

Pre-Trial, Trial & Appeals at the ICC



**ICC Summer School Presentation
Dr. Paul Bradfield - 10 June 2026**

Presentation Topics

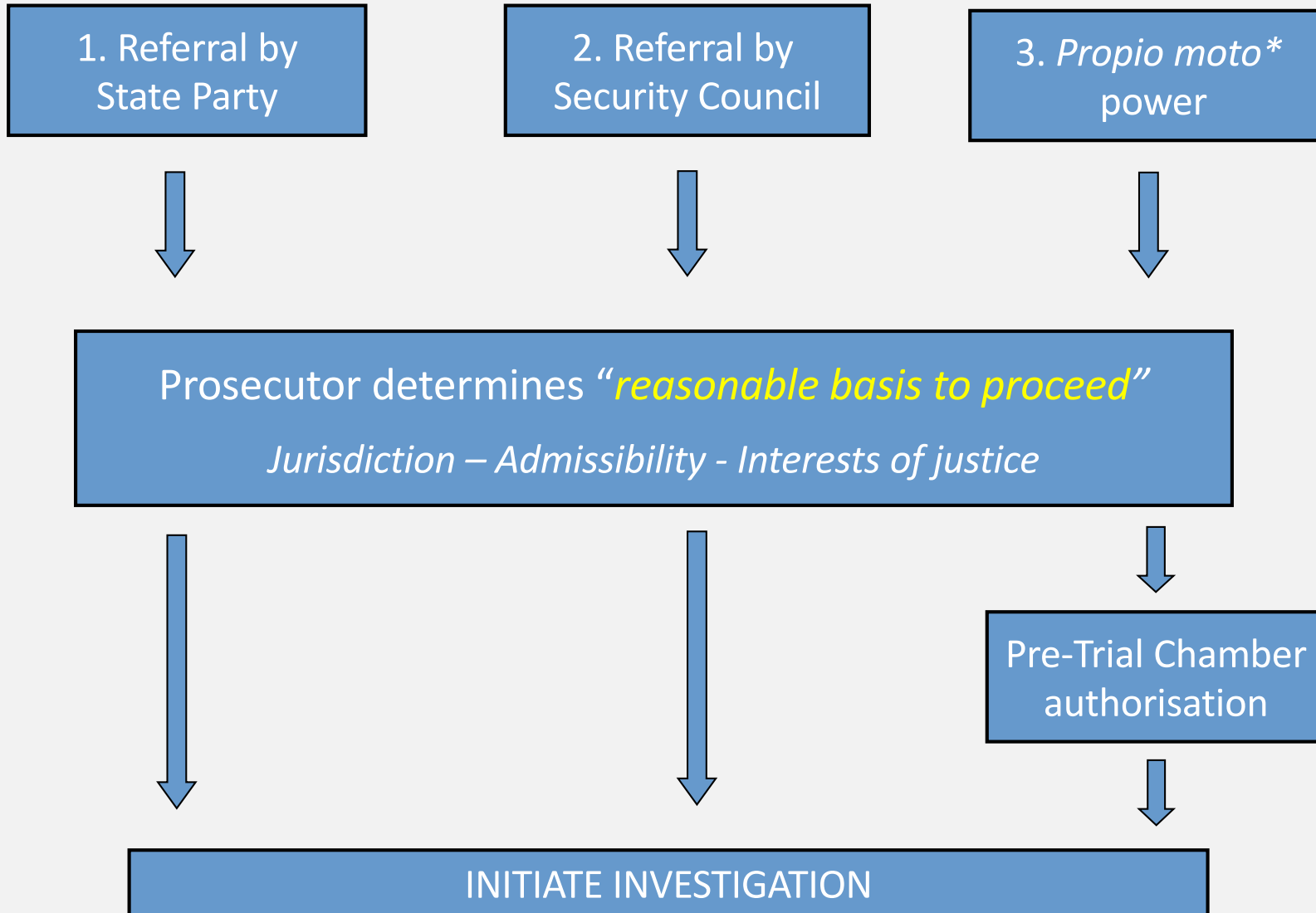
Pre-Trial	Trial	Appeal
Arrest	Hearing of evidence	Interlocutory appeals
Confirmation of charges process	No case to answer	Jurisdictional appeals
<i>In absentia</i> confirmation	Guilty pleas	Conviction appeals
Victim participation	Article 70 offences	Standard of review

