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THE INTERNATIONAL CRIMINAL COURT AND THE NATIONAL JUDICIAL SYSTEM IN AFRICAN STATES: ANALYSIS OF THE FAILSAFE JUDICIAL MECHANISM

Abstract:

The International Criminal Court (ICC) has opened investigations into eight cases and all of them are in Africa, thus fuelling the view that the Court is established to prosecute serious crimes in weak and developing states. Academic explanations too seem to support the assertion that the Court is targeting Africa and Africans albeit, inappropriately. This work investigates the factors which make the Court more effective in Africa than elsewhere and most potent being that national judicial systems in African states have been compromised by the perpetrators of the crimes under the jurisdiction of the ICC. More critical is the fact that the Court does not trump a vibrant national judicial system. This study links the preponderance of the ICC in Africa directly to the political system which produces incidences of genocide, crime against humanity, war crimes and failure of the national judicial system to investigate and prosecute these crimes. The conclusion of this work is that the ICC is a failsafe justice mechanism which holds that states have primary responsibility to investigate and prosecute Rome Statute crimes. This failure in African states explains the presence of the ICC rather than the theoretical deflections. This study is also causal comparative relating to the views of African leaders and citizens of the ICC operations. It interrogates whose interest the ICC serves, western world or justice?

Keywords:

ICC, Justice, Crimes, Africa

JEL Classification: F53

Introduction

The International Criminal Court (ICC) history is posterior to the events of the World War II. The Idea that war is not a zero sum conduct had existed since the ancient time but the general assumption that all is fair in war had promoted war crimes and crimes against humanity with little prosecutory success. The Holy Roman Empire set the pace in 1474 when Peter Von Hagenbuch, a military officer appointed by Duke Charles the Bold of Burgundy was tried and condemned to death before 27 Judges for atrocities against actions committed by his troops.[1] The idea of an International Criminal Court was a direct consequence of a universal jurisprudence which floated the Universal Declaration of fundamental Human Right in 1948. The UNHDR itself became necessary as a result of the revelations at the Nuremburg trials where Nazi criminals claimed that the Nazi national law permitted genocide and as such promoted the view that their actions were legal within the ambit of their municipal law.[2]

The Nuremberg trials was to lay both the normative and conceptual framework for UN proposal for permanent court in 1950 to try war criminals. This event establishes first the function of International Criminal Court as an assisting legal agency when national law has shown obvious incapacity to deliver justice. The International Criminal Court foundational ethic is to assist and not to trump national legal system. This assistance of course speaks directly to the altruistic concern of the international system regarding the incapacity of national legal system to try criminals and not necessarily about the factors surrounding the incapacities.[3]

By the time the Cold War broke out it became futile to continue the talk of international criminal court because, by its nature, the Cold War was international irrevocable schism that would not allow for a uniform legal ethos between West and the East. It was therefore not a fortuitous development that a universal legal prism was delayed till 1989 at the 44th session of the United Nations General Assembly when Trinidad and Tobago re-presented the consideration of the idea of an International Criminal Court. The year 1993 saw the UN Security Council establishing an ad hoc court of International Tribunal for the former Yugoslavia (ICTY) and was replicated in Rwanda with the international Criminal Tribunal for Rwanda (ICTR) and then Tribunals for East Timor, Sierra Leone and Cambodia following civil wars and war crimes in these countries.[4]

The advent of ad hoc international tribunal represented an advancement in international law which advanced that at least those accused of committing war crimes and crimes against humanity are brought before the international bar of justice. As the road to justice grew even

steeper and more perilous in national legal system, international system witnessed upsurge in the application of international law and justice to individuals. The benefits of both the Nuremberg and Tokyo war crimes trials were of immense measure in latter war crime developments. During those trials, three important precedents were established:

a) Leaders are criminally responsible for war crimes they ordered
b) Leaders are responsible for war crimes committed by their subordinates unless the leaders tried to prevent the crime or punished perpetrators.
c) Obeying orders is not a valid defense for having committed atrocities.[5]

It is important to note here however that the ICC is fundamentally different from the United Nations International Court of Justice (ICJ) in spite of the contextual similarities it shares with it. The ICC is not an organ of the United Nations but requires the supernatural status of the UN as leverage. The other difference is that the ICC handles cases involving individual who commits crimes, while the International Court of Justice mainly decides legal disputes among or between states.

The Rome Statute and Politics of National Interest

The credit of the idea of an International Criminal Court would be given to Trinidad and Tobago on the re-presentation of the idea at the 44th session of the United Nations General Assembly 1989. Subsequent political crises in countries like Yugoslavia, Rwanda, Sierra Leone, East Timor and Cambodia were the preponderating proofs that the international criminal court is essential to feuding and festering approaches in intra and the inter states affairs.

