UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

RELEVANCE OF INTERNATIONAL JUSTICE SYSTEM, CHALLENGES AND OPPORTUNITIES: A CASE OF AFRICA AND LESSONS LEARNT FROM ICC IN KENYA

KARANJA MARGARET NYAMBURA

REG. NO: R50/35329/2019

SUPERVISOR: PROF. MARIA NZOMO

A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT FOR THE AWARD OF MASTERS OF ARTS DEGREE IN INTERNATIONAL STUDIES

NOVEMBER, 2020

DECLARATION

Declaration by the Student

This research project is my original work and has not been presented for a degree award in any other University.

Signature_____ Date_____

Margaret Nyambura Karanja

REG. NO: R50/35329/2019

Declaration by the supervisor

This research project has been submitted for examination with my approval as a university Supervisor.

Signature_____ Date_____

PROF. MARIA NZOMO

DEDICATION

This work is dedicated to my father who has demonstrated to me the true spirit of living a fruitful life. To my lovely children- Diana, Joy and Tom for being understanding and enduring an absentee mother during the entire period.

ACKNOWLEDGMENT

I take this opportunity to acknowledge the support accorded to me from the Administration Police Fraternity, special thanks being to the Deputy Inspector General, Mr. Noor Gabow for nominating me to attend the course and giving me the necessary support throughout the entire period. To the National Defence College fraternity, and the College Commandant, for his continuous and relentless encouragement and inspirations.

Engineer Otieno great insight has added value to my material. My driver Benson Muriithi, steadfast readiness in ensuring that I am in the right place at the right time and Charity, dedicated support, which has seen me through all this.

Special thanks go to my supervisor, Professor Maria Nzomo whose able guidance has enabled me complete this work.

Together with all other who have contributed in one way or another, I say thank you and may God bless you mightily.

Above all, I acknowledge the unwavering hand of Almighty God, who is the author of everything.

ABSTRACT

Despite the undisputed relevance of international Justice in controlling global impunity, the international Justice system faces a number of challenges. It is challenging to work effectively in an international environment where many nations are unable or unwilling to prosecute most of serious human rights crimes. This research critically examine the effect of history and the working of the IJS with an aim to an earthen both perceived and structural challenges. A focus is given to IJS in selected jurisdictions with a case study of Africa and the ICC experience in in Kenya. Appropriate recommendations are given. A mixed research method combining desktop research and descriptive survey were used in this research. Primary data was obtained from questionnaire responses with a purposive sample of 22 respondents drawn from a population of international legal practitioners such as lawyers, judges, international court registrars, legal experts and diplomats. Qualitative analysis data was done through inferential statistics using SPSS version 22 and descriptive statistics was used to analyze quantitative data. Data was presented using text, tabulation and pie charts. Results of the research show that there are major challenges on International Justice System which include the jurisdiction challenges, lack of focus on victims, lack of touch with local realities and non-cooperation by member States. Lesson learnt from the cases of Kenya at ICC was that the court does little to victims of crimes and is vulnerable to activities that happen within and outside the country, especially where prominent people are involved in crime. It was also learnt that ICC approach to reparations in Kenya was unreliable and that without the co-operation and support of the agencies in the states, the ICC cannot tackle impunity. Another lesson was that the ICC cannot stand racist posturing and could not defend itself against accusation of targeting Africa and it was learnt that there were many challenges surrounding ICC witnesses' management hence interference with the witness and bribery. The recommendations of this research are rooted in the relooking on the existing structures of IJS to enable them match the global dynamics. Among the recommendations are that the International Organizations, the UN and the AU and International Courts should live to their international Law that promote world equality, international justice and observance of human rights. The Governments of Africa are also called upon to cooperate with IJS in order to ensure deterrence for future crimes against humanity particularly arising out of rampant post-election violence.

TABLE OF CONTENT

LIST OF TABLES

LIST OF FIGURES

ABBREVIATIONS

ACJHR :African Court of Justice and Human Rights

AU :African Union

ASP :Assembly of States Parties

CDF :Civil Defense Forces

CETC :Extraordinary Chambers within Cambodian courts

CSO :Civil Society Organizations

DRC :Democratic Republic of Congo

ECCC :Extraordinary Chambers in the Cambodian Courts

GA :General Assembly

HR :Human Right

ICJ :International Court of Justice

ICJT :International Justice Tribunal

ICRC :International Committee of the Red Cross

ICTY :International Criminal Tribunal for the former Yugoslavia

ICTR :International Criminal Tribunal for Rwanda

ICC/ICCt :International Criminal Court

ICJS :International Criminal Justice System

ICT :International Criminal Tribunal

IJT :International Justice Tribunal

IL :International Law

ILC :International Law Commission

IMT :International Military Tribunal

ISIL :Islamic State of Iraq and the Levant

JCE :Joint Criminal Enterprise

KNDR :Kenya National Dialogue and Reconciliation

LoN :League of Nations

MICT :Mechanism for International Criminal Tribunals

NPFL :National Patriotic Front of Liberia

ODM :Orange Democratic Party

OTP :Office of the Prosecutor

PEV :Post-Election Violence

PCIJ :Permanent Court of International Justice

PNU :Party of National Unity

RUF :Revolutionary United Front

RPF :Rwandese Patriotic Front

SC :Security Council

SCSL :Special Court of Sierra Leone

SPCD :Special Panel Court in Dili

TRC :Truth and Reconciliation Commission

TSC :Tribunal and Special Courts

UK :United Kingdom

UN :United Nations

UNGA :United Nation General Assembly

US :United States

U.S.A. :United States of America

UNIIIC :United Nations International Independent Investigation Commission

WW1 :WorldWar1

CHAPTER ONE

INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 Introduction

This chapter presents the "background of the study, the statement of the research problem, objectives of the study, research questions, and justification of the research study, literature review, theoretical framework, hypotheses and the research methodology". It also presents the scope and limits of the research and chapters outline.

1.2 Background of the study

International community during the 1990s undertook to limit the impunity related to mass slaughter, forced dislocations of ethnic communities and rape as weapons of war. During that time, there were genocides and many other widespread crimes, which led to the creation of justice mechanisms to deal with international criminals and use of universal jurisdiction to bring to justice many people that were victims of the crimes. Due to difficulties experienced by the established institutions in dispensing justice for the crimes, there have been loopholes, though new approaches have contributed to great achievements.

There is growing global political opposition to international justice and to ICC.[1] The electoral and administrative systems in the Atlantic brought in political leaders who were less supportive to international justice. For example George W. Bush, the president of USA during his time imposed unilateralist policies which were harsh to international institutions.[2]

Similarly, the Bush administration engaged on a global campaign to weaken and diminish international justice through the ICC in the year 2002 through the repudiation of the Rome statute US signature and threatening to reject all the peacekeeping operations that were

[1]Rapp, S. International Criminal Justice from the Bottom Up.In Proceedings of the ASIL Annual Meeting (Vol. 112, pp. 293-300).(Cambridge University Press, 2018).

[2]Duarte, É.,Marcondes, D., &Carneiro, C. Facing the Transnational Criminal Organizations in the South Atlantic. In *Maritime Security Challenges in the South Atlantic* (pp. 11-40). (Palgrave Macmillan, Cham.,2019).

started by the UN, until the UNSC passed a resolution that excluded members, citizens of other countries that are not signatory to the Rome Statute. to be involved in the UN operations .[3] There was also pressurization of each ICC member state to signing an immunity agreement that was bilateral and also excluded foreigners and US citizens that worked under contract with the US from ICC jurisdiction.[4] Such agreements of non-cooperation made the partner states violate their treaty obligations to the ICC, therefore threatening endangered states with penalties for helping the rule of law.[5]

During the Obama administration, the opposition was less aggressive with no effort towards ratifying the treaty while the Trump administration considered more hostile, entailing issues of arrest threats to ICC staffs and visa bans to investigators against American nationals on Afghanistan atrocities and also to countries that have ratified the treaty.

The US efforts in undermining the international justice were coincident with growing disillusion between powerful members in the Security Council over ad hoc tribunals, which they complained were costly and had inefficient procedures among other challenges. The Security Council members were increasingly skeptical concerning use of the tribunals and their rising costs. This led to waning political and financial support to these tribunals leading to Security Council putting pressure for adoption of completion strategy, with a deadline of 2010 irrespective of whether the tribunals had fulfilled their mandates or not.[6] In September 11, 2011 there was an increased opposition against the international justice as it was viewed as a challenge in realizing the fruits of efforts to combat terrorism.[7]

---

[3]Glossop, R. J. (2018). The International Criminal Court: Progressing Despite US Opposition. In *Nonviolence: Critiquing Assumptions, Examining Frameworks* (pp. 117-124). Brill Rodopi.

[4]Cormier, M. Can the ICC Exercise Jurisdiction over US Nationals for Crimes Committed in the Afghanistan Situation? Journal of International Criminal Justice, (2018).16(5), 1043-1062.

[5]Killingsworth, M. America's exceptionalist tradition: from the law of nations to the International Criminal Court. *Global Society*,(2019). *33*(2), 285-304.

[6]http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/cross_cutting_report_1_rule_of_law_2013.pdfaccessed on 3/3/2020

[7]Baumann, S. F. (2018). *Including terrorism as a crime under the Rome Statute: taking the fight against terror to the ICC* (Doctoral dissertation, University of Pretoria).

The changes of a number of governments in Europe led to reduction of the willingness of the European Union to withhold the growing hostility towards the system.[8]

The IJS is therefore susceptible to factors such as domestic politics and international diplomacy as well as interference of powerful states and individuals charged with serious offenses and crimes.[9] This has been demonstrated in most states such as in Africa where the ASP which ought to provide the political cover for the Court has faced challenges of political interference with IJS matters. For instance, some countries such as 'Kenya, Djibouti and Uganda' were accused of non-cooperation with the ICC court but this never deterred their behaviors.[10]

1.3 Statement of the Problem

Despite the reasons for formation of institutions of international justice such as the ICJ, tribunals and the ICC, the institutions have faced been obstacle in the achievement of their mandates. It is a challenge for the international justice institutions to work well in a challenging international environment where majority of the national courts are unable to provide justice to crimes involving human rights, and states are also unwilling to cooperate or are hesitant in abiding to the law establishing the international justice systems. Many a times the institutions have been accused of biasness and skewness affecting their credibility. Process of prosecuting prominent officials is complex and an expensive affair despite being held at the international or national jurisdictions.

The prosecutions are characterized by the challenge of big quantity of evidences that must be analyzed and classified in terms of crime scenes, types of crimes, and alleged perpetrators. Trial for such cases requires observing human rights that measures to the international

[8]Cacciatori, M. (2018).When Kings Are Criminals: Lessons from ICC Prosecutions of African Presidents.*International Journal of Transitional Justice*, *12*(3), 386-406.
[9]Nyawo J, *Selective Enforcement and International Criminal Law* (Intersentia 2017)
[10] Ibid.

requirements to ensure the legitimacy of the whole processes. The complexities of the procedures slag down the work of the IJS that contributes to their inefficiency through loss of evidence and additional maintenance costs.

Further, cases before international criminal tribunals are usually tried far distance from the crime scenes, making them less accessible to victims and witnesses. States where crimes occurred, and the government's officials involved in war criminals or their allies, are at times opposed to the prosecutions, leading to politicizations of the issues and lessened cooperation making it hard to get custody of the accused person or evidences. Tribunals are also confronted by challenges of coordination between prosecutors, judges and other staffs from various countries and legal cultures, which makes it difficult to conduct fair trials. Further, integrating both common and civil law traditions in order to come up with common rules and methods to be adopted in collecting evidence is costly and time consuming.

This study therefore, examines these and likely structural challenges that has not been adequately done. This calls for a dedicated research to examine these concerns and make appropriate recommendations for successful dispensation of international justice.

1.4 Research Questions

i. How effective is the international justice system in dispensation of international justice?
ii. What are the experiences of the international justice in various jurisdictions?
iii. What are some of the challenges and lessons learnt with a special focus to Africa and ICC experience in Kenya?

1.5 Objectives of the Study

i. To critically examine the international justice system in the dispensation of international justice.

ii. To assess the experiences of international justice in selected jurisdictions.

iii. To evaluate the challenges and the lessons learnt with a focus to Africa and ICC experience in Kenya.

1.6 Literature Review

1.6.1 The International Justice System and the dispensation of international justice

According to Clarke, the international justice is relevant in ensuring international mechanisms of adjudication has the institutional capacity to exert pressure on rogue governments, warlords and perpetrators of crimes against humanity.[11] International justice represents a channel for the realization of ideals and universal rights of victims of crimes. The ICJ preceded the PCIJ after it was dissolved in 1946, following an extended process of coming up with the methods for the peaceful settlement of international conflicts.[12]

The methods include use of, negotiation, arbitration, enquiry, conciliation mediation and good offices all enshrined in Chapter 6 of the UN Charter.

[11]Kamari Maxine Clarke., *Fictions Of Justice: The International Criminal Court And The Challenge Of Legal Pluralism In Sub-Saharan Africa (Cambridge Studies In Law And Society)* (Cambridge University Press 2009).

[12]*Ibid*

1.6.2 International justice mechanisms in various jurisdictions

Fitchtelberg studied hybrid criminal tribunals and found that, they are possible techniques to secure liability for offences committed during the transition period.[13] The author argues that tribunals are hybrid with the applicable law and institutional apparatus in a way that fit in the domestic and international legal perspectives, something that international justice institutions in its current state has not achieved. He notes that, it is believed that the hybrid model would give some advantages over the one that is used in the international justice system, by giving space for close relation with the system of national law, which would assist in the smooth transfer of international ways of acquiring justice to the legal system nationally, and would make the judges and prosecutors to be conversant with the local perspectives. The authors also suggest that it would create space at the lowest level following the appointment of judges and national staff depending on the personnel at international level so as to defend the mechanism arising from domestic based challenges.[14]

Chigowe and Juma sought to identify the place of tribunals and courts of hybrid nature in the Rome Statute" complementarily model using a case study of the Central African Republic's special courts.[15] Following the creation of the special courts after the intervention by the ICC in Central African Republic, the relationship between the special courts and ICC was unclear. The lack of clarity questioned whether the special courts may go contrary to the spirit of the complementarity cause as enshrined in the Rome statute article 17. He states that the view about introduction of special courts should shift. He also notes that special courts are not indictment to the complementarity Rome Statute principle. He suggests that the courts are a

[13]Aaron Fichtelberg, *Hybrid Tribunals:A Comparative Examination Of Their Origins, Structure, Legitimacy And Effectiveness* (Springer Press 2015).