ICC – core texts

- Rome Statute
- Rules of Procedure & Evidence
- Regulations of the Court
- Elements of Crimes
- Chambers Manual



Seizing jurisdiction → Pre-Trial → Trial



Art 58 standard: where “reasonable grounds” exist that person committed a crime, the Prosecutor requests from the Pre-Trial Chamber one of the following:



Summons to appear

Warrant of arrest



PRE-TRIAL - CONFIRMATION HEARING –
Standard: “*Substantial grounds to believe?*”



TRIAL – Standard: “*Beyond reasonable doubt?*”

Pre-Trial - Arrest

- **Art. 58** – “reasonable grounds to believe” – standard?

person committed a crime within the jurisdiction of the Court. The evidence need only establish a reasonable conclusion that the person committed a crime within the jurisdiction of the Court, and it is not required that this be the only reasonable conclusion that can be drawn from the evidence.²⁰

([Mudacumura Arrest Warrant Decision](#), para. 19)

Art. 58 criteria

- (i) To ensure the person's **appearance** at trial;
- (ii) To ensure that the person **does not obstruct** or endanger the investigation or the court proceedings; or
- (iii) To prevent the person from continuing with the **commission of crimes**

Arrest warrant application

- Filed pursuant to Article 58
- Lengthy application with reference to factual allegations and supporting evidence
- An *ex parte* and confidential process

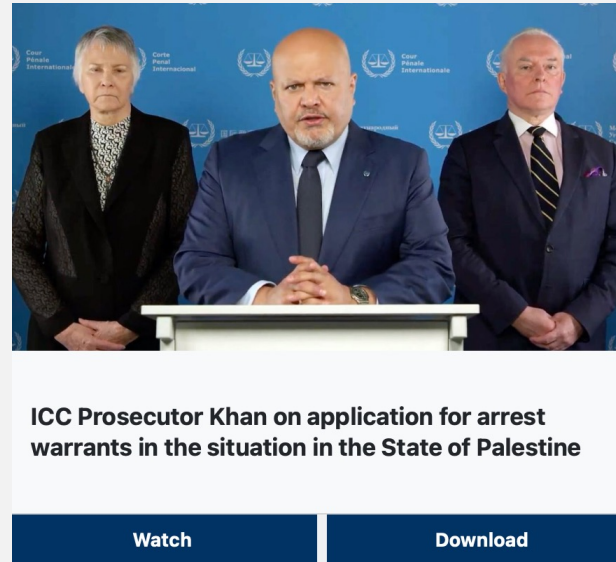
SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF THE PROSECUTOR V. BOSCO NTAGANDA

Public redacted version

Decision on the Prosecutor's Application under Article 58

Arrest warrant application



- E.g. Situations in Darfur and Palestine

Regulation 23 *ter*⁶

Classification of applications pursuant to article 58

1. Applications pursuant to article 58 shall be filed *ex parte* marked as “under seal” or “secret”, unless otherwise authorised by a Chamber.
2. Any filing that anticipates, relates to or refers to an application referred to in sub-regulation 1 shall also be filed *ex parte* marked as “under seal” or “secret”.
3. The existence and/or content of an application referred to in sub-regulation 1 **may not be made public** unless the Chamber seized of the application has ordered the reclassification of the application or authorised reference thereto.

- Amendment to Regulations in November 2025 – all future Art. 58 applications may not be made public

Alternatively: a summons – art. 58(7)

- Six accused from Kenya appeared by summons in 2011



Pre-Trial - “Confirmation”

- Key provision: Article 61
- Purpose of confirmation – “filtering mechanism”
- Neither a “mini-trial”, or a “trial before a trial” – but rather is a full trial warranted?

