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# **ECLIPSED JUSTICE: DECODING THE MYSTERIES OF ICC'S ELUSIVE ARREST WARRANTS**

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## **ABSTRACT**

In its pursuit of accountability for heinous transgressions like genocide, war crimes, and crimes against humanity, the ICC represents a glimmer of hope in the fight for global justice. The ICC has acted in its pursuit of justice by serving 31 persons with arrest warrants and summonses to appear for these heinous offences. The ICC is now holding six, four have been found guilty, nine cases have been closed, three have been found not guilty, and nine remain at large. Nine cases involving individuals such as Mr Omar Hassan Ahmad Al Bashir, Mr Saleh Mohammed Jerbo Jamus, Mr Walter Osapiri Barasa, Mr Paul Gicheru and Mr Philip Kipkoech Bett, Mr Saif Al-Islam Gaddafi, Mr Ahmad Harun, Mr Abdel Raheem Muhammad Hussein, Mr Joseph Kony, and Mr Sylvestre Mudacumura are set to be examined in this study. By examining these cases, we can better understand the difficulties of bringing those responsible for horrific atrocities to justice globally and the problems that have persisted in this area.

**Keywords:** Arrest Warrants, International Criminal Court (ICC), Global Justice, Peace, Genocide, War Crimes, Crimes Against Humanity, and Individual Criminal Responsibility.

**Introduction:** In its mission to prosecute global crimes, the International Criminal Court (ICC) encounters theoretical and practical roadblocks threatening its progress. The treaty Rome Statute provides the foundation for the ICC, a treaty-based organisation. The complementarity principle limits the ICC's capacity to pursue cases because it states that it can only step in when national governments refuse or cannot. As a result, the ICC cannot launch an inquiry or prosecution if a state having jurisdiction is already dealing with the case unless that state is unable or unwilling to provide a fair trial. Furthermore, controversial topics like universal jurisdiction, state agreement to ICC jurisdiction, and diplomatic or state immunity could hinder the ICC's capacity to exert its authority efficiently. The Rome Statute, the treaty establishing the ICC, provides the legal basis for issuing warrants. As mentioned in Article 58, the ICC has the power to issue warrants of arrest or summonses to ensure that individuals are brought to trial. But things become complicated when individuals don't turn up or get away with it. The intricacies of international law and the limitations of the ICC's enforcement tools are brought to light by these issues. The ICC relies heavily on the cooperation of individual governments to carry out its arrest orders because there is no international law enforcement body. However, there have been instances where countries have failed to fulfil their responsibility to arrest individuals with warrants from the ICC because of political considerations; this was most notably seen with Sudanese President Al-Bashir. To recap, the complementarity principle of the Rome Statute states that the ICC is a secondary legal body that steps in only when national legal systems fail or refuse to pursue crimes. Because of this, states have a heavy burden to protect their legal systems and should only give in to the ICC when necessary. Because the international community's commitment to the ICC's mandates affects diplomatic relations among states, the effects of ICC arrest warrants go beyond the borders of the governments directly involved. When the ICC issues an arrest warrant, all member states of the Rome Statute must work together to find and bring the wanted criminal to justice. Because of this, nations are under legal pressure and may find it difficult to maintain normal diplomatic relations with the country where the accused person is in control. The complexities of these links and the real-world effects of ICC arrest warrants highlight the intricate relationships among global justice, national sovereignty, and international law. Essentially, the ICC relies on states to carry out their arrest warrants. It has been difficult to apprehend individuals and ensure their appearance in court due to political considerations and the absence of an international law enforcement agency, which have obstructed this process (Silva, 2017). It weakens the legality of the international legal system

and the ICC's ability to administer justice when persons cannot be guaranteed to appear before the court. In light of the ICC's difficulties in carrying out arrest orders, this report investigates the consequences of non-appearance and renders justice. The credibility and effectiveness of the ICC are severely diminished due to its failure to ensure the attendance of persons. People lose faith in the international judicial system as a result. In addition to casting doubt on the ICC's authority, these events show how hard it is for the international community to bring those guilty of serious transnational crimes to justice. The failure to successfully have indicted individuals come before the ICC highlights the critical need for immediate, all-encompassing reforms to enhance the court's power and guarantee responsibility for serious international crimes. The ICC runs the danger of being seen as an ineffectual institution that cannot bring those responsible for the gravest crimes to justice unless these changes are implemented, and stronger cooperation efforts are made. Challenges to the ICC's authority and the global legal system's stability arise when the court's arrest orders are attempted to be enforced. The difficulties when people avoid capture or don't attend court proceedings are thoroughly examined. This study aims to shed light on the complex nature of international justice by carefully analysing relevant cases and reviewing the legal framework that the ICC uses to issue warrants. This study examines concrete cases when people with ICC warrants try to avoid justice, a major problem for the court's efforts to accomplish its mission. The study aims to show the intricate dynamics of the global legal scene by breaking down such cases. In addition, the paper tackles the complex issues surrounding the issuing and executing ICC warrants by methodically analysing the legal systems that control them. It clarifies how important it is to improve current processes and try to solve the ICC's ongoing problems, as well as how careful one must be when navigating international legal norms. Because of the difficulties brought to light, the study suggests possible ways forward within global justice. The recommendations here are based on a study into the real challenges faced by the ICC in carrying out its mandate, and they aim to start a conversation about how to make the court more effective. The study concludes with an in-depth analysis of the challenges in carrying out ICC warrants, illuminating the intricate legal issues involved. This analysis aims to contribute substantially to the ongoing conversation on strengthening and enhancing international justice processes by shedding light on particular cases and the current legal framework. The nine unhonoured warrants issued by the ICC are thoroughly examined in this study. We shall analyse each warrant separately based on the ICC's case information sheet in the following paragraphs.

