Peace Versus Justice:
A study of the ICC's intervention in Uganda

Dr. Mahmoud Elsharkawy

Lecturer of Public International Law

Faculty of Law – Beni Suef University

"السلام مقابل العدالة"

دراسة حول تدخل المحكمة الجنائية الدولية في أوغندا

الدكتور/ محمود حسين الشرقاوي

مدرس القانون الدولي العام

كلية الحقوق – جامعة بني سويف

Abstract:

In contrast to the national criminal judiciary, whose function is to achieve justice, without considering the factors or results that may affect the national society, the intervention of the International Criminal Court (ICC) in many cases in its attempt to achieve justice may lead to undermining the peace process in the country concerned and ignite conflicts that may disturb the international peace.

Therefore, the ICC finds itself reluctant between trying to achieve justice and prosecuting the accused individuals responsible for committing the crimes that fall within its jurisdiction and what may result from trying to achieve this justice such as fuelling an existing conflict in the country concerned and hindering any peace steps.

Therefore, this study aims to address this problem by analyzing the case of the ICC's intervention in the conflict in Uganda, by analyzing the role of the court in this conflict and by trying to find alternatives mechanisms through which the ICC can achieve balance between its role in achieving justice and maintaining peace paths.

Keywords: The International Criminal Court - Peace - Justice - Uganda.

ملخص الدراسة:

على الخلاف القضاء الجنائي الوطني الذي يكون وظيفته الرئيسية تحقيق العدالة الجنائية دون اعتبار للعوامل أو النتائج التي قد تترتب على تحقيق هذه العدالة، فإن تدخل المحكمة الجنائية الدولية في العديد من القضايا في محاولة تحقيق العدالة الجنائية قد يؤدي إلى تقويض عمليات السلام في الدولة المعنية وإشعال الصراعات التي تكون موجودة في هذه الحالات.

ولذلك تجد المحكمة نفسها حائرة بين محاولة تحقيق العدالة ومحاكمة المتهمين المسؤولين عن الجرائم الدولية التي تدخل في اختصاصها وبين ما قد يترتب على محاولة تحقيق هذه العدالة من تأجيج لحالة الصراع القائم في الدولة المعنية وانهاء أي محاولات لتحقيق السلام.

ولذلك سوف نحاول من خلال هذا البحث التعرض لهذه المشكلة من خلال دراسة حالة تدخل المحكمة الجنائية الدولية في النزاع في أوغندا، وذلك عن طريق تحليل دور المحكمة في هذا النزاع ومحاولة إيجاد بدائل أو آليات أخرى تستطيع المحكمة من خلالها التوفيق بين تحقيق العدالة ومحاولة الحفاظ على مسارات السلام.

الكلمات المفتاحية: المحكمة الجنائية الدولية – السلام – العدالة – أوغندا.

I- Introduction:

Inter-states conflicts became the common type of conflicts during the last years, instead of international armed conflicts between states. Such conflicts are more likely to end up with peace negotiations rather than military solutions. These negotiations have always tried to grant impunity to highly placed individuals as a condition for ending the conflict peacefully.

Therefore, highly placed individuals were not subject to any effective judicial power. As this impunity condition allowed them to go unpunished without effective prosecution. Although national laws always provide that they can be convicted of committing crimes, practices did not witness genuine or effective prosecution for them.

With the failure of national courts to do their job, here comes the role of the International Criminal Court (ICC) which was established mainly to achieve justice and ensure that no one can go unpunished as provided in the Rome Statute's preamble.

However, this approach may lead to severe consequences on the ongoing conflicts when the ICC investigations or prosecutions may have impacts on the course events, and as a result it can impede the peace negotiations and

lead to more suffer. This has been noted in many situations in which the ICC practiced its jurisdiction as the situation in Uganda.[1]

In Uganda, after the referral of the situation to the ICC by the Ugandan government in 2003, the Chief Prosecutor initiated an investigation in 2004 regarding the alleged committed crimes, and in 2005 the Pre-Trial Chamber II unsealed five arrest warrants against the senior leaders of the Lord's Resistance Army (LRA)[2].

In 2006, peace talks started between the government and the LRA in Juba, Southern Sudan. These peace talks included providing "total amnesty" to the LRA leaders including those who the arrest warrants issued against them. Hence, the Ugandan government offered other justice mechanisms to exclude the ICC investigation over the situation there and refused to arrest the LRA leaders or surrender them to the ICC. Hence, the ICC was accused of impeding the peace negotiations at this time.[3]

Instead of focusing of the theoretical dilemma of peace vs justice, this essay aims to investigate the role of the ICC in the situation in Uganda and explore mechanisms for the ICC to balance between the two sides. It aims

[1] Diba Majzub, Peace or Justice?: Amnesties and the International Criminal Court, Melbourne Journal of International Law, vol 3, 2002, pp. 252-253.
[2] The Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Case Information Sheet, July 2021, available at: https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/OngwenEng.pdf
[3] Phil Clark, The International Criminal Court's Impact on Peacebuilding in Africa, In book: The State of Peacebuilding in Africa, Lessons Learned for Policymakers and Practitioners, 2020, pp. 237-238.

to explain that the two issues can work together instead of contradicting with each other. It explains the available alternatives that the ICC could have taken to overcome this dilemma in Uganda and establishes an approach to be considered in future similar cases.