Article 61:

- Art. 61(1) – hold a hearing
- Art. 61(2) – in the accused’s absence
- Art. 61(3) – receive DCC in a language they understand
- Art 61(5) – Evidentiary standard: “substantial grounds to believe”

Substantial grounds?

39. Accordingly, the Chamber considers that for the Prosecution to meet its evidentiary burden, it must offer concrete and tangible proof demonstrating a clear line of reasoning underpinning its specific allegations. Furthermore, the “substantial

Lubanga [Confirmation Decision](#), para. 39

Indictment/DCC – Regulation 52:

- a) The full name of the person;
- (b) A statement of the facts, including the time and place of the alleged crimes;
- (c) A legal characterisation of the facts to accord both with the crimes under articles 6, 7 or 8 and the mode of liability under articles 25 and/or 28.

SITUATION IN UGANDA

IN THE CASE OF THE PROSECUTOR v. JOSEPH KONY

PUBLIC

Document Containing the Charges

Source: Office of the Prosecutor

Confirmation Decision

- Regulation 53: Confirmation Decision withing 60 days
- The confirmed charges “fix and delimit” the scope of the case
- Core purpose – also to give unequivocal notice to accused
- Any amendment of charges requires permission – Art.61(9)

**SITUATION IN THE REPUBLIC OF CÔTE D’IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. CHARLES BLÉ GOUDÉ***

Public

Decision on the confirmation of charges against Charles Blé Goudé

22 out of 26 ain't bad (?)

- Of 26 accused to date, 22 have passed the confirmation stage – 4 have not.

Mbarushimana Confirmation Decision:



322. The Majority notes that most of these press releases and speeches only contain words of encouragement and praise for the troops;⁷⁴⁰ homage and tributes to the FDLR leaders and combatants;⁷⁴¹ or, more broadly, optimistic commentary as to the prospective fate of the FDLR's struggle.⁷⁴² However, when former FDLR soldiers were asked, many said they had never heard of Mr Mbarushimana or they did not know of his media campaign of radio messages or press releases.⁷⁴³

Extent of pre-trial analysis?

46. For the aforementioned reasons, the Appeals Chamber finds that the Pre-Trial Chamber did not err with respect to the first two grounds of appeal. In determining whether to confirm charges under article 61 of the Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses. Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.

Mbarushimana [Appeal Decision](#), Appeals Chamber, 30 May 2012

Confirmation Decision

- Evolution of Confirmation Decisions – less is more

FOR THESE REASONS, THE CHAMBER HEREBY

CONFIRMS the charges against Mr Duterte pursuant to article 61(7) of the Statute, as follows:

I. THE SUSPECT: RODRIGO ROA DUTERTE

1. DUTERTE was born on 28 March 1945 in Maasin, Southern Leyte, the Republic of the Philippines (“Philippines”). He is a national of the Philippines. For much of the period 1988 to 2016, DUTERTE was Mayor of Davao City. During the period 1 November 2011 to 16 March 2019 (“the charged period”), DUTERTE was: Vice Mayor of Davao City (from 1 November 2011 to 30 June 2013); Mayor of Davao City (from 30 June 2013 to 30 June 2016) (together, the “Mayoral period”); and President of the Philippines (from 30 June 2016 to 16 March 2019, the “Presidential period”).

II. THE CHARGES

A. DUTERTE’S INDIVIDUAL CRIMINAL RESPONSIBILITY

1. Indirect co-perpetration (article 25(3)(a))

2. DUTERTE is individually criminally responsible pursuant to article 25(3)(a) of the Rome Statute for the crimes charged in Counts 1 to 3 as he committed them as an indirect co-perpetrator.

25. **Incident 1:** In or around 2013, members of the DDS [REDACTED] killed three alleged drug pushers, all First Name Unknown (“FNU”) Last Name Unknown (“LNU”), in or around [REDACTED], Davao City. The three victims [REDACTED].

