the International Criminal Court in conflict management in East Africa region.

1.6.1 International Crime

It may be referred as crimes against international law/crimes against humanity. Indeed the history of mankind is the history of wars. It is estimated that since the beginning of recorded history around 3,600BC, the Western world has known peace only for about 300 years. Following the end of the 1st world war (WW1) the League of Nation (LON) was founded as a result of Paris peace conference and its principal mission was to maintain world peace by preventing wars through collective security, disarmament and settling of international disputes through negotiation and arbitration. However, with onset of World War II (WWII) it indicated that LON had failed in its primary purpose to prevent major world war. Since then the world has been struggling with the need to come up with an international body that will address the

commission of international crimes. Despite the formation of United Nations where the Nations of the world vowed that there will never be a major world war, however still the world is experiencing conflicts.

Following the formation of the UN after the 2nd World war, world nations came together and agreed that certain crimes were against the entire human race. Accordingly thus in 1948 saw the birth of crimes of genocide. Subsequently, Geneva conventions led to many crime in international humanitarian law. The emergence of universal declaration of human right, international covenant for civil and political rights, various regional charters all criminalized their violations in international crimes. Positive developments continued and in 1985, the United Nations adopted the United Nations Declarations on the basic principles of justice for the victims of crime and abuse of power.

Those who commit crimes on a large or systematic scale should be held accountable. The investigations and prosecutions of international crimes including genocide, crimes against humanity and war crimes is a found mental component of transitional justice. It has roots in international legal obligations that can be traced back to the Nuremberg trials, and with the international criminal for the former Yugoslavia and Rwanda (ICTR). Indeed investigations and trials of powerful leaders (Whether political or military) help strengthen the rule of law and send a strong signal that such crimes will not be tolerated in a rights respecting society.

It has roots in international legal obligations that can be traced back to the Nuremberg trials, and with the international criminal for the former Yugoslavia (ICTY) and Rwanda (ICTR). Indeed investigations and trials of powerful leaders (Whether political or military) help strengthen the rule of law and send a strong signal that such crimes will not be tolerated in a rights respecting society.

1.6.2 International Criminal Court

The Rome statute which established the court entered into force in July 2002. This was a high point following a concerted effort by nations of the world to address impunity at the international level. Besides the establishment of the International Criminal Court and creation of Ad hoc tribunals and special tribunal court also signaled the conviction of the international community that justice is an intrinsic component of durable peace. The international criminal court only intervenes where the relevant National system have been unwilling, unable to investigate or prosecute. The international criminal court does a complementary role and the individual states have basic and primary responsibility to investigate and prosecute. The effectiveness of the International Criminal Court (ICC) is a major determinant of the Court's credibility in dispensing justice and legitimacy. The Court's strategic objectives include conducting fair, effective and expeditious proceedings, as well as being a model of public administration.¹⁶ The Court has made notable progress since its inception. Significant attention has been invested to date in consolidating its organizational structure, ensuring adequate support mechanisms for victims, witnesses and defendants and increasing efforts to develop and implement outreach and public information strategies. Important decisions on procedural and substantive legal issues such as jurisdiction and admissibility, participation and protection of victims and witnesses, admissibility and disclosure of evidence, and modes of liability, among others have been handed down by the respective Chambers. The ICC is a new institution which is humanitarian impertinent to combat impunity and establish a culture of accountability. However, the category of crimes over which the count may exercise jurisdiction is narrower. The court investigates alleged commission of war crimes, crimes against humanity and genocide. It is a guard that ICC is a recent development

¹⁶.Report of the International Bar Association Human Rights Institute , "Enhancing Efficiency and Effectiveness of ICC Proceedings: a work in progress page, January 2011

by the international community's struggle to advance cause of justice and rule of law. In order to accomplish this mission the court does not exist alone. It needs NGO, states and individuals¹⁷

The ICC has 121 state parties and has opened investigations in several countries and has issued one verdict. Arrest warrants are pending for suspects for war crimes and crimes against humanity in Libya, Sudan, Uganda and Congo among others. However, despite performance problems and inconsistent support from governments, the court has made significant headway, giving rise to increased expectations whenever the world's worst crimes occur especially as demonstrated by signs held by Syrian protesters that led to "Assad to Hague". The leaders of state parties to the ICC should unite to ensure that ICC brings to book all the perpetrators of international crime so that victims of massive crimes do not lose hope on the court.

The International Criminal Court becomes one of the institutions in the world in which Africa was involved during its formation. When compared to the global institutions like IMF, WTO, World Bank, the International Criminal Court stands out as one of the institutions that is legitimately owned universally. The international Criminal Court is an African court given the fact African states constitutes the single largest block of member states. Indeed by supporting the ICC will be sending a message to the African warlords and rebels that their time for brutalizing civilians is over.

Since 2008, the Court has engaged in a court wide process to review its level of efficiency and has presented four reports to the Assembly of States Parties (ASP); the Court's governing body, concerning its progress to date. In response to prompting from the Committee on Budget and Finance (CBF), a subsidiary body of the ASP which advises it on budgetary matters, the Court produced a Report on measures to increase clarity on the responsibilities of the different organs

¹⁷ Nick Grono, 2006, "the role of the international criminal court in peace processes: Mutually reinforcing or mutually exclusive pg 4

(Governance report) outlining its efforts to further streamline aspects of its operational processes and policies and clarify roles to reduce the risk of inefficiency due to overlapping roles and duplication.

The self-referrals by the DRC (March 2004), Uganda (2003), and the CAR (2004), and the alleged atrocities committed within their borders, led the Prosecutor, Luis Moreno Ocampo, to select these situations as the Court's first cases.¹⁸ State referrals under Article 14 of the Rome Statute enhance the ICC's effectiveness in prosecution and trials because the Court is largely dependent on nations' assistance and cooperation. Thus Africa was still the first continent to embrace the ICC judicial system. In addition, even African countries that have not ratified the Rome Statute are beginning to recognize the jurisdiction of ICC. An example is the recent self-referral of the crimes in Ivory Coast by President Alassane Ouattara.¹⁹ Such self-referrals are quite advantageous for the working of the Court. They allow for more comprehensive investigations due the cooperation of the referring state's authorities. They facilitate confidential access to witnesses and evidence. They are still relevant because the ICC lacks the institutional features for handling criminal matters and ordinary policing and thus will almost always rely on assistance and cooperation of State's national mechanisms, procedures and agencies²⁰. Nevertheless, the court involves in diplomatic measures in a bid to seek for cooperation where

¹⁸ICC, Communications and Referrals, <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Referrals+and+communications/> accessed 23 May 2011

¹⁹In the letter dated May 3, Ouattara expresses "my wish that your office carries out independent and impartial inquiries in Ivory Coast into the most serious crimes committed since November 28, 2010 throughout the Ivorian territory." The letter, published on The Hague court's website Wednesday, also calls on the prosecutor to identify and bring to justice those found to bear the most criminal responsibility. Available at <http://www.rnw.nl/africa/bulletin/ouattara-asks-icc-probe-ivory-coast-crimes> (accessed 23 May 2011).

²⁰Max Du Plessis, *African Guide to International Criminal Justice* (Institute for Security Studies: South Africa, 2008) at 126

there is no self-referrals like in Kenya.²¹ However, if the State are reluctant to cooperate or unwilling at all, the Rome statute have put obligations on the state to do so under Articles 87 -93²². However, the Rome Statute is not clear on any measures that it can take if a Member state of ACP refuses to arrest a person whose warrant of arrests have been issued by the Court. Thus no action was taken against Kenya by ICC even though the government invited the Sudanese President Omar El Bashir, who it has issued warrant of arrests²³, during the August 27 2010 constitutional promulgation. The act only attracted condemnation from a few leaders, civil societies worldwide and the international media.²⁴ Article 15 of the Statute grants the Prosecutor the ability to initiate an investigation on his own.²⁵ However, the Office of the Prosecutor early on adopted a policy of encouraging States Parties to refer situations directly to the Court.²⁶ The Prosecutor maintained this policy in the case of Sudan as well, unlike the Kenyan situation which he started on his own initiative.²⁷ He opened the investigations in Kenya upon approval by the Pre-Trial Chamber II in 31st March 2010 and announced the names of the six suspects in 15th

²¹ Standard Newspaper, “ICC sets up camp in Kenya as State grants immunity” available at <http://www.standardmedia.co.ke/letters/InsidePage.php?id=2000017601&cid=4&> (accessed on 22 May 2011), ICC Registrar Visit to Kenya, September 2010, footage available at <http://www.youtube.com/watch?v=FWgSUsFnYx0> (accessed 23 May 2011)

²² ICC, Official Journal, <http://www.icc-cpi.int/NR/rdonlyres/0D8024D3-87EA-4E6A-8A27-05B987C38689/0/RomeStatutEng.pdf> (accessed 20 May 2010)

²³ ICC-02/05-01/09, Case The Prosecutor v. Omar Hassan Ahmad Al Bashir, Warrant of Arrest for Omar Hassan Ahmad Al Bashir Available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/Related+Cases/ICC02050109/Court+Records/Chambers/PTCI/1.htm> accessed on 21 May 2011

²⁴ Xan Rice, “Omar al Bashir Tarnishes Kenya’s Landmark Day, 27th August 2010 available at <http://www.guardian.co.uk/world/2010/aug/27/omar-al-bashir-war-crimes-kenya> (assessed 14 May 2011)

²⁵ Rome Statute Article 15: “The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.

²⁶ Report of the American Non-Governmental Organization Coalition for the International Criminal Court, “Africa and the International Criminal Court, Gergana Halpern, August 2007

²⁷ ICC: Justice Advances in Kenya Case, March 9 2011 available at <http://www.hrw.org/en/news/2011/03/09/icc-justice-advances-kenya-case> (accessed 17 May 2011)

December 2010.²⁸ However charges for the three suspects has been dropped i.e Francis Muthaura, Hussein Ali and Koskei Henry. Aware that the Court did not have jurisdiction over Sudan and that the UNSC had formed an International Commission for Inquiry in Darfur, the Office of the prosecutor (OTP) decided to wait for the Council's referral, which was brought under Resolution 1593.²⁹ In Libya, the OTP has also handled the matter after the referral of the matter by the UNSC.³⁰

Questions have arisen begged on the rights of the victims and the suspects, where suspects are treated well, have right to medical care, balanced diet and other privileges whereas the victims are suffering in their homes, refugee camps without food or access to the basic needs. This then poses the question if the international community is conducting prosecutions in the interest of victims, why are victims not given priority?

The court has carried investigation in DRC, Sudan and Uganda Kenya. In DRC the investigations led to the surrender of Thomas Lubanga Dyilo who was the leader of the most dangerous militia in Turi region. Thomas Lubanga is accused of enlisting, conscripting and using child soldiers. The prosecution of Thomas Lubanga is historic in the sense that it affects thousands of lives of children whose lives and future is destroyed. Equally, in 17/10/2007 the Congolese Government surrendered and transferred Mr. German Katanga the alleged

²⁸ Reuters, "Kenyan Ministers named as suspects in vote violence" 15 December 2010 available at <http://uk.reuters.com/article/2010/12/15/uk-warcrimes-kenya-idUKTRE6BE20U20101215> (accessed on 22 May 2011) ,Al Jazeera, Africa, "ICC names Kenya violence suspects" 15 December 2010, available at <http://english.aljazeera.net/news/africa/2010/12/20101215111138974966.html> accessed on 22 May 2011)

²⁹ Resolution 1593 (2005) Adopted by Vote of 11 in Favour To None Against, with 4 Abstentions (Algeria, Brazil, China, United States), "Security council refers situation in Darfur, Sudan, to Prosecutor of International Criminal Court

³⁰ United Nations Resolution 1970, 2011, Adopted by the Security Council at its 6491st meeting, on 26 February 2011 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement> (accessed 16 May 2011)

commander of the “Force de resistance patriotique en Huri” to ICC. He is accused of committing war crimes and crimes against humanity. His name is forever associated with the name Bogoro a village which disappeared from the map of Congo.

In Sudan, the Darfur case was referred to the ICC by the UNSC in March 2005. The investigations have shown a co-coordinated attack to the civilians by Ahmed Harun, then Minister for interior. Respectively, warrant of arrest was issued in April 2001 but they have never been executed. Additionally, a warrant of arrest was issued against Sudan president Omar Ali Bashir but it may be difficult to effect the arrest given the fact that African Heads of state are of the view that the ICC is targeting African leaders.

Moreover, investigations by the ICC in Northern Uganda has indicated that the leadership of LRA was responsible for conscripting and enslaving children, slaughtering their families and forcing the displacement of millions of civilians in Northern Uganda³¹. Subsequently warrant of arrest for the four surviving members of LRA is in force. The prosecutor of the international criminal court has also opened investigations into the situation in the CAR due to the impact of sexual crimes and gender violence that may not be ignored under the international law.

Owing to the fact that ICC fairly new institution its success is premised as on the understanding that it has all the elements necessary to attain its mission. As the court demonstrates its credibility yet to be seen whether it will break the walls of impunity which have always stood on the way of worst criminal in the human kind and hence the court may create an environment of accountability. It is in this regard that the exact measure of success of

³¹ Nick Grono and Adam O'brien, Justice in conflict? The Icc and peace process in courting conflict? justice, peace and the Icc in Africa pg 13

the ICC is not based on the number of convictions achieved or prosecutions commenced but rather the extent to which the ICC leads to a culture of accountability.³²

Despite its spirited attempts to prosecute the key suspects who are alleged to have committed crimes, the ICC faces many challenges. First, it faces challenges of conducting investigations in situations of protracted instability where it needs both international co-operation at the political and operational levels to facilitate its work. Thirdly, it faces the challenges of applying the law as it is laid down in the Rome statute where the parties concerned are engaged in conflict – resolution process like the case in Northern Uganda.

1.6.3 International Crime Management

One of the challenges for the international community is their effort to resolve conflicts due to the lack of incentives to influence the conflicting parties. The international community has been trying to resolve conflicts whenever they have occurred for example the Nuremberg trials. Following the outbreak of the first and Second World War the international community has promised to stop re-occurrence of conflicts through enactment of treaties but still they occur.

Also the United Nations Chapter VII it clearly envisions a significant role for regional organizations in conflict management. As a result therefore regional organizations have been formed to assist in conflict management.

Either following the frustration of the United Nations and the African Union (successor of OAU), most African states, civil societies and the international non-governmental organization have resolved and assumed a bigger role in conflict management. Indeed at the sub-regional levels the political, economic and integration arrangements like ECOWAS, IGAD, SADC and

³² Philippe Kirsch, 2004 The international criminal court: A new and necessary institution meriting continued international support. The Berbelus electronic press, Forodhan instructional law journal

EAC have taken the role of security and conflict management.³³ In the Eastern Africa region the Intergovernmental Authority on Development has revitalized its mandate from addressing drought and pasture to mediation efforts which successfully led to relative peace between Republic of Sudan and Sudan Peoples Liberation movement(Army) in 2005. In west Africa the first institutional organ to provide security was a protocol on mutual Assistance in defence matters in 1981. However in 1990 it developed ECOMOG i.e Ecowas monitoring group to monitor security in the region. ECOMOG engaged in peacekeeping efforts in Liberia. Additionally, in regard to SADC in 1996 it formed an organ of security, defense which subsequently reversed a palace coup in Lesotho through the efforts of South Africa and Botswana. It is important to note that the African union has also developed a continental Early warning system that is in Addis Ababa which is the central observation and monitoring centre where data on conflict is collected and analysed.³⁴

Indeed the prosecution of Charles Taylor (Liberia), Thomas Lubanga, Late president Slobodan Milosevic may have a salutary effect on those who are engaged in crime. Consequently, thus out of the fear of prosecution the sitting heads of states and Government may cling to power to avoid arrest. The political game played by President Robert Mugabe (Zimbabwe) and President Omar Ali-Bashir (Sudan) illustrates clearly that leaders may continue retaining power so as to avoid arrest. The ball is thus in hands of the International Criminal court to secure more arrest and subsequent convictions so as to send a message to the perpetrators of the international crime.