II- Referral of the situation to the ICC:

For decades, the people of Northern Uganda were victims of the armed conflict between the Lord's Resistance Army' (LRA), who committed severe crimes including massacres, willful killing, torture, mutilation, and abducting children and forcing them to fight as soldiers in the ongoing conflict at this time.[1]

Also, the Uganda Peoples' Defense Forces (UPDF), the armed force of the Ugandan government, on the other side, committed crimes against civilians and violated the human rights of the population by imposing severe restrictions on people's freedom and enforced them to compulsory displacement.[2]

The international community ignored the acts of atrocities in northern Uganda for many years, also it was the will of the government to solve its conflict by itself far from the international monitoring. At this time, the international interventions took the shape of providing medical and other

[1] Human Rights Watch, Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda, vol. 17, no. 12(A), September 2005, http://www.hrw.org/sites/default/files/reports/uganda0905.pdf
[2] Ibid.

supplies, which was allowed only for a few international organizations by an authorization of the government. [1]

This approach has been changed in 2003 when the Ugandan president, Yoweri Museveni, referred the situation of the LRA crimes in Northern Uganda to the ICC chief prosecutor, asking for initiation of an investigation regarding the atrocities and the crimes committed by the LRA[2].

In 2004, the prosecutor decided to initiate an investigation regarding the alleged crimes committed in northern Uganda.[3] One year later, the prosecutor unsealing arrest warrants for five significant leaders in the LRA. In this stage, the ICC became the competent authority to achieve justice and prosecute these crimes and by this it became a pivotal player in the ongoing conflict.

As we have mentioned, the issued arrest warrants were against the LRA leaders, no member of the government was prosecuted or indicted. The

[1] Kirsty McNamara, Seeking Justice in Ugandan Courts: Amnesty and the Case of Thomas Kwoyelo, Washington University in St. Louis, School of Law, 2012, p. 661, available at: https://openscholarship.wustl.edu/law_globalstudies/vol12/iss3/19/

[2] ICC, President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC, 29 January 2004, available at: https://www.icc-cpi.int/news/icc-president-uganda-refers-situation-concerning-lords-resistance-army-lra-icc

[3] ICC, Prosecutor of the International Criminal Court opens an investigation into Northern Uganda, 29 July 2004, available at: https://www.icc-cpi.int/news/icc-prosecutor-international-criminal-court-opens-investigation-nothern-uganda

prosecutor justified that the crimes committed by the LRA "…. of much higher gravity than alleged crimes committed by the UPDF."[1]

It should be mentioned that although the Ugandan legislations criminalize these acts, such as genocide and crimes against humanity, the government chose to refer the situation to the ICC in accordance with art. 14 of the Rome Statute by which a state can refer "a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes."[2]

At the same time, the Prosecutor welcomed the referral by the government to initiate this investigation and considered it an early expression of confidence in the Court as it was the first case to be referred to the ICC.[3]

According to art. 17 of the Rome Statute, the national jurisdiction is the primary competent authority, which is known as "the principle of complementarity," to initiate the investigation in these crimes; however, the

[1] ICC, Statement by the Chief Prosecutor on the Uganda Arrest Warrants, , 14 October 2005, available at https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/AF169689-AFC9-41B9-8A3E-222F07DA42AD/143834/LMO_20051014_English1.pdf

[2] Article 14 of the Rome Statute.

[3] Payam Akhavan, "The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court," American Journal of International Law 99, no. 2, 2005, pp. 403-421.

Ugandan government voluntarily abandoned its jurisdiction to the ICC. This has raised many questions in this regard; for instance, Were the government unable to practice its jurisdiction? or did the government decide to take a proactive step to evade being prosecuted by the ICC for its crimes and to gain the international legitimacy of using force against the armed groups in their territory?[1]

III- Accusing the ICC of obstructing the peace processes in Uganda:

The ICC was explicitly accused of impeding the peace process when a delegation of Ugandan legislators, religious, and cultural leaders traveled to the Hague in April 2005 to inform the Chief Prosecutor, Moreno-Ocampo, that the ICC investigation was hampering the negotiations between the government and the LRA.[2]

Furthermore, the LRA leader, Joseph Kony, refused to come out of the bush to negotiate out of fear of being apprehended and surrendered to the ICC;[3] however, some believed that the ICC intervention enforced the LRA

[1] Manisuli Ssenyonjo, The International Criminal Court and the Lord's Resistance Army Leaders: Prosecution or Amnesty? International Criminal Law Review, Volume 7: Issue 2-3, 1 January 2007, pp. 365-366, available at: https://brill.com/view/journals/icla/7/2-3/article-p361_4.xml?language=en&ebody=article%20details

[2] Anna Macdonald, "In the interests of justice?" The International Criminal Court, peace talks and the failed quest for war crimes accountability in northern Uganda, Journal of Eastern African Studies, 2017, pp. 636-637.