The importance of notice

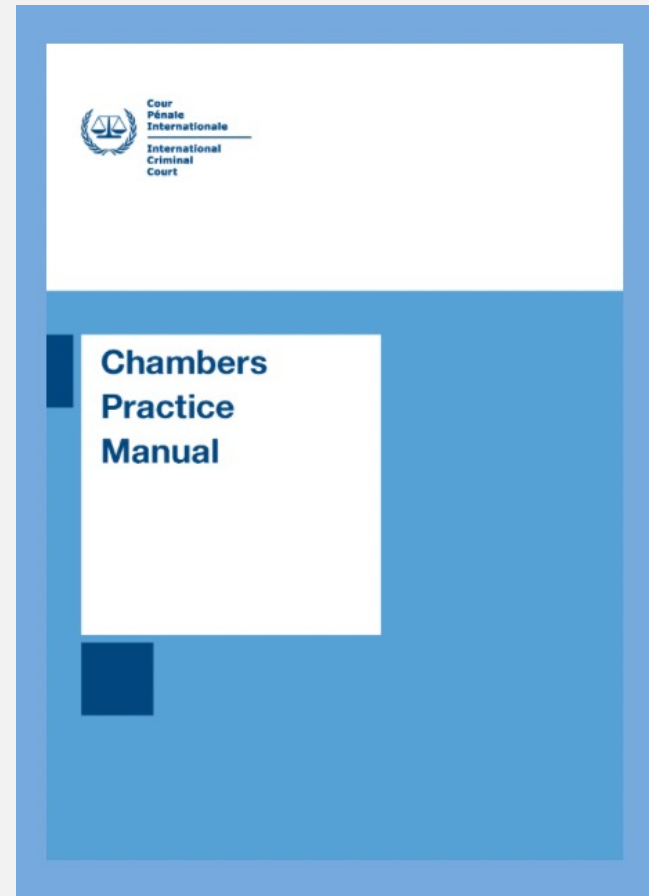
188. The Appeals Chamber is of the view that Mr Bemba suffered prejudice as a result of the lack of proper notice. The Appeals Chamber notes in this regard Mr Bemba's submission on appeal that, had he known that troop redeployment was considered a necessary and reasonable measure that he should have taken, he would have argued that this would not have been feasible or would have put lives at risk from "friendly fire".³⁷¹ Thus, the Trial Chamber should not have relied on this measure when finding that Mr Bemba had failed to take all necessary and reasonable measures and by doing so the Trial Chamber erred.

Bemba Appeal Judgement (2018), para.188



Chambers Manual

- Early confirmation decisions complex and led to confusion
- Chambers manual (2015) - internally created document of “best-practice” guidelines that pre-trial judges are expected to follow
- Recent confirmation decisions all follow same format – almost verbatim “copy and paste” of the Document Containing the Charges (DCC), i.e., the indictment
- → Leaves no doubt as to what is “confirmed”



In absentia confirmation hearing – Art.61(2)

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
 - (a) Waived his or her right to be present; or
 - (b) **Fled or cannot be found** and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

- Joseph Kony – at large since 2005
- December 2022 Prosecution request
- Granted in December 2023
- Defence Lawyer appointed in 2024
- Hearing in September 2025
- Legal representation of victims



Victim participation *before*



Victim participation *today*



Lawyers for victims

Represent participating victims' interests and ensure victims' voices are heard in Court

PROMOTING #ACCESSTOJUSTICE



Office of Public Counsel for Victims (OPCV)

Victim representation at the ICC

Article 68

Protection of the victims and witnesses and their participation in the proceedings

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

Rule 90

Legal representatives of victims

1. A victim shall be free to choose a legal representative.
2. Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives.

Definition of a 'victim'

Rule 85 **Definition of victims**

For the purposes of the Statute and the Rules of Procedure and Evidence:

- (a) "Victims" means **natural persons who have suffered harm** as a result of the commission of any crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

community.⁶¹¹ Lastly, transgenerational harm relates to the phenomenon in which **traumatised parents set in motion an intergenerational cycle of dysfunction, handing-down trauma to their children**, who themselves did not directly experience the atrocities their parents endured, affecting their children's emotional behaviour, attachment, and well-being as a result.⁶¹²