The international criminal tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established by the UN in 1993 and 1994 to

³³ Serevine Rugumanu, 2002, conflict management in Africa, Diagnosis of current practices and future prospects pg 15

³⁴ Paul D. Williams, "The African Union's conflict management capabilities pg 11

apprehend and try individuals suspected of committing war crimes in the 1990's has seen a step towards international humanitarian law. The failures and success of the Tribunals became basis for world to form a permanent international criminal institution.

1.6.4 Conflict Management in East Africa

Indeed the East African countries have been involved either in intra or interstate conflicts and one could expect that the National Institutions to with the Judiciary, police services/Armies and various National commissions formed to address such conflicts could assist but this has failed and thus there has been a concern to the international community more so the world institutions like the UN whose concerns are to ensure that we have peace. Three types of conflict management initiatives have taken places in the Great Lakes region. The first consists of humanitarian and military responses by the international community under the sponsorship of the United Nations and its specialized agencies, individuals and institutional mediation, conducted under the support of the Organization of African Unity (OAU) and its successor the African Union (AU), alone or in partnership with the UN and ad hoc military responses. Like all conflicts, the East African necessitated the use of such approaches owing to the absence of an overarching government authority. In this lacuna, an avenue was open for third party intervention as a mode of management through individual, regional and international initiatives. Such individual, regional and international approaches have included but are not limited to the use of military force between government forces supported by Zimbabwe, Angola and Namibia and rebels backed by either Rwanda or Uganda in 1998 and the work of British advocacy group Global Witness fact finding and call for action approach by launching a campaign against conflict diamonds. Meanwhile, a regional approach under the auspices of SADC saw the signing

of a ceasefire between the belligerents in June 1999, and a United Nations peacekeeping mission deployed to monitor the ceasefire.³⁵

According to Musifiky Mwanasali³⁶ the above initiatives have been fraught with many challenges where cooperation has not been achieved in the Great Lakes because of chronic civil strife, personal hostility among neighboring rulers and their constant interference in each other's internal affairs which have led to disastrous consequences in the social, economic and humanitarian spheres and have dimmed the prospects for lasting peace and political stability. He thus proposes a community based approach to conflict management, which entails trust or confidence building measures through open channels of communication between the military, civilian population and among feuding community leaders and the strengthening of the silent majority constituency of respectable and respected individuals or groups longing or actively working to promote lasting peace.

Alan and Tidwell³⁷, concentrated on the events at a specific period in the region's history, from 1994 – 1997 beginning with establishment of the main refugee camps along the Zairian border with Rwanda. They propose an analysis on the parties to the conflict and their orientation towards the peace process. They state that the Zairian war and the refugee crisis can be seen as a complex humanitarian emergency because of the existence of a complex internal conflict, large scale displacements of people, infrastructure collapse, interruption of food production and trade, non combatant death, starvation, and diseases and random and systematic violence against non

³⁵ Kriesberg Louis (2003), "Nature of intractability". Beyond intractability, G. Burgess and H. Burgess (Eds). Boulder, Conflict Research Consortium, University of Colorado.

³⁶ Musifiky Mwanasali, (2002) "Civil Conflict and Conflict Management in the Great Lakes Region of Africa" in George Klay Kieh, Jr and Ida Rousseau Mukenge (Eds), *Zones of Conflict in Africa: Theories and Cases*, (Connecticut, London: Praeger, Westport.

³⁷ Alan C. Tidwell, (1998) *Conflict Resolved? A Critical Assessment of Conflict Resolution*, London and New York: Pinter Publishers,

combatants. The above authors arrive at the same conclusion basically, which is the recognition of various actors, issues and interests which have rendered the conflict complex, intractable and even resistant to whatever approach which has been tried to manage it. They recognize the interplay of actors and interest together with the attendant dynamics as a nightmare to both official diplomatic approaches and non official ones. Faced with these realities and owing to the complexity of the conflict scholars, have argued for different approaches in managing the conflict.

While on the other hand, Carayanis and Tatiana³⁸, on the other hand, prefers a network centered approach to explain the conflict owing to the financial, political, and ideological factors that cut across the conflict boundary and links it with global networks of war and recommends that the first step to resolving this protracted conflict is to recognize its trans-boundary and networked nature.³⁹ For example, in 1994 when Rwanda had a civil war that claimed more than 800,000 people, this was a concern for the East African region, because it led to displacement of people and other people were refugees in the neighbouring countries. Also following the continued fighting LRA in Northern Uganda this is also affecting peace in the East African region and there is need to address it. Besides, also following the 2007/2008 post election violence in Kenya which led to the loss of life of 1500 persons and displacement of 500,000 persons this also affected the East Africa region. It thus important as solutions are being sought for conflict management the issues of actors, parties, interested groups and the civilians are taken into consideration.⁴⁰

³⁸ Carayanis, Tatiana. (2001) *The Complex Wars of the Congo: Towards a New Analytic Approach in Central Africa: Structure, Dynamics and Challenges for Policy* Hosted by Africa Peace Forum, Nairobi Center on International Cooperation, New York University, Safari Park Hotel, Nairobi, Kenya

³⁹ Alan C. Tidwell, (1998) *Conflict Resolved? A Critical Assessment of Conflict Resolution*, (London and New York: Pinter Publishers.

⁴⁰ Mwagiru.....Diplomacy..

Kenya has experienced both internal conflict, cross border conflict and experienced the effects of conflict occurring in neighboring states. As a result, a number of interventions exist to address conflict at community, national, regional and international levels. These measures range from district peace committees, traditional peace processes and participation in regional peace and security initiatives. More recently, the National Steering Committee on Peace Building and Conflict Management has not only developed a draft framework for a policy on conflict management but also formulated a draft national policy on peace building and conflict management. Strategic coordination amongst key actors has been lacking in conflict management and peace building.⁴¹

Owing to the fact that the involvement of the International Criminal Court in the investigation and prosecution of key suspects who are alleged to have committed crimes against humanity both the Citizens of the East Africa region and the international community is following keenly to find out whether conflicts that have been persistent in the region will be managed.

Conflict management has been conceptualized to cover every action taken by the parties to the conflict to handle the situation. This includes the initiation of a conflict, its escalation, the ensuing complications, containment, resolution and transformation.⁴²

Owing to the presence of all triggers of conflict in East Africa that have challenged the legitimacy and capacity of the East African Community states (Kenya, Tanzania, Uganda, Rwanda and Burundi) in providing human security. Conflicts in this region are not just a product of the power of the states but are also a result of the weakness of the states in managing two critical transitions: the transition from the colonial to the independent state in the early sixties

⁴¹ Adam Mohamed et al,2006,"conflict management in Kenya: Towards policy and strategy

⁴² Azem, Hamad Ahmad. "The Reconceptualisation of Conflict Management." *Peace, Conflict and Development: An Interdisciplinary Journal* 7 (2005): 1-31.

and the transition from authoritarian or undemocratic regimes to democratic change in the early nineties.⁴³

1.7 Hypothesis

The following will be the hypothesis that will be tested during the research:-

(a) Null hypothesis

The International Criminal Court does not have any effect on the conflict management in the East African region

(b) Positive hypothesis

The International Criminal court is a mode of conflict management in the East African Region

(c) Negative hypothesis

The International Criminal Court is not a mode of conflict management in the East African region

1.8 Theoretical Framework

The outbreak of conflicts is largely due to the underlying causes which may have not been properly addressed by the concerned parties. This is due to the fact that there are so many actors and it's the interaction of the varied needs of the actors that causes conflict. It causes a cobweb. In order to understand conflict in this paradigm (Conflict research) we must look at the underlying causes or rather the deep rooted causes i.e. needs of different groups and identify the probable means of resolving the causes through the problem solving approach. This is due to the

⁴³ Chikwanha, Annie Barbara. "The Anatomy of Conflicts in the East African Community (EAC): Linking Security With Development." Theme for 2007-Development Policy and the Security Agenda for Africa: Reassessing the Relationship. The Netherlands: Development Policy Review Network-African Studies Institute, Leiden University , 2007. 1-24

fact that conflicts arises from within people and it is thus people who are best suited to re-look at what causes the conflict and come up solutions that will assist in the rebuilding and reconstruction of the society.

Respectively therefore owing to the multiplicity of threats to the individual its better to move away from the traditional, one-sided approach of looking at security as threat to the state by military from another state but to the one that guarantees security of the individuals, their protection and empowerment.⁴⁴ It means protecting the vital freedoms, protecting people from critical and pervasive threats, building on their strengths and aspirations⁴⁵ In a wider political rights, access to education and above all ensuring that each individual has opportunities to fulfill his or her potential. It also intends to promote a new integrated, co-ordinated and people – centre approach to advancing peace, security and development within and across the nations. In this regard therefore the conflicts in East Africa which are due to the economic, social and political needs where the people feel deprived off political needs and economic deprivations will probably be better be resolved by having the conflicting parties listening to one another's problems and then come up with a solution. The East Africa region has been a replica of chaos, pictures of hunger, political unrest in Kenya (1992, 1997 and 2007/2008 post election violence).The region has weak political institutions to deal appropriately with political concerns.

Equally, the region has not developed economically to withstand the economic needs of the people. The feelings and attitudes of the general public that either they are marginalized or not accessing basic necessities is a recipe for conflicts. In this respect therefore the Kenyan

⁴⁴ Human security in theory and practice, application of human security concept and the United nation Trust Fund for human security, human security unit office for the co ordination of humanitarian affairs United Nations New York

⁴⁵ Duragana Dulic, Peace building and human security: Kosovo case Terrorism and organized crime in Western region of Balkan 2-8 October 2008 University of Belgrade

Government in an attempt to ensure accessibility to the maternity services the Head of state declared that no maternity fees will be levied in all Public Hospitals.⁴⁶ The president (Kenyan) enumerated during the Madaraka celebrations (1/6/2013) the key challenges facing the country in its quest to develop. The President cited the following as the key obstacles to the realization of development in Kenya i.e. National Unity, economic growth, food security, education, health, insecurity and fight against corruption. By singling out the above factors it means that the Government has shifted from its traditional focus on security to incorporate the basic concerns of the general public that if not addressed may lead to outbreak of conflicts. By addressing the above it will lead to “freedom from fear and want “as once espoused by the USA Secretary of State Edward R. Stettinus in 1945 at the launch of the UN where he argued that the battle of peace has to be fought on two fronts. The first is security front where victory spells freedom from fear .The second is the economic and social front where victory means freedom from want.⁴⁷

According to John Burton⁴⁸ what makes it possible to resolve the intractable conflicts is the application of the human needs theory through problem solving approach. This is because the needs holds in the premises that deep rooted conflicts are caused by the denial of one or more basic human needs such as identity, recognition, and security. Upon employing better strategy of either lose-lose or win-win the conflicting parties make compromises and therefore have a peaceful transition devoid of past animosities. The use of the best strategy will thus be guided by problems solving approach where the participants are encouraged to listen without judgment to each other’s needs, concerns and perspectives, misperceptions and misunderstanding are cleared

⁴⁶ The Standard on Sunday, June 2 2013 page 2

⁴⁷ UN report ,human Security and peace building in Africa : The need for an inclusive Approach, December 2009

⁴⁸ John Burton.”clonflict resolution”:The human dimension,international journal of peace studies,JAN 1998 VOL.3 No.1

up, enabling the conflicting parties to acquire insights into each other's goals, intentions and fears. The conflict is jointly explored and analyzed, producing creative win-win options that meet everyone's needs. To this extent therefore John W. Burton disagreed strongly with Hans Morgenthau notion that attributed conflicts to aggressiveness in physical acquisition and deduced that conflicts can be avoided by threat and deterrent strategies, he (Morgenthau) omitted a human element that defeats his prescription. He did not differentiate between disputes (Over human needs and aspirations). This is just cosmetic for no threat whatsoever can deter when there are human behavioral needs at stake. By persuading the conflicting parties to a dispute in order to resolve their conflict, the peace research argues that the conflict researcher "cons" the underdog into playing the top dog's game.

1.9 Conceptual Framework.

A research of the efficacy of the conflict management approaches used in the Eastern Africa conflict will be of little practical significance unless it was contextualized within a broader conceptual framework which would assist in analyzing such approaches while allowing the drawing up of conclusions which would have wide applicability. It has been necessary to adapt a conceptual framework as it will allow linkages between the various management approaches to the networks whose complexity which mixes various actors, issues and interests have made the conflict management a nightmare to both practitioners and scholars.

Indeed the history of mankind has been the one featured with conflicts throughout and the individual nations, sub regional organization (IGAD, EAC, COMESA), regional organizations (EU, AU, ASEAN,) NGO'S and the international community have been concerned on the right approach to manage the conflicts. In this regard therefore following the outbreak of the First

world war WW1 (1914-1919) through the efforts of the international community the world nations formed the League of Nations (LON) where the nations that had participated in the war signed an agreement and they promised not to go to war again. However, a few years later in 1939-1945 another major world war (WWII) broke out despite the earlier agreement⁴⁹. This led to the formation of the United Nations (UN) whose objectives were:- to promote and facilitate cooperation in international law, International security, economic development, social progress, human rights, civil liberties, political freedoms, democracy and the ultimate achievement of lasting world peace. In its preamble the UN stated” we the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...”⁵⁰. Indeed such a big political developments serves to reassure the people that war will never break out again as Jean pierre Cot-Alain Pellet⁵¹ correctly puts it. The UN has elaborate structures to wit the General Assembly and the Security Council. The latter was to deal decisively with the outbreak of conflicts. As the UN continued with its principle task, clandestinely there developed the Cold war between the West and the East with their respective allies.

It’s important to note that the world has been developing socially, economically, politically and more so technologically. These developments have made the world to be one major global village⁵². Indeed developments of the regional organizations to enhance economic and social wellbeing have also realized that it is difficulty to prosper economically without a peaceful

⁴⁹ F.S. Northedge and M.J. Grieve, *A Hundred Years of International Relations*, (New York: Praeger, 1971), Chapter 5, "The Approach to the First World War," pp. 71-90

⁵⁰ Charter of UN, UN conference on International Organization, 26/6/1945

⁵¹ Jean pierre Cot-Alain pellet, what they had in mind: The preamble to the charter in “Development: Seeds of change pg 22, 1986, Rome Italy

⁵² Udochukwu Ogbaji and Chukwuma Ike, The impact of globalization on the social economic development of Africa

environment. For example the it is important to note that the formation of IGADD⁵³ i.e. Inter-Governmental Authority on Drought and Development, the forerunner to IGAD, was largely due to pressure from aid agencies and international donors, while it's subsequent assumption of responsibilities in the field of peace and security followed new thinking on the role of regionalism and regional cooperation in safeguarding order. Out of the consideration from the IGAD members that there is no development without peace, they considered it wise to help Sudan through IGAD as mediator in Sudanese peace process attains peace and sustainable development. Besides the failure of the various peace process processes in Sudanese civil war made the IGAD- a regional organization to take the bull by the horn and find away forward in the civil war in Sudan.

