

# **MECHANISMS OF THE ICC: PROSECUTOR, VICTIMS RIGHTS AND RELATIONSHIP WITH THE UNITED NATIONS**

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On 17 July 1998 in Italian capital in Rome, the world established a new and a unique institution never existed before, the International Criminal Court (ICC). It was perhaps the most important insurance for justice, peace and security developed since creation of the United Nations after the Second World War, and effects of which would be felt in this new century. It also put in place the missing link of peace and security maintained by the UN Security Council with justice by bringing individuals responsible for committing crimes of international concern before an international, permanent and independent court, when, by and large, States failed in prosecuting such individuals. By targeting individuals rather than States, the International Law recognized individuals as actors of International Law requiring protection as well as made them accountable. The Court thus developed direct link between and individual and the International Law that individuals would henceforth not only be subject to national laws but International Law too.

As an institution with no previous reference, the international community represented by 120 nations in Rome faced an unprecedented challenge to devise a mechanism that investigates an individual of a sovereign State, respects his/her legal culture, acts neutrally, adhere principles of State's sovereignty but still seeks justice, ends impunity, deter future crimes, takes care of victims, establishes peace and equally importantly, maintains highest standards of practice, acts transparently and at the end, ensures rights of the accused and holds a fair trial. The Court is expected to set highest standard of justice that others could look and get inspiration from but at the same time, not act as a world's Court of Appeal. I believe the Rome Statute has quite successfully designed a mechanism that satisfies so many of these and other competing and often, conflicting claims.

## **Duties of the States:**

International humanitarian Law obligated States Parties penal repression of serious violations of the four Geneva Conventions of 1949, their additional protocols of 1977 and other treaties. In other words, States were always duty bound to all violations to suppress all violations of humanitarian laws. It also held individuals responsible for violations of humanitarian laws which, either they themselves committed, or ordered others to commit. It mandated such violations be considered as crimes and violators be prosecuted and punished.

States Parties to International humanitarian laws had four distinct obligations in relation to grave breaches;

- a) States were bound to enact specific legislations prohibiting and punishing grave breaches of the Conventions either by enacting new laws or by

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- amending existing laws. Such laws should cover everybody regardless of nationality and for acts committed within or beyond of State's territory;
- b) The State must search, investigate and prosecute and if necessary, extradite such individuals;
- c) A State must ensure that its military commanders prevent, suppress and take actions against those under their commands violating Conventions;
- d) States should assist each other in connection with criminal proceedings relating to these humanitarian laws violations.

Moreover, international human rights laws set clear standards and norms and reaffirmed basic rights of human person that the States had been under obligation to respect and ensure.

### **The Missing Link:**

The Rome Statute filled up the gap by building up an elaborate mechanism largely to step in when States would not or fail to investigate and prosecute serious crimes. Earlier, following the post World War II tribunals, the international community set up two ad hoc tribunals in 1990's, still busy in conducting trials of international criminals.

The International Criminal Tribunal for the former Yugoslavia, based in The Hague, Holland, covered four categories of crimes; the grave breaches of the Geneva Conventions of 1949, violations of laws and customs of war, genocide and crimes against humanity.

The International Criminal Tribunal for Rwanda in Arusha, Tanzania, covered three categories of crimes; genocide, crimes against humanity and violations of common Article 3 of the 1949 Conventions.

The International Criminal Court was logical response to monumental failures of States to fulfill their obligations under international laws in prosecuting international crimes in national and international jurisdictions and thereby enabled the culture of impunity to gain deep roots in societies around the world. The ICC is the international communities answer to ensure that those who commit crimes do not go unpunished.

### **International mechanism to compliment national jurisdiction:**

The aim of the Rome Statute is to complement the national criminal jurisdiction when its principle of complementarity under which the ICC's jurisdiction is invoked only when a State is genuinely unable or unwilling to prosecute alleged criminals over which it has jurisdiction, and to meet this principle's requirement, the State will need to have adequate legislations enabling them to prosecute such criminals.

So the ICC will only respond to in case of failures of the States and the States, therefore, will have to actively fulfill their obligations and the national courts will continue to play primary role in the prosecution of alleged international crimes.

### **New legal order and structure:**

The Statute establishing the ICC developed a new legal order for criminal justice for it to follow should States failed. It put in place a mechanism for complete justice. At its apex, the Presidency composed of the President of the Court and two Vice Presidents. The Presidency's function is to ensure proper administration of the

Court, in all non-prosecutorial matters. The 18 Judges of the Court, elected from all regions of the world, collectively acts as a Plenary.