Ongwen [Reparations Order 2024](#), para.168

Transgenerational harm



Kony Confirmation Decision (November 2025)



DECIDES that the time limit for filing an application for leave to appeal this decision shall be suspended until Mr Kony is notified of this decision upon his surrender to the Court;

COMMITTS Mr Kony to a Trial Chamber for trial on the charges as confirmed upon his surrender to and appearance before the Court, pursuant to article 61(11) of the Statute and rule 126(3) of the Rules;

Kony Appeal Decision (June 2025)

46. In contrast, the Impugned Decision defined “cannot be found” by reference to two factors: (i) that the precise whereabouts of the suspect were and remain unknown,⁶⁵ and (ii) that he or she “has never been accessible”.⁶⁶ Of relevance to the issue before the Appeals Chamber is the second factor. The Appeals Chamber finds no basis for this factor in the ordinary meaning of the terms. The Statute uses the phrase “cannot be found” in the present tense and thus refers to the person’s status at the time of the envisaged confirmation hearing. The provision does not require evaluating whether the person was ever accessible to the Court previously.

Article 19(3)

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

- Mechanism to bring legal clarity on an issue



3. *Conclusion*

73. In the light of the foregoing, the Chamber is of the view that acts of deportation initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute. It follows that, in the circumstances identified in the Request, **the Court has jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh**, provided that such allegations are established to the required threshold. This conclusion is without prejudice to subsequent findings on jurisdiction at a later stage of the proceedings.

Myanmar/Bangladesh Article 19(3) [Decision](#), September 2018



112. Accordingly, in the view of the Chamber, Palestine acceded to the Statute in accordance with the procedure defined by the Statute and, in addition, the Assembly of States Parties has acted in accordance with Palestine's accession.²⁹⁵ In view of its accession, Palestine shall thus have the right to exercise its prerogatives under the Statute and be treated as any other State Party would. Moreover, Palestine's accession has not been challenged under article 119(2) of the Statute.²⁹⁶ Palestine is therefore a State Party to the Statute, and, as a result, a 'State' for the purposes of article 12(2)(a) of the Statute. These issues have been settled by Palestine's accession to the Statute.

Article 19(3)

- A real time saver?
- States and accused still entitled to challenge jurisdiction

15. First, the Chamber rejects Israel's argument that merely because it *claims* that Palestine could not have delegated jurisdiction to the Court, the Chamber would have to ignore its previous decision (rendered in a different composition) **which has become *res judicata***.²² Indeed, there is a fundamental difference between granting a State standing on the presumptive validity of its claim to have jurisdiction over a situation or a case and granting it standing on the basis of an argument – which was already ruled upon – that a particular State Party does not have jurisdiction.

[Decision](#) on Israel's jurisdictional challenge, 21 November 2024

Trial Proceedings

➤ Governing framework:

- Part 6 of the Rome Statute: articles 62-76
- Chapter 6 of the Rules of Procedure: rules 131-144

➤ Order of proceedings:

- Reading of charges
- Opening statements
- Presentation of evidence
 - Prosecution
 - Victims
 - (no case to answer)
 - Defence
 - Rebuttal (Prosecution)
 - Rejoinder (Defence)
- Closing statements (unsworn statement)



- Types of Evidence:

