

The ICC's Jurisdiction over Human Trafficking as a Crime Against Humanity: Legal Guarantees and Practical Challenges for Victims

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Abstract:

The International Criminal Court is an institution that protects the interests of the victims in human trafficking. It was established by the Statute of Rome in 1998 to try war crimes, crimes against humanity, genocide, and sexual violence, which are all considered grave violations. In terms of human trade, the ICC endeavors to break the cycle of impunity by making victims' situations more secure by having the means of access to justice and redress. Moreover, the Court raises international awareness of trafficking in persons and encourages global cooperation in bringing forward such crimes for prosecution, thereby serving international justice and the protection of human legal protections of victims of this serious violation.

key words:

International Criminal Court- Human trafficking- Human rights- International crimes- victims

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introduction:

Human trafficking is the most heinous and widespread violation of human rights in modern society. It enthralls millions of women and children subjected to physical, psychological, and legal harm. Though the offense is usually addressed at the national level, its global aspect has invoked increased interest from international legal authorities.

The International Criminal Court (ICC), established by the Rome Statute in 1998, exercises jurisdiction over the most serious crimes of concern to the international community at large, including genocide, crimes against humanity, and war crimes. Among the acts constituting crimes against humanity is "enslavement," defined in Article 7 as including the trafficking of persons where it involves the exercise of powers of ownership over a person.

This raises a fundamental legal question: To what extent does the ICC provide effective legal protection to victims of human trafficking wherever such acts fall under its jurisdiction as crimes against humanity?

The study seeks to explore the role of the ICC in protecting victims of human trafficking, both by analyzing the legal guarantees afforded under the Rome Statute, as well as the practical restrictions on their enforcement. It is necessary for the study to observe the potential, along with the boundaries, of the international criminal justice system in dealing with this growing phenomenon.

This study will be divided into two sections: first, by identifying the guarantees enjoyed by affected individuals of human trade under the founding treaty of the International Criminal Court, and second, by discussing the effectiveness of the International Criminal Court in ensuring these entitlements.

Section I: The Rights of Human Trafficking Victims under the Rome Statute of the International Criminal Court

By examining the ICC Statute and the Rules of Procedure and Evidence of the International Criminal Court, it is evident that

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complainants, of international crimes, including harmed persons of exploitation of persons, are granted a set of legal protections. These guarantees pertain both to the conduct of criminal proceedings and to reparations.

A) The Rights of Human Trafficking Victims in Criminal Proceedings:

Among the liberties granted to victims of trafficking in persons in the context of criminal proceedings are the right to safeguarding, the right to participate in trial proceedings, and the right to legal representation.

1- The Right to Protection

The underlying ICC documents grant victims of human trafficking physical, psychological, as well as juridical protection. However, the realization of such protections is subject to resources and interstate cooperation. In high-risk situations, especially when the victims testify against powerful traffickers, enforcement of such protections on the ground could be unsuccessful. The effectiveness of the Victims and Witnesses Unit established under Article 43(6) therefore relies not merely on its internal capacity but also on member states' political will to observe standards of protection.¹

While Article 54(1)(b) mandates that the Prosecutor consider the situation of the victims, this obligation is discretionary and not enforceable. In practice, this can be a source of inconsistency in the application of victim-specific considerations to different cases

Under Article 68/5, for any pre-trial proceedings, the Prosecutor is allowed to refuse to disclose evidence or information when such disclosure would endanger the safety of the witness or their family. A summary may be given instead, in order for such measures not to prejudice the entitlements of the accused or the fairness and impartiality of the trial.²

¹ Al-Aqqad, Khaled Abdullah. *Rights of Victims in the Light of International Criminal Law*, 1st edn, Arab Studies Centre, Egypt, 2017, p. 107.

² William A. Schabas, *An Introduction to the International Criminal Court*, 1st edn, Cambridge University Press, UK, 2001, pp. 112–115.

Articles 57/3 and 68/1 respectively vest the shielding of complainants in the Pre-Trial and Trial Chambers, and allow the Trial Chamber to take preventive measures for that purpose.

Under Rules 87 and 88 of the Rules of Procedure and the Rules of Evidence, the Court may wish to conduct in-camera sessions or make use of technology available, such as video conferencing, to ensure that the identity of the harmed persons is not revealed to the public. The Court can withdraw the name of the victims and witnesses in cases where there is a threat of retaliation against them.