The Judges then fill up three Chambers of the Court; the Pre-Trial Chamber, the Trial Chamber and the Appeals Chamber. A single Prosecutor and two Deputy Prosecutors form the Office of the Prosecutor. The Registry headed by a Registrar takes care of non-judicial matters, matters relating to victims, witnesses and defense.

The Assembly of States Parties, meeting of all the States Parties to the ICC oversees management of the Court, its finances, accounts of expenditures, approves all rules and procedures, elects Judges, Prosecutor, Registrar and other officials etc. The Assembly has no influence in daily running of the Court or Prosecutor's decision, who acts independently.

### **Activating the ICC:**

There are three different ways that the mechanism of the ICC could be initiated, a State Party to the Rome Statute, that has ratified or acceded to Statute could refer a situation to the Prosecutor. A State could also refer a situation to the Court without accession. The Security Council of the United Nations could refer a situation for investigation and eventual prosecution and lastly, the Prosecutor has power to initiate his/her own investigation based on information received from any sources, provided other conditions have been met.

In case of referral by a States Party or initiated by the Prosecutor, the Court would prosecute individuals who have committed crimes on the territory of an ICC member state, or who are nationals of a member state, unless a country specifically accepts the authority of the ICC to prosecute its nationals.

If the matter is referred by the UN Security Council under Chapter VII of the UN Charter, the Court could exercise jurisdiction over the situation regardless of its membership of the Court or nationality of the accused.

### **Prosecutor and Procedures:**

The Prosecutor, elected by the States Parties, is an independent person responsible for investigation and prosecution. He is responsible for receiving of information and referrals by the States Parties or by the Security Council. It can only investigate crimes falling within its jurisdiction. The Office of the Prosecutor is a separate organ of the Court.

Warrants of arrests are always issued by a Pre-Trial Chamber once the Prosecutor produces enough evidence meriting such arrests. States Parties are obliged to cooperate in effecting arrests and surrendering the arrestee to the Court.

After arrest, the arrestee must be brought before the Pre-Trial Chamber promptly to examine lawfulness of arrests, inform reasons of arrests etc. The accused then can ask for provisional release. After confirmation of charges, the Trial Chamber ensures expeditious, fair and transparent trial. If convicted, the accused could be sentenced up to 30 in prison and in exceptional cases, imprisonment for life.

### **Victims Rights:**

Victims of international crimes have special and unique place in the Rome Statute. In fact, ICC is the first international court with elaborate procedures for victims and

witnesses. Victims of sexual and gender violence, child victims received particular attention. In a word, victims' rights are primary objectives of the Court, and procedures are therefore victims friendly.

Victims could be individuals and organizations suffering from physical harm to a person's body, psychological harm or goods or property damaged. Victims means natural persons who have suffered harm or organizations or institutions that have sustained harm to their property, which is dedicated to religion, education, art or science or charitable purposes, or historic monuments, hospitals and other places and objects for humanitarian purposes.

The Rome Statute ensures victims participation in all stages of the Court's proceedings without prejudicing the rights of the accused or holding of a fair and impartial trial. Victims may participate, either in person or through their representatives to explain why a case falls within the jurisdiction of the Court, present views and concerns, making opening and closing statements, question witnesses, ask the Court to take gender sensitive measures etc.

A Victims and Witness has been set up under the Registry of the Court to take protective measures, security arrangements, counseling and other appropriate measures for victims and witnesses. A Trust Fund has been set up for the benefit of victims of crimes within the jurisdiction of the Court and families thereof.

#### **Relationships with the UN:**

Although the diplomatic conference that adopted the Rome Statute establishing the ICC was negotiated within the UN framework, the Court is independent to UN as well as all other organizations. However, for practical reason, the Court has a relationship agreement with the UN. As an international legal person, the Court entered into such an agreement which was entered into by the President of the Court.

The agreement defines relationship and cooperation between these two international organizations. Under this agreement, the United Nations and the Court agree conditions under which funds may be provided to the Court. It elaborates procedures to refer to the Prosecutor a situation by the UN Security Council, when, Secretary General will immediately transmit written decision of the Security Council to the Prosecutor together with documents.

Under the Statute, the Security Council could also ask the Court, pursuant to Article 16, not to commence or proceed with an investigation or prosecution for 12 months.

The Security Council could also make a finding of a failure by a State to cooperate with the Court, where the matter has been referred by the Security Council to the Court. In such situation, the Security Council shall inform the Court of action if taken by it.

In fine, the International Criminal Court is definitely a step forward to punish persons responsible for committing most heinous crimes and joining the Court would effectively deny such persons to enjoy impunity. The Court's strength would be its universality. Equally, only through universal concerted efforts could the world prosecute and punish perpetrators of most serious.

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