[14] See foot 5 above.

[15]Lloyd Chigowe and Laurence Juma, 'The Principle Of Complementarity And Hybrid Courts: The Case Of The Special Criminal Court For The Central African Republic' (2018) 26 Lesotho Law Journal.

key attempt to eliminate the impunity gap that has resulted from the poor functioning of the national criminal justice system.[16]

1.6.3 The challenges and lessons learnt in dispensation of international Justice

Sadat and Carden studied the challenges relating to jurisdiction of international justice institutions and admissibility in dispensation of international justice.[17] They found out that international justice through the international law is essential in controlling the occasional excesses in the world politics and hence key to the maintenance of world order and stability. They argue that the Rome Statute in addressing the challenges employs norms stipulated in the IL as the substantive criminal law.[18]

Srirams also studied challenges of accountability and mediation processes in relation to international justice system, he found that, persecutors who address issues of conflict and human right abuses are trans-boundary and regionalized.[19] This contradicts the principle of non-interference of states sovereignty and internal affairs. Therefore, there is need for broader dynamics and state-focused solutions to address these pertinent issues. Ignoring this measure may, in the opinion of the researcher, cause dilemma that may pose bigger challenges to mediation and accountability and make holistic peace and justice even more elusive.[20]

Nyawo studied the 'dynamics of enforcing international criminal justice through the Rome Statute. He noted that the realization of the expected end is on easy.[21] That the uneasy relations among the AU, the ICC, and other powerful nations have led to increased concerns about the future of ICJ in general, and in Africa in particular, questioning its relevance. However, it has been marred by myriad of challenges in addressing African cases referred to

[16] *Ibid.*
[17] Leila Nadya Sadat and S. Richard Carden, *The New International Criminal Court: An Uneasy Revolution* (Routledge 2017).
[18] *Ibid.*
[19] Chandra LekhaSriram, *Conflict Mediation And The ICC* (Springer 2009).
[20] See 9 above.
[21] James Nyawo, *Selective Enforcement And International Criminal Law* (Intersentia 2017).

it which also counters its relevance. The distracters have already prepared the ICC's obituary. It has also been criticized for being manipulated by powerful states and individuals who politicize cases leading to their collapse. The court has been opposed for targeting African cases and failure of being a legal independent institution.[22]

Moran examined the problem of power invested on ICC with a focus on its claim to jurisdiction.[23] He questioned the basis of its relevance and authority and explores that has to be consented by the state parties and also face the influences of the UN Security Council.[24] Makinda, Okumu and Mickler examined challenges of peace, security and governance in Africa and recommended that, good governance should be put in place as an essential necessity to achieve peace and security in Africa.[25] They note that only where governance structures are stable, effective, and are designed to meet the people's needs, rights, and hopes, can international justice can be realized.[26]

1.6.4 Literature Gaps

The literature reviewed is in line with the study variables. Evidently, there exist gaps in the IJS which hinders effective in administration of international justice which warrants further research which can be bridged by this study.

1.7 Justification of the Study

On academic justification the increased violation of human rights and an increase on the world state impunity, calls for academic institutions to address these problems, through analysis of the ICJ establishment instruments to unearthen possible structural obstacles and

[22] *Ibid.*
[23] Clare Frances Moran, 'The Problem of the Authority of the International Criminal Court' (2018) *18 International Criminal Law Review.*
[24] See 13 above.
[25] Samuel M Makinda, F. WafulaOkumu and David Mickler, *The African Union* (Routledge 2016).
[26] *Ibid.*

inform on how to address the challenges thereof, for purpose of making them more effective in handling their mandates.

On policy justification, the recommendations provided if implemented can contribute to effective delivery of international justice, which is important in ending global impunity, ensuring global order as well as promoting a culture of protection and observance of human rights.

1.8 Theoretical Framework

The study utilized theory of Justice as postulated by John Rawls in 1971. He emphasizes on justice which implies fairness and also advocates for equal liberty.[27] His original position of social contract is that human beings are rational creatures who agree on adoption of principles of social and political justice.[28] The "veil of ignorance" describes the hypothetical original position where Rawls presents a situation whereby rational contractors disregard important values such as skills and knowledge, as well as the status in the society which makes them equal. Therefore, when a situation presents itself this unique equal status enables them to choose the principle of justice where they share fate with others.

The Rawls' Maxmin Rule is arguably one of the central principles in Rawls' work on a *'Theory of Justice' (1971)*.[29] Maximin rule is a decision rule in uncertain situations that ensure that the undesirable results are minimized at the expenses of the desirable outcomes. Situation presents itself where people are left with no choice except choosing what benefits them. According to Rawls, people always choose their own principle of justice.[30]

---

[27] John Rawls, *A Theory of Justice* [1999] Revised Edition Cambridge: The Belknap Press of Harvard University Press, 53.

[28] Michael Moehler, 'The Rawls-Harsanyi Dispute: A Moral Point of View' [2015] *Pacific Philosophical Quarterly*, University of Southern California & John Wiley & Sons Ltd. 87-92.

[29]Olatunji A. Oyeshile, 'A Critique of the Maxmin Principle in Rawls' Theory of Justice' [2008] 3(1) *Humanity and Social Sciences Journal*, 65.

[30]Olatunji A. Oyeshile, 'A Critique of the Maxmin Principle in Rawls' Theory of Justice' [2008] 3(1) *Humanity and Social Sciences Journal*, 65.

The Principle of fair equality of opportunity is applicable in ensuring that political representation matches the diversity of the society. This principle supports Kantian and utilitarian view that people should be treated equally.[31]

The theory has been criticized on the basis that, its proposition of justice as fairness rejects the concept of individual's beliefs and practices. That it also ignores claims that people deserve certain economic benefits depending on their actions. For example, those who work hard achieve higher result and vice versa.[32]

Despite the critics, the theory of distributive justice is relevant in this study as it propound distributive justice based on freedom and equality of all. The theory advocates for principled reconciliation of liberties and equality, which applies to the basic structure of well-ordered societies.[33]

1.9 Hypotheses

H_1The history of international justice system has been effective in informing the dispensation of international justice.

H_O The international justice instruments have not met the thresholds for the realization of international justice.

H_2 There exist a perceived and structural impediment in the realization of international justice.

1.10 Research Methodology

The methodology of the research adopted focuses on "the study design, target population, sampling and sample size, data collection instruments and procedure, validity and reliability of research instruments, data analysis and presentation as well as ethical considerations."

[31]Rawls, John. A theory of justice. Harvard university press, 2009.
[32]*Ibid*
[33]*Ibid.*

1.10.1 Research Design

In undertaking the research, the researcher used descriptive research design to assess the relevance of international justice system, challenges and opportunity by utilizing a case of Africa and lessons learnt from ICC in Kenya. This method is helpful in that it is less expensive and effective when constrained with time limit. It also confirms collection and analysis of data to assess the reliability, variability and performance in determining possible relationships between variables.[34]

1.10.3 Data collection Procedure

Primary data was collected through survey research methodology, where structured questionnaires were filled by the study participants. There are five categories of respondents that participated in the study and they included; diplomats, international court practitioners such as lawyers, court administrators and experts in international law and diplomacy as well as academics. Some of the questionnaires were administered electronically via E-mails and Social Net-working sites such as whatsApp due to COVID-19 which has hampered movement.

1.10.4 Target Population

Target population is "the group of individuals or participants with specific attributes of interest and relevance to a study". This study targeted at the diplomats, international court practitioners such as lawyers, court administrators and experts in international law and diplomacy as well as academics who are engaged and could be well versed with issues of international justice system, challenges and opportunities.

[34] Mugenda, M. O & Mugenda, A. (2003). *Research Methods: Qualitative and Quantitative Approaches.* Nairobi: African Centre for Technological Studies, Kenya.

1.10.5 Sampling and Sample Size

The researcher utilized simple random and purposive sampling procedures in selecting the sample size of the study. The study focused on populations of interest for this study who are selected from stakeholders involved in issues of diplomacy and international justice system. These techniques allow representation of all units and relevant respondents to participate in the study. The sample size for this study was 25 respondents as shown in the table below.

Table 1. Target Population and Sample Size

Target Sample	**Size of Sample**
Diplomats	5
Lawyers	5
Court administrators	5
International law and diplomacy analysts	5
Academicians	5
Total	**25**

Source; Researcher, 2020

1.10.6 Data Collection Tools

The researcher adopted a questionnaire which captures both qualitative and quantitative data. This method prevents issues of duplication. The questionnaire aims at yielding maximum information and data. The questionnaire included both "open-ended and closed-ended questions'' which helped in collecting sufficient data. The questions were designed in a manner that is flexible in questioning and had subsequent follow up questions that offered the participants an avenue to air their views more on the questions.

1.10.7 Data Analysis

Qualitative data analysis involves assessing the qualitative data in order to enable the researcher explain a phenomenon. The study utilized content analysis to analyze both qualitative and quantitative data.[35] Herein, the findings obtained were described in prose with the emergent meanings being highlighted.

1.10.8 Legal and Ethical Considerations

The study made an effort to maintain ethical standards. This began with voluntary participation obtained through informed consent. To this end, the targeted research participants were briefed before participation and were guaranteed of their anonymity to encourage them to be more willing to participate in the study. Hence, the respondents were assured that no identifying information would be used to link them with the data provided. The researcher also sought all the necessary documents from relevant authorities including a permit from NACOSTI to enable her to conduct the research.

---

[35] Kawulich, B. (2004). *Qualitative Data Analysis Techniques*. Carrollton: University of West Georgia

1.10.9 Scope and Limits of the Research

Limited time and working within strict timelines were the limiting factors in this study. Movements to collect some relevant data were constrained due to time, financial restrictions and the prevailing situations of the COVID -19.

1.11 Chapter Outline

Chapter One covers introduction and background of the study, statement of the problem, objectives and research questions, theoretical framework and justification of the study, literature review, research hypotheses as well the methodology.

Chapter Two seeks to examine the international legal instruments on dispensation of international justice.

Chapter Three assess the experiences and challenges learnt on the international justice system from selected jurisdictions.

Chapter Four evaluate the experiences and challenges learnt.

Chapter Five provides data presentation and analysis.

Chapter six covers summary, conclusion and recommendations. It will highlight on the key summaries from each chapter and suggestions for further research.

CHAPTER TWO

THE INTERNATIONAL LEGAL INSTRUMENTS ON THE DISPENSATION OF INTERNATIONAL JUSTICE

2.1 Introduction

This chapter entails the international legal instruments, international law commission, and international courts of justice and tribunals, all of which form the basis for the existing international justice mechanisms.

2.2 History and the Founding Instruments

2.2.1 The Permanent Court of International Justice (PCIJ)

The PCIJ originates from international arbitration as informed by the first Hague Conference in 1899.[36] International arbitration was believed to have its origins in 'Jay Treaty of 1794' signed between USA and Great Britain, which was formerly known as "Treaty of Amity, Commerce and Navigation".[37] This led to creation of various plans and proposals for formation of an IJT, which brought about the PCIJ.

PCIJ was created by LoN under 'Article 14 of the Covenant of the LoN' and helped to address international disputes, which occurred during the WW1.[38] The decisions of the PCIJ often clarified areas that were previously unclear in international law. In October 1945, the PCIJ held its last session during which it decided to take all useful mandates and instruments to the new ICJ, which was to settle at the Palace of Peace.[39] On 31st January, 1946, all the judges of the PCIJ resigned and, on February 6, 1946, the GA of the UN, during its first

[36]Tams, Christian J. "Peace Through International Adjudication: The Permanent Court of International Justice and the Post-War Order." *Peace Through Law: The Versailles Peace Treaty and Dispute Settlement After World War I. Series: Studies of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law (16). Nomos* (2019): 217-237.

[37]Andrade, Attila SL. "Treaty of Amity, Commerce, and Navigation Between Brazil and the US." *The University of Miami Inter-American Law Review* 47, no. 2 (2016): 200-219.

[38] Grant, Thomas D. "The League of Nations as a Universal Organization." In *Peace Through Law*, pp. 65-84. NomosVerlagsgesellschaftmbH& Co. KG, 2019.

[39]Popa, Liliana E. "PCIJ/ICJ Practice on Treaty Interpretation." In *Patterns of Treaty Interpretation as Anti-Fragmentation Tools*, pp. 145-216. Springer, Cham, 2018.

session, together with the Security Council proceeded to elect the members of the ICJ. The PCIJ was dissolved 1946.[40]

2.2.2 The United Nations

UN contributes to international law through the development, ratification of conventions and signing of treaties with an aim of strengthening economic and social well-being of state parties as well as maintaining international peace and stability.[41] These provisions govern relations and cooperation between states. The UN Charter, whose Preamble provides the for creating of the conditions that are necessary for the maintenance of justice and for the promotion for the respect of the established rules of international law.[42] Further the UN Charter article 13 mandates the General Assembly to carry out studies and to offer recommendations that would ensure progressive development and codifications of international law.in relevant fields The Charter offered a framework for negotiation and, in particular, by arbitration or judicial settlement for State Parties or their agents having dispute (Article 33 of the UN Charter).[43] Presently, more than 500 multilateral treaties covering wide variety of fields such as 'human rights', 'disarmament' and 'environmental protection', among others have been created and deposited at UN Headquarters while many others have also been deposited with State Parties.[44]

The UN General Assembly has been a forum for adopting, signing and ratifying international treaties. The Legal (Sixth) Committee of considers legal matters and reports to the GA in

[40]Sainz-Borgo, Juan Carlos. "Latin America and the International Court of Justice. "In *The Difficult Task of Peace*, pp. 87-108. Palgrave Macmillan, Cham, 2020.