Article 18, however, does provide for such action by the Prosecutor as to restrict the information provided to states, if necessary, to protect individuals, prevent evidence destruction, or prevent the flight of persons.

Article 18 allows the Prosecutor to limit any information he or she deems necessary to give out to the states in order to prevent victimization, destruction of evidence, or fleeing of persons.¹

2- The Right to Participate in Trial Proceedings

Their participation in the proceedings under the Rome Statute gives an opportunity for individuals of trafficking in persons to present their views and make requests with respect to the facts and request relief. Under 15/1, there is a potential for the survivors to furnish information to the Prosecutor or submit oral or written testimonies as per 15/2. The Prosecutor shall maintain the confidentiality of such information and testimonies and take protecting measures.

affected persons equally participate in the investigation process, under Rule 89 of the Rules of Procedure and Evidence.

Article 68/3 of the founding treaty provides that the views and concerns of complainants of international offenses can be presented during appropriate stages of the proceedings in such a way that does

¹ Silvia A. Fernández de Gurmendi, The Role of the International Criminal Court's Registrar in Protecting the Rights of Victims, in Roy S. Lee (ed.), *The International Criminal Court: The Making of the Rome Statute*, Kluwer Law International, The Hague, 1999, pp. 411–422.

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not prejudice the legal protections of the accused or the fairness and impartiality of the trial it self.¹

To the extent possible, the participation of harmed persons or their representatives in the proceedings shall be ensured and the Court shall notify individuals of the Prosecutor's decision not to initiate an investigation or prosecution. The Registrar is responsible for notifying the survivors or their legal representatives who have previously participated in the proceedings, or to the extent possible, with individuals who have contacted the Court concerning the case. The Registrar also informs affected individuals about:

- The steps taken by the court before it, including dates of hearing, or any date to which the hearing may be adjourned, and the date of judgment
- Petitions, complaints, requests, and other related documents;
- Court's rulings related to victim participation for specific stages of the proceedings.

Under Rule 93, the Chamber may consult the views of survivors regarding reconsidering the decision of the Prosecutor for not investigating or prosecuting, collective or individual trials for accused persons, plea bargaining, and providing guarantees to witnesses against prosecution or detention.

3- The Right to Legal Representation

Such a right to legal assistance or representation should be recognized for exploitation of persons affected persons within international judicial procedures, which are immensely complicated. There is no way the very fundamental understanding of the legal paradigms of an overall nature may be a precondition for the victims to be in a position to exercise the right in either domestic or international judicial proceedings.²

The Rome Statute affirms the right of victims to be legally represented during proceedings, as provided under Article 68(3).

¹ Robert Cryer et al., *An Introduction to International Criminal Law and Procedure*, 1st edn, Cambridge University Press, UK, 2007, pp. 130–135.

² Khaled Abdullah Al-Aqqad, *op. cit.*, p125.

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When victims lack sufficient resources, the Court's Registry ensures financial support to secure legal assistance. Given the high number of victims involved in international crimes, the Court facilitates group representation through shared legal counsel, chosen from an approved list maintained by the Registrar and based on proven competence. Rule 90 outlines the procedures for appointing legal representatives, while Rule 91 grants them the right to participate fully in proceedings, subject to certain limitations determined by the Court when necessary.

In addition to the guarantees mentioned above related to criminal proceedings, the Tribunal grants affected persons of international unlawful acts, including trafficking in persons harmed persons, the right to reparations, which will be addressed in the following section.¹

B) subtitle: The Rights of Human Trafficking Victims to Reparations

Under Article 75 of the Rome Statute, the Court may order reparations for victims in addition to sentencing offenders. Reparations can include restitution, compensation, or rehabilitation. In the context of human trafficking, however, restitution is often unsuitable because the harm caused is primarily physical and psychological rather than material. Consequently, compensation and rehabilitation are the primary forms of reparation offered to survivors, aiming to address their suffering and promote recovery.

1- The Right to Compensation

Reparations are made a right of victims of human trafficking through Article 75 of the Rome Statute. However, in practice, monetary reparations are hard to secure. First of all, perpetrators in general do not have the means to adequately compensate.