[3] Uganda: ICC Could Suspend Northern Investigations—Spokesman, IRINNews, April 18, 2005, available at: https://www.thenewhumanitarian.org/report/53945/uganda-icc-could-suspend-northern-investigations-spokesman

leaders to sit on the table of negotiations again and indirectly constituted a pressure on them to negotiate with the government even if in the absence of their leader, Kony.[1]

It can be argued that the Ugandan government did not intend to achieve criminal justice or to prosecute those who committed these crimes by referring the situation to the ICC, rather it has always used the ICC as a leverage to enforce the LRA leaders to comply with the peace agreements and to sit on the table of negotiations.

This has been clarified in two situations. The first one is the Amnesty Act of 2000 which was adopted by the Ugandan government to end the conflict by granting "full amnesty form prosecution" to those who announced rebellion against the government.[2] However, this act could not achieve peace or end the conflict; therefore, the government referred the situation to the ICC to enforce the LRA to sit on the negotiations table once again in 2003.

The second situation was in the context of the ICC investigation, after the issue of the five arrest warrants, the 2006 peace talks began between the government and the LRA leaders and it included a provision to grant

[1] David Lanz, The ICC's Intervention in Northern Uganda: Beyond the Simplicity of Peace vs. Justice, The Fletcher School of Law and Diplomacy, May 2007, pp. 12-16.
[2] The Amnesty Act, 2000, cap. 294, Revised Edition Laws of Uganda 2000.

amnesty to LRA leaders from prosecution. [1] This was considered a turning point of the government situation regarding the referral of the situation to the ICC. The government preferred peace settlement to justice for the second time after the failure of its efforts to overcome the LRA.[2]

IV- Available alternatives for the ICC:

Although the Rome Statute does not explicitly address the peace processes and does not provide clear mechanisms for the Court to deal with this issue; however, it can be said that the ICC can adopt one of the following alternatives to address this problem as follows:

A- Article 53 and the "interests of justice":

Art. 53/1/C of the Rome Statute can be considered as a commitment on the prosecutor to evaluate the situation and balance between the gravity of the crime and the interests of victims, on one side, and the interests of justice from the other side. According to art. 53/2/c the prosecutor may decide that there is not a sufficient basis for a prosecution because after considering the gravity of the crime and the interests of victims, "there are nonetheless

[1] Unger, T., Wierda, M., Pursuing Justice in Ongoing Conflict: A Discussion of Current Practice. In: Ambos, K., Large, J., Wierda, M. (eds) Building a Future on Peace and Justice. Springer, Berlin, Heidelberg, 2009, p. 263, 270, available at: https://doi.org/10.1007/978-3-540-85754-9_11

[2] ICG, "Peace in Northern Uganda?" Africa Briefing No. 41 in September 2006, available at https://www.files.ethz.ch/isn/25310/b041_peace_in_northern_uganda.pdf

substantial reasons to believe that an investigation would not serve the interests of justice."

This has raised many questions about the meaning of the concept of "the interests of justice"; particularly if peace interests can be included in the interests of justice. In general, justice has two primary concepts: retributive justice and restorative justice. While the former focuses on the punishment of lawbreakers and their suffer in return to the victims suffer, and to ensure the severity of the punishment is proportionate to the seriousness of their crimes,[1] the latter, the restorative justice, includes non-judicial mechanisms and prioritizes the reconciliation and mainly focuses on addressing the victims' needs and their communities' necessities.[2]

It is widely accepted that the ICC adopts both concepts.[3] From one side, retributive restorative justice was clearly adopted in the preamble of the Rome Statute as the interpretation of the interests of "justice", in accordance with the objects and purpose of the Rome Statute will lead to focus on

[1] Jon'a F. Meyer, Retributive justice, SAGE Publications Encyclopedia of Crime and Punishment, 2002, available at: https://www.britannica.com/topic/retributive-justice

[2] Clark, P. Kaufman, Z. D. Nicolaidis, K. „Tensions in Transitional Justice", In: Clark, P. Kaufman, Z. D. After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond, London: Hurst Company (2008) See also: Marshall, T.F. (1999). Restorative justice: an overview. London: Home Office, http://www.antoniocasella.eu/restorative/Marshall_1999-b.pdf

[3] Claire Garbett, The International Criminal Court and restorative justice: victims, participation and the processes of justice, Restorative Justice An International Journal, 2017, pp. 200-201.

prosecuting those who committed these crimes as the preamble provides that it aims “to put an end to impunity for the perpetrators of these crimes.”