[41]Gassner, Jochen, and Michael Narodoslawsky."International legal instruments and regional environmental protection." *Environment, development and sustainability* 3, no. 3 (2001): 185-198.

[42]Simma, Bruno, ed. *The charter of the United Nations*. OUP, 1995.

[43]*Ibid*

[44]Liu, N., & Middleton, C. (2017).Regional clustering of chemicals and waste multilateral environmental agreements to improve enforcement. *International Environmental Agreements: Politics, Law and Economics*, *17*(6), 899-919.

plenary session.[45] States which are members of the UN have the right of representation in the General Assembly.[46] International humanitarian law is also an establishment of UN General Assembly.[47] It set of rules that seek to limit the means and weapons of war and minimize the effects of fighting by protecting people and populations who do not or no longer take part in the fighting (civilians, humanitarian workers, prisoners, etc). The "Geneva Convention" of (1949) and the "Addition Protocol" of (1977) are at the heart of international humanitarian law.[48] They aim at protecting civilians and victims of international conflicts.

The Geneva Conventions gave birth to the ICRC with a specific mandate of assisting and protecting the victims of wars and internal conflicts.[49] Since their adoption, the Geneva Conventions have guided the United Nations in its fight for international humanitarian law and against impunity. The UN aims at establishing a legal framework for which will address environmental issues, the work of migrants, the fight against drug trafficking or the fight against terrorism, among others areas of international community interests.

2.2.2.1 The International Law Commission

The ILC was formed with an aim of strengthening further developments in the IL.[50] The members of IL when taken collectively represent the legal apparatus in the world. They sit as experts in their individual capacity.[51] The International Law Commission assesses proposals

[45]Pronto, Arnold N. "The work of the Sixth Committee of the United Nations General Assembly in 2016 and 2017." *South African Yearbook of International Law* 42, no. 1 (2017): 290-319.
[46]*Ibid*
[47]Crawford, Emily, and Alison Pert. *International humanitarian law*. Cambridge University Press, 2020.
[48]Zhang, Weihua. "Modernization of International Humanitarian Law-The Origins and Evolution of the 1977 Additional Protocols to the 1949 Geneva Conventions." *J. Hum. Rts.* 17 (2018): 650.
[49]Brzezinski, Z., and P. Sullivan. "International Committee of the Red Cross (ICRC)." *The Statesman's Yearbook 2007: The Politics, Cultures and Economies of the World* (2017): 49.
[50]Oral, Nilufer."The International Law Commission and the Progressive Development and Codification of Principles of International Environmental Law." *FIU L. Rev.* 13 (2018): 1075.
[51]*Ibid*

which aim at development of IL as directed by the UNGA or which come from members of the organization.[52]

The work of the ILC consists mainly drafting articles on questions of international law. The Commission has so far prepared several conventions which have been adopted by the UNGA and which today form the cornerstone of relations between States, such as: the "*Convention on the Law of the Non-Navigational Use of International Watercourses* (1997)" regulates the fair and reasonable use of watercourses crossing at least two countries;[53] "*the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* (1986), [54] the '*Vienna Convention on Succession of States in Respect of State Property, Archives and Debts'* (1983),[55]and 'the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents'* (1973)[56] among others".

2.2.2.2 The International Court of Justice (ICJ)

The 1944 report suggested formation of the ICJ based on the fact that it was to retain the PCIJ advisory jurisdiction.[57] On 30th October, 1943, at the end of a conference that brought together China, the United States, the UK and the USSR, a joint declaration was published recognizing the need "to establish immediately as possible international organization guided by the sovereign equality principle and for all peaceful and for ensuring the maintenance of

[52]*Ibidem*
[53]Garane, Amidou, Charles Biney, and Eléonore Belemlilga. "The 1997 United Nations Convention on the Law of Non-navigational Uses of International Watercourses: what contribution to the development of the Water Charter for the Volta Basin?." *Water International* 42, no. 4 (2017): 360-371.
[54]Miller, William J. "Treaty." *Legal Magazine* (2018).
[55]Aleksejeva, Anastasija. "Succession of states in respect of state responsibility: towards yet another Vienna Convention?." (2019).
[56]Sisco, Joseph J. "Convention on the Prevention and Punishment of Crimes Against Diplomatic Agents and Other Internationally Protected Persons." In *Diplomacy In A Dangerous World*, pp. 199-210. Routledge, 2019.
[57]*Ibid*

international peace and security".[58] Following this declaration, talks took place between the four Powers at 'Dumbarton Oaks' (United States) which resulted in production of proposals advocating for formation of ICJ (9th October, 1944) and 1st convention of jurists, representing forty four states in April 1945.[59] The San Francisco conference, however, was careful not to break any continuity with the past, considering in particular that the Statute of the PCIJ was itself inspired by past experiences and that it was desirable to maintain a system, which seemed to have worked well. At the same time, necessary arrangements were made so that the competence of the PCIJ was transferred as much as possible to the ICJ.[60]

The ICJ was established through the UN Charter chapter 14, and meant to be guided by the annexed statute began its activity in April 1946.[61] It is the only one without its headquarters in New York and since its creation; more than 170 cases have been entered on the Court's list.[62] The mission of the Court is "to settle, in accordance with international law, legal disputes brought before it by states and to give advisory opinions on legal questions, which may be raised by the organs and specialized agencies of the United Nations".[63]

2.2.2.3 The Tribunals and Special Criminal Courts

The United Nations has participated in the creation of several courts set up to provide justice to victims of international crimes through the Security Council, which has established two special tribunals; the (ICTY)[64] and the (ICTR).[65] The United Nations also participated in the

[58]Pronto, Arnold N. "Codification and Progressive Development of International Law: A Legislative History of Article 13 (1)(a) of the Charter of the United Nations." *FIU L. Rev.* 13 (2018): 1101.
[59]*Ibid*
[60]*Ibid*
[61]Whittington, William Vallie. "The Charter of the United Nations: A Note on Publication of the Treaty." *Jus Gentium: J. Int'l Legal Hist.* 1 (2016): 608.
[62]Wellens, Karel. *Negotiations in the case law of the International Court of Justice: A functional analysis*. Routledge, 2016.
[63]Bernasconi-Osterwalder, Nathalie, and Martin Dietrich Brauch. *Is "Moonlighting" a Problem?: The Role of Icj Judges in ISDS*. Winnipeg: International Institute for Sustainable Development, 2017.
[64]Potts, Amanda, and Anne LiseKjær."Constructing achievement in the International Criminal Tribunal for the Former Yugoslavia (ICTY): A corpus-based critical discourse analysis." *International Journal for the Semiotics of Law-Revue internationale de Sémiotiquejuridique* 29, no. 3 (2016): 525-555.

establishment, inter alia, of the SCSL (2002),[66] the ECCC (2006) [67] and the SCSL (2007).[68] These special courts, once their limited mandate end, give way to a reduced structure exercising residual functions for the conclusion of all their trials, appeals and other administrative functions.

2.3 The International Criminal Court (ICC)

The idea of an international tribunal had already been considered in the past, especially after the two great world conflicts.[69] After the world wars, there were two ad hoc tribunal established by allies power to prosecute the Axis powers leaders, accused of crime against humanity.[70] It is until 1990s, the international criminal tribunals (ICTs) were created to try specific countries and cases, such as the crimes committed in Yugoslavia or in Rwanda.[71]

The Preparatory Commission by the United Nations (UN), led to enactment of the Rome Statute, signed on July 17, 1998, leading to the establishment of ICC in year of 2002 under and meant to function independent from the UN leadership.[72] The mandate was to try those accused of "war crimes, genocide, crimes against humanity and crimes of aggression" and its inception, had 18 judges whose 9-year term was not renewable.[73]

At time of creation of the ICC, 60 countries ratified to the Rome Statute, while others are yet to, with China, Israel or India refusing to sign, while United States having signed, but having

---

[65]Kaufman, Zachary D. "United Nations International Criminal Tribunal for Rwanda." *Encyclopedia of Transitional Justice (NadyaNedelsky & Lavinia Stan editors, 2nd edition)(Forthcoming)* (2019).

[66]Oosterveld, Valerie. "The construction of gender in child soldiering in the Special Court for Sierra Leone. "In *Research Handbook on Child Soldiers*.E dward Elgar Publishing, 2019.

[67]Leang, Chea, and William Smith. "The Early Experience of the Extraordinary Chambers in the Courts of Cambodia."In *International Criminal Justice*, pp. 173-194.Routledge, 2016.

[68]Townsend, G., & Swigart, L. (2017). An interview with Gregory Townsend, Los Angeles County Public Defender (1997-98); Associate Legal Officer, ICTR Registry and Chambers (1998-2000)

[69] Kevin Jon Heller, "The Nuremberg Military Tribunals and the origins of International Criminal Law*", From IMT to the zonal Trials.*(2011): 1

[70]*Ibid.*

[71]Holá, Barbora, Catrien Bijleveld, and Alette Smeulers. "Consistency of international sentencing: ICTY and ICTR case study." *European journal of criminology* 9, no. 5 (2012): 539-552.

[72]*Ibid.*

[73]*Ibidem.*

made no ratification.[74] Several countries were opposed to the treaty including; 'China, Iraq, Israel, Libya, Qatar, the United States, Yemen and Israel'. They are therefore not affected by the ICC, which only affects signatory members.[75] By 2015, more than 120 countries had joined the ICC.[76]

The ICC is concerned with promotion of human rights through fighting impunity with regards to the rule of law and observing the IL. The OTP enables government to carry out independent investigations and prosecutions.[77] As such, it only offers help when called upon by the government that fails to find other alternatives for meting justice.

The first ICC trials so far relate more to the African states, which has led to the perception that the ICC has targeted personalities from only African continents, and this has given rise to a growing discontent in Africa.[78]

The ICC plays an instrumental role in exercising the rule of law and combating impunity as enshrined in the IL.[79] As 'Kofi Annan argued , the ICC has an important effect in "letting the perpetrators know that impunity is not guaranteed".[80] That when tensions arise, announcing to the public that the ICC is investigating the situation can be an important means of letting all perpetrators of crime be aware of being accountable for their actions as well as serving as an alert to local, international, and stakeholders.[81]

---

[74]Burke-White, William W. "Proactive complementarity: The International Criminal Court and national courts in the Rome system of international justice." *Harv. Int'l LJ* 49 (2008): 53.

[75]*Ibid.*

[76]Funk, T. Markus. "International Criminal Court Bringing World Promised Justice." *Insights on L. & Soc'y* 11 (2010): 14.

[77]International Criminal Court, Office of the Prosecutor, Paper on some policy issues before the Office of the Prosecutor , September 2003' ('2003 OTP Policy Paper'), 3; International Criminal Court, Office of the Prosecutor, Prosecutorial Strategy 2009–2012 , 1 February 2010 ('Prosecutorial Strategy 2009–2012') [23].

[78]*Ibid.*

[79]Song, Sang-Hyun. "The role of the International Criminal Court in ending impunity and establishing the rule of law." *UN Chronicle* 49, no. 4 (2012): 12-15.

[80]Hassan, Fareed Mohd. "National Prosecution Against Heads of State of Non-state Parties to the Rome Statute in Southeast Asia: Challenges and Prospects Under the Complementarity Principle." PhD diss., University of Aberdeen, 2018.

[81]*Ibid.*

2.4 Chapter Summary

This chapter discussed the international legal instruments, ILC, and ICJT, all of which form the basis for the existing international justice mechanisms. This was done based on desk review of existing literature. The next chapter presents an analysis of the international justice systems experiences and challenges from selected jurisdictions.

CHAPTER THREE

THE EXPERIENCES OF INTERNATIONAL JUSTICE SYSTEM FROM THE SELECTED JURISDICTIONS

3.1 Introduction

This section discusses experiences on international justice from the selected jurisdictions. It presents an overview of history and work of International Criminal Tribunal in former Yugoslavia and Rwanda, special and hybrid courts in 'Lebanon, Cambodia, Sierra Leone, Democratic Republic of Congo, East Timor and ICC in Kenya', challenges experienced and lessons learnt thereof.

3.1.1 International Criminal Tribunal for the Former Yugoslavia (ICTY)

In May 1993, the ICTY was established by the United Nations in response to the mass atrocities committed during the conflicts that raged in "Croatia and Bosnia and Herzegovina" in the early 1990s.[82] In the reports of atrocious crimes, thousands of civilians were killed or injured, tortured, victims of sexual assault in detention camps and other were displaced which ignited rage from the international community and resulted to UNSC invoking 'Chapter VII' of the UN and the creation of the first ICT to try war crimes perpetrators from the courts in Nuremberg and Tokyo.[83]

The primary task of the ICTY was to prosecute perpetrators of heinous crimes as well as those enshrined in its statute. By prosecuting the perpetrators and guaranteeing justice to the victims the ICTY sought to deter more crimes against humanity and establish sustainable peace and stability in the former Yugoslavia.[84]

[82]Potts, Amanda, and Anne Lise Kjær (2016), op. cit p. 23

[83]Magnarella, Paul J. "International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia." *International Journal on World Peace* 33, no. 1 (2016): 109-111.

[84]Vukpalaj, Anton. "Acquittals at the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2012-2013: the domestic implications." *Studies of Transition States and Societies* 10, no. 1 (2018): 37-49.

The ICTY indicted more than 160 individuals, including many political or military leaders "heads of state, prime ministers, interior ministers, chiefs of staff, chiefs of the army and police" having occupied high functions or functions of intermediate rank during the period of Yugoslav conflict.[85] The indictments issued by the Tribunal relate to crimes committed between 1991 and 2001 against members of the different ethnic communities from different countries.