**Accountability in Exile: The Unfinished Tale of Omar Al Bashir's ICC Proceedings:** On October 16, 1993, Omar Al Bashir was inaugurated as president. Human rights atrocities, especially in Sudan's Darfur region, were heavily alleged while he was in government. Bashir was indicted on five counts of crimes against humanity, two counts of war crimes, and three counts of genocide in the Bashir Case. Murder, extermination, forcible transfer, torture, rape, deliberate assaults on civilians, pillaging, and genocide in different ways are among the many charges about events that took place in Darfur between 2003 and 2008. There must be accountability and justice because the so-called crimes were so serious and had such a profound impact on the impacted populace. The fact that Al Bashir is still at large, despite the issuance of arrest warrants, presents substantial obstacles to advancing the case. The consequences of his persistent avoidance of justice and the obstacles faced by the ICC in their pursuit of a trial against him are explored in this paper. It emphasises the critical importance of Bashir's arrest for the success of the international justice system. The matter will not be moved to trial unless the accused is apprehended and conveyed to the Hague. The distinctive features of the ICC's procedure, such as the need for participants to be present in person during trial proceedings, will be laid forth at this point. This study emphasises the significance of apprehending Bashir in fostering the quest for justice and upholding global accountability.

**Justice Deferred-Abdallah Banda's Continued Evasion and ICC's Struggle:** Three charges of war crimes relating to an alleged assault in Darfur on September 29, 2007, were levelled against Abdallah Banda, who is known as the Commander-in-Chief of the Justice & Equality Movement's Leadership. Although Saleh Mohammed was originally named as a suspect, the charges against him were dropped in 2013 when he passed away. The first Pre-Trial Chamber ruled in favour of Abdallah Banda's war crimes allegations and ordered his trial on March 7, 2011. September 11, 2014, saw the issuance of an arrest order to guarantee Banda's attendance at the trial, notwithstanding his voluntary appearance before the ICC during the pre-trial phase. The Trial Chamber stressed that Banda's voluntary surrender would be acknowledged, and the circumstances of his presence in the Netherlands throughout the trial would be assessed if he voluntarily chose to appear before the Court. The most recent evidence shows that the accused has still not been apprehended. The trial will not proceed until Abdallah Banda is apprehended or voluntarily surrenders. The ICC does not hold trials in absentia since it does not compromise its ideals. The

study delves into the difficulties caused by Banda's persistent avoidance of justice and the wider consequences of holding those responsible in war crimes cases to account. In its pursuit of accountability for alleged Darfur war crimes, the ICC has used the Abdallah Banda case as a prime example. The study sheds light on the intricate legal aspects of the case, highlighting how the defendant's presence is vital to the victims' pursuit of justice through a fair and effective trial.

### **Behind Bars or Beyond Reach - Walter Osapiri Barasa and the ICC's Legal Challenge:**

Walter Osapiri Barasa, a citizen of Kenya, faces three counts of crimes against the administration of justice. The accusations that he tried to corruptly influence or had any influence over three ICC witnesses in the cases involving Kenya are the basis for the charges. On August 2, 2013, the arrest warrant initially filed in the Barasa case was sealed. The document was later unsealed on October 2, 2013. Allegations like this highlight how serious it is to meddle with the ICC's justice system. Walter Osapiri Barasa is still missing and has not been found, as far as we know. The ICC is currently in the pre-trial phase of the case, which depends on whether the suspect voluntarily appears or is apprehended. In line with the ICC's policy of not holding trials without the accused, the analysis highlights the importance of Barasa's capture or voluntary surrender in advancing the case. For the ICC to fulfil its mission, the suspect must play a pivotal role in the proceedings, and this study aims to help us better understand the case's complicated legal issues.