On the other hand, restorative justice can be clarified in article 53/1/C which addresses the prosecutor's evaluation of the admissibility of a case to the court as the prosecutor is required to take into account “the gravity of the crime and the interests of victims" in deciding whether to initiate an investigation.[1]

This has been considered by the former international criminal tribunals of Yugoslavia and Rwanda where it was declared by the Deputy Prosecutor that the ICTY is essentially an instrument of peace: the criminal prosecution of persons responsible for serious violations of international humanitarian law is regarded as being central to the peace process in the former Yugoslavia. [2]

In the Ugandan case, the prosecutor tended to adopt the retributive justice more than restorative justice when he stated that the ICC prosecution of the committed crimes in Northern Uganda should go forward for the

[1] Rene Blattmann and Kirsten Bowman, Achievements and Problems of the International Criminal Court: A View from Within, 15 November 2008, volume 6, Issue 4, p. 18, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1301380

[2]Ivan Simonovic, The Role of the ICTY in the Development of International Criminal Adjudication, Fordham International Law Journal, Volume 23, Issue 2, 1999, p. 443, available at: https://core.ac.uk/download/pdf/144226006.pdf

leaders of the LRA, with lesser perpetrators dealt with via Ugandan measures.[1]

This approach has been criticized by many who argued that the arrest warrants should have been declined based on the need of the victims for peace and reconciliation which outweigh the importance of prosecution. Thus, victims have two different opinions regarding investigations and prosecutions in Uganda. While some preferred peace over prosecution, others demanded justice by prosecuting those who committed such crimes.[2]

Therefore, it can be said that the broad interpretation of the concept of the "interests of justice" can extend to include peace and reconciliation processes, when these processes are more urgent to the victims more than prosecuting those who committed these crimes.

The same approach can be established on "the interests of victims" provided in art. 53/2/c of the Rome Statute, as the prosecutor should also take into account the interests of victims when considering the interests of justice. Hence, the term "victim" is broad enough to include not only the

[1] ICC, Address by Mr. Luis Moreno-Ocampo, Building a Future on Peace and Justice, Nuremberg, 24/25 June 2007.
[2] United Nations High Commissioner for Human Rights, Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda, August 2007, available at: https://www.refworld.org/reference/countryrep/ohchr/2007/en/77929

direct victims of these crimes but also the indirect victims which may include the society and the international peace.[1]

Therefore, considering the interests of victims can be used as a mechanism to promote peace settlements over prosecution. In order to consider the victims' interests, the ICC needs to open direct and indirect dialogues with the victims as well as local leaders (religious, political, tribal), other states, local and international intergovernmental and nongovernmental organizations. This has done in Uganda as the prosecutor conducted more than 25 missions to Uganda to listen to the views and concerns of the local community as well as meetings with the local leaders in The Hague.[2]

B- Article 17 and the principle of complementarity:

There is no agreed definition on the principle of complementarity; however, it has always been referred to as the "underlying principle of the ICC."[3] Contrary to the former international criminal courts of Yugoslavia

[1] Jessica Gavron, Amnesties in Light of Developments in International Law and the Establishment of the International Criminal Court, 51 ICLQ 91, 2002, p. 110, available at: https://www.icc-cpi.int/sites/default/files/ICCOTPInterestsOfJustice.pdf

[2] Policy Paper on the Interests of Justice, the office of the prosecutor, the ICC, September 2007, p. 6, available at: https://www.icc-cpi.int/sites/default/files/ICCOTPInterestsOfJustice.pdf

[3] Jonathan I. Charney, "International Criminal Law and the Role of Domestic Prosecution", American Journal of International Law 95(1), 2001, p. 120, available at: https://www.researchgate.net/publication/273081916_International_Criminal_Law_and_the_Role_of_Domestic_Courts

and Rwanda which had a primacy jurisdiction over the national authorities, the ICC adopted a different approach by giving the primary jurisdiction to the national jurisdiction and considering the case is admissible only to the ICC if the national authority is unable or unwilling to exercise its jurisdiction according to art. 17 of the Rome Statute.[1] This does not affect the existence of the jurisdiction of the court over the case, i.e., the court may have a jurisdiction over a specific case, but the case is inadmissible.[2]

As the principle of complementarity has been adopted to balance between states' sovereignty and the rights of the international community in achieving peace and prevent the most sever crimes including war crimes, crimes against humanity, genocide, and aggression. The principle of complementarity is also consistent with the principle of "Ne bis in idem," which protects persons from being punished or subject to several procedures twice for the same facts[3], and was provided in art. 20 of the Rome Statute.