3.1.2 International Criminal Tribunal for Rwanda (ICTR)

The ICTR was instituted by Security Council "to try those accused of genocide or other serious violations of international humanitarian law committed in the territory of Rwanda and in the territories from neighboring states between 1st January, 1994 and 31 December 1994".[86] Since its opening in 1995, it has produced 93 people who participated in Genocide in Rwanda.[87] Among those indicted were senior military and government leaders in 1994, politicians, businesspersons as well as religious authorities, militia and media officials.[88] With support from other institutions it has led to the development of an ICJS which deals with genocide case in Rwanda.[89] It has succeeded in delivering judgment on the genocide cases and also tried to conceptualize the idea of genocide as provided in 'Geneva Conventions of 1948'. Further it has made attempts to define rape in ICL in its effort to

[85]Sterio, Milena, and Michael Scharf, eds. *The Legacy of Ad Hoc Tribunals in International Criminal Law*.Cambridge University Press, 2019.
[86]Kendall, Sara, and Sarah MH Nouwen."Speaking of legacy: toward an ethos of modesty at the International Criminal Tribunal for Rwanda." *American Journal of International Law* 110, no. 2 (2016): 212-232.
[87]Holá, Barbora, and Alette Smeulers. "Rwanda and the ICTR: Facts and Figures." In *The Elgar Companion to the International Criminal Tribunal for Rwanda*. Edward Elgar Publishing, 2016.
[88]*Ibid*
[89]Peterson, Ines. "Criminal Responsibility for Omissions in ICTY and ICTR Jurisprudence." *International Criminal Law Review* 18, no. 5 (2018): 749-787.

prosecute the perpetrators.[90] More so, the court made the first attempt to prosecute media which were broadcasting programs that incited public to commit acts of genocide.[91]

Genocide in Rwanda resulted in death of about 800,000 people.[92] The ICTR delivered 45 judgments where 93 people were charged including politicians, businesspersons, religious leaders, and other senior officials in the government.[93] Those who were found guilty were arrested and prosecuted.[94]

The tribunal faced several criticisms due to high costs compared to relatively small number of convictions and failing to deliver compensation to the victims. The location of the court and use of foreign languages made the process extremely costly. Majority of those convicted of genocide were not tried by the ICTR, and were referred to the 'Rwandan community *gacaca* courts', with their cases completing in 2012.[95] The courts faced problems of disconnection between the victims, accused and the entire process.[96] It was difficult to determine the accused person and those behind the genocide and there were feelings that the perpetrators had not been sentenced to harsh sentences compared to some of the executors in Rwanda who had been convicted during the first year of transitional justice.[97] ICTR is also accused of failing to exercise its full jurisdiction, conducting thorough investigations and collecting hard evidence in the genocide cases.[98]

[90]Wick, Charlotte E. "Direct and public incitement to commit genocide: lessons from the International Criminal Tribunal for Rwanda." PhD diss., University of Leicester, 2019.
[91]*Ibid.*
[92]Melvern, Linda. *A people betrayed: the role of the West in Rwanda's genocide*. Zed Books Ltd., 2019.
[93]Burnet, Jennie E. "for Mass Death, Acts of Rescue, and Silence in Rwanda." *A Companion to the Anthropology of Death* (2018): 205.
[94]Holá, Barbora, and Alette Smeulers. "Rwanda and the ICTR: Facts and Figures." In *The Elgar Companion to the International Criminal Tribunal for Rwanda*. Edward Elgar Publishing, 2016.
[95]*Ibid.*
[96]Cohen, Stanley, and Zachary Kaufman. "See also: Hutus; Rwandan Civil War; Rwandan Genocide, French Responses to; Rwandan Genocide, Role of Propaganda in the; Rwandan Patriotic Front; Tutsis." *Rwandan Genocide: The Essential Reference Guide* (2018): 58.
[97]*Ibid.*
[98]Mamdani, Mahmood. *When victims become killers: Colonialism, nativism, and the genocide in Rwanda*. Princeton University Press, 2020.

On December 20, 2012, the ICTR rendered its last judgment in the Ngirabatware case.[99] Thus, the judicial activities of the Tribunal, which remained to be carried out, fell within the sole power of the chamber. The formal closure of the ICTR was expected to coincide with the delivery of the final judgment by the Appeals Chamber.[100] Pending the delivery of the judgment in 2015, the Tribunal continued to handle cases of impunity and prosecuting perpetrators of genocide in Rwanda and also prevent such atrocities happening in future. [101] Ironically, despite the tribunal being wounded down, more arrest of some individuals have been made such as such Ladislas Ntaganzwa, termed one of the main instigators of the genocide, and was charged crimes of mass rapes and killings.[102] Others went on the run delaying the whole process such as Felicien Kabuga who is accused of inciting the public to the acts of genocide and serious crimes against humanity.[103]

3.1.3 Special Court for Lebanon of 2007

The STL also known as the 'Lebanon Tribunal' or 'the Hariri Tribunal', was to prosecute individual accused of assassinating 'Rafic Hariri', the former 'Lebanese prime minister', and 21 others, and connected attacks in 2000.[104] It was established on 1 March 2009 and with sittings near Hague in Leidschendam, Netherlands and with the primacy over the Lebanon national courts but with field offices in Beirut (Lebanese capital).[105] It has the capacity to hold trials in absence of the perpetrators or the victims and has also addressed of offences on terrorism acts. It is the only IJS institution that requires a "dedicated Outreach Programme

[99]Drumbl, Mark A. "Sentencing and penalties."In *The Elgar Companion to the International Criminal Tribunal for Rwanda*.Edward Elgar Publishing, 2016.
[100]SáCouto, Susana, and Patricia Viseur Sellers. "The BEMBA Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes." *Wm. & Mary Bill Rts. J.* 27 (2018): 599.
[101]*Ibid.*
[102]Bürgin, Annina Cristina. "Chronicle on International Courts and Tribunals (July-December 2015)." *Revistaelectrónica de estudiosinternacionales (REEI)* 31 (2016): 14.
[103]*Ibid.*
[104]Baxter, Alexander Mark. "A critical investigation of power and ideology through the Special Tribunal for Lebanon."PhD diss., Nottingham Trent University, 2019.
[105]*Ibid.*

Unit in its Statute or Rules of Procedure and Evidence", for purpose of providing accurate and timely information to the Lebanon public.[106]

On 28th March, 2008, UNIIIC submitted its tenth report to the SC.[107] The Head of the Commission, Mr. Daniel Bellemare, confirmed that "several people in a network jointly perpetrated the assassination of Rafic Hariri", that this network was involved in other cases before the UNIIIC, as part of its expanded mandate, and that it continued to operate even after the assassination.[108]

3.1.4 Extraordinary Chambers in the Cambodian Courts of 2006

During Khmer Rouge regime several people died due to starvation, diseases and among other factors considered as a gross violation to Human Rights.[109] Through the UN support the concerned leaders during that regime were held accountable and justice was served in a court known as 'the Extraordinary Chambers' within Cambodian courts (ECCC).[110]

An agreement was reached in June 2003 on the details of international assistance and participation. Although created by the 'Cambodian Government' and the UN, this new special tribunal was independent of the latter. The court followed the rule of law and observed the IL and the court was only to prosecute suspects for crimes alleged to have been committed between April 17, 1975 and January 6, 1979 and senior leaders of Democratic Kampuchea and the main perpetrators of serious violations of national and IL.[111]

---

[106] *Ibidem.*

[107] Harwood, Catherine. "The UN International Independent Investigation Commission in Lebanon." *The Law and Practice of International Commissions of Inquiry (Oxford: Oxford University Press, Forthcoming)* (2017).

[108] Wählisch, Martin. "The Special Tribunal for Lebanon: An Introduction and Research Guide." *Globa Lex (2012), Hauser Global Law School Program, NYU Law School* (2012).

[109] Petit, Me Robert, Me Yet Chakriya, Me Kong Pisey Me Kar Savuth, Me Moch Sovannary, and Me Martine Jacquin. "3,/Extraordinary Chambers in the Courts of Cambodia." (2008).

[110] *Ibid.*

[111] Ciorciari, John D., and Youk Chhang."Documenting the crimes of democratic Kampuchea." *Bringing the Khmer Rouge to justice. Edwin Mellen, New York* (2005): 221-306.

3.1.5 Special Court for Sierra Leone of 2002

The SCSL was jointly created in 2002 by the Sierra Leonean government and the UN after a decade of civil war marked by all kinds of atrocities.[112] The SCSL Appeals Chamber was to examine the question of amnesty and justifiable crimes under IL.[113]

The idea of a court was launched in 2000 after are quest letter of June 12, 2000 sent by then-Sierra Leonean President Ahmad Tejan Kabbah to Secretary General Kofi Annan.[114] Consequently, through the 1315 resolution "Special Court for Sierra Leone" in 2002 was established and approved by the Sierra Leonean Parliament in March 2002.[115] Its mandate consisted prosecuting those who borne the most serious human abuse violations and IL in Sierra Leone.[116]

There are three differences with the ICT in former 'Yugoslavia and for Rwanda' and that of SCSL, which are emblematic.[117] First, it is the first court operating in the very territory where the crimes were committed therefore *in situ*, and made up of both international and local staff.[118] Second, the Court was established by an international treaty, and third the SCSL was funded not by the main budget of the UN, but by voluntary contributions from donors, including; "Canada, the US, , the Netherlands ,the United Kingdom and Nigeria".[119]

3.1.6 Special Courts in East Timor

Special courts in East Timor were established to prosecute the perpetrators of the 1999 violence who fled back to Indonesia after causing nearly massive injuries, death and

[112]Oosterveld, Valerie. "The construction of gender in child soldiering in the Special Court for Sierra Leone."In *Research Handbook on Child Soldiers*. Edward Elgar Publishing, 2019.
[113]Jalloh, Charles C. "The International Law Commission's First Draft Convention on Crimes Against Humanity." *African Journal of International Criminal Justice* 5, no. 2 (2019): 119.
[114]Fichtelberg, Aaron, Hybrid Tribunals: A Comparative Examination of Their Origins, Structure, Legitimacy And Effectiveness (Springer Press 2015):30.
[115]Ikpe, Ekaette, Jacob Kamau Nyokabi, and Abiodun Alao."Building the state without peace or making peace without the state: the paradox of state-building and peace-building in Sierra Leone." (2017).
[116]See 114 above.
[117]UNSCR 1315.
[118]*Ibid.*
[119] Footnote 114.

destruction in East Timor.[120] Two tribunals were created and they included "The Human Rights Ad-Hoc Tribunal for East Timor" and "a Mixed Court" also known as "The Special Panel Court in Dili or SPCD". The tribunals have carried out several trials on the perpetrators of the violence.[121] It is noted that, despite being confronted by myriad of challenges, the process still contributes to deterrence strategy as well to development of international justice system.[122]

3.1.7 ICC in the Democratic Republic of Congo, DRC

The ICC prosecuted the perpetrators of crimes against humanity in DRC Congo which occurred in 2002 where dozens of people were massacred, thousands displaced, others were tortured, raped and children recruited as soldiers. Several individuals including Bosco Ntaganda, Katanga and Thomas Lubanga were arrested and prosecuted against committing these crimes, where the court found them guilty and sentenced them accordingly based on the crimes each committed.[123]

3.1.8 ICC in Kenya

Kenya faced international criminal justice when the ICC intervened after the 2007-2008 PEV crises where many Kenyans were killed, property destroyed, and thousand were subjected to torture and other inhumane acts. These were the first cases instituted by the ICC prosecutor, involving a sitting president and his vice president.[124] The investigations resulted in two cases

[120] *Ibid.*
[121] The included lieutenant colonels Gatot Subiyaktoro, Herman Sudyono, and Liliek Koehadianto, captain Achmad Syamsudin, lieutenant Sugito. All of which were involved in the military command over Suai district.
[122] Ibid. As Cohen points out, "The issuance of an arrest warrant against General Wiranto in May 2004 by Special Panels Judge Phillip Rapoza resulted in a complete breakdown of cooperation between the Serious Crimes Unit and the Prosecutor General of East Timor. The Timorese government refused to request INTERPOL to issue an international arrest warrant against Wiranto, effectively ending the effort to use this mechanism to exert pressure on Indonesia." (Cohen, 2006),148.
[123] *Ibid.*
[124] Prosecutor v Francis Kirimi Muthaura and Uhuru Muigai Kenyatta , Decision on the schedule leading up to trial, ICC-01/09-02/11, 9 July 2012.

involving the six suspects, publicly referred to as the 'Ocampo Six' and inquired the 'Pre-Trial Chamber' to issue summons to them in year of 2010.[125] The cases were divided into two with each case comprising of three suspects. The first one also known as "Kenya One" by "OTP staff" dealt with the crimes committed as a result of differences between PNU and ODM party supporters. The second one also referred to as 'Kenya Two' focused on the response of the PNU to the violence and the crimes committed by law enforcers.[126] However, three suspects namely 'Muthaura, Kosgey and Ali' vacated the case during the pretrial, while the rest were 'Kenyatta, Ruto and Sang' continued with full trial and were accused of commissioning crimes against humanity.[127]

The OTP worked and consulted with the government, CSO's and other relevant stakeholders during the entire process.[128] According to a survey conducted by KNDR, majority of the Kenyans especially the victims of the PEV preferred prosecution of the perpetrators as they believed it will combat issues of impunity and guarantee justice. Hence despite the spirit of the ICC complementarity clause, specials tribunal request had been done earlier and rejected thrice as the parliament was unwilling to finalize debate on legislation to effect the same in January and February, 2009, and the local mechanisms that were proposed such as initiating Truth, Justice and Reconciliation Commissions processes and ACJHR seemed unbelievable.[129] That the proposed mechanisms, had not been employed in the previous similar atrocities in 1992 and 1997.[130] Notwithstanding, the OTP faced Kenya's Integrated Backlash Strategy as well as challenges of non-cooperation, which included failure of

[125]Lionel Nichols "The International Criminal Court and the End of Impunity in Kenya" Springer International Publishing Switzerland, 2015.From "Nairobi to Hague" 82.
[126]Situation in the Republic of Kenya, Prosecutor's Application Pursuant to Article 58 as to William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, Public Redacted Version of Document ICC-01/09-30-Conf-Exp, 15 December 2010 ('OTP Kenya One Application').
[127]*Ibid*.
[128]*Ibid.*
[129] Foot note 152 pg.69.
[130]*Ibid*.

evidence collection, threatening of witnesses as well as political interference on the court processes.[131]

Political interference of the court process led to the conclusion that, the ICC process was politicized hence questioning its credibility in contributing to ending impunity.[132]

3.2 Chapter Summary

This chapter presents history of ICT in former Yugoslavia and Rwanda, special and hybrid courts in Lebanon, Cambodia, Sierra Leone, DRC, East Timor and ICC in Kenya. The next chapter presents the challenges and lessons learnt with international justice system.