Owing therefore to the fact that the world has become one global village there has been a big concern to come up with global institutions to deal with conflicts just as we have World Health Organization (WHO),World Trade Organization (WTO) and the International labour Organization (ILO) among others. Indeed conflicts do not respect boundaries they escalate and affect the neighbouring states, for example the menace of the LRA and the Government of Uganda is affecting the people of DRC, Central Africa Republic and Sudan⁵⁴. It's a realization that there was need to form a universal body to deal with conflicts of certain magnitude like genocide, crimes against humanity and war crimes. Thus ICC was created by the Rome Statute which came into force on 1st July 2002.The ICC is supposed to complement existing national judicial systems and it may only exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such a crimes.

⁵³ Young J,2007,"Sudan IGAD Peace Process :An Evaluation," Institute of Governance studies, Simon Fraser,Vancour,Canada

⁵⁴ Behind the Violence :causes, consequences and the search for solutions to the war in Northern Uganda, Refugee law project working paper No.11,plot 9,Perryman Garden old Kampala page 4,February 2004

It might be too early to pass a judgment on any of the cases currently before the ICC. However, as the analysis into each of the cases showed, the Court is faced with a Herculean task. At this juncture, a scrutiny of the Statute of the ICC will reveal the strengths and weaknesses of its functioning within ongoing conflict situations. From the various and real situations presented above, it is evident that each conflict is different and thus their resolutions or solutions are necessarily different. But law is not selective and provides for a general, rather a one-size approach to situations that fall within its ambit.

The ICC is concerned with “the most serious crimes of concern to the international community as a whole”. Falling within the realm of serious crimes of concern, as stated in Article 5 of the Statute, are (a) The crime of genocide (b) Crimes against humanity (c) War crimes (d) The crime of aggression. All four crimes have been prosecuted, perhaps in a rather premature form, by the Nuremberg International Military Tribunal (IMT) and other *post-war* courts. It is Article 5(1) (d) that is the real sleeper in the Court’s subject-matter jurisdiction. While the Plenipotentiaries at the Rome Conference were able to agree that the crime of aggression should be part of the Court’s subject matter jurisdiction, they could not come to a consensus on either the definition or the mechanism for judicial determination of whether or not the crime had actually occurred.⁵⁵ And in accordance with Articles 121 and 123 of the Statute, the crime of aggression is still being given shape. At the PrepCom, several States advocated to adopt the definition laid out by a UN General Assembly Resolution 3314 in 1974 in the wake of Vietnam. It states that “Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.”⁵⁶ Even before 1974, individuals were held criminally responsible for waging a war

⁵⁵ William A. Schabas, *Introduction to the International Criminal Court*, Cambridge: Cambridge University Press 2004

⁵⁶ <http://jurist.law.pitt.edu/3314.htm>

of aggression at the Nuremberg trials. The IMT stated in no uncertain terms that waging a war of aggression “is not only an international crime; it is the supreme international crime differing only from the other war crimes in that it contains within itself the accumulated evil of the whole”.⁵⁷ Though the crime of aggression, as Justice Robert H Jackson said, “is the greatest menace of our times”, the question of determining whether the crime has been committed or not is a political issue. The ICC, the UN and Member States need to look back at the IMT for support in this matter. In its judgment for the trial of German Major war criminals, the Nuremberg Court “looked closely at some of the events which preceded the acts of aggression”.⁵⁸ It can be argued here the IMT was a court established by the victorious allies and so there was no debate about whether the defeated were aggressive or not. Though shrouded in victor’s justice, it cannot be denied that the Nuremberg Court was acting independently as it was prosecuting individuals not States. Going further back in time, is sufficient legal support not to be thrown into disarray about the crime of aggression. The principle of an unjustifiable war can be traced back to the Briand- Kellogg Pact of 1928 in which the signatories renounced war between nations. In the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, parties to the Protocol declared that a “war of aggression...constitutes an international crime”. The crime of aggression is already an evolving principle that the ICC needs to take a few steps further. Though within the realm of unstable and ever- changing geopolitics, giving the ICC the power to determine *independently* before trying and punishing an act of a crime of aggression, especially in a situation of ongoing conflict, can give the Court the capacity to intervene in a conflict way before the atrocities may be committed. I would argue here that jurisdiction over the crime of aggression is essential as a conflict prevention tool for the Court. Though the elements of this crime are yet to be established and the Statute has not set out any hierarchy to the crimes within the Court’s jurisdiction, it is the crime of aggression that can lead to genocide, war crimes and crimes

⁵⁷ See the judgment of the IMT for the trial of German Major War Criminals
<http://www.yale.edu/lawweb/avalon/imt/proc/judnazi.htm#common>

⁵⁸ Ibid.

against humanity. Without a consensus on the crime of aggression, the Court may be handicapped in preventing or even managing conflicts if it has to wait for grave breaches of human rights to occur to even be able to consider an investigation.

Even with crimes that have been well-defined under the Court's jurisdiction, compromises have been made. With respect to war crimes States at the Rome Conference made a convenient compromise. The gravest restriction on the Court's jurisdiction is the "opt- out" clause. According to this provision as stated in Article 124 of the Statute, States that become party to the Statute may declare that they will not accept the Court's jurisdiction with regard to war crimes for a period of seven years after the entry into force of the Statute. Regarding the "opt- out" clause, opinions vary from detrimental to a positive outlook that a limited restriction of the Court's jurisdiction is better than no jurisdiction at all, as currently is the situation with the crime of aggression.⁵⁹ Another window left open is *mens rea*- the mental element. With the help of this provision, persons convened before the Court can allege ignorance, unintentional behaviour or the existence of circumstances precluding wrongfulness in order to be relieved of individual criminal responsibility.

Through an empirical review and critical analysis of the Statute of the ICC, this paper has enumerated the various stumbling blocks for the Court. And I say stumbling blocks because as has been evidenced above the ICC can function though on a short leash. It needs to be remembered here that the essay was trying to forecast whether the Court could deter conflicts- resolve or even prevent or manage them irrespective of their character- international or internal-which may be a step further from the role envisaged for it. The ICC is a treaty organisation and by that very implication means that it would be dysfunctional without the cooperation of those States party to its Statute. With regards to non- Member States, the, Article 12 (3) provides that that State "*may* accept the exercise of jurisdiction by the Court with respect to the crime in question" (emphasis added). It is not just a

⁵⁹ Gabriella Venturini, 'War Crimes in International Armed Conflicts', in Mauro Politi and Giuseppe Nesi (eds.) *The Rome Statute of the International Criminal Court A Challenge to Impunity*, Aldershot: Ashgate 2001

matter of jurisdiction because even if the Court can exercise jurisdiction, undetermined cooperation from State parties is suspect. For instance, the Prosecutor can conduct on-site investigations without the consent of the State but only after the Pre-Trial Chambers has clearly established that a State cannot grant permission for lack of an appropriate authority within its judicial system. Scholars have pointed out that such power based on judicial leave cannot be effectively utilised.⁴⁰ Arresting and surrendering suspects also depends solely on cooperation from the State. The Court's warrant for arrest is determined to be legitimate by a national competent judicial authority who initially takes the suspect into custody. In some States, specific legislations need to be implemented in order to authorize cooperation with the Court.

This is not an exhaustive list of the inevitable need for States to cooperate with the Court but an indication of the strictures in the Court's functioning. However, these difficulties arise because of the lack of the Court's ability to enforce. The regular enforcement of criminal law has always required coercion and the authority to deploy coercive power internationally still remains firmly in the hands of States.⁶⁰, which the Statute in many ways relieves the States of such a responsibility. In the Preamble of the Statute, it states: Reaffirming... 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... 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.⁶¹

It would have been to the benefit of the Court here to perhaps insist on the assistance of the State parties in the pursuance of the purposes of the United Nations, which of course falls within Chapter VII of the United Nations Charter. But perhaps to give the ICC a streak of its own persuasive power may have been useful. However, in the case of internal armed conflicts the Statute expressly, though

⁶⁰ Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*, Oxford: Oxford University Press 2003

⁶¹ See <http://www.un.org/law/icc/statute/rome/rome.htm> for the Statute of the ICC

not persuasively enough, states under Article 8(f) that: Nothing in paragraph 2(c) and (e) shall affect the responsibility of the Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State by all legitimate means. Besides the issue of enforcement, the ICC needs the support of States because the actions of the Court have a direct impact on individuals who live on the territory of sovereign States and are subject, first and foremost, to their jurisdiction.⁶² These may be just technical issues but the serious loopholes that hamper the capacity of the Court to be an effective deterrent in conflicts and serious violations of human rights have been critically evaluated above, though not exhaustively. However, in the event that the Court fails to obtain the cooperation of the State, matters begin to have political discolorations. The Court can refer the matter to the Assembly of States or in the event that the Security Council referred the case to the Court, the Security Council under the provision of Article 87 (7). However, the Statute does not stipulate what measures the Assembly of States or the Security Council should take, perhaps, to the benefit of the Court. This is not to say that States are always uncooperative. Such situations may or may not arise when the case is not referred to the Court by the State in which the crime has occurred; otherwise cooperation, though not necessarily, is implicit. Certain scholars have pointed out an over- reliance on justice ignores the fact that potential victims are better served if they are not allowed to be made victims in the first place.⁶³ Law is not pre- emptive, but if States could push ahead in arriving at a consensus on the crime against peace, which is now called the crime of aggression; it would be a start in the right direction. The ICC can be effective as a preventive mechanism only if it can have jurisdiction as soon as it is aware of the planning and/or preparation for unleashing violence and crimes of a serious nature. And even with such jurisdiction, there are several States, including the United States of America, who are not party to its Statute; thus

⁶² Antonio Cassese, 'The Statute of the International Criminal Court: Some Preliminary Reflections', *European Journal of International Law* 1999, Vol.10

⁶³ Maj. Michael L. Smidt, 'The International Criminal Court: An Effective Means of Deterrence?', *Military Law Review* 2001, Vol.167

restricting the Court to a peripheral element of the system for regulating international life.⁶⁴ This is not to say that there is no light at the end of the tunnel. For the first time in history, the ICC provides the global community with an institution, an agency and a method to address the most heinous international crimes on a *regular, consistent and continuous basis* (emphasis added). Universality of application can be achieved in time. And in time, the Court will also be able to not only punish crimes but also prevent them as it would have developed a societal picture of accepted norms through its legal processes. The ICC will be able to, perhaps, standardise codes of conduct with the aim of creating expectations of regular and honest behaviour on a global level, which then needs to trickle down to community levels- what Francis Fukuyama⁶⁵ defines as social capital.

The biggest hurdle in the ICC's path towards preventing and resolving conflicts is that war itself is not illegal. Criminalising war/conflict was a dilemma faced by the draughtsmen of the Hague Conventions of 1907, which states in the Preamble that it is necessary "to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert".⁶⁶ So long as war is justified by law and is within the bounds of legality, the ICC might find it legally impossible to prevent a *just* war. It is beyond the Statute for the Court to assess the justification of a conflict except through trying and punishing acts that are deemed unlawful within the laws of war, human rights law and humanitarian law. But this might not be hurdle for the Court resolving conflicts as much as it would be for it to prevent them. It also needs to be taken into consideration here that conflicts are between or within States not individuals⁴⁸. Prosecuting persons for human rights violations and other violations of laws of war is indisputable but this legal mechanism seems oblivious to the fact that conflicts are not caused because of human rights violations but because of other more intricate and complex reasons- economic, social and political- which unfortunately mere

⁶⁴ Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*, Oxford: Oxford University Press 2003

⁶⁵ Francis Fukuyama, 'Social Capital and the Global Economy', *Foreign Affairs* 1995, Vol74 No.5

⁶⁶ Hague Convention IV 1907: Convention Respecting the Laws and Customs of War on Land
<http://www.yale.edu/lawweb/avalon/lawofwar/hague04.htm>

prosecutions are insufficient to resolve. It needs to be pointed out here that the ICC is just one of the several instruments of international law and only addresses some of the concerns within the global legal framework. The various agencies- ICC, ICJ and other ad hoc tribunals should complement each other and work cooperatively so that impunity is not given a chance. There is a small loophole in this proposal as well. The arm of the international law does not extend into legislations and social contracts within a State; meaning the crusaders of international law will, yet again, have to wait and monitor till serious “violations of concern to the international community as a whole” are committed to reach out and lay down the law. Nevertheless, to give the ICC and international law the benefit of the doubt, international law can only evolve further. And although it may be the emperor’s new clothes for the Court, it may be of more help to national and domestic judicial authorities seeking peace with just

1.10 Research Methodology

This study will draw from both primary and secondary sources of information. Primary data will be derived from interactive interviews and administration of questionnaires from Uganda and Kenya since these countries have ICC inductees.

1.10.1 Research design

According to Pearson and Kothari (2004) they argue that a research design is a framework for conducting the research. It is generally a plan on how to proceed with the research. It is a road map on how research is to be carried out. It helps in detailing out the procedures necessary for obtaining the information needed to solve research problems.

The research will be conducted using mixed methods i.e. both qualitative and quantitative methods. The quantitative methodology will help in quantifying, measuring and expressing

numerically. Among the methods that will be used to capture data quantitatively will be used are:-

(1) Interviews- The respondents will be asked both open-ended and close ended questions.

The interviews will be both personal and telephone interviews.

(2) Observations:- In observation the research will

For example the research will seek to establish from the persons affected by the 2007/08 post election violence in Kenya on their views about the impact of the International Criminal Court as a mode of conflict management in the East African region. While the qualitative methodology, will assist in capturing the emotions/feelings of the public in regard to the intervention of the international Criminal Court. Data will be captured by use of narratives and experiences the citizens face or are facing during conflicts. By use of questionnaires and interviews the respondents will be asked open – ended questions which will give them an opportunity to express their feelings and experiences following the conflicts. For example, the respondents will be asked questions like, "does the involvement of the international Criminal court help in reducing conflicts in the region". Their responses will be compared against the other modes of conflict that have been in place prior to the intervention of the International Criminal court. Such other modes are the respective court system and traditional ways of resolving conflicts.

Relatedly also, the mixed methods will assist in explaining and describing how the citizens in the region are viewing the intervention of the ICC in the region.

Data that will be collected using mixed methods i.e. both in numbers and narratives will give a strong outcome since they will complement one another. Are the citizens seeing the ICC investigation and prosecution in the region as a panacea or it is another failed institution like the local mechanisms that have failed previously?

1.10.2 Sample design

The research will use non-probability sampling techniques where both deliberate and convenience sampling will be used to select the respondents.

Using questionnaires respondents will be chosen purposively from eight provinces in Kenya i.e Central, Nairobi, Nyanza, North Eastern, Eastern, Rift Valley, Western and Coast Province.

Meanwhile questionnaires in Rwanda and Uganda will be served at the respective capital cities.

This is important for our research because following the 2007/2008 post election violence the effects were felt throughout the entire nation though the most hit regions were Central, Rift Valley, Nyanza and Coast regions.