Therefore, the ICC shall not practice its jurisdiction if there is a national procedure was taken to prosecute or bring the accused persons to trial, unless

[1] Benzing, Markus, The Complementarity Regime of the International Criminal Court: International Criminal Justice between Sate Sovereignty and the Fight against Impunity, Max Plank UNYB 7 (2003), pp. 592-594.
[2] Markus Benzing, The complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity, Max Planck Yearbook of United Nations Law, Volume 7, 2003, p. 594.
[3] Gerard Conway, Ne Bis in Idem in International Law, International Criminal Law Review 3(3), July 2003, p. 217, available at: https://www.researchgate.net/publication/228176991_Ne_Bis_in_Idem_in_International_Law

the proceedings were to protect the criminals from being prosecuted by the court, or it did not conduct independently or impartially as provided in art. 20/3 of the Rome Statute. Although it can be difficult to ensure the fulfilling of these requirements, as the language of art. 20 indicates the possibility of considering other criminal mechanisms.[1]

It can be said that the Ugandan government tried to use this approach as in 2008 when the parties agreed to establish a Special Division of the Ugandan High Court empowered to investigate and prosecute the worst crimes committed during the war named after that as the International Crimes Division ("ICD").[2]

Furthermore, the agreement included setting up a truth body responsible for reparations with a clearer role for "traditional mechanisms," as part of the "alternative justice and reconciliation framework."[3] Moreover, the government adopted "mato oput" which is a customary mechanism of settling disputes in Uganda by forgiving each other and compensating the victims or their families. However, the government was accused of using

[1] Linda M. Keller, The False Dichotomy of Peace versus Justice and the International Criminal Court, HAGUE JUSTICE JOURNAL, VOLUME 3, NUMBER 1, 2008, p. 22, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1340720
[2] Prosecutor v. Joseph Icony, Decision on the admissibility of the case under article 19(1) of the Statute, ICC-02/04-01/05, 10 March 2009, para. 2, available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2009_01678.PDF
[3] Agreement on Implementation and Monitoring Mechanisms, clause 37, 2008.

this mechanism to grant amnesty to the LRA leaders and it could not be considered an effective prosecution.[1]

Although these bodies did not identify criminal responsibility or enforcing certain types of criminal sanctions, it offered compensation which does not entail also criminal prosecution, but it might represent social condemnation like a prosecution.[2]

Therefore, the ICC can broadly interpret the principle of complementarity and rely on it to encompass other justice alternatives such as truth bodies or mato oput. However, these alternatives should still meet the requirements of art. 17 and art. 20 of the Rome Statute, and the national authority must approve that it is genuinely willing and able to handle the case in its domestic system. Hence, a state which enters into an amnesty agreement can be considered unwilling to investigate or prosecute the alleged crimes.[3]

[1] Joseph Yav Katshung, "Mato oput versus the International Criminal Court (ICC) In Uganda," Pambazuka News Issue 271, September 28, 2006, http://pambazuka.org/en/category/comment/37403

[2] Roco Wat I Acoli: Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration 55 (Liu Institute for Global Issues, September 15, 2005, available at: https://sppga.ubc.ca/news/roco-wat-acoli-restoring-relationships-acholi-land-traditional-approaches-justice-reintegration/

[3] Jennifer Llewellyn, A Comment on the Complementarity Jurisdiction of the International Criminal Court, 24 DALHOUSIE L.J. 192, 2001, p. 204.

C- Article 16 and the deferral of investigation or prosecution:

According to article 16 of the Rome Statute, the Security Council (SC) may request from the ICC to suspend an investigation or prosecution, or even not to start it for a year, in a resolution adopted under Chapter VII of the Charter of the United Nations when it considers threats to the peace, breaches of the peace, or acts of aggression.[1]

Therefore, whenever an investigation or a prosecution may fuel the conflict leading to more suffer or human casualties in the concerned country which constitutes a threat or breach of the peace as provided in Chapter VII of the UN Charter, the SC may request to suspend the proceedings to allow for peace chances.[2] It should be mentioned that the SC has an obligation to use this authority to save peace in accordance with the purposes of the criminal justice. Therefore, this authority cannot be used to protect the criminals.

On the other side, the ICC should not consider the SC request if it was not in accordance with Chapter VII of the UN Charter.[3] It can be noted that the limitation of the SC is to suspend the proceedings or to delay it but not to end it. Therefore, it cannot be used as a mechanism to end the investigation or the prosecution unless it has not started yet and the national authority

[1] Article 16 of the Rome Statute and Chapter VII of the UN Charter.
[2] Int'l Crisis Grp, Negotiating Peace and Justice: Considering Accountability and Deterrence in Peace Processes, (Nuremberg, 26 June 2007).
[3] Linda M. Keller, The False Dichotomy of Peace versus Justice and the International Criminal Court, Op. cit., p.20.

could prove its ability or willingness to start the proceedings. Consequently, the SC could have suspended the prosecutions in Uganda to give more time for peace settlements.

V- Conclusion:

The issue of "peace vs. justice" is a controversial issue that will always appear in the ICC investigations. In Uganda, and in every case the ICC will intervene, the justice achievement will have an impact on the ongoing conflict and the peace process. The Rome Statute provided that the aim of the treaty is to prosecute these severe crimes against humanity and to ensure that criminals can go unpunished. Therefore, this idea of the peace role of the ICC was considered by the drafters of the treaty, even if it is a judicial body which should be more interested in achieving justice.