**Witness Tampering and ICC: The Philip Kipkoech Bett Perspective:** Charges against Philip Kipkoech Bett, a Kenyan national, centre on accusations that he corruptly influenced witnesses in trials stemming from the current situation in Kenya. Arrest warrants were filed under seal on March 10, 2015, in the Bett Case, and the charges against him are closely related to those against Paul Gicheru. After that, on September 10, 2015, these warrants were unsealed. Paul Gicheru and Philip Kipkoech Bett's cases were divided by Pre-Trial Chamber I on December 11, 2020. According to the latest information, Paul Gicheru faces witness interference allegations, while Philip Kipkoech Bett is not in ICC custody. According to the findings, the investigation into Philip Kipkoech Bett will not conclude until he is apprehended and brought before the ICC in The Hague. In keeping with its ideals, the ICC does not hold trials in absentia. The Philip Kipkoech Bett case shows that the ICC is serious about combating corruption and witnessing tampering in the legal system. By

focusing on how crucial Bett's arrest was to the case's progression and the fair administration of justice, this study hopes to enhance understanding of the case's complicated legal issues.

**Gaddafi's Heir: Saif Al-Islam and the Lingering Pursuit of Justice:** After the Libyan revolution of 2011, Saif Al-Islam Gaddafi, who is the son of Muammar Gaddafi, was accused of committing genocide. Muammar Gaddafi and Abdullah Al-Senussi were implicated in the case. However, in 2013, it was determined that Al-Senussi's case was inadmissible. After Muammar Gaddafi died in 2011, the accusations against him were dismissed. On June 27, 2011, Saif Al-Islam, Muammar Gaddafi, and Abdullah Al-Senussi were issued an execution warrant in the Gaddafi Case. The suits challenging Muammar and Abdullah Al-Senussi have concluded due to their inadmissibility and termination, respectively. Nevertheless, Saif Al-Islam Gaddafi is currently exempt from the court's jurisdiction while his case is still in the pre-trial phase. Based on the latest information, the legal processes against Saif Al-Islam Gaddafi are in the pre-trial stage. These proceedings await his transfer to The Hague, where the Court is located. The study indicates that judicial processes against Saif Al-Islam Gaddafi are ongoing, notwithstanding the conclusion of previous investigations. This demonstrates the ICC's persistent dedication to investigating and dealing with accusations of crimes against humanity. The unique legal framework governing the Saif Al-Islam Gaddafi case stands out at the ICC due to the resolution of proceedings involving his father and other prominent individuals. This study elucidates the significance of transferring Saif Al-Islam Gaddafi during the pre-trial phase, emphasising its vital role in pursuing justice and accountability following the Libyan revolt.

**Crimes Unveiled: The Ahmad Harun Chronicles in Darfur:** Prosecutors have levied an unprecedented twenty counts of crimes against humanity against Ahmad Muhammad Harun, including but not limited to murder, persecution, forcible population displacement, rape, cruel acts, incarceration, severe deprivation, and torture. Murder, attacks on civilians, damage to property, sexual assault, looting, and violation of human dignity are among the 22 war crimes with which he is charged. The arrest warrant for Ahmad Harun, which was issued on April 27, 2007, is a clear indication of how grave the alleged crimes that occurred during the Darfur crisis were. Ahmad Harun continues to elude capture, even though there is a problem with the arrest warrant. This study shows that the matter will remain in pre-trial proceedings unless Ahmad Harun is apprehended and brought to The Hague for trial. Following its guiding principles, the ICC does

not hold trials when the accused are absent. Cases like the one involving Ahmad Muhammad Harun show how committed the ICC is to dealing with major crimes like war crimes and crimes against humanity. This paper clarifies the complex legal issues underlying the case to further the cause of accountability and justice in the Darfur conflict. It emphasises the critical necessity to apprehend Ahmad Harun immediately.

**Echoes of Darfur: A Quest for Justice in the Abdel Raheem Muhammad Hussein Case:** There are seven counts of crimes against humanity against Abdel Raheem: persecution, murder, rape, cruel acts, torture, confinement, and forced transfer. Killing, assaulting civilians, destroying property, rape, looting, and violating human dignity are among the six counts of war crimes against him. March 1, 2012, the day of the issuance of the arrest warrant for Abdel Raheem Hussein, drawing attention to the gravity of the alleged crimes committed during the Darfur conflict. Despite issuing an arrest warrant, Abdel Raheem Hussein remains at large. This study emphasises that the case will persist throughout the pre-trial phase until the person is either captured or voluntarily brought before the court. Following its guiding principles, the ICC does not hold trials when the accused are absent. The unwavering commitment of the ICC to tackling serious war crimes and crimes against humanity is demonstrated by the case of Abdel Raheem Hussein. The significance of apprehending Abdel Raheem Hussein in guaranteeing the effective pursuit of responsibility and justice in the Darfur conflict is underscored by this study, which improves understanding of the case's legal intricacies.