1.10.3 Research Instruments

This refers to the tools used for the data collection and how they will be developed. The tools that will be used in this research will be questionnaires and semi-structured interviews. The former are research instruments that gather data over a large sample. This instrument is suitable because it is time saving, has high levels of confidentiality and it has no room for biasness. The questionnaire will be pre-tested on a pilot basis before data collection commences.

On the other hand the semi-structured interviews will be based on an interview guide to gather information from the respondents. It contains a list of written questions and topics to be covered by the interview. It contains both open and closed questions which will give a complete and a detailed understanding of the issues under research. The interview will give a one on one account expression on how the respondents view the International Criminal Court as a mode of conflict management in the East African region.

1.10.4 Data collection

In this research, primary data will be collected by administering questionnaires and conducting interviews with the respondents. Self-administered questionnaires will be distributed to the sampled respondents who will be given enough time to complete the questions, after which the completed questionnaires will be collected. Semi-structured interviews will be conducted with a few purposively selected respondents which will assist in backing up the information from the questionnaires. The interview will target qualitative data. Meanwhile secondary data will be collected from books, inter net, journals, published and unpublished materials and will include both quantitative and qualitative types.

Qualitative data will be analysed using thematic method. According to Kombo and Tromp (2006) defines thematic analysis as a form of analysis which identifies and groups related themes together and describes the association between them. It will involve in identifying information relevant to the research objectives from raw data, coding the information, identifying major themes based on the objectives and placing the coded data under related themes.

Besides quantitative data will be analysed using descriptive statistic such as frequencies, modes, means, variance or standard deviations aided by the statistical package for social sciences (SPSS) application software.

Lastly but not least, Secondary data will be sourced from a collection and review of published and unpublished material, journals, academic papers and periodicals.

1.10.5 Data Analysis, presentation and Interpretation

Data collected by key informant interview and open ended questionnaires were coded by giving all statements numeric codes based on meaning for ease of data capturing. This is

followed by data entry and analysis. The data was then analyzed using content analysis. Tables were used and results presented in narration.

1.11 Chapter summary

The research paper sought to find out the role of the International Criminal Court in conflict management with a particular emphasis on the comparative assessment of the International Criminal Court as a mode of conflict management in the East Africa region.

Chapter 1 contains the introduction and background of the study, the statement of the problem, objectives of the study, justification, hypothesis, Literature Review, theoretical framework, the methodology that was used in the study, data presentation, analysis and interpretation; and finally the scope and limitation of the study.

Chapter two will present a conceptualization of the International Criminal Court in conflict management. The role of the International criminal Court in conflict management will be analysed and in particular its role in the intervention of conflicts in East Africa. The strategy and the operational challenges of the International Criminal Court in conflict management will be discussed.

Chapter 3 provides the primary data collected from the field on the comparative assessment of the International Criminal Court as a mode of conflict management in East Africa.

Chapter 4 provides an in-depth analysis and interpretation of the primary data contained in chapter three of this study while subjecting to the objectives of the study, literature review; and testing the hypothesis as stated in chapter 1.

Chapter 5 presents the summary of the Key findings conclusions and recommendations. The researcher has made proposals and recommendations on the key areas as per the findings.

CHAPTER TWO

CONCEPTUALIZATION OF INTERNATIONAL CRIMINAL COURT IN CONFLICT MANAGEMENT

2.1 Introduction

The Rome statute which established the court entered into force in July 2002. This was a high point following a concerted effort by nations of the world to address impunity at the international level. Besides the establishment of the International Criminal Court (ICC) and creation of Ad hoc tribunals and special tribunal court also signaled the conviction of the international community that justice is an intrinsic component of durable peace. The International Criminal Court only intervenes where the relevant National system have been unwilling, unable to investigate or prosecute. The ICC does a complementary role and the individual states have basic and primary responsibility to investigate and prosecute. The effectiveness of the International Criminal Court (ICC) is a major determinant of the Court's credibility in dispensing justice and legitimacy. The Court's strategic objectives include conducting fair, effective and expeditious proceedings, as well as being a model of public administration.⁶⁷ The Court has made notable progress since its inception. Significant attention has been invested to date in consolidating its organizational structure, ensuring adequate support mechanisms for victims, witnesses and defendants and increasing efforts to develop and implement outreach and public information strategies. Important decisions on procedural and substantive legal issues such as jurisdiction and admissibility, participation and protection of victims and witnesses, admissibility and disclosure of evidence, and modes of liability, among others have been handed down by the respective Chambers.

⁶⁷.Report of the International Bar Association Human Rights Institute , “Enhancing Efficiency and Effectiveness of ICC Proceedings: a work in progress page, January 2011

The ICC is a new institution which is humanitarian impertinent to combat impunity and establish a culture of accountability. However, the category of crimes over which the court may exercise jurisdiction is narrower. The court investigates alleged commission of war crimes, crimes against humanity and genocide. It is a guard that ICC is a recent development by the international community's struggle to advance cause of justice and rule of law. In order to accomplish this mission the court does not exist alone. It needs NGO, states and individuals⁶⁸

The ICC has 121 state parties and has opened investigations in several countries and has issued one verdict. Arrest warrants are pending for suspects for war crimes and crimes against humanity in Libya, Sudan, Uganda and Congo among others. However, despite performance problems and inconsistent support from governments, the court has made significant headway, giving rise to increased expectations whenever the world's worst crimes occur especially as demonstrated by signs held by Syrian protesters that led to "Assad to Hague". The leaders of state parties to the ICC should unite to ensure that ICC brings to book all the perpetrators of international crime so that victims of massive crimes do not lose hope on the court.

The ICC becomes one of the institutions in the world in which Africa was involved during its formation. When compared to the global institutions like IMF, WTO, World Bank, the International Criminal Court stands out as one of the institutions that is legitimately owned universally. The ICC is an African court given the fact African states constitutes the single largest block of member states. Indeed by supporting the ICC will be sending a message to the African warlords and rebels that their time for brutalizing civilians is over.

The self-referrals by the DRC (March 2004), Uganda (2003), and the CAR (2004), and the alleged atrocities committed within their borders, led the Prosecutor, Luis Moreno Ocampo, to

⁶⁸ Nick Grono, 2006, "the role of the international criminal court in peace processes: Mutually reinforcing or mutually exclusive" pg 4

select these situations as the Court's first cases.⁶⁹ State referrals under Article 14 of the Rome Statute enhance the ICC's effectiveness in prosecution and trials because the Court is largely dependent on nations' assistance and cooperation. Thus Africa was still the first continent to embrace the ICC judicial system. In addition, even African countries that have not ratified the Rome Statute are beginning to recognize the jurisdiction of ICC. An example is the recent self-referral of the crimes in Ivory Coast by President Alassane Ouattara.⁷⁰ Such self-referrals are quite advantageous for the working of the Court. They allow for more comprehensive investigations due the cooperation of the referring state's authorities. They facilitate confidential access to witnesses and evidence. They are still relevant because the ICC lacks the institutional features for handling criminal matters and ordinary policing and thus will almost always rely on assistance and cooperation of State's national mechanisms, procedures and agencies⁷¹. Nevertheless, the court involves in diplomatic measures in a bid to seek for cooperation where there is no self-referrals like in Kenya.⁷² However, if the State are reluctant to cooperate or unwilling at all, the Rome statute have put obligations on the state to do so under Articles 87 -93⁷³. However, the Rome Statute is not clear on any measures that it can take if a Member state of ASP refuses to arrest a person whose warrant of arrests have been issued by the Court. Thus no action was taken against Kenya by ICC even though the government invited the Sudanese

⁶⁹ICC, Communications and Referrals, <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Referrals+and+communications/> accessed 23 May 2011

⁷⁰In the letter dated May 3, Ouattara expresses "my wish that your office carries out independent and impartial inquiries in Ivory Coast into the most serious crimes committed since November 28, 2010 throughout the Ivorian territory." The letter, published on The Hague court's website Wednesday, also calls on the prosecutor to identify and bring to justice those found to bear the most criminal responsibility. Available at <http://www.rnw.nl/africa/bulletin/ouattara-asks-icc-probe-ivory-coast-crimes> (accessed 23 May 2011).

⁷¹Max Du Plessis, *African Guide to International Criminal Justice* (Institute for Security Studies: South Africa, 2008) at 126

⁷²Standard Newspaper, "ICC sets up camp in Kenya as State grants immunity" available at <http://www.standardmedia.co.ke/letters/InsidePage.php?id=2000017601&cid=4&> (accessed on 22 May 2011), ICC Registrar Visit to Kenya, September 2010, footage available at <http://www.youtube.com/watch?v=FWgSUxFnYx0> (accessed 23 May 2011)

⁷³ICC, Official Journal, <http://www.icc-cpi.int/NR/rdonlyres/0D8024D3-87EA-4E6A-8A27-05B987C38689/0/RomeStatutEng.pdf> (accessed 20 May 2010)

President Omar El Bashir, who it has issued warrant of arrests⁷⁴, during the August 27 2010 constitutional promulgation. The act only attracted condemnation from a few leaders, civil societies worldwide and the international media.⁷⁵ Article 15 of the Statute grants the Prosecutor the ability to initiate an investigation on his own.⁷⁶ However, the Office of the Prosecutor early on adopted a policy of encouraging States Parties to refer situations directly to the Court.⁷⁷ The Prosecutor maintained this policy in the case of Sudan as well, unlike the Kenyan situation which he started on his own initiative.⁷⁸ He opened the investigations in Kenya upon approval by the Pre-Trial Chamber II in 31st March 2010 and announced the names of the six suspects in 15th December 2010.⁷⁹ However charges for the three suspects have been dropped i.e. Francis Muthaura, Hussein Ali and Koskei Henry. Aware that the Court did not have jurisdiction over Sudan and that the UNSC had formed an International Commission for Inquiry in Darfur, the Office of the prosecutor (OTP) decided to wait for the Council's referral, which was brought

⁷⁴ ICC-02/05-01/09, Case The Prosecutor v. Omar Hassan Ahmad Al Bashir, Warrant of Arrest for Omar Hassan Ahmad Al Bashir Available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/Related+Cases/ICC02050109/Court+Records/Chambers/PTCI/1.htm> accessed on 21 May 2011

⁷⁵ Xan Rice, "Omar al Bashir Tarnishes Kenya's Landmark Day, 27th August 2010 available at <http://www.guardian.co.uk/world/2010/aug/27/omar-al-bashir-war-crimes-kenya> (assessed 14 May 2011)

⁷⁶ Rome Statute Article 15: "The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.

⁷⁷ Report of the American Non-Governmental Organization Coalition for the International Criminal Court, "Africa and the International Criminal Court, Gergana Halpern, August 2007

⁷⁸ ICC: Justice Advances in Kenya Case ,March 9 2011 available at <http://www.hrw.org/en/news/2011/03/09/icc-justice-advances-kenya-case>(accessed 17 May 2011)

⁷⁹ Reuters, "Kenyan Ministers named as suspects in vote violence" 15 December 2010 available at <http://uk.reuters.com/article/2010/12/15/uk-warcrimes-kenya-idUKTRE6BE20U20101215> (accessed on 22 May 2011) ,Al Jazeera, Africa, "ICC names Kenya violence suspects" 15 December 2010, available at <http://english.aljazeera.net/news/africa/2010/12/20101215111138974966.html> accessed on 22 May 2011)

under Resolution 1593.⁸⁰ In Libya, the OTP has also handled the matter after the referral of the matter by the UNSC.⁸¹

Questions have arisen begged on the rights of the victims and the suspects, where suspects are treated well, have right to medical care, balanced diet and other privileges whereas the victims are suffering in their homes, refugee camps without food or access to the basic needs. This then poses the question if the international community is conducting prosecutions in the interest of victims, why are victims not given priority?

The court has carried investigation in DRC, Sudan and Uganda Kenya. In DRC the investigations led to the surrender of Thomas Lubanga Dyilo who was the leader of the most dangerous militia in Turi region. Thomas Lubanga is accused of enlisting, conscripting and using child soldiers. The prosecution of Thomas Lubanga is historic in the sense that it affects thousands of lives of children whose lives and future is destroyed. Equally, in 17/10/2007 the Congolese Government surrendered and transferred Mr. German Katanga the alleged commander of the “Force de resistance patriotique en Huri” to ICC. He is accused of committing war crimes and crimes against humanity. His name is forever associated with the name Bogoro a village which disappeared from the map of Congo.

This is in the belief that given the nature of the conflicts they will never be fully resolved but be managed as conflicts keep changing face each time. Conflict management approaches are

⁸⁰ Resolution 1593 (2005) Adopted by Vote of 11 in favour To None Against, with 4 Abstentions (Algeria, Brazil, China, United States), “Security council refers situation in Darfur, Sudan, to Prosecutor of International Criminal Court

⁸¹ United Nations Resolution 1970, 2011, Adopted by the Security Council at its 6491st meeting, on 26 February 2011 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement> (accessed 16 May 2011)

those utilized when the prospects for conflict resolution seem far off, but the dynamics of conflict demand that something is done to contain it.

According to Jacob Bercovitch he has broadly categorized conflict management approaches into four; threat based, deterrence based, adjudicatory, and accommodationist. They conclude that each of these approaches, whether in relation to conflict or its management, carries with it different ramifications and consequences, entails different costs, demands different resources, and may succeed or fail under different circumstances.⁸² True to J. Bercovitch's sentiments the purpose of conflict management is more of deterrence so as to avoid future occurrence/breakout of conflicts.

Conflict management bring into the picture the perspective of a third party, a mediator, conflict advisor, conflict manager, or supervisor who can be called to help or engage conflict parties or eventually one of them. One can speak about conflict management also when during the conflict both parties look for a consensual solution, without asking for an external assistance. During conflicts, the conflicting parties may feel overwhelmed and thus may seek to end the conflicts and thus invite or come up with mechanisms of managing the conflict. More often than not, invitation of the third party seems appropriate. Such scenario was seen in Kenya, Sudan and Uganda where parties outside the conflict are invited to help in managing the conflict. It is worthy to note that it is not a guarantee that whenever third parties intervene in a conflict there is a permanent solution to the issues that led to the conflicts. For example, the intervention of IGAD in the Sudanese civil war that culminated into signing of the peace agreement in 2005 and ultimate split of Sudan republic into Republic of Sudan and Republic of South Sudan but however, once again conflicts have erupted out.

⁸² Bercovitch, Jacob (1991), "International Mediation and Dispute Settlement: Evaluating the Conditions for Successful Mediation, Negotiation Journal 7(1)

2.2 Role of the International Criminal Court in Conflict Management

The ICC is concerned with “the most serious crimes of concern to the international community as a whole”. Falling within the realm of serious crimes of concern, as stated in Article 5 of the Statute, are (a) The crime of genocide (b) Crimes against humanity (c) War crimes (d) The crime of aggression. All four crimes have been prosecuted, perhaps in a rather premature form, by the Nuremberg International Military Tribunal (IMT) and other *post-war* courts. It is Article 5(1) (d) that is the real sleeper in the Court’s subject- matter jurisdiction. While the Plenipotentiaries at the Rome Conference were able to agree that the crime of aggression should be part of the Court’s subject matter jurisdiction, they could not come to a consensus on either the definition or the mechanism for judicial determination of whether or not the crime had actually occurred.⁸³ And in accordance with Articles 121 and 123 of the Statute, the crime of aggression is still being given shape. At the PrepCom, several States advocated to adopt the definition laid out by a UN General Assembly Resolution 3314 in 1974 in the wake of Vietnam. It states that “Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.”⁸⁴ Even before 1974, individuals were held criminally responsible for waging a war of aggression at the Nuremberg trials. The IMT stated in no uncertain terms that waging a war of aggression “is not only an international crime; it is the supreme international crime differing only from the other war crimes in that it contains within itself the accumulated evil of the whole”.⁸⁵ Though the crime of aggression, as Justice Robert H Jackson said, “is the greatest menace of our times”, the question of determining whether the crime has been committed or not is a political issue.