The former Prosecutor of the ICTY, Carla Del Ponte, declared that "peace without justice is unsustainable since unpunished crimes form stumbling blocks to lasting peace because even after a hundred-year, people do not simply forget the atrocities visited against them"[1]. Therefore, it can be said that peace is an essential component of justice as well as justice results in more stable peace. The Ugandan case had different influencers and factors which affected the ICC investigation, and it should be considered in the evaluating of the ICC role in these cases. On the one hand, the Ugandan

[1] Address by Carla del Ponte, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, to the United Nations Security Council, Press Release, OFFICE OF THE PROSECUTOR, The Hague, 30 June 2004.

government referred the case for the first time since the ICC was established which impacted the ICC decisions in many perspectives, such as not prosecuting the Ugandan government even though many organizations reported committing severe crimes. Then, it was criticized for its bias in favor of the government. Also, this decision, not to prosecute the government, encouraged other countries to refer their cases, as this referral was followed by the Central African Republic.

While many believe that the ICC intervention in Uganda was an impediment to the peace negotiations, the ICC succeeded to achieve the following goals:

(I) The warrants altered the LRA's calculations and created an incentive for the indicted commanders to negotiate as they do not have many options.
(II) ICC investigation was a factor in preventing Sudan's continued support to the LRA, forcing them to come to the negotiation table.
(III) The ICC role and prosecution of those leaders show the LRA as criminals and prevent other regional actors from dealing with or supporting them.

Also, the ICC was trying to prove itself as an international judicial entity that can have the international community's confidence and trust. Therefore, in the absence of exact peace mechanisms in the Rome statute, it was not easy to accept peace negotiations as an alternative for justice. Withdrawing the arrest warrants shortly after issuing it could undermine the ICC's mandatory force in the scene and would also give an impact as the ICC can

reverse its decisions easily. Then, it was clear that the ICC, in its decision, considered that it was in the construction stages of its system.

Moreover, the governments' referral was not honestly an action to achieve justice, but to mobilize the international community, especially Sudan, against supporting the LRA in Uganda's case. Also, it can be said that it was for the purpose of gaining international legitimacy regarding their decisions of using force against the LRA. To prove this, the government launched, a few months after the referral, the operation Iron Fist II as we have explained before.

In Uganda's case, the evaluation of the role of the ICC should consider that negotiations between the two parties were ongoing for decades, and it did not come to a successful end every time despite the amnesty act came to force in 2000 before the referral of the case to the ICC in 2003. Therefore, it is arguable to think that the ICC investigation was the primary factor of the negotiations' failure.

Actual criminal justice cannot be achieved in most cases, as it requires prosecuting leaders and governmental officials, this includes anyone or any organ responsible for the crimes starting from the conflicts' leaders, those who supporting them on national and international levels, civilians, and soldiers. Then, the ICC should reconsider their impacts on the conflict. If the ICC intervention was a factor for peace and saving thousands of lives, the ICC succeeded in its mission.

Therefore, it should promote its mechanism regarding evaluating the conflict, considering the people's country's interest, the severity of crimes, international peace, prevention of crime in the long-term, and the importance of implementing accountability. Now, The ICC can prosecute high-level officials, who could not prosecute for centuries, but it needs more efforts and cooperation of the international community.

Finally, in general, we can conclude that the ICC will always be accused of the peace process's impediment. Comparing the ICC's role to national courts, domestic policies always aim to exclude national courts from political interests; however, the ICC cannot be excluded from political and peace matters of its interventions and its impacts on the ongoing conflicts.

Therefore, the ICC should consider the peace process in its investigations; it should have flexibility in its work. Will it be better to prosecute small numbers of criminals or save thousands of lives of people? The interest of victims repeated in the Rome Statute many times as one of the main goals of achieving justice. The victims are interested in prosecuting the criminals who committed these severe crimes, but they have a more urgent need for peace.

VI- Recommendations:

Although the ICC is mainly a judicial body; its main mission is to investigate and prosecute the most severe crimes enacted in the Rome Statute, practices approves that its interventions will have crucial impacts on

the ongoing conflicts. Its involvement may result in positive impacts on the conflicts leading to end the conflicts or it may lead to fuel the conflict and thwart the attempts of peace negotiations. Therefore, the following recommendations can be considered to deal with this this dilemma:

1- The ICC should consider the peace negotiations giving chances to other justice mechanisms such as the above-mentioned ones. The Court should consider, during the implementation of art. 53 of the Statute, the interests of justice in its broad definition; to include interests of victims and the local and international peace considering that the Preamble to the Statute recognizes that the crimes under the Court's jurisdiction threaten the peace, security and well-being of the world.

2- The court should give a chance for the national jurisdiction and other justice alternatives mechanisms to be exercised first according to art. 17 and the principle of complementarity. When the exercise of the national jurisdiction is genuine and effective by approving the ability and willingness of the national authorities to investigate the crimes and prosecute the criminals not to protect them or giving them amnesties.