**LRA's Legacy: Joseph Kony's Dance with Justice:** Twelve counts of crimes against humanity have been brought against Joseph Kony, including rape, sexual enslavement, slavery, murder, and inhumane acts. Murder, cruel treatment of civilians, and promoting rape are among the 21 war crimes that he is allegedly accused of. The alleged offences occurred in the northern area of Uganda after July 1, 2002. After Raska Lukwiya, Okot Odhiambo, and Vincent Otti were no longer alive, the actions against them were withdrawn. On July 8, 2005, the arrest warrant was approved for Joseph Kony, highlighting the seriousness of the alleged crimes committed by the Lord's Resistance Army (LRA) in northern Uganda. Despite an arrest warrant being issued, Joseph Kony is still at large. This study emphasises that the case will remain in pre-trial proceedings until the person is captured and brought to the Hague. Following its guiding principles, the ICC does not hold trials when the accused are absent. The ICC's steadfast commitment to investigating genocide

and war crimes perpetrated by the LRA in northern Uganda is illustrated by the Joseph Kony case. This study clarifies the intricate legal aspects of the case and highlights how important it is to apprehend Joseph Kony, hold him accountable, and seek justice. The legal actions that were taken against other notable individuals in the case are also covered in this study.

**Unmasking Mudacumura's Alleged War Crimes:** Murder, deformity, inhuman treatment, sexual assault, torture, property destruction, looting, and violation of human dignity are among the nine war crimes allegations against Mudacumura. In the Democratic Republic of Rwanda (DRR), the alleged crimes took place against the background of the Kivus conflict. The seriousness of the alleged war crimes committed during the Kivus War was underscored by the issuance of an arrest warrant for Sylvestre Mudacumura on July 13, 2012. Sylvestre Mudacumura persists in eluding capture despite the issuance of the arrest warrant. This study says the trial won't begin until the suspect is located and brought to the Hague. By refusing to hold trials when the accused are not present, the ICC stays true to its principles. War crimes committed during the Kivus conflict in the Democratic Republic of Rwanda are being addressed by the ICC through the Sylvestre Mudacumura case. This study sheds light on the intricate legal details of the case, emphasising the importance of apprehending Mudacumura to guarantee accountability and justice.

**Challenges and Implications:** The study dissects nine cases, highlighting challenges such as non-appearance, evasion, and political considerations affecting the execution of arrest warrants. As evidenced by the Al Bashir case and other instances, the failure of states to fulfil their obligations raises doubts regarding the International Criminal Court's dependence on state cooperation. The intricate dynamics of diplomatic relations and the legal pressure on states underscore the fragility of the international legal system when it comes to holding individuals accountable for grave offences.

**Implications of Non-Appearance before ICC:** The study highlights that the inability to secure the appearance of those indicted undermines the ICC's authority, which erodes faith in the ability of the international legal system to administer justice. The credibility of the ICC and its function in resolving crimes of international significance are affected more widely by this.

**Recommendations:** A multifaceted approach is recommended to enhance the efficacy of ICC



arrest warrant enforcement. Firstly, there is a need to mobilise global pressure on countries providing shelter to indicted individuals. This concerted international effort would encourage compliance with ICC arrest warrants and strengthen the court's authority. Simultaneously, diplomatic engagements with relevant nations should be intensified. Strengthening cooperation through diplomatic channels is essential for securing the apprehension of individuals subject to ICC arrest warrants. Furthermore, regional collaboration should be enhanced to address the challenges of executing ICC arrest warrants. A united regional front can streamline processes and improve the efficiency of warrant enforcement. Increasing public awareness about ICC cases is crucial. A well-executed public awareness campaign can garner international support and pressure governments to fulfil their obligations to apprehend indicted individuals. Advocating for legal reforms that address loopholes in ICC arrest warrant enforcement mechanisms is paramount. This would fortify the legal framework, ensuring a more robust and effective process for bringing individuals to justice. In consolidation, a comprehensive strategy involving international pressure, diplomatic engagement, regional collaboration, public awareness, and legal reforms is essential to overcome the challenges of enforcing ICC arrest warrants.

**Conclusion:** This in-depth analysis of cases involving arrest warrants and summons issued by the ICC sheds light on the complexity of doing justice globally. The study highlights the critical need for changes and concerted measures to strengthen the ICC's authority, ensuring accountability for serious international offences. Without these steps, the International Criminal Court risks being viewed as incapable of delivering justice for the most heinous crimes, compromising its credibility and effectiveness.

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