⁸³ William A. Schabas, *Introduction to the International Criminal Court*, Cambridge: Cambridge University Press 2004

⁸⁴ <http://jurist.law.pitt.edu/3314.htm>

⁸⁵ See the judgment of the IMT for the trial of German Major War Criminals
<http://www.yale.edu/lawweb/avalon/imt/proc/judnazi.htm#common>

The ICC, the UN and Member States need to look back at the IMT for support in this matter. In its judgment for the trial of German Major war criminals, the Nuremberg Court “looked closely at some of the events which preceded the acts of aggression”.⁸⁶ It can be argued here the IMT was a court established by the victorious allies and so there was no debate about whether the defeated were aggressive or not. Though shrouded in victor’s justice, it cannot be denied that the Nuremberg Court was acting independently as it was prosecuting individuals not States. Going further back in time, is sufficient legal support not to be thrown into disarray about the crime of aggression. The principle of an unjustifiable war can be traced back to the Briand- Kellogg Pact of 1928 in which the signatories renounced war between nations. In the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, parties to the Protocol declared that a “war of aggression...constitutes an international crime”. The crime of aggression is already an evolving principle that the ICC needs to take a few steps further. Though within the realm of unstable and ever- changing geopolitics, giving the ICC the power to determine *independently* before trying and punishing an act of a crime of aggression, especially in a situation of ongoing conflict, can give the Court the capacity to intervene in a conflict way before the atrocities may be committed. I would argue here that jurisdiction over the crime of aggression is essential as a conflict prevention tool for the Court. Though the elements of this crime are yet to be established and the Statute has not set out any hierarchy to the crimes within the Court’s jurisdiction, it is the crime of aggression that can lead to genocide, war crimes and crimes against humanity. Without a consensus on the crime of aggression, the Court may be handicapped in preventing or even managing conflicts if it has to wait for grave breaches of human rights to occur to even be able to consider an investigation

⁸⁶ Ibid.

2.3 The intervention of the International Criminal Court in East Africa

The importance of East Africa in the international political system cannot be gainsaid. In fact the African continent has acted as a place for the testing of several hypotheses in the field of conflict management by Western scholars and conflict managers. The realization of the prohibitive and attendant cost of rebuilding conflict prone society has led to the emergence of more inclusive conflict management approaches mainly using top-bottom and bottom-top approaches, while integrating them with elements of peace-building which remains the wider goal of conflict transformation. One realization which would be key to future conflict resolution not only in the region but in the world would be the realization that unless underlying structures which give rise to conflict are discovered and root causes addressed conflict will still remain a feature in the continent. But even with the identity of the structural causes appropriate methods may need to be incorporated towards the end of solving these conflicts.

In this regard therefore the East Africa region has not been an exception. Each of the countries in East Africa is independent and as such they have their national institutions like Judiciary, Police, Executive, National Assembly and commissions (e.g. electoral) that are expected to deal with conflicts whenever they occur. The conflicts are either intrastate or interstate which are due to leadership wrangles, control of natural resources (Misingo island), cattle rustling (Pokot of Kenya and Karamojong of Uganda), inter and intra-ethnic disputes. Indeed all triggers of conflict i.e. structural, political, economic, social and cultural are all at play within the region i.e. violent and non-violent, sporadic or occasional, epidemic or intractable. Equally, the internalization of small arms and light weapons and its consequences are fuelling conflict in the region⁸⁷.

⁸⁷ Annie Barbara Chikwamba, *The Anatomy of conflict in the east African, a Linking security with development*

Owing to the nature of conflicts it is impossible to adequately prevent occurrence of conflict or resolve fully the recurrence of conflicts in the society. This is largely due to the human nature and the varied continued advancement in political, economic and social spheres. In this regard therefore conflicts will only be managed since it is not possible to eradicate them. The countries in the region have been trying to deal with the outbreak of conflicts by prosecuting the culprits or forming up commissions to address the main causes but they keep re-occurring.

In Kenyan conflicts have been periodically re-occurring during election period especially from 1992. During such conflicts people are killed, property destroyed and others are displaced from some parts of the country. In 2007/2008 during post election violence (PEV) more than 1500 persons were killed, more than 300,000 people were displaced and properties destroyed. Due to the failure of the Government to institute a local judicial process to look into circumstances that led to the intervention of the international community⁸⁸ which has led to the investigation and subsequent prosecution of key suspects by the International Criminal Court.

Relatedly also, following years of tensions between the Tutsi and Hutu that led to the 1994 civil war which started with the killing of president Habriyamana of Rwanda and president of Burundi there has been efforts to re-built the two countries through various processes and institutions especially in Rwanda where we have the Gacaca courts and the international Tribunal which makes the Republic of Rwanda to be relatively peaceful in the region. The long standing differences in Rwanda was essentially a domestic conflict between the two majority tribes the majority Hutu and minority Tutsi.⁸⁹

⁸⁸ Workshop report, September 2005, "rebuilding post-conflict societies: lessons from a decade of global experience, newyork pg 2

⁸⁹ Lilian Barria and Steven roper, 2005, "how effective are International Criminal tribunals? An analysis of the ICTY and the ICTR ,page 2

On the other hand, in Northern Uganda there has been protracted conflict between the LRA and the government of Uganda for more than 20 years⁹⁰. Despite the spirited attempts by the government to deal with such conflicts still there has not been fruitful results. The LRA leadership led by Joseph Kony is claiming to be fighting for the marginalized and economically backward Northern Uganda.

Following the above situations where conflicts have been on the surface of the region without reasonable resolution or reduction by the respective government and joint efforts by the sub-regional, regional or continental efforts the international community through the international criminal court got involved with a view of investigating and prosecuting the key suspects. This was among others the realization that for international peace to prevail there was need for an International Criminal Court.

Nevertheless, the ICC is welcome to the East Africa region as a Panacea to conflicts that see the perpetrators go unpunished. However, despite its presence in the region from 2005 still conflicts continue to occur. One could have expected the continued invasion of LRA in Northern Uganda could have been the thing of the past but still the LRA is fighting in the region where they claim to be on a spiritual mission to cleanse Northern Uganda and rule the country according to the ten commandments where they are arguing that they are championing for the rights of the marginalized northern population.⁹¹ In the year 2005 the Uganda government under leadership of president Kaguta Museveni that referred the case to the ICC is giving mixed reactions and the people of Uganda are of the opinion that the International criminal Court is too far from their reach and it may not promote the recovery of the society since it is not promoting or based on reconciliation and it has the feeling that ICC is not helping in the situation. President

⁹⁰ Courting conflict? justice, peace and the Icc in Africa page 14

⁹¹ Courting conflict? justice, peace and the Icc pg 14

Kaguta Museveni of Uganda is on record arguing that ICC is a creation of the Western world, this then means the people of Uganda do not have any faith in the ICC investigations and prosecutions. In fact they could prefer community based judicial system that encompasses reconciliation that is key to recovery and continuity of the society.

In this regard also the Kenyan government having ratified the Rome statute in 1998 it could have expected that it respects the statute and owing to the presence of the court therefore the suspects/perpetrators of the Kenyan 2007/2008 political violence could have not neither planned or participated in the planning of the political chaos that claimed more than 1500 persons and displacement of more than 300,000 persons. Does it mean that the organizers of the political violence did not know that ICC was existing or had no teeth to bite? Equally, though the government owing to its failure to institute special tribunal to investigate the 2007/2008 violence the matter was referred to the ICC. Following the investigations and subsequent arraignment of six suspects before the court which has since dropped charges of the three out of six this is receiving mixed reactions from the Kenyan citizens who are skeptical whether the trials of the remaining three will go to the end and ensure justice for the parties.

In the year 2005 the Uganda government under leadership of president Kaguta Museveni that referred the case to the ICC is giving mixed reactions and the people of Uganda are of the opinion that the International criminal Court is too far from their reach and it may not promote the recovery of the society since it is not promoting or based on reconciliation and it has the feeling that ICC is not helping in the situation. President Kaguta Museveni of Uganda is on record arguing that ICC is a creation of the Western world; this then means the people of Uganda do not have any faith in the ICC investigations and prosecutions. In fact they could prefer

community based judicial system that encompasses reconciliation that is key to recovery and continuity of the society.

The involvement of the International Criminal court in the East African region has been received with mixed reactions from the citizens and the Governments of the day. Victims of crime are optimistic that they will get justice where the governments have failed while the suspects/perpetrators who oftenly happen to be state officials are not happy with the presence of the international Criminal court in the region. For example during the inauguration of Kenya's Fourth president Hon. Uhuru Kenyatta, President Yoweri Museveni of Uganda argued that the prosecutions at The Hague were an indication of Western re-invasion on the region. Additionally, currently there is spirited effort to have the trials brought back home from The Hague by the African Union (AU) and Eastern African heads of state i. e Uganda and South Sudan. By referring the cases to the International Criminal Court it meant that the national institutions were incapable to deal with the 2007/8 post election violence in Kenya, why then a change of mind to have the case brought back to Arusha Tanzania.? Will it still have the international picture and impact it could have if the proceedings continue to take place in the Netherlands (Hague)? The idea behind the prosecution at The Hague is to have a deterrent effect to those who might be thinking that the National government might be out to protect them.

2.4 Strategy and Operational Challenges of the International Criminal Court

Owing to the fact that the existence of the International Criminal Court is at its formative stages of finding its exact position with the stakeholders has not been fully demarcated. It is worthy to note that there have been other national and International institutions that have also previously been involved in pursuit for the international justice but have failed. There is a growing concern on what exactly is the intended purpose of the International Criminal Court.

Among the issues the international criminal court is facing is: what, and for whom is the international criminal justice/proceedings? Will it improve the material conditions of victims and the affected communities? Will it contribute to peace and reconciliation?⁹²

Ironically five years after its creation, the court has been accused of being an impediment to what it was created to promote. Peace with regard to Northern Uganda, remarks that the ICC Indictments of five senior members of Lord Resistance Army (LRA) was received negatively by some individuals in the Uganda peace process, who have argues that it has undercut their efforts to advance peace initiatives in Northern Uganda⁹³.

However, despite its existence crimes continue to be committed on large scale and the perpetrators go scot-free. Then the question arise does the creation of the ICC promote peace or it is just a failed international criminal court like the various national Judicial Institutions.

Drawing from the past experiences where the powerful state/government individuals have always stood in the way barring victims from accessing justice it may also appear extremely difficult for the international criminal court to investigate and prosecute the perpetrators. For example during the Ouko Commission in 2003 despite Kenyan Government assurance that witnesses will be given protection but by mid May 2003 a total of 14 witnesses thought to be having knowledge have died or been killed under mysterious circumstances pointing accusing finger to the Government⁹⁴. It is against this that crucial witnesses have never stepped forward to give evidence against a powerful Kenyan despite the Country having launched the witness protection authority under the office Attorney General.

⁹² Courting conflict? Justice peace and the icc pg 11

⁹³ Cherif Bassiouni,"post conflict society edns,the universal model:the international criminal court pg 815

⁹⁴ The standard newspaper May 14 2013 page 33

Accordingly in a resolution passed on 27/5/2013 at the Heads of states meeting in Ethiopia – Addis Ababa Capital the Heads of state argued that Kenya has a credible judiciary capable of hearing and determine the cases impartially and expeditiously. Such debates have elicited reactions from different factions especially from the International Criminal Court which has hesitantly claimed that it will not refer the cases back home (Kenya) but may only consider deferring the cases touching on the three Kenyans. It is such a mixed scenarios that’s puts aback the hopes of the victims who thought that the International proceeding will ultimately bring justice but in the meantime it is a case of justice delayed thus justice denied.

Additionally , the African leaders in their 21st Assembly of Heads state and Government in Ethiopia resolved to lobby at the UN Security Council level to have the cases facing president Kenyatta and his Deputy Hon. William Ruto at the International Criminal Court at the Hague be referred back to Kenya. The declaration read in part” The AU supports and endorses the Eastern Africa region’s request for a referral of the ICC investigations and prosecutions in relation to 2007 post-election election in Kenya in line with the principle of complementarily, to allow for a national mechanism to investigate and prosecute the cases under a reformed Judiciary provided for in the new Constitution”.⁹⁵ The leaders noted with a lot of concern that most of the ICC inductees are Africans and though they were not supporting impunity they were concerned that Africans are able to manage their problems. The leaders noted with a lot of concern that most of the ICC inductees are Africans and though they were not supporting impunity they were concerned that Africans are able to manage their problems.

Since the inception of the International Criminal Court and it’s involvement in the prosecutions of perpetrators of violence in the world, questions have come up whether the ICC will act as a mode of conflict management. Following the inception of the Court senior political

⁹⁵ Daily Nation Tuesday Hague accused of only targeting African leaders page 4 28/5/2013

and government officials, Head of states and Governments have been arraigned before the ICC. Equally, warrants of arrest have been issued against (President Omar Al-Bashir-Sudan, LRA's top leadership, Rwanda's Fugitive Felician Kabuga) among others. Despite that violence and conflict continue to occur in those countries. This is indeed against the expectations of the International community whose hopes were that probably commission of the international crimes could be on the decrease⁹⁶.

Some critics of the Court's work in East Africa insist that the ICC should step back and allow Africans to resolve their conflicts in accordance with African traditions and criminal justice systems.⁹⁷ These critics argue that the Court imposes western standards of judicial prosecution on African nations, which traditionally prefer reconciliation as the key peacemaking and peace building strategy. This study proposes to assess the International Criminal Court as mode of conflict management in the East African Region. By using the Ugandan and Kenyan cases at the International Criminal Court, the research will probe whether the various approaches have made any difference in its management. It's thus the purpose of this study to question and possibly answer this question; which improvements can be made on the ICC conflict management approaches already in place. The former UN Secretary General Koffi Annan ⁹⁸suggests that in order to achieve a balance of resolving the conflict, while at the same time address and ensure that the reasonable security and economic development of the state are not subjugated by the local, regional and international actors.

⁹⁶ Daniel Donovan, international criminal court: Successes and failures of the past and goals for the future

⁹⁷ Adam Branch, *Uganda's Civil War and the Politics of ICC Intervention*, Ethics and International Affairs, pp. 190-94, Vol. 21.2, 2007.

⁹⁸ Annan, Koffi. (1998), Keynote Address to the Conferences on Preventing Deadly Conflict Among Nations in the Twenty First Century.