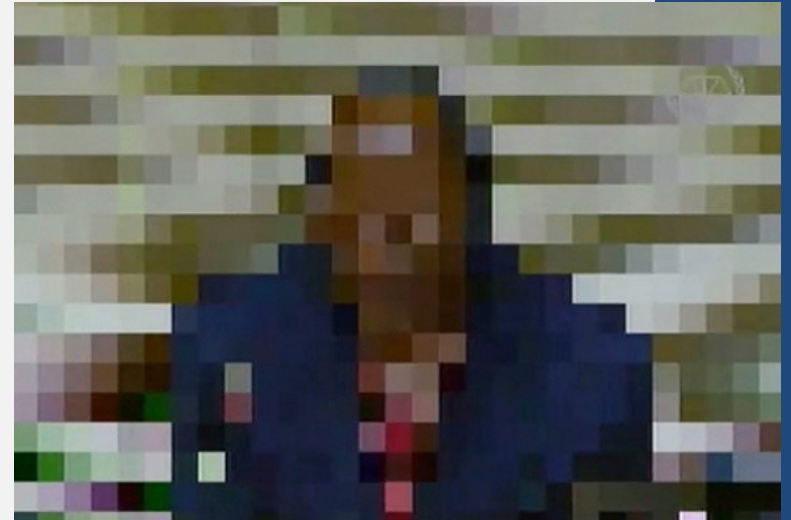
- Witness testimony (Viva voce, rule 68)
- Documentary evidence (Bar table motion)
- Forensic/Scientific
- Admission vs Submission
- Article 69(4):

“The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence”

Protective measures

Rule 87

- Typical measures
 - Pseudonym (e.g. P-10)
 - Voice and facial distortion
 - 30-minute broadcast delay (redactions)
 - Private sessions



Rule 88 (Special measures)

- Use of screen
- In-court support
- Psychological support
- Remote testimony

“No Case to Answer”

- Common procedure at the ad hocs – rule 98 *bis*
- The legal framework of the ICC **did not** initially expressly provide for a “no case to answer” procedure.
- Thus, when first requested in the *Ruto* case, the power of a chamber to hold this procedure had to be **interpreted and read-in to article 64(2)**, which provides that:

“The Trial Chamber shall ensure that a trial is ***fair and expeditious*** and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.” (emphasis added)

(*Prosecutor v Ruto*, [Decision No. 5 on the Conduct of Trial Proceedings](#), 3 June 2014, para.16)

No Case to Answer – *Ruto* case



- Relying on art. 64, the *Ruto* Trial Chamber essentially adopted the legal standard used at the ICTY/R:

“the test to be applied for a 'no case to answer' determination is whether or not, on the basis of a prima facie assessment of the evidence, there is a case, in the sense of **whether there is sufficient evidence introduced on which, if accepted, a reasonable Trial Chamber could convict the accused.**”

No Case to Answer Decision – *Ruto* case

- Rather than “acquitting” the accused, the *Ruto* Trial Chamber, by a 2-1 majority innovatively declared a “mistrial”
- Reliability was ultimately examined: “a chamber should nevertheless be entitled make such an evaluation where a case is effectively breaking down” (para. 144).
- Fractured decision – Separate “Reasons” from each judge.
- Article 74 not adhered to.

No Case to Answer - *Gbagbo*



- January 2019 – oral hearing: “the Chamber, by majority, hereby: Decides that the Prosecutor has failed to satisfy the burden of proof to the requisite standard as foreseen in **Article 66** of the Rome Statute.” (i.e. beyond a reasonable doubt).
- Prosecution appealed on procedural & substantive grounds, but was unsuccessful

- Notably, the appeals chamber considered that the application of the No Case to Answer test ‘**necessarily entails assessment of credibility and reliability.**’
- This is because no reasonable tribunal of fact “could properly convict” on the basis of evidence the credibility and reliability of which could not persuade the mind of guilt beyond reasonable doubt’

(*Gbagbo* Acquittal [Appeal Judgement](#), 31 March 2021, para.315)

Rule addition – Rule 140

Rule 140 *quater*²⁰

Motions for acquittal

1. Upon the conclusion of the evidence presented by the Prosecutor or if evidence is presented on behalf of the victims, at the conclusion of that evidence, if the Trial Chamber finds that the evidence is insufficient in law to sustain a conviction on one or more charges, the Trial Chamber, on a motion being filed or *proprio motu*, shall enter a decision of acquittal on any charge.
2. A motion for a decision of acquittal may only be filed with leave of the Trial Chamber. The defence application for leave and any responses from the Prosecutor and legal representatives of victims shall be filed on an expedited basis in accordance with the Regulations.