[131] *Ibid.*

[132] Infotrak Research and Consulting, Infotrak Harris Poll, 'Kenyans take on the ICC and the Ocampo list of 6', December 2010.

CHAPTER FOUR

CHALLENGES AND LESSONS LEARNT FROM THE INTERNATIONAL JUSTICE SYSTEM

4.1 Introduction

This chapter presents challenges from the international justice system. General challenges are presented followed by challenges faced in relation to International Court of Justice, International Criminal Court, and Tribunals and Special Courts.

4.2 General Challenges

4.2.1 The challenges of low efficiency and effectiveness

The international justice system has been ineffective in delivery of verdicts in most cases presented to them. Most of the courts and tribunals have not effectively delivered their mandate as expected. There is need to comprehend the boundaries that exist between these institutions and their objectives so as to assess their capacity to guarantee justice to the victims of gross violation of international law. Prosecuting powerful individuals who are accused of violation of HR involving many people is a complex and costly process whether conducted in the national or international court.[133] These cases require massive information and evidence that must be analyzed in order to qualify as a crime. The prosecution agencies must observe and respect the IL and human rights standards for accountability, transparency and legitimacy of the entire process. However, observing these crucial components of fairness in trial is a complex process and often marred by issues of corruption especially in African states.[134]

[133] *Ibid*.
[134] *Ibidem.*

4.2.2 Challenges of lack of visibility and accessibility

Many victims of the cases which are referred to the ICC fail to witness the whole process because they cannot access it.[135] The government of the accused person may interfere with the prosecution by objecting to cooperate with the court and deterring the process of obtaining custody of the accused or evidence. Further, the prosecution process is hampered as collecting of enough and reliable evidence which will enable the accused to develop a full defense become elusive.[136] Additionally, crimes are perpetrated in different environments with varying cultural values and languages which require translation and this hampers information sharing, communication, collection of facts and hard evidence which slows down the whole process.[137]

4.2.3 Challenges of differing backgrounds of court officials and on implementation of procedure

Prosecution process is hampered by convergence of different court officials who share different legal backgrounds, cultures and values. This in turn obstructs delivery of effective trials.[138] Integrating civil law and common law traditions to produce rules of procedure to be followed by these actors is complex and an expensive process.[139] This problem was evidenced by the Yugoslav and Rwandan courts.[140] The ICTR has only managed to deliver trial in fifteen cases amidst myriad of challenges.[141] Some cases have taken too long and other factors such as violation of human rights and overloaded charges have been reported. Due to the costly nature of some institutions such as ICTY and the ICTR, many cases in

[135]Hillebrecht, Courtney, and Scott Straus. "Who Pursues the Perpetrators? State Cooperation with the ICC." *Human Rights Quarterly* 39, no. 1 (2017): 162-188.
[136]*Ibid.*
[137]*Ibidem.*
[138] See footnote 165
[139]*Ibid.*
[140] Springer Series "International Justice and Human Rights" Series Editor George Andreopoulos, City University of New York John Jay College of Criminal Justice, New York, New York, USA,182.
[141]*Ibid.*

countries such as “Sierra Leone, Kosovo, and East Timor” have been referred to the hybrid system as the ‘alternative option’.[142]

4.2.4 The challenges of witness and victim protection and questioned states cooperation

The witnesses and victims have accused the court of failing to offer them protection and insufficient follow-up during the trials.[143] Some war criminals after being charged have refused to comply due to absence of cooperation, coordination and support from their host countries and other countries with the ability to arrest them.[144] This is evidenced by pending cases where individuals have been accused of committing serious crimes such inhuman acts and funding of terrorism among others.

4.3 Challenges specific to International Court of Justice

Since ICJ inception in 1945, the court's has experienced actual or perceived diminished influence and effectiveness on many of its core areas of operation.[145] These include, on credibility of ICJ judge election and re-election process; conflicts of interest arising from UNSC members on the Court; jurisdiction issues which is often disputed by some UN State Parties; appointment of a special judge under Article 31 of the Court Act; preliminary jurisdiction and licensing issues and grounds for the court's exercise of jurisdiction, especially on the controversial advisory jurisdiction.[146]

Modern issues related to environmental protection, terrorism and human trafficking among others around the world may not have been envisaged before. It has been argued that the ICJ

[142]*Ibidem.*
[143]Mizrahi, Stephanie B. "International Criminal Court." *The Encyclopedia of Women and Crime* (2019): 1-5.
[144]*Ibid*.
[145]Daniel, Tim. "Bakassi case: Challenges of case management of international litigation." In *The Bakassi Dispute and the International Court of Justice*, pp. 4-24.Routledge, 2017.
[146]Becker, Michael A. "The Challenges for the ICJ in the Reliance on UN Fact-Finding Reports in the Case Against Myanmar." *Blog of the European Journal of International Law* (2019).

is not suitable for resolving modern international disputes if the jurisdiction and compositional issues are not addressed.[147]

4.4 Challenges specific to ICC

ICC faces the major challenge of credibility costs and delivery where it has been accused of delivering few verdicts despite receiving Billions of Euros.[148] More so, its legitimacy has been questioned due to prosecutor's tendency of selecting cases and location. Globally, the Court is compromised due to representation of only two members from the UNSC yet the Security Council can refer situations to the Prosecutor majority being not subject to the same process. [149]

4.5 The challenges of local aspects of Special Courts and Tribunals

The hybrid mechanisms possess an advantage due its lasting legacy of exercising justice especially in states where crimes have been committed.[150] This is made possible by presence of expertise and professional staffs in the area of crime trial which, strengthen the capacity of national courts, as they make contribution to international justice.[151] The courts close proximity to the crime prone areas makes it easy for victims to access them.[152] However, local people who are hired to support on these matters may be exposed to security risk due to the interactions with the key suspects and allies.[153]

---

[147]Naranjo, Dan A. "Global Conflict Resolution and the International Court of Justice." *Judges J.* 55 (2016): 16.
[148] See footnote 85 The Prosecutor v Thomas Lubanga Dyilo, Judgment pursuant to Article 74 of the Statute, No. ICC-01/04-01/06, 14 March 2012. He was sentenced to a total of 14 years of imprisonment on 10 July 2012, and this was confirmed by Appeals Chamber on 1 December 2014,pg. on the The ICC's Performance and Budget in the Last 14 Years.
[149]*Ibid.*
[150]Baylis, Elena A. "Cosmopolitan Pluralist Hybrid Tribunals." *Forthcoming, The Oxford Research Handbook on Global Legal Pluralism* (2019).
[151] See footnote160.
[152] See foot note 145 p.1.
[153]*Ibid.*

4.7 The Challenges of fair trial and right to appeal

After formation of the "Yugoslav and Rwandan courts" the international community was confronted by challenges arising from their *sui generis* nature (unique). The only available similar institutions were the 'courts of Nuremberg and Tokyo', which exercised their mandate with dual diligence following the IL.[154] Although not absent, the guarantees of a fair trial in these proceedings and other international justice mechanisms are unlikely to be met by today's standards due the unpredictable environment, that a time defeat justice.

4.8 Chapter Summary

This chapter presented the challenges with international justice system. General challenges are presented followed by challenges faced in relation to ICJ, ICC and TSC. The next chapter presents the data analysis, interpretation and findings.

[154]Faraci, David. "Hybrid Non-Naturalism Does Not Meet the Supervenience Challenge." *J. Ethics & Soc. Phil.* 12 (2017): 312.

CHAPTER FIVE

DATA ANALYSIS, INTERPRETATION AND FINDINGS

5.1 Introduction

The chapter provides an analysis on challenges of international justice. It presents analysis as in the reviewed literature as well as results of survey conducted to find out respondent opinions.

5.2 Response Rate

A survey was conducted on purposive sample of 25 respondents drawn from the international justice system. The questionnaire was online and links were sent to respondent emails or twitter handles. Out of these, 22 responded. This made a response rate of 88% which was deemed sufficient analysis.

5.3 Demographic Information of the Respondents

The findings are presented in the following section.

5.3.1 Experience of the Respondents

The findings show that 27.3% had the experience of above 11 years in international justice while 36.4% had experience of 6-10 years and a similar percentage had between 1 and 5 years. This shows that the respondents had sufficient experiences to make significant contributions to the subject under investigation. The respondents were international law practitioners (31.8%), ICJ and ICC at 13.6% and from the ACJHR and EACJ at 9.1% and 4.5% respectively.

The position is as shown in the figure and table as shown below:-

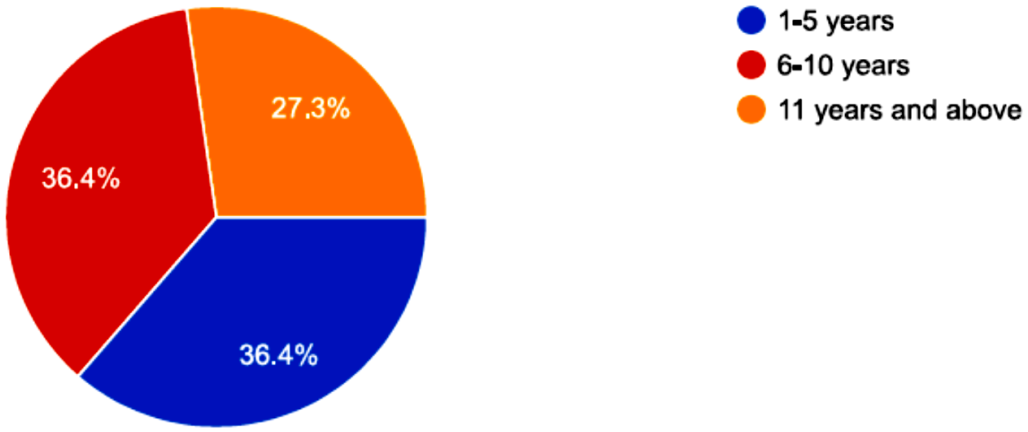

Table 2. Respondent by position and area of practice

Respondent Institution /Area of practice	**Respondent Position**	**Frequency**	**Percent**
The EACJ	Registrar	1	4.5
ACJHR	Registrar, prosecution	2	9.1
ICC	OTP lawyers	3	13.6
ICJ	Lawyers, Judges	3	13.6
Diplomats	Ambassadors	4	18.2
International law practitioners	Advocates	7	31.8
International law and diplomacy experts	Professors	2	9.1
TOTAL		**22**	**100.0**

5.3.2 Highest Level of Education

The findings presented in Figure 2 presents the level of the study participant's education. About 9.1% of the respondents had PhD, 22.7% had master's degree, 63.6% had bachelor's degrees while the rest had post-graduate diploma.

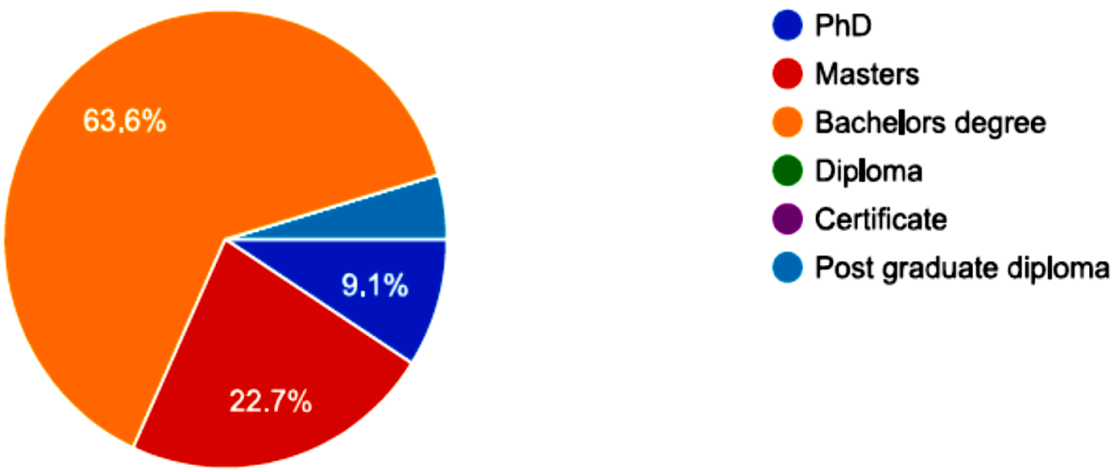

Figure 2. Respondent highest level of education

5.4 Study Findings

The respondents were asked to rate the challenges in international justice in Africa. The findings are presented in Table 3.

Table 3: Respondent rating on challenges of international justice and in Africa

Challenges of international justice	Likert rating by the respondents/ Number of respondents who rated each scale						
	5	4	3	2	1	Total	Weighted Mean
Low efficiency and effectiveness of international justice system	18	2	1	1	0	22	5
Jurisdiction challenges	15	5	1	1	0	22	5
Lack of visibility and accessibility to the international justice system	19	3	0	0	0	22	5
Problems of witness and victim protection	18	2	1	1	0	22	5
Difficulty to ensure fair trial	19	1	1	0	0	21	5
Challenges with right to appeal court decisions	15	6	1	0	0	22	5
High costs	21	1	0	0	0	22	5
Resistance from regimes and influential persons	14	6	1	1	0	22	5
International justice targets African leaders	16	4	2	0	0	22	5
Challenge of impartiality and independence of international courts	14	6	1	1	0	22	5
Not in touch with local realities	17	2	2	1	0	22	5

The respondents were asked to indicate the extent to which they agreed that the challenges listed in Table 3 affected the dispensation of international justice. The Likert scale ratings were: “1- Strongly disagree, 2- Disagree 3- Neutral 4- Agree 5-Strongly agree”. The results

show that the respondents strongly agreed as shown by weighted means of 5 that these challenges affect dispensation of international justice: lack of visibility and accessibility to the international justice system; problems of witness and victim protection; high costs; resistance from regimes and influential persons, and not being in touch with local realities. This shows that all the challenges under investigation were important detriments to international justice and in Africa.