In addition, while the Trust Fund for Victims is an alternative, its funding is limited and depends on voluntary contributions by state parties. This creates a lacuna between the theoretical right to

¹ Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge University Press, 2012, pp. 175–180.

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reparations and its actual delivery, hence undermining victims' confidence in the international justice system.

2- The Right to Rehabilitation

Another form of reparation for affected individuals of trafficking is rehabilitation, as a form of reparation pursuant to Article 75(2) of the Rome Statute, aims to restore victims to stable, dignified living conditions. But unlike compensation, rehabilitation involves some measure of long-term psychosocial assistance, medical care, and reintegration support—services that the Court cannot practically provide itself. This limitation ensures that the ICC must rely on third parties, NGOs and foreign contributors, to implement rehabilitation schemes. The success of such initiatives thus hinges heavily on the political will and funding at the national level. Without systematic coordination, rehabilitation amounts to a symbolic promise rather than an assured entitlement.¹

The ICC has, in some cases, recognized rights of human trafficking-related offense victims. In *Prosecutor v. Ongwen*, sexual slavery and forced marriage offenses were handled as crimes against humanity. Although not formally so labeled, the crimes contained fundamental elements of coercion and exploitation. Participation of victims and the reparations awarded demonstrate the ICC's commitment to realizing its protective mandate according to Article 68 of the Rome Statute

Section II: Effectiveness of the International Criminal Court in Ensuring the Rights of Human Trafficking Victims

Over 1,500 victims of enslavement, sexual violence, and crimes of exploitation have been assisted and provided with reparations programs, as per the ICC's Trust Fund for Victims Annual Report (2023). However, the Fund does not categorize its beneficiaries into types of crimes like trafficking, which makes it more difficult to quantify the impact of the ICC on victims of trafficking specifically.

¹ M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 2nd edn, Kluwer Law International, The Hague, 1999, pp. 244–248.

The Tribunal not only recognizes the legal protections of trafficking in persons harmed persons but also establishes a series of guarantees to ensure they can exercise these guarantees. However, in practice, certain international challenges hinder the implementation of these guarantees, negatively impacting the affected individuals' liberties.

A) Guarantees for Exercising the Rights of Human Trafficking Victims:

An examination of the ICC's Statutory framework reveals several guarantees to enable survivors of international offenses, including human trade, to exercise their entitlements. These guarantees pertain to both the jurisdictional and procedural aspects of the Court.

1- Guarantees in Jurisdictional Matters

The guarantees of jurisdiction include the following:

- Complementarity of Court Jurisdiction: The complementarity principle, as contained in Articles 1 and 17 of the Rome Statute, ensures that the ICC steps in only when states are unable or unwilling to prosecute. While this principle is an affirmation of state sovereignty, it inadvertently shields human traffickers from prosecution. In practice, most states lack the resources and political will to criminalize trafficking as a crime against humanity. In turn, complementarity—intended as a protector of national jurisdiction—can become an obstacle to justice for victims when national systems fail and the ICC remains idle.¹

- Failure to Issue Declarations of Non- Acceptance of exploitation of persons unlawful acts: Although Article 124 of the Statute allows State parties to declare non-acceptance of the Court's jurisdiction over war crimes for seven years from the coming into force of the Statute, this does not apply to human trafficking offenses, as these are violations against humanity. This provision thus works in

¹ Qahwaji, Ali Abd al-Qader. *International Criminal Law: Major International Crimes and International Criminal Tribunals*, 1st edn, Dar Al-Halabi Legal Publications, Lebanon, 2001, p. 331.

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favor of affected persons of trafficking in persons, in that it ensures that States cannot exclude the jurisdiction of the Court over such unlawful acts.

- **Ban on Reservations:** Under the Vienna Convention on the Law of Treaties of 1969, reservations are unilateral statements made by states with the intention to exclude or modify certain provisions of the treaty's legal effect. However, Article 120 of the founding treaty prohibits any form of reservation to the Statute, thus not permitting a state party to make any reservation that may hinder the Court's jurisdiction over the crime of human trade.¹

- **Non-Applicability of Statute of Limitations:** Article 29 reaffirms that international crimes, including trafficking where it constitutes a crime against humanity, are not subject to a statute of limitations. This is significant in allowing victims to seek justice years later when the crime was perpetrated. But its pragmatic significance is undermined by evidentiary challenges: documents are lost over time, memories dissipate, and perpetrators disappear. Moreover, the lack of a time bar is significant only when victims know their rights and have access to redress mechanisms. Otherwise, the lack of limitation is good in law but worthless in practice.