- Added in December 2025
- Discretionary remedy
- Must have a hearing
- Must adhere to Rule 74
- Stipulates the legal standard

Judgment and Sentence

Article 74 **Requirements for the decision**

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

Article 76 **Sentencing**

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

Going forward: Judgement & Sentence

together

2. Noting Article 76(1) of the Statute,⁴ the Chamber considers it to be in the interests of justice and expeditiousness in this case that the judges who assess the evidence and submissions relevant to any potential sentencing in the event of a conviction, are the same as those present during the trial and the deliberations pursuant to Article 74(1) of the Statute. Therefore, the Chamber hereby decides to render any potential decision on sentencing pursuant to Article 76 of the Statute simultaneously with its judgment under Article 74 of the Statute.⁵

Yekatom [Decision](#), 18 July 2024, para.2

Guilty plea

Article 65

Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:
 - (a) The accused understands the nature and consequences of the admission of guilt;
 - (b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
 - (c) **The admission of guilt is supported by the facts of the case** that are contained in:
 - (i) The charges brought by the Prosecutor and admitted by the accused;

Al Mahdi (Mali)



- Convicted of war crime of attacking protected objects
- Sentenced to 9 years of imprisonment in 2016
- Mitigating factors: plea, cooperation, remorse
- Released early in 2022 Article 110. (Al Hassan in 2025)

Reparations

Article 75

Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

Article 70 offences

Article 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
 - (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
 - (b) Presenting evidence that the party knows is false or forged;
 - (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
 - (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
 - (e) Retaliating against an official of the Court on account of duties performed by that or another official;
 - (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.



- Bemba et al – convicted in 2016



- Paul Gicheru – surrendered in 2020, but died in 2022 before trial
- Barasa, Bett at large

Appeals – Articles 81 & 82

Article 81

Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

Article 82

Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
 - (a) A decision with respect to jurisdiction or admissibility;
 - (b) A decision granting or denying release of the person being investigated or prosecuted;
 - (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
 - (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

Standard of review on appeal

- Enquiry:
 - For errors of law: whether there is an error that 'materially affected' the decision
 - For errors of fact: if no reasonable trial chamber could have reached the decision on the evidence before it
- Remedy: Amend, reverse or remand
- Seminal appeal decisions:
 - Lubanga Abuse of Process Appeal [Decision](#) (2006)
 - Kenya Admissibility Appeal [Decision](#) (2011)
 - CAR Admissibility Appeal [Decision](#) (2026)

Careers in ICL

- If interested in litigation, get domestic qualification and a few years experience on your feet
- If interested in investigation, get in experience in law enforcement, regulatory and compliance roles
- Work on a second language, e.g. French, Arabic increasingly important
- Build your profile, publish blogs, articles to show expertise
- ICC/Nuremburg Moot Court
- Internships



ICC internships – deadline of 28 June




International Criminal Court ✓

23h · 🌐




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- ◆ Judicial Cooperation Support Section
- ◆ Information Management Services Section
- ◆ Victims and Witnesses Section
- ◆ Victims Participation and Reparation Section
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 Eligibility requirements vary by position. Candidates must carefully review the vacancy announcement for the eligibility criteria applicable to each opportunity.

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KSC internships – deadline of 16 June

YOU WILL FIND BELOW OUR LATEST INTERNSHIP CALL FOR CONTRIBUTIONS (CFC) 1-2026.

THE DEADLINE FOR ALL APPLICATIONS IS 16 JUNE 2026 AT 17:00 HOURS (BRUSSELS TIME).

Intern within the Specialist Prosecutor's Office

Reference	Employment Regime	Availability
I-2026-0001.2	INTERNSHIP	September 2026

Intern within the Chambers Legal Support Unit

Reference	Employment Regime	Availability
I-2026-0003.2	INTERNSHIP	October 2026

Intern within the Public Information and Communication Unit

Reference	Employment Regime	Availability
I-2026-0005	INTERNSHIP	August 2026

Intern within the Ombudsperson's Office

Reference	Employment Regime	Availability
I-2026-0010	INTERNSHIP	October 2026