5.2.4 Other challenges identified by the respondents included the following:

i. Political rhetoric in opposing international justice. There is generally lack of political good will in countries where accused come from. This is in addition to lack of government commitment to support investigations. Such opposition and lack of commitment are as a result of weak democracy and poor governance structures of affected states. In such states, interference by persons holding power and lack of cooperation are major challenges.

ii. Inability of lawyers to appropriately apply the international law. This problem is often compounded by lack of skilled investigators therefore poor results of investigations

iii. Cases take time before they are heard and determined.

iv. Conflict of interest

v. Perception that ICC only targets African States and widespread evidence of unequal application international measures by the United Nations Security Council.

vi. Perception that a layperson cannot access justice through IJS due to high costs and complexity of processes.

vii. Lack of practical legal framework and institutions to enforce international justice. They largely rely on enforcement by the member states hence occasional conflict with national interests.

5.3 Rating of lessons learnt from ICC in Kenya

The study participants were asked to rate the lessons they learnt from ICC in Kenya. The findings were presented in Table 4.

Table 4. Respondent rating of lessons learnt from ICC in Kenya

Lessons learnt	Likert rating by the respondents/ Number of respondents who rated each scale					Total	Weighted Mean
	5	4	3	2	1		
There was no great deal of investigations prior to issuing of ICC of summons	15	5	2	0	0	22	5
Steps to mitigate potential threats to witnesses were not put in place	3	1	3	1	14	22	2
Evidence driven investigations was not adopted in place of target driven investigations	13	5	3	1	0	22	4
Court outreach policies did not enable the prosecutors and members of court registry to work together	8	8	6	0	0	22	4
OTP did not investigate the truth, as required by Article 54 of the Rome Statute	11	7	3	1	0	22	4
ICC did not engage in relentless pursuit but exhibited singular, myopic obsession with African situations	9	5	4	2	2	22	4
ICC did not respond to locals, who are of great importance in prosecuting state crimes	13	4	5	0	0	22	4

ICC does operate within ample duration of the investigation to address its major operational shortcoming of limited time	12	4	6	0	0	22	4
ICC was not efficient and effective in dispensing international justice	13	5	4	0	0	22	4

The respondents strongly agreed (WM=5) that there were no great deal of investigations prior to issuing of ICC of summons. However, they generally disagreed that steps to mitigate potential threats to witnesses were not put in place (WM=2). They also agreed that evidence driven investigations was not adopted in place of target driven investigations and that court outreach policies did not enable the prosecutors and members of court registry to work together. They also agreed that OTP did not investigate the truth, as required by "Article 54 of the Rome Statute" and that ICC did not engage in relentless pursuit but that it exhibited singular, myopic obsession with African situations. Furthermore, the respondents agreed that ICC did not respond to locals, who were of great importance in prosecuting state crimes and that ICC did not operate within ample duration of the investigation to address its major operational shortcoming of limited time. Lastly, the respondents agreed that ICC was not efficient and effective in dispensing international justice.

The respondents were also of the opinion that the following additional lessons were learnt:

i. The politicians fail to observe and respect the rule of law and that was why there was resistance to the cooperation with the ICC.
ii. There was violation to the complementarity principle. The State must ensure smooth working relationships with ICC.
iii. Politicians and perpetrators realized that they can be prosecuted at ICC for offences against humanity if the offences are against Rome Statutes.

iv. ICC does not have authority to command governments to cooperate especially when suspects are people in power.

5.4 Lessons Learnt from ICC Experience

The lessons learnt from Kenyan ICC experience can be broadly viewed in two categories. The first is on the role of the Office of the Prosecutor (OTP) on the Kenyan cases investigations which were not fruitful as expected. The second is that ICC greatly risked by targeting both sides of the Kenyan conflict.

5.4.1 Lessons Learnt by Kenyans

The ICC had learnt lessons from ICTR and ICTY, which were accused of failing to sufficiently assist victims. The Rome Statute therefore clearly identified the need for recognition, inclusion and restitution of victims and the statute required that victims should be effectively be served by the court.[155] Article 68(3) of the Rome Statute provides for participation of victims during proceedings in cases where their personal interests are affected. The law outlines how victims and witnesses should be protected during the participation process. The ICC is believed to focus attention on victims as enshrined in the court's authorizing legislation; yet it is accused of doing very little to victims of crimes.[156] Articles 75 and 79 of the Rome statute provide for reparations for victims and Trust Fund. This is meant to give a form of rehabilitation to victims as a lesson from ICTY and ICTR. The expanded meaning of reparation by the ICC shows that the Rome Statute meant that the court would be committed to protection and support of victims as a step beyond the traditional compensation methods.

[155]Chandra Lekha Sriram, *Conflict Mediation and the ICC* (Springer 2009).
[156]Clarke. K, *Fictions Of Justice: The International Criminal Court And The Challenge Of Legal Pluralism In Sub-Saharan Africa* (Cambridge Studies In Law And Society) (Cambridge University Press 2009)

Kenyans learnt through experience otherwise. The ICC is alleged to have completely failed to give meaningful justice to victims, more seriously victims of gender-based and sexual crimes and while the OTP laid charges for sexual and gender-based crime offenders and obtained evidences of the same, no individual was convicted at the ICC for the crimes leading to the conclusion that the ICC does not adequately protect victims.[157] They learnt that safety of victims and witnesses was compromised during the ICC processes as some witnesses lost their lives while others were threatened and withdrew participation. No proper protection was provided and this made people lose faith in the ICC process. ICC approach to reparations in Kenya was also unreliable. Kenyan victims and witnesses learnt that hope for any reparation from ICC was not easily realizable as even the most deserving cases were not considered both by the State and ICC. Victims of crimes against humanity found out that justice was not for them at ICC, despite the crimes being included under Articles 7 and 8. They learnt that they should may be rely on locally available justice system and not hope for redress from a foreign court as there was no visible transparency and accuracy in case handling by ICC. It is also believed that, the court received a lot of pressure from the accused to withdraw the cases and also the government was not willing to support and cooperate with the court.

5.4.2 Lessons Learnt by ICC and Other Stakeholders

The ICC needs support from other agencies in order to tackle issues of impunity.[158] Many Kenyans especially the victims of PEV lost their trust with court after the cases were withdrawn from the court. These cases demonstrated how lack of cooperation and support at domestic level can deny justice at international level. These raises questions on how the Kenyan constitution allowed the accused persons, Uhuru Muigai Kenyatta and William Ruto to run for country's highest positions despite being accused of crimes against humanity and

[157]Moran C, 'The Problem of the Authority of the International Criminal Court' (2018) 18 *International Criminal Law Review*
[158]*Ibid*

the country being a signatory to the Rome statute. Its alleged that after they ascended in power the accused persons manipulated power and halted the prosecution processes including collecting of the evidence. That they even interfered with the witnesses where, they intimidated them, threatened and others were eliminated. These factors among others are alleged to have facilitated in the collapse of the cases at Hague.

Rome Statute article 86, calls upon state parties to offer necessary support and assistance to the ICC operations yet most have done contrary to the expectations. as earlier demonstrated. States which have witnessed weak governance, lack the capacity to observe these obligations. Other obligations under the Rome Statute which are signatory to Rome statute should observe include "identifying and tracking persons or things, taking evidence and testimony under oath as well as producing evidence, questioning individuals, examining places or sites and exhuming and examining grave sites, executing searches and seizures, providing records and documents and preserving evidence". In this regard, Kenya failed to observe these obligations despite being a signatory to the Rome statute.

It's evident that the ICC is susceptible to factors such as domestic politics and international diplomacy as well as interference of powerful individuals charged with serious offenses and crimes.[159] This as was demonstrated by the PEV cases at the court, where the victims are still suffering and as most of them have not been compensated.

That the ASP which ought to provide the political cover for the Court has faced challenges of interference with court matters. For instance, some countries such as Kenya, Djibouti and Uganda were accused of non-cooperation with the court but this never deterred their behaviors and therefore, a conclusion that, ASP is incapable of meeting the required cover necessary for ICC to carry its mandate.

[159] Nyawo J, *Selective Enforcement and International Criminal Law* (Intersentia 2017)

The court becomes more vulnerable when regional organizations such as AU deliberately employs political pressure on it. This raises questions whether the pressure might have led the chambers withdrawing the case against Uhuru Muigai and co- accused person William Ruto. The AU has also played part in the withdrawal of most of the African states that were members of the Rome Statute through the uncountered allegations against the Court of having targeted the African Leaders. Ironically, most African cases continue to refer cases to the court for instance Sudan and Libya and none of the countries have objected. This is also similar to Kenya and Côte d'Ivoire before the cases were suspended, where accused preferred to refer their cases to the ICC rather than the local mechanisms. Their cases later presented loopholes in the prosecution process due to the disappearance of witnesses and evidence, cases of bribery and lack of protection to the witnesses by the court. Further, there were alleged inadequate investigations in Kenya by the OTP which contributed to the collapse of cases.

5.5 Chapter Summary

The chapter provides an evaluation of challenges on International Justice System from the reviewed literature as well as from the respondent opinions, in Africa and lessons learnt from ICC in Kenya experience. The next chapter presents the summary conclusions and recommendations.

CHAPTER SIX

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This chapter presents summary of the research, as well as recommendations made.

6.2 Summary

6.2.1 Founding Instruments of International Justice System

There is UN Charter established a framework for peaceful settlement of disputes in Chapter VI for State Parties or their agents having dispute.[160] The UN General Assembly has been a forum for adopting, signing and ratifying international treaties the ILC which was formed in 1947 to further the development of IL.[161] Deposited are more than 500 multilateral treaties covering wide variety of fields such as HR, disarmament and environmental protection, among others. Established also are international courts and tribunals such as PCIJ, ICJ, ICC, the ACJHR, ICTR and ICTY and other IJS mechanisms.

6.2.2 Challenges in the Dispensation of International Justice, in Africa and the Kenya Experience

The challenges faced with international justice include low efficiency and lack of effectiveness, lack of visibility and accessibility of the courts, implementation challenges, problems with witness and victim protection, challenges of compatibility with local settings and challenges relating to fair trial and appeals. Africa has experienced International Justice System in relation to 'Rwanda', 'Sierra Leone', 'DRC' and 'Kenya' and challenges experienced cut across. These challenges show that International Justice System has not often taken options which maximize the desirability of the least desirable possible outcome, which is impunity meted on victims.

[160] Charter of the United Nations Chapter VI.
[161] Article 13 (1) (*a*) of the Charter of the United Nations

6.2.3 Lessons Learnt from the Cases of Kenya at ICC

Lesson learnt from the cases of Kenya at ICC was that the court does very little to victims of crimes and is vulnerable to other factors such as local politics and abstraction from powerful individuals. This means that the ICC has not exercised Rawl's principle of fairness to victims. It was also learnt that ICC approach to reparations in Kenya was unreliable. The ICC lacks visible transparency and the capacity to and that to handles cases of impunity. Another lesson was that the ICC cannot stand racist posturing and could not defend itself against accusation of targeting African States.

6.3 Recommendations

The following measures were recommended to improve international justice. The recommendations target international organizations, IJS, and Governments in Africa.

6.3.1 International Organizations (AU and UN)

i. The UN and the AU should live up to their international law promote respect for the human life through promotion of global order with one voice.
ii. The UN should encourage members of UN Security Council who have not ratified to the Rome Statute, such as China, the USA and Russia do so.
iii. The AU should demonstrate respect and commitments to the African Charter on Human and People's rights and therefore enforce the upholding of the rule of international law.

6.3.2 International Justice System

The IJS such as the International courts; the ICJ, ICC and mechanisms thereof should conduct thorough investigations and present watertight cases to the prosecutors for the

perpetrators of crimes against humanity to be brought to justice. Further, the IJS should ensure transparency and accountability, observe rule of law and promote global respect for human rights

6.3.3 Governments in Africa

The government in Africa should cooperate and coordinate with the IJS at work in order to ensure justice is served and perpetrators are held accountable of their actions. The Kenya government should cooperate with ICC to ensure the process serve as deterrence in future for future crime against humanity as well provide justice to the victims 2007 post-election violence.

6.5 Chapter Summary

This chapter presented the summary, conclusion and recommendations based on the study variables. It focused on the founding on the critical examination on the instruments and structures, of international justice system, African experience and, lessons learnt from the cases of Kenya at ICC. The recommendations of the study were also presented.

6.5 Area of Further Research

The following area is proposed for further research.

The way forward to the existing instruments and structures of IJS to facilitate effective dispensation of international justice.

BIBLIOGRAPHY

Books

Aaron Fichtelberg, *Hybrid Tribunals:A Comparative Examination Of Their Origins, Structure, Legitimacy And Effectiveness* (Springer Press 2015).

Abbenhuis, Maartje. "Introduction: Unbridled promise? The Hague's peace conferences and their legacies." In *War, Peace and International Order?*, pp. 1-11. Routledge, 2017.

Baylis, Elena A. "Cosmopolitan Pluralist Hybrid Tribunals." *Forthcoming, The Oxford Research Handbook on Global Legal Pluralism* (2019).

Brian Bix, *Jurisprudence: Theory and Context* (5edn Sweet and Maxwell 2009 London) 107.

Chandra Lekha Sriram, *Conflict Mediation And The ICC* (Springer 2009).

Clarke. K, *Fictions Of Justice: The International Criminal Court And The Challenge Of Legal Pluralism In Sub-Saharan Africa* (Cambridge Studies In Law And Society) (Cambridge University Press 2009)

Cohen, Stanley, and Zachary Kaufman. *Rwandan Genocide: The Essential Reference Guide* (2018): 58.

Crawford, Emily, and Alison Pert. *International humanitarian law*. Cambridge University Press, 2020.

Crawford, James, and Crawford James. *The International Law Commission's articles on state responsibility: introduction, text and commentaries*. Cambridge University Press, 2002.

Harwood, Catherine. "The UN International Independent Investigation Commission in Lebanon." *The Law and Practice of International Commissions of Inquiry (Oxford: Oxford University Press, Forthcoming)* (2017).

Hedemann-Robinson, Martin. *Enforcement of International Environmental Law: Challenges and Responses at the International Level*. Routledge, 2018.