Conflicts in East Africa are often assumed to have a state sponsored perspective and thus since the state is the creator of the National Legal Institutions, it apparently becomes difficult to have state officers and Heads of governments/state to be tried by the same institutions that they created. This is one of the reasons as to why leaders in the political realm either cling to power and continue unleashing terror to the citizens and bar the international community from intervening. Due to notion of safeguarding the National sovereignty and the clause of complementarity it gives the persons behind the attacks a chance to protection in disguise that the national interest comes first. Additionally, owing to the fact that the International Court does not have a police of its own it depends on those governments that it is investigating thus it becomes a big problem when the inductees are the state officers.⁹⁹

Despite its spirited attempts to prosecute the key suspects who are alleged to have committed crimes, the ICC faces many challenges. First, it faces challenges of conducting investigations in situations of protracted instability where it needs both international co-operations at the political and operational levels to facilitate its work. Thirdly, it faces the challenges of applying the law as it is laid down in the Rome statute where the parties concerned are engaged in conflict – resolution process like the case in Northern Uganda.

Since 2008, the Court has engaged in a wide process to review its level of efficiency and has presented four reports to the Assembly of States Parties (ASP); the Court's governing body, concerning its progress to date. In response to prompting from the Committee on Budget and Finance (CBF), a subsidiary body of the ASP which advises it on budgetary matters, the Court produced a Report on measures to increase clarity on the responsibilities of the different organs (Governance report) outlining its efforts to further streamline aspects of its operational processes

⁹⁹ Nick Grono :2006,the Role of the International Criminal Court in peace processes:Mutually reinforcing or mutually exclusive?

and policies and clarify roles to reduce the risk of inefficiency due to overlapping roles and duplication.

2.5 Conclusion

It might be too early to pass a judgment on any of the cases currently before the ICC. However, as the analysis into each of the cases showed, the Court is faced with a Herculean task. At this juncture, a scrutiny of the Statute of the ICC will reveal the strengths and weaknesses of its functioning within ongoing conflict situations. From the various and real situations presented above, it is evident that each conflict is different and thus their resolutions or solutions are necessarily different. But law is not selective and provides for a general, rather a one-size approach to situations that fall within its ambit.

CHAPTER THREE

COMPARATIVE ASSESSMENT OF THE INTERNATIONAL CRIMINAL COURT AS A MODE OF CONFLICT MANAGEMENT IN EAST AFRICA

3.1 Introduction

In this chapter, the researcher will explore and provide primary data by bringing and comparing the various responses in regard to the comparative assessment of the International Criminal Court (ICC) as a mode of conflict management in the East African region. By and large, the researcher seeks to closely examine the reactions of the respondents from Kenya, Uganda and Rwanda on how they evaluate the intervention of the International Criminal Court in conflict management with the guiding question, are conflicts on the decline or increase following the Investigation and prosecution by the International Criminal court. Besides, various approaches in conflict management that have been in place will be compared with the ICC.

Precisely the choice and target countries (Kenya, Uganda and Rwanda) was informed by the following factors:- (i) The Geographical location (ii) level of intervention in conflict resolution by the international community (iii) status of post and/or current position on conflict. The data collection methods that will be applied are interviews (oral) and open ended questions.

3.2 Conflict Management Approaches in East Africa

3.2.1 International Criminal Tribunal in Rwanda

The tribunal was introduced as a reaction to the failure of the national system to bring justice the perpetrators of the genocide. Indeed the Rwandan genocide was one of its own magnitudes to have occurred in the Eastern Africa countries and it received different reactions from across the

continent. As Murungi,¹⁰⁰ clearly illustrates in her discussion that the International Criminal Tribunal in Rwanda's key objective was the prosecution of people that were responsible for genocide and other crimes of violation of the International Humanitarian Law that occurred in Rwanda in the so called 1994 Rwandan genocide. The ICTR was formed as a result of the United Nations Security Council (UNSC) Resolution 955. The Rwandan Government wrote to the President of the Security Council calling for the earliest possible creation of an international tribunal to try the alleged criminals.

The resolution creating the ICTR mandated two purposes for the tribunal. According to Ngoga,¹⁰¹ firstly, the Security Council determined that the crimes committed in Rwanda "constitute a threat to international peace and security" and "that the establishment of an international tribunal will contribute to ensuring that such violations are halted and effectively redressed. He further states that by holding trials, the international community was set to make clear that, whatever the intentions of individual states; the world community of states would not allow the authors of such gross violations of human rights to go unpunished. Second, the resolution called upon the ICTR to help bring peace and reconciliation to Rwanda.

From the trials of the Rwandan genocide it has acted as deterrence measure barring will be criminals from planning conflicts on a large scale. According to six (6) respondents from Rwanda representing 60% of the respondents they argued that the trials and conviction in Arusha have contributed to the relative peace that is being enjoyed in Rwanda.

¹⁰⁰Murungi Betty, Human Rights Lawyer, her response on the ICTR trials and the victims' rights, 12 June 2013

¹⁰¹ Ibid.

3.2.2 International Criminal Court in East Africa

The idea of coming up with a permanent International Criminal Court was mooted after the World War II. But it was not until towards the end of the 20th century, that a new impetus for a permanent International Criminal Jurisdiction led to the adoption of the Rome Statute of the International Criminal Court (ICC) in July 1998. The Cold War that had plagued and frustrated codification of the international law principles developed from the Nuremberg and Tokyo trials; the ad hoc nature of the ICTY and ICTR, as well as the international public outcry for the impunity in commission of international crimes necessitated the establishment of a permanent court. The Court was granted powers to try persons accused of the most serious international crimes including crimes against humanity, genocide, war crimes and, the crime of aggression. The International Criminal Court is established under the Rome Statute as an independent institution. The Court does not form part of the United Nations. It however maintains a cooperative relationship with the U.N and can receive requests for intervention and prosecution of perpetrators of crimes against humanity, war crimes or genocide from the UN Security Council. The ICC sits at The Hague, in the Netherlands. It however may choose to sit elsewhere if the situation so demands in hearing matters before it.

The first entry of the International Criminal Court in East Africa was in 2005 by the invitation of the Ugandan government to assist and try the insurgents from the Northern Uganda led by Joseph Kony. Following the 2007/08 post election violence and failure of the Kenyan government to try the suspects the case was referred to the International Criminal Court where currently three Kenyans are facing trial. This is a case which has also elicited a number of reactions because two suspects are the sitting President and his deputy.

3.2.3 Impact of The International Criminal Court in Post Conflict East Africa

The ICC has so far been involved in two post conflict processes in the EA region. It was called upon to intervene in the war between the Lord's Resistance Army (LRA) and the Ugandan army in northern Uganda and in Kenya after the 2007/2008 post election violence.¹⁰²

The government of Uganda had in the past engaged in peace talks with the rebel Lord's Resistance Army (LRA) to end the nation's devastating civil war. However, the talks have represented the best chance to resolve the stalemate but they keep failing every time.

Uganda crisis reveals, however, this transfer of formal authority has failed to produce meaningful criteria dictating how exactly the ICC should exercise its authority. According to Mugimba Robert¹⁰³ he argues that to put it more specifically, we are often told that the ICC—with its prominent framework of 'complementary' jurisdiction—is a last resort, designed to intervene only when national legal systems fail.

The Kenyan government held its 2013 General elections and they were relatively peaceful and to this extent it means that, the ICC process in Kenya has had a deterrent effect on the Kenyan people.

The ICC cases have drawn mixed reactions from the Kenyan public. The inductees dismissed the charges against them as being more of political than criminal. While the victims are hoping that this is the best chance to get justice since the senior political and government leaders can not be held accountable by the same courts that they create.

¹⁰² ICC Press Release, President of Uganda refers situation concerning the Lords Resistance Army (LRA.) to the ICC, 20040129-44 accessed at <http://www.icc-cpi.int>.

¹⁰³ Ibid

3.0 Primary sources of data

3.1 Interview

By the use of non-probability sampling technique i.e. deliberate sampling also known as purposive sampling I prepared a list of my interviewees and their places or locations .The main reason for choice of purposive sampling was to ensure that I get the right information from the interviewees/respondents. In framing the questions for my interview, I asked the same questions to the interviewees. The aim of asking the same questions was to enable me grade and analyse the information which had to help me in comparing the responses.

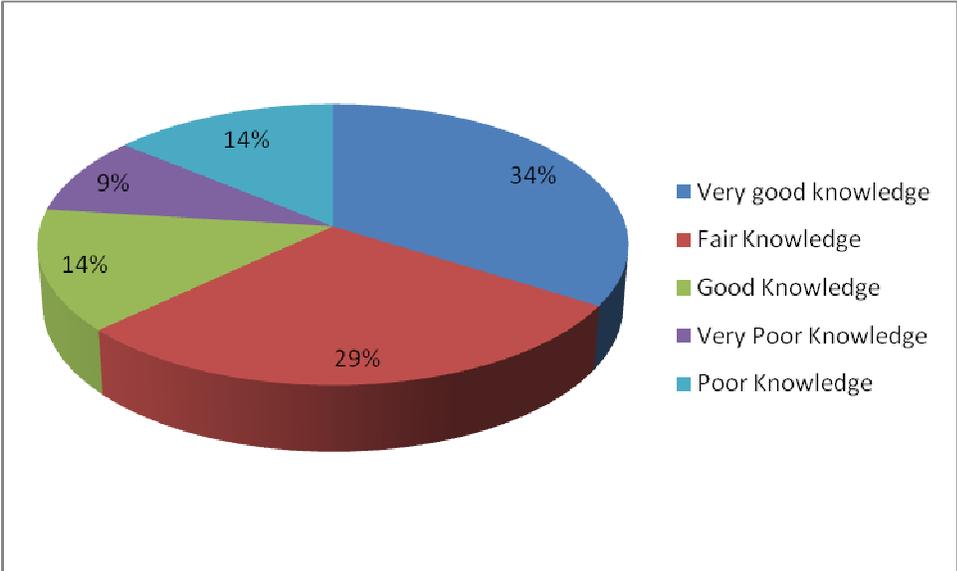
A total of ten persons were interviewed directly and in put down the responses, answers as they were being answered. In conducting the interview, I structured the interview in such manner that it consisted of the following three sections i.e.:-

- (a) List of interviewees
- (b) Knowledge of conflicts
- (c) Knowledge of ICC and its impact in the East African region

Table 3.1 shows the list of the interviews:-

	No. of persons interviewed	Place	Date	%
1	5	Molo	15/4/2013	15
2	5	Eldoret	17/4/2013	5
3	5	Busia	20/4/2013	10
4	5	Timboroa	16/4/2013	5
5	5	Nakuru	12/4/2013	20
6	5	Nairobi	4/4/2013	35
7	5	Kisumu	24/4/2013	10

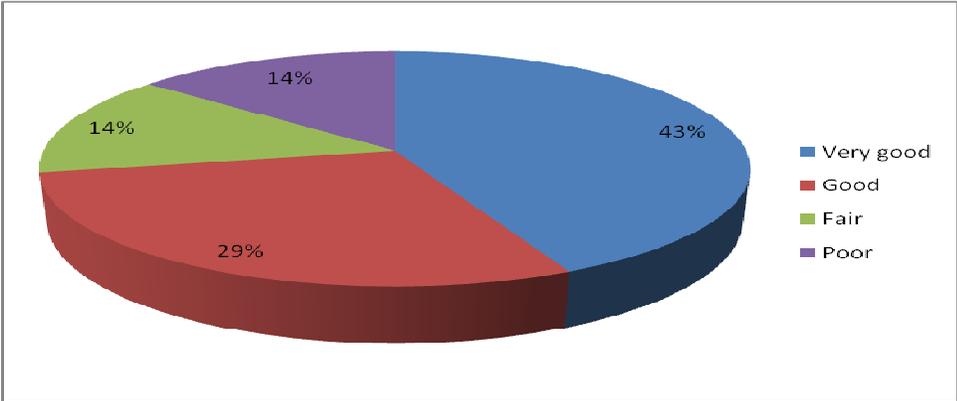
Figure 3.1: shows respondents knowledge of conflicts In East Africa



The research findings show that more than half of the respondents had relatively good knowledge of the conflicts in East Africa 23% of the respondents had low knowledge of conflicts in East Africa.

3.2 Knowledge of the International Criminal court in East Africa

Figure 3.2: shows respondents knowledge of the international Criminal Court in east Africa



The research findings were that a very high percentage of the respondents were aware of the presence of the ICC in East Africa. The respondents were aware of the objectives of the court and its mandate. Despite the high level of awareness of the presence of the ICC, the respondents still had a feeling that the ICC was not the right conflict management strategy in the East Africa Region.

3.3 Questionnaire

By use of purposive sampling technique open ended questions it was to elicit a wide perspective from the respondents so as to give a detailed account of the questions. The respondents were asked questions like, "Have you ever heard about the International Criminal Court". While in the closed ended questions the respondents are given options on the likely answers e.g. have you ever heard about the International Criminal Court? YES or NO.

Questionnaires were prepared and served to the following person/individuals/representatives of institutions.

A total of hundred questionnaires was served and was completed by respondents at the field. The questionnaires were served to consenting adults who were purposively chosen.

The questionnaire consisted of three (3) sections:-

3.3.1 Personal Data

This section of the questionnaire covered respondent's age, tribe, home, highest level of education/qualification. Though the personal data was not central to the study it helped in contextualising findings and formulation of appropriate recommendations.

Table 3.2 Respondents Age at Time of Completing the Questionnaire

S/No.	Age	Frequency	Percentage
1.	20-30	10	10%
2.	30-40	25	25%
3.	40-50	30	30%
4.	50-60	20	20%
5.	60 and above	15	15%

From the above it clearly shows that the respondents were mature people who gave out adequate respondents in regards to the research topic.

Table 3.3 Showing Highest School Qualification

S/no.	Highest level of education	Frequency	Percentage
1.	Primary	15	15%
2.	Secondary	25	25%
3	Texiary college	30	30%
4.	University	30	30%

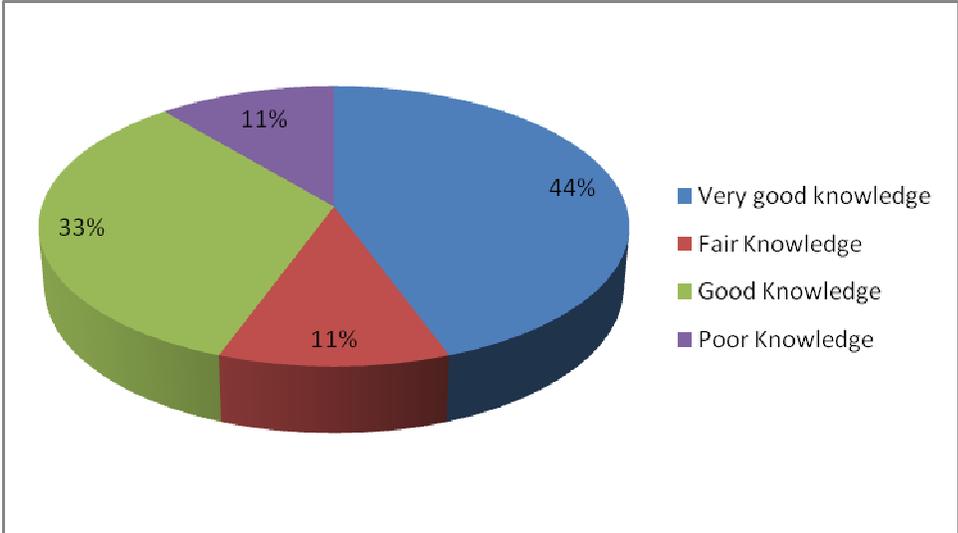
From the above, it demonstrates that the respondents had a fairly high level of education and thus they were in a position to give appropriate responses.