3- The Security Council should consider the power given to it by art.16 of the Statute and intervene to suspend the proceedings if there is a threat to the peace according to chapter VII of the UN Charter.

4- The Rome Statute may need modification to be more effective. The core of these modifications includes providing the Prosecutor and the Court more power to deal with these problems in the future. One important point is

considering the views and thoughts of the victims in this regard whose, in specific situations, their only justice is to get peace after years of conflicts and suffering.

Also, the Statute needs to clearly adopt the restorative justice which is "a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offense and its implications for their future"[1] rather than the retributive justice.

5- The ICC and the prosecutor should promote more effective cooperation between them and the national authorities to achieve justice and to work on peaceful settlements to the disputes. Therefore, the court and the prosecutor should give more concern about the peace processes between the conflict parties not only prosecuting the criminals.

It can be noted that the modern trends of the ICC and the prosecutor go in this way as has been declared by the former prosecutor, Fatou Bensouda, during presenting her Office's 21th report on the Situation in Libya to the UN Security Council as she stated that "there can be no lasting peace without accountability and justice." At the same time, she expressed the ICC concerns about the "peaceful settlement of disputes" in many situations.[2]

[1] Tony Marshall, Restorative Justice in Britain, in RESTORATIVE JUSTICE ON TRIAL: PITFALLS AND POTENTIALS OF VICTIM-OFFENDER MEDIATION – INTERNATIONAL RESEARCH PERSPECTIVES, (H. Messenger & H Otto eds., Kluwer Academic Publications 1992), pp. 15–28.

[2] Statement of the ICC Prosecutor to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011), May 2021, available at: https://www.icc-cpi.int/news/statement-icc-prosecutor-united-nations-security-council-situation-libya-pursuant-unscr-1970-0

6- The ICC and the prosecutor may also need to limit their circle of investigation or prosecution to the most dangerous criminals. This can help in the implementation of its decisions by the national authorities as well as put pressure on the rest of the leaders to end the conflict fearing that they will be prosecuted too.

7- The ICC needs to consider cultural differences and language barriers in dealing with these situations. The judges may need to visit the countries, if it is possible, to figure out the situation on the ground. This will help the court to be more engaged with the case, bridge the socio-economic gab between the court and the concerned countries, identify other local justice alternatives, address the people and victims' needs, and take the appropriate and suitable decisions.

References:

- Address by Carla del Ponte, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, to the United Nations Security Council, Press Release, OFFICE OF THE PROSECUTOR, The Hague, 30 June 2004.
- Agreement on Implementation and Monitoring Mechanisms, clause 37, 2008.
- Anna Macdonald, "In the interests of justice?" The International Criminal Court, peace talks and the failed quest for war crimes accountability in northern Uganda, Journal of Eastern African Studies, 2017.
- Benzing, Markus, The Complementarity Regime of the International Criminal Court: International Criminal Justice between Sate Sovereignty and the Fight against Impunity, Max Plank UNYB 7, 2003.
- Claire Garbett, The International Criminal Court and restorative justice: victims, participation and the processes of justice, Restorative Justice An International Journal, 2017.
- Clark, P. Kaufman, Z. D. Nicolaidis, K. „Tensions in Transitional Justice", In: Clark, P. Kaufman, Z. D. After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond, London: Hurst Company (2008) See also: Marshall, T.F. (1999). Restorative justice: an overview. London: Home Office, http://www.antoniocasella.eu/restorative/Marshall_1999-b.pdf
- David Lanz, The ICC's Intervention in Northern Uganda: Beyond the Simplicity of Peace vs. Justice, The Fletcher School of Law and Diplomacy, May 2007.
- Diba Majzub, Peace or Justice?: Amnesties and the International Criminal Court, Melbourne Journal of International Law, vol 3, 2002.

- Gerard Conway, Ne Bis in Idem in International Law, International Criminal Law Review 3(3), July 2003, available at: https://www.researchgate.net/publication/228176991_Ne_Bis_in_Idem_in_International_Law
- Human Rights Watch, Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda, vol. 17, no. 12(A), September 2005, available at: http://www.hrw.org/sites/default/files/reports/uganda0905.pdf
- ICC - President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC, 29 January 2004, available at: https://www.icc-cpi.int/news/icc-president-uganda-refers-situation-concerning-lords-resistance-army-lra-icc
- ICC - Prosecutor of the International Criminal Court opens an investigation into Northern Uganda, 29 July 2004, available at: https://www.icc-cpi.int/news/icc-prosecutor-international-criminal-court-opens-investigation-nothern-uganda
- ICC, Statement by the Chief Prosecutor on the Uganda Arrest Warrants, , 14 October 2005, available at https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/AF169689-AFC9-41B9-8A3E-222F07DA42AD/143834/LMO_20051014_English1.pdf
- ICC, Address by Mr. Luis Moreno-Ocampo, Building a Future on Peace and Justice, Nuremberg, 24/25 June 2007.
- ICG, "Peace in Northern Uganda?" Africa Briefing No. 41 in September 2006, available at https://www.files.ethz.ch/isn/25310/b041_peace_in_northern_uganda.pdf
- Int'l Crisis Grp, Negotiating Peace and Justice: Considering Accountability and Deterrence in Peace Processes, (Nuremberg, 26 June 2007).