John Rawls, *A Theory of Justice* (Harvard University Press, Cambridge 1971) 3.

John Rawls, *A Theory of Justice* [1999] Revised Edition Cambridge: The Belknap Press of Harvard University Press, 53.

Leila Nadya Sadat and S. Richard Carden, *The New International Criminal Court: An Uneasy Revolution* (Routledge 2017)

Mamdani, Mahmood. *When victims become killers: Colonialism, nativism, and the genocide in Rwanda*. Princeton University Press, 2020.

Melvern, Linda. *A people betrayed: the role of the West in Rwanda's genocide*. Zed Books Ltd., 2019.

Rapp, S. *International Criminal Justice from the Bottom Up. In Proceedings of the ASIL Annual Meeting* (Vol. 112, pp. 293-300).(Cambridge University Press, 2018).

Rawls, John. *A theory of justice*. Harvard university press, 2009.

Samuel M Makinda, F. WafulaOkumu and David Mickler, *The African Union* (Routledge 2016).

Sterio, Milena, and Michael Scharf, eds. *The Legacy of Ad Hoc Tribunals in International Criminal Law*. Cambridge University Press, 2019.

Wellens, Karel. *Negotiations in the case law of the International Court of Justice: A functional analysis*. Routledge, 2016.

Yimsut, Ronnie. *Facing the Khmer Rouge: A Cambodian Journey*. Rutgers University Press, 2011.

Bhogal, T., &Trivedi, A. (2019).ICC DOCDEX Rules In *International Trade Finance* (pp. 227-232). Palgrave Macmillan, Cham.

Burnet, Jennie E. "for Mass Death, Acts of Rescue, and Silence in Rwanda." *A Companion to the Anthropology of Death* (2018): 205.

Daniel, Tim. "Bakassi case: Challenges of case management of international litigation." In *The Bakassi Dispute and the International Court of Justice*, pp. 4-24.Routledge, 2017.

Đorđeska, Marija. "General Principles Ascertained by the Permanent Court of International Justice (1922–1940)." In *General Principles of Law Recognized by Civilized Nations (1922-2018)*, pp. 234-274.Brill Nijhoff, 2019.

Drumbl, Mark A. "Sentencing and penalties."In *The Elgar Companion to the International Criminal Tribunal for Rwanda*. Edward Elgar Publishing, 2016.

Duarte, É.,Marcondes, D., & Carneiro, C. Facing the Transnational Criminal Organizations in the South Atlantic. In *Maritime Security Challenges in the South Atlantic* (pp. 11-40). (Palgrave Macmillan, Cham.,2019).

Epstein, Arnold Leonard."The case method in the field of law. "In *The craft of social anthropology*, pp. 205-230.Routledge, 2017.

Grant, Thomas D. "The League of Nations as a Universal Organization." In *Peace Through Law*, pp. 65-84. Nomos Verlagsgesellschaftmb H& Co. KG, 2019.

Guttmann, Robert. "The Global Emergence of Climate Policy."In *Eco-Capitalism*, pp. 65-97. Palgrave Macmillan, Cham, 2018.

Holá, Barbora, and Alette Smeulers. "Rwanda and the ICTR: Facts and Figures." In *The Elgar Companion to the International Criminal Tribunal for Rwanda*. Edward Elgar Publishing, 2016.

Kamari Maxine Clarke., *Fictions Of Justice: The International Criminal Court And The Challenge Of Legal Pluralism In Sub-Saharan Africa (Cambridge Studies In Law And Society)* (Cambridge University Press 2009).

Kaufman, Zachary D. "United Nations International Criminal Tribunal for Rwanda." *Encyclopedia of Transitional Justice (Nadya Nedelsky & Lavinia Stan editors, 2nd edition)(Forthcoming)* (2019).

Kiyala, Jean Chrysostome K. "Child Soldiering Global Perspectives and in the Democratic Republic of Congo." In *Child Soldiers and Restorative Justice*, pp. 73-111. Springer, Cham, 2019.

Leang, Chea, and William Smith. "The Early Experience of the Extraordinary Chambers in the Courts of Cambodia. "In *International Criminal Justice*, pp. 173-194.Routledge, 2016.

Mizrahi, Stephanie B. "International Criminal Court." *The Encyclopedia of Women and Crime* (2019): 1-5.

Oosterveld, Valerie. "The construction of gender in child soldiering in the Special Court for Sierra Leone. "In *Research Handbook on Child Soldiers*. Edward Elgar Publishing, 2019.

Parker, Rita, and Anthony Burke."The United Nations and global security. "In *Global Insecurity*, pp. 347-367. Palgrave Macmillan, London, 2017.

Penrose, Margaret M. "Creating an international prison." In *Research Handbook on the International Penal System*. Edward Elgar Publishing, 2016.

Popa, Liliana E. "PCIJ/ICJ Practice on Treaty Interpretation." In *Patterns of Treaty Interpretation as Anti-Fragmentation Tools*, pp. 145-216. Springer, Cham, 2018.

Power, Jonathan. "From Nuremberg to the International Criminal Court. "In *Ending War Crimes, Chasing the War Criminals*, pp. 19-26.Brill Nijhoff, 2017.

Rossi, Christopher R. "The Central American Court of Justice and the Monroe Doctrine." In *Whiggish International Law*, pp. 153-191.Brill Nijhoff, 2019.

Sainz-Borgo, Juan Carlos. "Latin America and the International Court of Justice. "In *The Difficult Task of Peace*, pp. 87-108. Palgrave Macmillan, Cham, 2020.

Sakai, Hironobu. "Legitimization of Measures to Secure Effectiveness in UN Peacekeeping: The Role of Chapter VII of the UN Charter." In *Public Interest Rules of International Law*, pp. 135-156.Routledge, 2016.

Sisco, Joseph J. "Convention on the Prevention and Punishment of Crimes Against Diplomatic Agents and Other Internationally Protected Persons." In *Diplomacy In A Dangerous World*, pp. 199-210. Routledge, 2019.

Ssenyonjo, Manisuli. "State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia." In *Criminal Law Forum*, vol. 29, no. 1, pp. 63-119.Springer Netherlands, 2018.

Szántó, Diana. "The Set: Parallel Worlds (Sierra Leone on the World Stage)." In *Politicising Polio*, pp. 3-35. Palgrave Macmillan, Singapore, 2020.

Tar, Usman A., and SharkdamWapmuk."The Revolutionary United Front, Liberian Warlords and Civil War in Sierra Leone." In *Violent Non-State Actors in Africa*, pp. 251-275. Palgrave Macmillan, Cham, 2017.

Zyberi, Gentian. "The International Court of Justice and the Recognition of States." *Routledge Handbook of State Recognition* (2019).

Journals

Abiodun, A. K., Chituru, A. G., Iluno, L. U., & Oladepo, O. G. (2017). An Examination of the Enforcement of ICJ Decisions Through Regional Organizations and Specialized Agencies. *JL Pol'y & Globalization*, *59*, 21.

Akhavan, Payam. "Beyond impunity: can international criminal justice prevent future atrocities?." *American Journal of International Law* 95, no. 1 (2001): 7-31.

Andrade, Attila SL. "Treaty of Amity, Commerce, and Navigation Between Brazil and the US." *The University of Miami Inter-American Law Review* 47, no. 2 (2016): 200-219.

Bakoariniaina, Lao Nathalie, Timothy Kusky, and Tsilavo Raharimahefa. "Disappearing Lake Alaotra: Monitoring catastrophic erosion, waterway silting, and land degradation hazards in Madagascar using Landsat imagery." *Journal of African Earth Sciences* 44, no. 2 (2006): 241-252.

Becker, Michael A. "The Challenges for the ICJ in the Reliance on UN Fact-Finding Reports in the Case Against Myanmar." *Blog of the European Journal of International Law* (2019).

Boot, Machteld. *Genocide, crimes against humanity, war crimes: nullumcrimen sine lege and the subject matter jurisdiction of the International Criminal Court*. Vol. 12.Intersentianv, 2002.

Brehm, Hollie Nyseth, Christi Smith, and Evelyn Gertz."Producing Expertise in a Transitional Justice Setting: Judges at Rwanda's Gacaca Courts." *Law & Social Inquiry* 44, no. 1 (2019): 78-101.

Brzezinski, Z., and P. Sullivan. "International Committee of the Red Cross (ICRC)." *The Statesman's Yearbook 2007: The Politics, Cultures and Economies of the World* (2017): 49.

Bürgin, Annina Cristina. "Chronicle on International Courts and Tribunals (July-December 2015)." *Revistaelectrónica de estudiosinternacionales (REEI)* 31 (2016): 14.

Burke-White, William W. "Proactive complementarity: The International Criminal Court and national courts in the Rome system of international justice." *Harv. Int'l LJ* 49 (2008): 53.

Cacciatori, M. (2018).When Kings Are Criminals: Lessons from ICC Prosecutions of African Presidents. *International Journal of Transitional Justice*, *12*(3), 386-406.

Ciorciari, John D., and Youk Chhang."Documenting the crimes of democratic Kampuchea." *Bringing the Khmer Rouge to justice. Edwin Mellen, New York* (2005): 221-306.

Clare Frances Moran, 'The Problem of the Authority of the International Criminal Court' (2018) *18 International Criminal Law Review*.

Cormier, M. Can the ICC Exercise Jurisdiction over US Nationals for Crimes Committed in the Afghanistan Situation?. *Journal of International Criminal Justice*, (2018).*16*(5), 1043-1062.

Daniel, Tim. "Bakassi case: Challenges of case management of international litigation." In *The Bakassi Dispute and the International Court of Justice*, pp. 4-24.Routledge, 2017.

Dekker, Ige F., and Wouter G. Werner. "The Completeness of International Law and Hamlet's Dilemma." *Nordic Journal of International Law* 68, no. 3 (1999): 225-247.

Diepart, Jean-Christophe, and David Dupuis. "The peasants in turmoil: Khmer Rouge, state formation and the control of land in northwest Cambodia." *Journal of Peasant Studies* 41, no. 4 (2014): 445-468.

Faraci, David. "Hybrid Non-Naturalism Does Not Meet the Supervenience Challenge." *J. Ethics & Soc. Phil.* 12 (2017): 312.

Funk, T. Markus. "International Criminal Court Bringing World Promised Justice." *Insights on L. &Soc'y* 11 (2010): 14.

Garane, Amidou, Charles Biney, and Eléonore Belemlilga. "The 1997 United Nations Convention on the Law of Non-navigational Uses of International Watercourses: what contribution to the development of the Water Charter for the Volta Basin?." *Water International* 42, no. 4 (2017): 360-371.

Gassner, Jochen, and Michael Narodoslawsky."International legal instruments and regional environmental protection." *Environment, development and sustainability* 3, no. 3 (2001): 185-198.

Glossop, R. J. (2018). The International Criminal Court: Progressing Despite US Opposition. In *Nonviolence: Critiquing Assumptions, Examining Frameworks* (pp. 117-124). Brill Rodopi.

Hillebrecht, Courtney, and Scott Straus. "Who Pursues the Perpetrators?: State Cooperation with the ICC." *Human Rights Quarterly* 39, no. 1 (2017): 162-188.

Hodgkin, Thomas, and Ruth Schachter."French-speaking West Africa in transition." *Int'l Conciliation* 33 (1959).

Holá, Barbora, CatrienBijleveld, and Alette Smeulers. "Consistency of international sentencing: ICTY and ICTR case study." *European journal of criminology* 9, no. 5 (2012): 539-552.

Ikpe, Ekaette, Jacob Kamau Nyokabi, and Abiodun Alao."Building the state without peace or making peace without the state: the paradox of state-building and peace-building in Sierra Leone." (2017).

Isau, Ahmed Olatunji. "The international court of justice: jurisdictional basis and status." *Ajayi Crowther University Law Journal* 1, no. 1 (2017).

Jackson, Robert H., and Carl G. Rosberg. "Why Africa's weak states persist: The empirical and the juridical in statehood." *World politics* 35, no. 1 (1982): 1-24.

Jalloh, Charles C. "The International Law Commission's First Draft Convention on Crimes Against Humanity." *African Journal of International Criminal Justice* 5, no. 2 (2019): 119.

Johnson, R. Burke, and Anthony J. Onwuegbuzie."Mixed methods research: A research paradigm whose time has come." *Educational researcher* 33, no. 7 (2004): 14-26.

Kendall, Sara, and Sarah MH Nouwen."Speaking of legacy: toward an ethos of modesty at the International Criminal Tribunal for Rwanda." *American Journal of International Law* 110, no. 2 (2016): 212-232.

Kent, Andrea Kay. "Geneva Convention Relative to the Protection of Civilian Persons in Time of War and Additional Protocol." *The Encyclopedia of Women and Crime* (2019): 1-5.

Killingsworth, M. America's exceptionalist tradition: from the law of nations to the International Criminal Court. *Global Society*,(2019). *33*(2), 285-304.

Lambert, Elisabeth. "The ICC regime of victims' reparations: More uncertainties and inconsistencies brought to light by recent cases." *Austl. Int'l LJ* 23 (2017): 1.

Liu, N., & Middleton, C. (2017).Regional clustering of chemicals and waste multilateral environmental agreements to improve enforcement. *International Environmental Agreements: Politics, Law and Economics*, *17*(6), 899-919.

Lloyd Chigowe and Laurence Juma, 'The Principle Of Complementarity And Hybrid Courts : The Case Of The Special Criminal Court For The Central African Republic' (2018) 26 Lesotho Law Journal.

Magnarella, Paul J. "International Trials and Reconciliation: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia." *International Journal on World Peace* 33, no. 1 (2016): 109-111.

Marsden, Mark, Stephen Rowley, Joseph Monaghan, and Jane Sharp. "Noteworthy tribunal decisions and panel reports." *Planning News* 45, no. 3 (2019): 20.

McFeatters, Dale. "The Special Court for Sierra Leone: A Potential Model for Establishing the Rule of Law after Large Scale Combat Operations." *Mil. L. Rev.* 227 (2019): 119.

Michael Moehler, ‘The Rawls-Harsanyi Dispute: A Moral Point of View’ [2015] *Pacific Philosophical Quarterly*, University of Southern California & John Wiley & Sons Ltd. 87-92.