Table 3.4 showing sources proving information about the International Criminal court

S/No.	Source of information	Frequency	Percentage
1.	Radio	25	25%
2.	Television	25	25%
3.	Newspaper	20	20%
4.	People	30	30%

3.4 Knowledge of conflicts and conflict management strategies

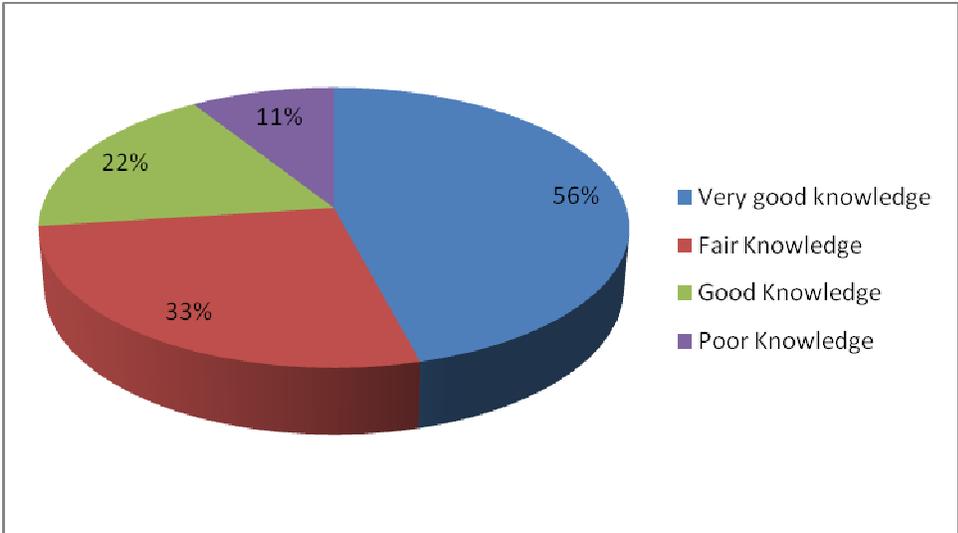
Figure 3.3: Shows respondents' knowledge of conflict and conflict management strategies



The above pie chart shows that 77 % of the respondents had knowledge on the conflict management strategies

3.5 Knowledge of the International Criminal Court and its functions

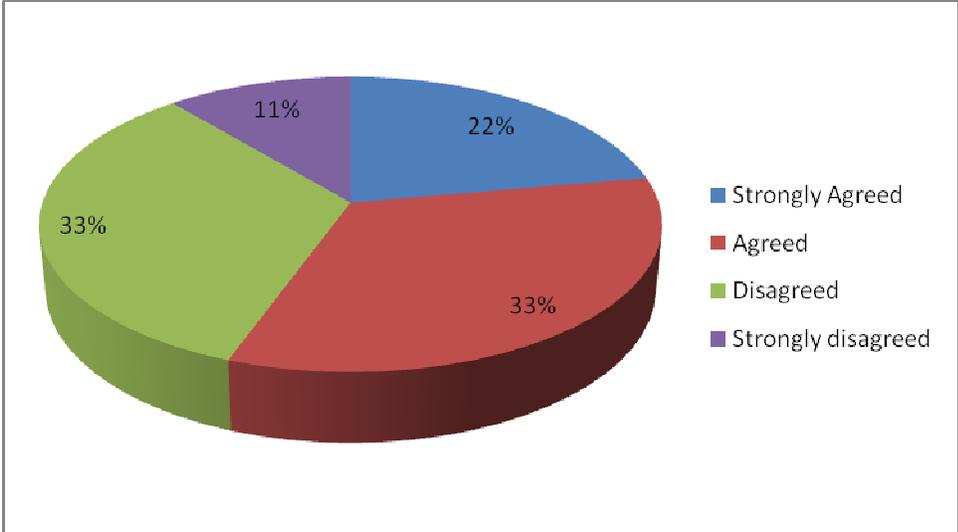
Figure 3.3: Shows respondents' knowledge on the ICC and its functions



From the above it shows that a big percentage of the respondents had good knowledge of the functions and the mandate of the ICC.

3.6 Respondents opinion on whether the ICC will reduce conflict

Figure 3.4: Shows respondents’ opinion on whether the ICC will reduce conflict



From the above the opinions are divided on whether the ICC will reduce conflicts. This is because same percentage of respondents 33% i.e. agreed and disagreed on whether it will reduce conflict. It may take some time before the benefits of the ICC are well known to the ordinary East African citizens for them to appreciate the importance of East African Court.

CHAPTER FOUR

DATA ANALYSIS, INTERPRETATION AND PRESENTATION

4.0 Introduction

This chapter discusses the data analysis, interpretation and presentation on the research on the comparative assessment of the International Criminal Court as a mode of conflict management East African Region. The main purpose of the research was to enable comparative assessment of the International criminal Court as a mode of conflict management in the East African region.

This chapter encompasses issues raised in the literature review, statement of the problem, discussions in chapter two and the primary data in chapter three. A number of themes to be discussed in this chapter includes the knowledge of conflicts, knowledge of the international Criminal Court and its objectives, the knowledge of the various modes of conflict management and lastly but not least impact of the intervention of the International Criminal Court in the East African region.

The findings have been drawn from a total of 48 questionnaires representing 69% out of the 70 questionnaires served. The questionnaires were served to respondents drawn from the victims, perpetrators of conflict, church elders, community leaders and provincial administration within the East Africa region i.e. Rwanda, Uganda and Kenya. Part of the information was reviewed from Kenyan Daily newspapers. Besides, some of the respondents requested for non-disclosure of their identity and every effort has been done to ensure the same.

The data from both the questionnaires and the interviews were analyzed and findings were discussed as per the respective section of the interview and the questionnaire.

The three sections of the questionnaire were:-

- (a) Personal data
- (b) Knowledge of conflicts and conflict management strategies
- (c) Knowledge of the International Criminal Court and its functions

4.1 Personal data

This part of the questionnaire focused on the respondent's age, marital status, occupation and level of education. Despite the fact that the personal data was not key reason for conducting the research it laid ground for understanding the respondents and shaped the opinions in making appropriate recommendations in regard to the research.

Table 4.1 Showing respondents age at time of completing questionnaire

S/No.	Age	Frequency	percentage
1.	21-30	10	10%
2.	31-40	25	25%
3.	41-50	30	30%
4.	51-60	20	20%
5.	61 and above	15	15%

All the respondents showed high degree of awareness of the intervention of the International Criminal Court in the East African region.

Figure 4.1: Showing respondents completing questionnaires

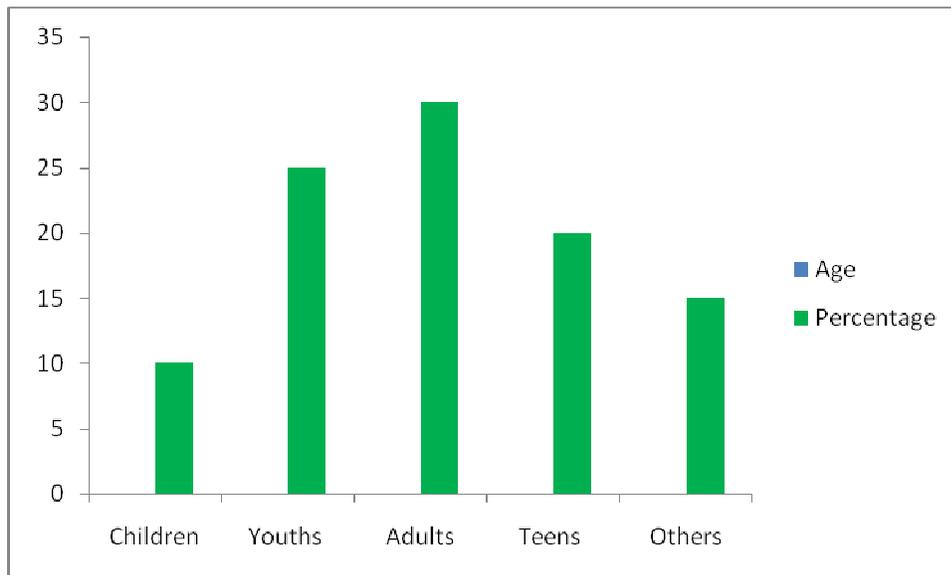
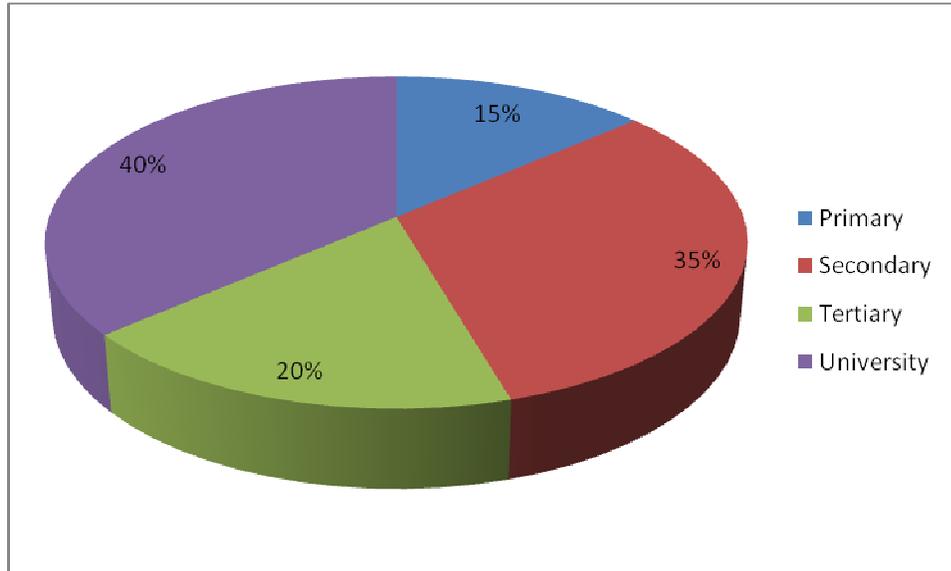


Table 4.2 Showing Respondent’s Highest Level of Education

S/No.	Highest education level	Frequency	Percentage
1.	Primary	15	15%
2.	Secondary	35	35%
3.	Tertiary	20	20%
4	University	40	40%

The respondents exhibited high level of education and they were thus competent to answer the questionnaire appropriately.

Figure 4.2: Showing Respondents Level of Education



Thus following the above findings it is clear that the International Criminal Court proceedings are far removed from the victims and the even the general community of the East Africa Region. This is a similar case like the International trials of the Bosnia and Serbia where one Patricia Laundry¹⁰⁴ argues in her study that the victims are not aware that justice is being sought for them and this renders the ICC process to lose meaning since they take place aware from the person which makes them lose immediate legitimacy. To this extent therefore majority of the people in East Africa do not understand the exact role of ICC.

4.2 Knowledge of Conflicts and Modalities of Conflict Management

The respondents who were served with the questionnaires completed the second part of the questionnaire which was finding out whether they had knowledge of the conflicts and how to manage conflicts. The table below shows the level of knowledge of conflicts and how they are being managed.

¹⁰⁴ Patricia Lundy, Mark McGovern, "Whose Justice? Rethinking Transitional Justice from the Bottom Up" in *Journal of Law and Society* Vol. 35, No. 2, June 2008

Table 4.3 showing level of knowledge of conflicts and how they are being managed

S/No	No. of respondents	Modalities of conflict management	Percentage
1.	35	Local court system	35%
2.	30	National institutions e.g. Commissions	30%
3.	15	Other traditional mechanisms	15%
4.	20	Other sources e.g. ICC	20%

4.3 Knowledge of the International Criminal Court and its functions

This part of the questionnaire was the main purpose of conducting the research and the respondents indicated a high level of awareness of the involvement of the International Criminal court in conflict management in the East Africa region. The table below shows level of knowledge of the international Criminal court and their assessment on whether the international Criminal court is assisting in reduction of conflicts in the East African region.

Table 4.4 showing knowledge of the International Criminal Court

S/No	Knowledge	No. of respondents	Percentage
1.	Knowledge of ICC	65	65%
2.	Somehow knowledge	30	30%
3.	No idea about ICC	5	5%

From the table above it shows that a majority of the respondents had a good knowledge of the presence of the International Criminal Court in the East African Region. This is similar when compared with the response from the interviews.

Table 4.5 Showing the respondents assessment on whether the ICC is a mode of conflict management

S/No	ICC as a Mode of conflict management	No. of respondents	Percentage
1.	Yes	45	45%
2.	No	25	25%
3.	No idea	30	30%

4.4 Interviews

The responses from the interview were analysed as per the three sections of the interview which were personal data, knowledge of conflicts and knowledge of the International Criminal court and whether it is a mode of conflict management.

Table 4.6: Showing Respondent's Age

S/no.	Age	Respondents	Percentage
1	21-30	4	25%
2	31-40	6	38%
3	41-50	2	12%
4	51 and above	4	25%

The table shows that the respondents were mature and of sound mind to participate in the interview. They were purposively chosen and they equally indicated their willingness to participate in the research.

Table 4.7 showing respondent’s knowledge on conflicts and modalities of conflict management

S/No.	No of respondents	Preferred mode of conflict management	Percentage
1.	5	Local courts	31%
2.	4	National institutions	25%
3	4	Traditional mechanisms	25%
4	3	Other institutions e.g. ICC	19%

From the tabulation majority of the respondents preferred the systems of local Courts. They had low opinion on whether the International Criminal Court could act as a mode of conflict management.

Table 4.8 showing respondents knowledge on ICC and modalities on how to manage conflicts

S/No	ICC as a mode of conflict management	No. of respondents	percentage
1	YES	5	31%
2	NO	7	44%
3	NO IDEA	4	25%

From the above tabulation a big percentage of respondents were of the view that the International Criminal Court may not be an appropriate mode of conflict management.

Table 4.9 Showing sources of information on International Criminal Court

S/No	Source of information	No. of respondents	Percentage
1	Radio	4	25%
2	Television	4	25%
3	Newspaper	3	18%
4	People	5	32%

From the tabulation above it shows that most of the respondents obtained information about the International Criminal Court from other people.

Table 4.10 showing whether ICC led to peaceful elections in Kenya

S/no.	Did the ICC led to peaceful general election in Kenya	No. of respondents	Percentage
1	Yes	9	56%
2	No	5	31%
3	Not really	3	13%

CHAPTER FIVE

SUMMARY OF RESEARCH FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

The purpose of the research was to find out whether the on-going investigation and prosecution by the International Criminal Court in the East African region would help in conflict management. In this respect thus a comparative assessment of the ICC investigations and prosecution was carried out within the three East African countries I .e Kenya, Uganda and Rwanda with a view of wanting to find out whether they are assisting in conflict management.

The paper sought to find out the exact role of the ICC in conflict management, its success and failures. For example since the intervention of the ICC in Uganda in 2005 at the first there was a good reception though with time its tempo is coming down and the victims are having that feeling that the International Criminal Court is not doing any better to assist in conflict management. There is a general feeling that the ICC investigation and prosecution favours the suspects and ignores the victims of the conflicts. Most importantly the research drew crucial lessons from the International tribunals of Yugoslavia and the Nuremberg trials which accorded good lessons especially the Rwandan tribunal where the Gacaca courts are playing important roles which can be emulated other than the ICC trials which are supposedly removed from the people.