- **Illegality of Amnesty:** The Rome Statute does not create any allowance to the bar to prosecute and, by implication, sets it in stone that amnesty cannot be a defense to indict. This ensures that perpetrators of exploitation of persons will in no way have a soft landing through national amnesty laws.

- **Non-Recognition of Immunities:** Article 27 has been hailed as a safeguard of the ICC's vow of accountability because it clearly excludes immunity on the basis of official capacity. In principle, this empowers the Court to prosecute senior government officials charged with human trafficking. In practice, however, issuing arrest warrants against them has been difficult. States may be able to evade

¹ Cassese, Antonio. *International Criminal Law*, trans. Publisher's Library, 1st edn, Saader Legal Publications, Lebanon, 2015, p. 535.

cooperation, especially where there is a political or economic interest at stake. Thus, while the Statute upholds the principle of equality before the law, its operation demonstrates the persistence of realpolitik's grip on international justice.¹

2- Procedural Guarantees

These are the procedural guarantees, including:

- Methods of Instituting Proceedings: enhancing access to justice for victims. Article 13 provides that cases may be brought to the Court through a referral by a State Party, a referral by the United Nations Security Council, or the Prosecutor's own initiative (*proprio motu*). A State Party can refer a situation involving potential crimes under the Court's jurisdiction, supported by relevant documentation. Alternatively, the UN Security Council may refer cases under Chapter VII of the UN Charter when international peace and security are at risk. Finally, Article 15 authorizes the Prosecutor to initiate investigations independently based on credible information from diverse sources, subject to authorization by the Pre-Trial Chamber.²

International Cooperation in Prosecution: Without international cooperation, the Court cannot function. Article 86 of the Statutory framework makes all state parties under obligation to fully cooperate with the International Criminal Court in investigations and bring to trial. In other words, this cooperation consists of extradition, sharing of evidence, and any other legal aid vital for the Court to discharge its mandate effectively for defense of the guarantees of the victims.

These jurisdictional and procedural guarantees can be interpreted as providing wide-ranging shielding and assurance of justice to survivors of human trade. However, the efficiency of such guarantees lies in the cooperation of state parties themselves and the

¹ Abd El-Khalek, Mohamed Abd El-Monem. *International Crimes: A Foundational Study of Crimes Against Humanity, Peace, and War Crimes*, 1st edn, Dar Al-Nahda Al-Arabiya, Egypt, 1989, p. 460.

² El-Anani, Ibrahim Mohamed. *Public International Law*, 5th edn, Dar Al-Nahda Al-Arabiya, Egypt, no date of publication, pp. 94-96.

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capability of ICC itself to be able to overcome the practical challenges in actualizing them¹

B) Obstacles to the Implementation of Guarantees for Victims of Human Trafficking:

Despite the established guarantees to protect affected persons of international unlawful acts, including complainants of exploitation of persons, several obstacles hinder their realization. These obstacles pertain to jurisdictional aspects and procedural aspects of the court

1- Obstacles to the Implementation of Victims' Rights Guarantees in Jurisdictional Matters

Obstacles in the jurisdictional domain that are:

- **Complementary Role of the ICC:** Another factor that modulates the authority of the Court is the complementary jurisdiction of the Tribunal, which tries to balance the independence of the court with national sovereignty. On one hand, it does respect national sovereignty and uses it as a way to protect it. Instead, it may serve to bridle the effectiveness and independence of international criminal legal action in realizing justice for harmed persons.

- **Temporal Jurisdiction of the ICC:** The Tribunal is juridically competent to only prosecute cases for those atrocities committed after the entry into force of the founding treaty, under Articles 11 and 24/1 thereof. This, by and large, is in line with the principles of non-retroactivity underpinning criminal legal orders, which safeguard an individual not to be tried on the basis of facts which were not criminal at the time they acted.