Miller, William J. "Treaty." *Legal Magazine* (2018).

Moran C, 'The Problem of the Authority of the International Criminal Court' (2018) 18 *International Criminal Law Review*

Muharremi, Robert. "The Kosovo Specialist Chambers and Specialist Prosecutor’s Office." *Americal Journal of International Law* 20 (2016).

Murnane, Linda Strite. "International Criminal Law." *Int'l Law.* 50 (2016): 135.

Naranjo, Dan A. "Global Conflict Resolution and the International Court of Justice." *Judges J.* 55 (2016): 16.

Oduntan, Gbenga. "Access to justice in international courts for indigent states, persons and peoples." *Indian Journal of International Law* 58, no. 3-4 (2018): 265-325.

Olatunji A. Oyeshile, ‘A Critique of the Maxmin Principle in Rawls’ Theory of Justice’ [2008] 3(1) *Humanity and Social Sciences Journal*, 65.

Olayode, Kehinde, and Charles Ukeje."South-South and Regional Cooperation for Peace building in West Africa." *Modern Africa: Politics, History and Society* 5, no. 1 (2017): 33-54.

Oral, Nilufer."The International Law Commission and the Progressive Development and Codification of Principles of International Environmental Law." *FIU L. Rev.* 13 (2018): 1075.

Pedersen, Morten B. "The ICC, the Rohingya and the limitations of retributive justice." *Australian Journal of International Affairs* 73, no. 1 (2019): 9-15.

Pérez-León-Acevedo, Juan Pablo. "The Katanga Reparation Order at the International Criminal Court: Developing the Emerging Reparation Practice of the Court." *Nordic Journal of Human Rights* 36, no. 1 (2018): 91-102.

Peterson, Ines. "Criminal Responsibility for Omissions in icty and ictr Jurisprudence." *International Criminal Law Review* 18, no. 5 (2018): 749-787.

Potts, Amanda, and Anne LiseKjær."Constructing achievement in the International Criminal Tribunal for the Former Yugoslavia (ICTY): A corpus-based critical discourse analysis." *International Journal for the Semiotics of Law-Revue internationale de Sémiotiquejuridique* 29, no. 3 (2016): 525-555.

Pronto, Arnold N. "Codification and Progressive Development of International Law: A Legislative History of Article 13 (1)(a) of the Charter of the United Nations." *FIU L. Rev.* 13 (2018): 1101.

Pronto, Arnold N. "Codification and Progressive Development of International Law: A Legislative History of Article 13 (1)(a) of the Charter of the United Nations." *FIU L. Rev.* 13 (2018): 1101.

Pronto, Arnold N. "The work of the Sixth Committee of the United Nations General Assembly in 2016 and 2017." *South African Yearbook of International Law* 42, no. 1 (2017): 290-319.

Rankin, Melinda. "Investigating Crimes against Humanity in Syria and Iraq: The Commission for International Justice and Accountability." *Global Responsibility to Protect* 9, no. 4 (2017): 395-421.

SáCouto, Susana, and Patricia Viseur Sellers. "The BEMBA Appeals Chamber Judgment: Impunity for Sexual and Gender-Based Crimes." *Wm. & Mary Bill Rts. J.* 27 (2018): 599.

Scheffer, David. "Reflections on Contemporary Responses to Atrocity Crimes." *Genocide Studies International* 10, no. 1 (2016): 105-114.

Schmid, Julie Calidonio. "Advisory Opinions on human rights: moving beyond a pyrrhic victory." *Duke J. Comp. & Int'l L.* 16 (2006): 415.

Schulz, Philipp. "Discussing community-based outreach activities by the International Criminal Tribunal for Rwanda." *Journal of Eastern African Studies* 11, no. 2 (2017): 347-366.

Song, Sang-Hyun. "The role of the International Criminal Court in ending impunity and establishing the rule of law." *UN Chronicle* 49, no. 4 (2012): 12-15.

Straubus, Alexis. "Prospects for Justice and Accountability in Syria." *Augsburg Honors Review* 12, no. 1 (2019): 7.

Tams, Christian J. "Peace Through International Adjudication: The Permanent Court of International Justice and the Post-War Order." *Peace Through Law: The Versailles Peace Treaty and Dispute Settlement After World War I. Series: Studies of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law (16). Nomos* (2019): 217-237.

Taylor, Ghankay. "The Special Court for Sierra Leone and the Question of Head of State Immunity in International Law: Revisiting." *Nigerian Yearbook of International Law 2017* (2018): 239.

Teitel, Ruti G. "Transitional justice genealogy." *Harv. Hum. Rts. J.* 16 (2003): 69.

Timberg, Sigmund. "International Trade Tribunal--A Step Forward Short of Surrender of Sovereignty." *Geo. LJ* 33 (1944): 373.

Vukpalaj, Anton. "Acquittals at the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2012-2013: the domestic implications." *Studies of Transition States and Societies* 10, no. 1 (2018): 37-49.

Wählisch, Martin. "The Special Tribunal for Lebanon: An Introduction and Research Guide." *GlobaLex (2012), Hauser Global Law School Program, NYU Law School* (2012).

Waldorf, Lars. "A Mere Pretense of Justice: Complementarity, Sham Trials, and Victor's Justice at the Rwanda Tribunal." *Fordham Int'l LJ* 33 (2009): 1221.

Whittington, William Vallie. "The Charter of the United Nations: A Note on Publication of the Treaty." *Jus Gentium: J. Int'l Legal Hist.* 1 (2016): 608.

Young, Laura A., and Rosalyn Park. "Engaging diasporas in truth commissions: lessons from the Liberia Truth and Reconciliation Commission Diaspora Project." *International Journal of Transitional Justice* 3, no. 3 (2009): 341-361.

Yusuf, Abdulqawi Ahmed. "Compulsory Jurisdiction of the Court under the Optional Clause."In *New Challenges to International Law*, pp. 8-13.Brill Nijhoff, 2018.

Zhang, Weihua. "Modernization of International Humanitarian Law-The Origins and Evolution of the 1977 Additional Protocols to the 1949 Geneva Conventions." *J. Hum. Rts.* 17 (2018): 650.

Zimmermann, Andreas. "Humanitarian Assistance and the Security Council." *Israel Law Review* 50, no. 1 (2017): 3-23.

Reports

Abdul-Hamid, Husein, and Mohamed Yassine."A Historical Perspective on Education in Lebanon." 2020.

Akande, Dapo, and Souza Dias. "Cooperation with the ICC-what the Security Council and ASP must do." *ISS Africa Report* 2019, no. 15 (2019): 1-16.

Aleksejeva, Anastasija. "Succession of states in respect of state responsibility: towards yet another Vienna Convention?." (2019).

Bernasconi-Osterwalder, Nathalie, and Martin Dietrich Brauch. *Is "Moonlighting" a Problem?: The Role of Icj Judges in ISDS*. Winnipeg: International Institute for Sustainable Development, 2017.

De Gruyter, Chris, Geoffrey Rose, Kailey Wilson, ZoranDukanovic, and Long T. Truong. *Exploring Planning Tribunal Decisions on Transportation Demand Management Plans*. No. 18-00047. 2018.

De Guzman, Margaret M. "The Global-Local Dilemma and the ICC's Legitimacy." (2018).

Dicker, R., &Keppler, E. (2004). Beyond the Hague: The Challenges of International Justice. World Report .

Forsberg, Sanna. "Violence Against Civilians in Civil War: A Comparative Case Study of the Sierra Leone Civil War." (2017).

General Assembly."67/1.Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels." (2012).

James Nyawo, *Selective Enforcement And International Criminal Law* (Intersentia 2017).

Lohne, Kjersti. "Global civil society, the ICC, and legitimacy in international criminal justice." (2017).

M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence*, (Sweet and Maxwell) 577.

Petit, Me Robert, Me YetChakriya, Me Kong Pisey Me KarSavuth, Me MochSovannary, and Me Martine Jacquin. "3,/Extraordinary Chambers in the Courts of Cambodia." (2008).

Simma, Bruno, ed. *The charter of the United Nations*. OUP, 1995.

Townsend, G., &Swigart, L. (2017). An interview with Gregory Townsend, Los Angeles County Public Defender (1997-98); Associate Legal Officer, ICTR Registry and Chambers (1998-2000)

Dissertations and Theses

Baumann, S. F. (2018). *Including terrorism as a crime under the Rome Statute: taking the fight against terror to the ICC* (Doctoral dissertation, University of Pretoria).

Baxter, Alexander Mark. "A critical investigation of power and ideology through the Special Tribunal for Lebanon."PhD diss., Nottingham Trent University, 2019.

Clements, Richard Andrew. "Governing International Criminal Justice: Managerial Practices and the International Criminal Court."PhD diss., University of Cambridge, 2019.

Hassan, Fareed Mohd. "National Prosecution Against Heads of State of Non-state Parties to the Rome Statute in Southeast Asia: Challenges and Prospects Under the Complementarity Principle." PhD diss., University of Aberdeen, 2018.

Kabua, Irene Warima. "Peace Initiatives in Conflict Management: The Case of Eastern Democratic Republic Of Congo, 1996-2016." PhD diss., United States International University-Africa, 2019.

Maurer, Fabio. "Release from pre-trial detention in theory and practice in modern international criminal justice in the light of International and European Human Rights Standards." PhD diss., uniwien, 2017.

Wick, Charlotte E. "Direct and public incitement to commit genocide: lessons from the International Criminal Tribunal for Rwanda." PhD diss., University of Leicester, 2019.

APPENDICES

Appendix I: Research Questionnaire

Dear respondent,

My name is Margaret Nyambura Karanja. I am a postgraduate student at the Institute of Diplomacy and International Studies of University of Nairobi. I am carrying out a research on the *Relevance of international Justice System, challenges and opportunities: A case of Africa and lessons learnt from the ICC in Kenya,* as a course requirement. I kindly request you to take a few minutes out of your busy schedule to respond to a few questions I will ask you as outlined in this research questionnaire.

Please be assured that the data collected will be treated with utmost confidentiality and will only be used for the purposes of this study only.

Gender: Male [ ] Female [ ]

Highest level of education:

PhD [ ] Masters [ ] Bachelors [ ] Diploma [ ] Certificate [ ]

Experience in international justice/diplomacy:

1-5 years [ ] 6-10 years [ ] 11 and above [ ]

Job Title: ……..

QUESTIONS

1. To what extent do you agree that the following challenges affect the dispensation of international justice?

   1- Strongly disagree, 2- Disagree 3- Neutral 4- Agree 5-Strongly agree

	1	2	3	4	5
1. Low efficiency and effectiveness of international justice system					
2. Jurisdiction challenges					
3. Lack of visibility and accessibility to the international justice system					
4. Problems of witness and victim protection					
5. Difficulty to ensure fair trial					
6. Challenges with right to appeal court decisions					
7. High costs					
8. Resistance from regimes and influential persons					
9. International justice targets African leaders					
10. Challenge of impartiality and independence of international courts					
11. Not in touch with local realities					

What other challenges do you believe affect dispensation of international justice in Africa?

……

……

……

……

……

2. To what extent do you agree that the following the lessons were learnt from the case of ICC in Kenya?

1- Strongly disagree, 2- Disagree 3- Neutral 4- Agree 5-Strongly agree

	1	2	3	4	5
1. There should be a great deal of investigations prior to issue of summons					
2. Steps to mitigate potential threats to witnesses should not be put in place					
3. Evidence driven investigations should be adopted in place of target driven investigations					
4. Court outreach policies should be revised to enable the prosecutors and members of court registry to work together					
5. OTP should investigate the truth, as required by Article 54 of the Rome Statute					
6. ICC that should not engage in relentless pursuit and exhibit of singular, myopic obsession with African situations					
7. ICC should respond to locals, who were of great importance in prosecuting state crimes					
8. ICC should operate within ample duration of the investigation to address its major operational shortcoming of limited time					
9. ICC should be efficient and effective in dispensing international justice					

What other lessons do you believe were learnt from the case of ICC in Kenya?

……

……

……

……

……

3. What measures do you recommend should be put in place in order to achieve proper dispensation of international justice in Africa?

……

……

……

……

……

THANK YOU

Appendix 11: Research Permit

REPUBLIC OF KENYA

NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

Ref No: **589072**

Date of Issue: **17/November/2020**

RESEARCH LICENSE

This is to Certify that Ms.. MARGARET NYAMBURA KARANJA of National Defence College Kenya, has been licensed to conduct research in Nairobi on the topic: RELEVANCE OF INTERNATIONAL JUSTICE SYSTEM, CHALLENGES AND OPPORTUNITIES: A CASE OF AFRICA AND LESSONS LEARNT FROM ICC IN KENYA for the period ending : 17/November/2021.

License No: **BAHAMAS ABS/P/20/7802**

589072

Applicant Identification Number

Director General
NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

Verification QR Code

NOTE: This is a computer generated License. To verify the authenticity of this document, Scan the QR Code using QR scanner application.

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT, 2013

The Grant of Research Licenses is Guided by the Science, Technology and Innovation (Research Licensing) Regulations, 2014

CONDITIONS

1. The License is valid for the proposed research, location and specified period
2. The License any rights thereunder are non-transferable
3. The Licensee shall inform the relevant County Director of Education, County Commissioner and County Governor before commencement of the research
4. Excavation, filming and collection of specimens are subject to further necessary clearence from relevant Government Agencies
5. The License does not give authority to tranfer research materials
6. NACOSTI may monitor and evaluate the licensed research project
7. The Licensee shall submit one hard copy and upload a soft copy of their final report (thesis) within one year of completion of the research
8. NACOSTI reserves the right to modify the conditions of the License including cancellation without prior notice

National Commission for Science, Technology and Innovation
off Waiyaki Way, Upper Kabete,
P. O. Box 30623, 00100 Nairobi, KENYA
Land line: 020 4007000, 020 2241349, 020 3310571, 020 8001077
Mobile: 0713 788 787 / 0735 404 245
E-mail: dg@nacosti.go.ke / registry@nacosti.go.ke
Website: www.nacosti.go.ke