Finally however, from the research it is clear that the Intervention of the ICC is not a panacea for conflict management in the region especially given the fact that its role has not been properly communicated to the people and especially the victims. The research thus found out that the opinions of the people of East Africa is divided with a higher number of respondents from the

republic of Kenya arguing that the process of referring the Kenyan matter to the court was rushed and thus this renders the current investigation and prosecution non consequential.

5.2 Summary of Research Findings

In summary, a number of conclusions have been drawn from the research which maybe summed up as :- (i) the International Criminal Court takes over cases/matters that the National jurisdiction are unable to handle (ii) States that are parties to the Rome statute are unwilling to fully cooperate with the ICC in its pursuit of the goals of achieving the objectives (iii) Victims and suspects/perpetrators of crimes against humanity are pessimistic about the whole operation of the International Criminal Court in bringing out justice to them (iv) The International Criminal Court process further complicates the course and justice for the victims and all the parties especially when the trials are taking place far away from home countries (v) There is a general feeling that in regard to the conflict management the local mechanisms still stand a high chance of being better conflict management mode than the involvement of the ICC

5.3 Key Findings and Conclusions

From the research a number of findings have been drawn out. This section will discuss the key findings of the study and accordingly relate the findings with the hypothesis and objectives of the study. Ultimately conclusions will be given on each key findings.

5.3.1 Main objective: To carry out a comparative assessment of the International Criminal Court as a mode of conflict management in East Africa

The study had the main objective of carrying out a comparative assessment of the International Criminal Court as a mode of conflict management in East Africa to find out whether since the involvement of the International Criminal Court investigation and prosecution is acting as a mode of conflict management. In this regard therefore the research has found out that the involvement of ICC has prompted a number of reactions from all the parties. Indeed a number of victims are of the opinion that the Court proceedings are far removed from them and they are being conducted in languages that they do not understand and it's expensive and difficulty to follow the proceeding at the Netherlands-(Hague).

The research has further established out that though the International Criminal Court takes over investigations from the National states it still requires the assistance of the National Government to assist them. This becomes a bit trick especially when senior Government officials are key suspects before the court. This is exactly the scenario that is unfolding in Kenya where the Head of state and his Deputy are facing trial at the International Criminal Court.

Indeed theoretically, the ICC complements the National courts where the national state is unable or unwilling to prosecute perpetrators of war crimes i.e. the two complements one another. Above all the only way to ensure better conflict management and avoid breakout of conflicts there is need to reduce suspicion among the concerned parties as Collier, P, Hoeffler¹⁰⁵ argues that unless the local people's suspicion are reduced then there will always be a potential for breakout of conflict.

¹⁰⁵ Collier, P. A. Hoeffler, and D. Rohner, 2007, *Beyond Greed and Grievance: Feasibility ad Civil War*, CSAE, Oxford. At p. 245

In terms of the legislative framework, the research has established that many countries do not have a legal framework on international crimes or crimes against humanity as stipulated under the Rome Statute. For instance at the time of the 2007/2008 post- election violence in Kenya, the country had not domesticated the Rome Statute until January 2009 when Kenya enacted the International Crimes Act. The domestication was rushed and the country is getting worried and its weighing the option of withdrawing all-together from the ICC. This further jeopardizes the future of conflict management in East Africa region.

5.3.2 Specific Objective: To assess whether the presence of the International Criminal Court investigations and prosecutions in the East Africa region is reducing conflicts

Under this objective, the research established out that speculations were high that inception of the International Criminal Court was the most necessary International body to give victims and suspects a fair hearing. Indeed the creation of the ICC comes at right moment to address the issues of conflicts in the world. A number of countries in the world are facing conflicts of one nature or the other. Currently there is conflict in Syria, Libya, Northern Uganda, Central African Republic (CAR) and Mali. It is interesting to note that even the state parties to the Rome statute that led to the formation of the international Criminal Court are also embroiled in conflicts. This also raises questions as to why to states enter into pacts and agreements which they do not follow to the letter. Why are the perpetrators and attackers not afraid that they may be prosecuted by the International Criminal Court.? A very interesting twist of turns is where victims are complaining that instead of them being protected and given assistance it is now the other way round that the main suspects are well treated, accommodated and victims are left continue suffering. Additionally, the fact that the ICC proceedings takes place in a very far place from home and

they do not know or are not updated or briefed on day to day proceedings, they thus develop such a fear that the ICC is not out to help them.

It is evident from the research therefore that the presence of the International Criminal Court in the region has not reduced or mitigated the occurrence of the conflicts. The respective Heads of the states within the region are castigating and blaming the western world as being the brain child behind the International Criminal court in the region. They equate the presence of the International Criminal Court as imposition of the Western Governments in the region. Subsequently, the International Criminal Court is being frustrated since it can not operate without the support of the respective national government. In this regard for example a number of key witnesses in the cases facing the three Kenyans who are facing trial at the Hague have withdrawn and they are not ready to continue being witnesses. They claim that they have been warned of dire consequences in the event that they continue being witnesses. According to the editor Oliver Mathenge¹⁰⁶ indicated that three prosecution witnesses against one of the suspects facing trial at The Hague had dropped out. They were witnesses number 5,426 and 334. They claimed that they were no longer safe to be witnesses. Following such attitudes and fears that develop from the witnesses and victims then the intervention of the International Criminal Court loses meaning and purpose in the region. Indeed as the clock ticks away and the impact of the International Criminal Court is not being felt then it is not of any assistance. For example the International Criminal Court investigators have been present in Northern Uganda following the LRA rebels since 2005, then someone might ask a question why all this long? Besides, the issuance of warrant of arrest against the remaining LRA commanders have not been effected by such a feared world court i.e. International Criminal Court how will the national governments then cope up with such menace.? Recently, the Chief Prosecutor of the International Criminal

¹⁰⁶ The star newspaper 7/19/2013, "prosecution witnesses withdraws" ,Oliver Mathenge pg 1 and 6

Court threatened UN Action against Kenya for what she claims lack of co-operation¹⁰⁷. She further claims that some public officials in Kenya have fostered an Anti-ICC climate in the country which has had a chilling effect on the willingness of potential witnesses and organizations willing to work with the court to do so. Whilst on the other hand the Kenya's Attorney General put up a counter claim that the ICC prosecutor was meddling unsupported claims based on paranoia, misunderstandings or false conclusions. This counter-reaction at this highest level does not augur well in the lower echelons of the populace. From the foregoing discussion it is apparent that outside intervention in trying to solve problems that the local population considers purely within the confines of the state is difficult. For example to a large extent the 2007/08 Post election violence in Kenya did not merit the intervention of the supposedly highest court in the world. The most probable course of action could have been for the state to identify the needs of different groups and identify the probable means of resolving the causes through the problem solving approach. This is due to the fact that conflicts arise from within people and it is thus people who are best suited to re-look at what causes the conflict and come up with solutions that will assist in the rebuilding and reconstruction of the society. This could have been the best approach to bring together the victims and suspects together other than sidelining and sending witnesses' way from home in the belief that this could bring unity and reconciliation.

¹⁰⁷ The Daily Nation 12/6/2013 "Bensouda threatens UN Action", Benard Ngunjiri and Alphonse Shiundu

5.3.3 To understand strategy and operational challenges faced in the implementation of the approaches in conflict management by the International Criminal Court in East Africa.

Under this objective, the research established that indeed the International Criminal Court is fairly new and it has a multiplicity of challenges which are hindering it to achieve its primary objective. One of the challenges is that it intervenes in matters that are referred to it either by the consent of the Nation state, the United Nation (UN) resolutions or by the investigation from the office of the prosecutor. This is a serious obstacle because since the country that is in conflict may not allow or accord the International Court Officials assistance when they may want to visit such countries. Besides also, the ICC does not have army/police of its own and it depends on the goodwill of the respective states. This does poses a challenge whenever the court intends to effect an arrest or execute a warrant of arrest that has been issued by the court. For example, there is a warrant of arrest against the sitting president of the republic of Sudan i.e. His Excellency; President Omar Ali Bashir by the ICC but it has been a problem to arrest him.

The research also established out that most of the Nations that signed and agreed to the Rome statute are from 3rd world countries and a majority of them come from the Africa Continent. This is posing a serious challenge owing to the fact that the African Heads of states under the auspices of the African Union are considering an option of pulling out from the Rome statute since they have that feeling that the ICC investigation and prosecutions is targeting the African Continent because most of the ICC suspects are from Africa.

5.4 Conclusion

Following the research there is indeed mixed feelings about the involvement of the International Criminal Court in the East African Region as a mode of conflict management. Citizens of each country have divided opinions on the aftermath effect of the Investigation and Prosecution of key suspects at The Hague. In Kenya for example, following the on-going investigation and Prosecution of suspected Key suspects in the 2007/2008 post election violence, the Country held a relatively peaceful General elections on 4th March 2013 where they chose their 4th President of the Republic of Kenya. In this regard according to table 4.4.5, 56% of persons interviewed on whether the on-going investigation and prosecution by the International Criminal Court might have led to peaceful elections said “yes” while 31% of the respondents said the intervention of the International Criminal Court did not influence the peaceful environment after the General Elections while 13% of the respondents argued that they were not sure what led to the peaceful environment after the elections.

Respectively therefore owing to the multiplicity of threats to the individual its better to move away from the traditional, one-sided approach of looking at security as threat to the state by military from another state but to the one that guarantees security of the individuals, their protection and empowerment.¹⁰⁸ It means protecting the vital freedoms, protecting people from critical and pervasive threats, building on their strengths and aspirations. One of the best way to avoid conflicts and escalation of civil war is to ensure that every citizen meets all the entitlements and the Authority to ensure that there is no marginalization of development so that only a certain part of the population feels sidelined than the other. In this respect therefore the Kenyan Government in an attempt to ensure accessibility to the maternity services the Head of

¹⁰⁸ Human security in theory and practice, application of human security concept and the United nation Trust Fund for human security, human security unit office for the co ordination of humanitarian affairs United Nations NewYork

state declared that no maternity fees will be levied in all Public Hospitals.¹⁰⁹ The president (Kenyan) enumerated during the Madaraka celebrations (1/6/2013) the key challenges facing the country in its quest to develop. The President cited the following as the key obstacles to the realization of development in Kenya i.e. National Unity, economic growth, food security, seducation, health, insecurity and fight against corruption. By singling out the above factors it means that the Government has shifted from its traditional focus on security to incorporate the basic concerns of the general public that if not addressed may lead to outbreak of conflicts. In this respect therefore the Kenyan Government in an attempt to ensure accessibility to the maternity services the Head of state declared that no maternity fees will be levied in all Public Hospitals.¹¹⁰ The president (Kenyan) enumerated during the Madaraka celebrations (1/6/2013) the key challenges facing the country in its quest to develop. The President cited the following as the key obstacles to the realization of development in Kenya i.e. National Unity, economic growth, food security, education, health, insecurity and fight against corruption. By singling out the above factors it means that the Government has shifted from its traditional focus on security to incorporate the basic concerns of the general public that if not addressed may lead to outbreak of conflicts.

Indeed from the research there is spirited and co-ordinated effort by the African Union to have the prosecutions stopped at The Hague and be brought back “nearer home”. In a way this is a move meant at the end to terminate the prosecutions and to continue with impunity. The Heads of states spearheading this idea are Yoweri Kaguta Museveni (Republic of Uganda) and President Salvar Kiir Republic of South Sudan who are claiming that the African problems will only be resolved by the Africans only. Accordingly in a resolution passed on 27/5/2013 at the

Heads of states meeting in Ethiopia –Addis Ababa Capital the Heads of state argued that Kenya has a credible judiciary capable of hearing and determine the cases impartially and expeditiously. By virtue of this it is drawing a mixed reaction where the 2007/08 post election victims had opted that the indulgence of the International Criminal Court could help in bringing the suspects to book but when the trials are being brought home it gives the key suspects who are senior government officials a golden chance of continuing with the impunity.

In conclusion the conflicts continue happening in the East African region and the best conflict management strategy is neither the investigation and prosecution by the International Criminal Court or the National Institutions but a combined effort of both institutions.

5.5 Recommendations

The research was necessitated by the desire to have a comparative assessment of the International Criminal Court as a mode of conflict management in the East African region .This is following a growing concern of the possible failure by the respective National Government in the region to curb outbreak of conflicts that keep graduating from small scale to high levels of atrocities that attracts the international community to intervene. For example following the protracted conflicts in the republic of Uganda, the 2007/08 post election violence in Kenya and the 1994 Rwandan genocide the International community has intervened to try to bring order following the respective conflicts. However, the study has established that the International Criminal Court is a fairly new institution, it is my considered opinion that its impact on the conflict management in the East African region has not been properly captured. Nevertheless, its an institution that merits more support to help citizens who might have fallen out with the governments of the day.

Following the research a number of findings and conclusions were drawn and from this the following recommendations were derived i.e. academic and policy recommendations

5.5.1 Academic recommendations

In this regard I therefore recommend a further research to be carried out so as to have a wider comparative view on the International Criminal Court as a mode of conflict management in the East African region.

5.5.2 Policy recommendations

This section will explore and explain policy recommendations that are derived from the findings of the study.

5.5.3 Government initiatives

Indeed it is the desire of every government to ensure that its citizens are staying harmoniously free from fear and want. There is need for political will on the part of the government to be able to support the efforts of the International Criminal court proceedings and ensure it achieves its purpose. Determined political will by government will ensure proper investigation and prosecution of crimes committed during the outbreak of conflicts. The government is thus under obligation to ensure that the victims who suffers during violence are assisted to resume their normal lives while also ensuring that it cooperates with the International Criminal Court to ensure justice is achieved.

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APPENDICES

Appendix 1: Questionnaire on comparative assessment of the International criminal Court in the East African region

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

Good morning/ afternoon, my name is Justus Ongwenyi Ombati a Master's of Arts in International Conflict Management student at University of Nairobi, Institute of Diplomacy and International Studies. I am currently undertaking research on comparative assessment of the International Criminal Court as a mode of conflict management in East Africa, as a requirement for the award of the Master Degree. Due to the nature of the research, i have selected you to provide relevant information to the study by filling the questionnaire attached herewith and revert. The information you give in response to these questions and statement will be held in confidence and not used for any other purpose apart from the academic purpose.

SECTION A: GENERAL INFORMATION

1. Personal Characteristics. (Please tick the answer)

Gender

Male Female Trans-gender

Education

Primary Secondary College University None of the above

Age

25-30 31-35 36-40 45 and above

Religion

Christian Muslim Any other-Specify-----

1. Organization

- a. Name of the institution/work department
- b. Geographical location of the institution/work station
- c. Position at the institution
- d. Number of years working.....

SECTION B: GENERAL PERCEPTIONS OF INTERNATIONAL CRIMINAL COURT IN EAST AFRICA

i. International Criminal court

On average, how do you rate your understanding of International Criminal court?

Very good Good knowledge fair knowledge know nothing at all

ii. International Criminal court and its role in conflict management in East Africa.

The International Criminal Court is the most relevant and legitimate organ in conflict management in East Africa?

Strongly Relevant Relevant Do not know Irrelevant

iii. International Criminal Court and conflict management in East Africa

Do you think that the International Criminal Court is doing the best in investigation and prosecution of suspects of crimes against humanity's

Strongly Agree Agree Disagree Strongly disagree

Thank You