- Ivan Simonovic, The Role of the ICTY in the Development of International Criminal Adjudication, Fordham International Law Journal, Volume 23, Issue 2, 1999, available at: https://core.ac.uk/download/pdf/144226006.pdf
- Jennifer Llewellyn, A Comment on the Complementarity Jurisdiction of the International Criminal Court, 24 DALHOUSIE L.J. 192, 2001.
- Jessica Gavron, Amnesties in Light of Developments in International Law and the Establishment of the International Criminal Court, 51 ICLQ 91, 2002, available at: https://www.icc-cpi.int/sites/default/files/ICCOTPInterestsOfJustice.pdf
- Jon'a F. Meyer, Retributive justice, SAGE Publications Encyclopedia of Crime and Punishment, 2002, available at: https://www.britannica.com/topic/retributive-justice
- Jonathan I. Charney, "International Criminal Law and the Role of Domestic Prosecution", American Journal of International Law 95(1), 2001, available at: https://www.researchgate.net/publication/273081916_International_Criminal_Law_and_the_Role_of_Domestic_Courts
- Joseph Yav Katshung, "Mato oput versus the International Criminal Court (ICC) In Uganda," Pambazuka News Issue 271, September 28, 2006, http://pambazuka.org/en/category/comment/37403
- Kirsty McNamara, Seeking Justice in Ugandan Courts: Amnesty and the Case of Thomas Kwoyelo, Washington University in St. Louis, School of Law, 2012, available at: https://openscholarship.wustl.edu/law_globalstudies/vol12/iss3/19/
- Linda M. Keller, The False Dichotomy of Peace versus Justice and the International Criminal Court, HAGUE JUSTICE JOURNAL, VOLUME 3, NUMBER 1, 2008, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1340720

- Manisuli Ssenyonjo, The International Criminal Court and the Lord's Resistance Army Leaders: Prosecution or Amnesty? International Criminal Law Review, Volume 7: Issue 2-3, 1 January 2007, available at: https://brill.com/view/journals/icla/7/2-3/article-p361_4.xml?language=en&ebody=article%20details
- Markus Benzing, The complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity, Max Planck Yearbook of United Nations Law, Volume 7, 2003.
- Payam Akhavan, "The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court," American Journal of International Law 99, no. 2, 2005.
- Phil Clark, The International Criminal Court's Impact on Peacebuilding in Africa, In book: The State of Peacebuilding in Africa, Lessons Learned for Policymakers and Practitioners, 2020.
- Policy Paper on the Interests of Justice, the office of the prosecutor, the ICC, September 2007, available at: https://www.icc-cpi.int/sites/default/files/ICCOTPInterestsOfJustice.pdf
- Rene Blattmann and Kirsten Bowman, Achievements and Problems of the International Criminal Court: A View from Within, volume 6, Issue 4, 15 November 2008, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1301380
- Roco Wat I Acoli: Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration 55 (Liu Institute for Global Issues, September 15, 2005, available at: https://sppga.ubc.ca/news/roco-wat-acoli-restoring-relationships-acholi-land-traditional-approaches-justice-reintegration/

- Statement of the ICC Prosecutor to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011), May 2021, available at: https://www.icc-cpi.int/news/statement-icc-prosecutor-united-nations-security-council-situation-libya-pursuant-unscr-1970-0
- The Amnesty Act, 2000, cap. 294, Revised Edition Laws of Uganda 2000.
- The Prosecutor v. Dominic Ongwen, ICC-02/04-01/15, Case Information Sheet, July 2021, available at: https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/OngwenEng.pdf
- Unger, T., Wierda, M., Pursuing Justice in Ongoing Conflict: A Discussion of Current Practice. In: Ambos, K., Large, J., Wierda, M. (eds) Building a Future on Peace and Justice. Springer, Berlin, Heidelberg, 2009, available at: https://doi.org/10.1007/978-3-540-85754-9_11
- Tony Marshall, Restorative Justice in Britain, in RESTORATIVE JUSTICE ON TRIAL: PITFALLS AND POTENTIALS OF VICTIM-OFFENDER MEDIATION – INTERNATIONAL RESEARCH PERSPECTIVES 15–28 (H. Messenger & H Otto eds., Kluwer Academic Publications, 1992.
- Prosecutor v. Joseph Icony, Decision on the admissibility of the case under article 19(1) of the Statute, ICC-02/04-01/05, 10 March 2009, available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2009_01678.PDF
- Uganda: ICC Could Suspend Northern Investigations—Spokesman," IRINNews, April 18, 2005.
- United Nations High Commissioner for Human Rights, Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda, August 2007, available at: https://www.refworld.org/reference/countryrep/ohchr/2007/en/77929