As it is, the International Criminal Court cannot take jurisdiction to persecute offenses committed before the date the Statutory framework became effective; ergo, affected individuals for such violations cannot receive any form of justice from the Court. The Statute became effective on July 1, 2002 by virtue of Article 126 and

¹ Antonio Cassese, *International Criminal Law*, 1st edn, Oxford University Press, UK, 2003, pp. 352.

by extension provided the prerequisite threshold for any prospective survivors applications.

Concerning States that have deposited their ratification or accession subsequent to its effective date, it shall take effect 60 days after the said State has so deposited its instrument of ratification or accession. Second, unlawful acts committed within or against the national of a non-state party lie beyond the jurisdiction of the Tribunal unless such nonstate parties make a declaration to that effect, by making an application under Article 12(3), only then would the International Criminal Court have jurisdiction if the offenses have been committed after the entry into force of the founding treaty.¹

2- Obstacles to the Implementation of Victims' Rights Guarantees in Procedural Matters

Barriers in the procedural domain:

- Power of Security Council to Suspend Investigations or proceedings: Article 16 of the Rome Statute gives the UN Security Council the authority to suspend ICC investigations or prosecutions for renewable periods of 12 months. While aimed at preserving international peace, this provision has come in for extensive criticism for claiming to pose severe political interference questions. Major states' ability to freeze proceedings undermines the sovereignty of the Court and delays justice for victims, particularly where the perpetrators enjoy political protection. Thus, the dilemma between legal accountability and geopolitical imperative remains a cen

- Prohibition of Double Jeopardy: Article 20 enunciates the principle of ne bis in idem, which protects a person against being tried twice for the same offense. While this is a fundamental criminal law guarantee, it can be misused to avoid international responsibility where national trials are flawed or tainted. If the local court hastily acquits a trafficker in defiance of the due process, then the ICC can be precluded from access to re-open the case even if proceedings were

¹ Mohamed, Youssef Abikar. Trial of War Criminals before International Criminal Tribunals: A Comparative Study between Islamic Law and Contemporary International Law, Shatat Printing, Dar Al-Kutub Al-Qanuniya, Egypt, 2011, p. 569.

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superficial. It refers to a structural deficiency in the Statute, where procedural safeguards are manipulated as impunity shields in some national contexts.¹

Conclusion:

This study contributes to the literature of international criminal law through its examination of the legal status of human trafficking within the jurisdiction of the International Criminal Court, which has not been addressed to a significant extent. While trafficking is most commonly prosecuted at the domestic or regional level, its formulation as a crime against humanity under Article 7 of the Rome Statute is both legally intriguing and pragmatically underutilized. By analyzing the specific procedural and substantive guarantees available to victims of trafficking under the ICC regime, and determining the challenges they face in their pursuit for justice

research bridges a gap between theory and practice. It also provides concrete reforms to improve the visibility and treatment of trafficking cases within the prosecutorial priorities of the Court.

First, The Results:

- The Rome Statute offers victims of human trafficking a range of legal protections, particularly where trafficking constitutes enslavement as a crime against humanity.

- Victims have the right to protection, participation in the proceedings, legal representation, and reparations (in the form of compensation and rehabilitation).

- The ICC principle of complementarity permits intervention where national systems break down but also limits the jurisdictional scope of the Court.

- Political and procedural hurdles—such as Security Council interference and lack of retroactive jurisdiction—undermine the Court's ability to deliver justice.

¹ Ali Abd al-Qader Qahwaji, op. cit., p 344.

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- The lack of trafficking-specific information and the failure to explicitly characterize trafficking in ICC prosecutions reinforce victims' legal invisibility.

Second: Recommendations

- States Parties ought to enhance their coordination with the ICC to achieve greater protection and participation actions for trafficking victims.

- The ICC ought to institute internal policies to further specially categorize and concentrate on human trafficking within its prosecutorial strategy.

- The Trust Fund for Victims ought to provide disaggregated data to account for the aid provided specifically to trafficking victims.

- Legal reformations must be considered to more clearly delineate trafficking in the Rome Statute with broader and more direct coverage.

- The authorization accorded to the UN Security Council to postpone proceedings must be reconsidered so as to prevent politicization of justice.

Ultimately, this research not only clarifies the ICC's current approach to trafficking-related crimes but also opens the door for future research on how international criminal justice mechanisms can better respond to complex, transnational human rights abuses.

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