At the 52nd session, the UN General Assembly decides to convene the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of International Criminal Court which was held in Rome, Italy from 15 June to 17 July, 1998 to “utilize and adopt a convention on the establishment of an International Criminal Court”.[6]

The Rome Statute of International Criminal Court was adopted on the 17 July, 1998 by a vote of 120 to 7 with 21 countries abstaining. The event also attracted 17 intergovernmental organizations, 14 specialized agencies of the UN and some 250 non-governmental organizations. The presence of these non-governmental organizations and the role they played in the formation of the ICC are crucial in the analysis of the goals and achievements of the ICC in war crimes trials.

The barrage of criticisms against the ICC since its establishment raise fundamental question relating to whose interest this Court serves. This is when one observes that the ICC is roundly crucified by virtually all states both operating within and outside the same *idealpolitik*. The ICC was originally rejected by Iraq; Israel, Libya, China, Qatar, Yemen and U.S.A. These seven were later to be joined by the India, Indonesia, Russia and Japan. On a population scale, the ICC appears to have enjoyed support of 30% only of the world population. According to John Rosenthal:

> *Seven of the ratifiers taken together - San Marino, Nauru Andorra, Liechtenstein Dominica, Antigua and Barbuda and the Marshall Islands – have a population of roughly 347,000 which is less than the population of New York's smallest borough of Staten Island. On the side of the non-ratifiers, by contrast, one finds India with its billion inhabitants; China 1.25 billion; Indonesia 230 million; Russia 150 million; and of course the USA 312 million*.[7]

This population deficit has led some commentators to see the ICC as little than a European court. This view may be correct on the population deficit charge, but if viewed from the point of political instability and violent government changes, instances of most egregious abuses of human rights - all of which combined to weaken judicial system in states where all of these exist, certainly, the ICC will do little to assist courts in European states. The opposition to ICC operations is not without its *realpolitik* intent. This is because states that are opposed to the ICC have not claimed yet that there is no need for an International Criminal Courts. Structural defects have been observed in the Articles 13(b) and 16 of the ICC which state that prosecutorial right to refer or defer an ICC investigation or prosecution to the UN Security Council. Political interference is highly visible in the ICC prosecution especially in an institutional *cul de sac* when only two of the five permanent members are members of the ICC.[8]

Strangely, joining the packs of opponents to the ICC are African leaders through some of the pronouncements of the African Union in recent times. It is however in another breadth understandable why African leaders find the ICC a colonial tool as Professor Mahmood Mamdani points out:

> *The era of the international humanitarian order is not entirely new. It draws on the history of modern Western colonialism. At the outset of colonial expansion in the 18th and 19th centuries, leading Western Powers – Britain, France Spain – claimed to protect 'vulnerable groups'.*[9]

African leaders' opposition to the ICC has opened a wide range of debate and this is the central *raison dtre* of this paper. It is necessary to point out that opposing forces to the ICC are working essentially for the interest of their states as we shall further illustrate presently. The ICC has been roundly trashed without parameters between good reason and bad reason. Opposition of the United States to the operations of the ICC is a high flying reductionist blitz militating against the accommodation of the body as a democratic and humanitarian tool to achieve international peace. The US objects to the ICC particularly because the powers of the body appear to be absolute. According to David Scheffer – the Clinton Administrator's Ambassador – at-large for war crimes issues:

> *The treaty purports to establish an arrangement whereby US armed forces operating overseas could be conceivably prosecuted by the ICC even if the US has not agreed to be bound by the treaty… this is contrary to the most fundamental principle of treaty law*.[10]

Scheffer's observation relates to the fact that the US being a world power whose military has the most universal mobility and can be caught in the unbridled judicial process of the ICC and then be subjected to frivolous judgments. The United States fears that the ICC can be used for politicized prosecution as Scheffer's further opined:

> *We are also concerned there are insufficient checks and balances on the authority of the ICC prosecutor and judges. The Rome Statute creates a self-initiating prosecutor answerable to no state or institutions other than the court itself without such external check on the prosecutor, there is insufficient protection against politicized prosecutions or other abuses.*[11]

The ICC as it is presently constituted is in counter pointer arrangement to the foreign policy goals and national interests of the US and to these no derogation is permitted. To demonstrate this the US has gone ahead to pass the American Service Members Protection Act of 2002 which became known officially as "The Hague Invasion Act". Furthermore, it has signed Bilateral Immunity Agreement (BIAs) known as Article 98 agreement", with most of the member states to

exempt the US citizens from possible surrender to the ICC. The benefit of this to signatory parties is that parties will not surrender citizens of the other party to international tribunals or the ICC unless both parties agree in advance.[12]

It is however interesting to point out that the United States eventually became the first villain of its fears. America supported the ICC actions against Sudan in a clearly politicized prosecutions that were full of anti-Sudan political agenda in the Darfur trials. The above illustrates the U.S. opposition to the ICC purely from the index of US involvement in international politics and global military relations. The US opposition foreshadows a judicial conspiracy by her competitors and opponents using the garb of the ICC as the turf for allocation of their goals.

The issue of national interest has continued to advertise some states as deliberate refusenik to the principle and goals of the ICC. One such concern is the various schisms and divisions in international politics – the North – South dichotomy, the West and East rivalry and the concern of erstwhile colonial states over the preponderance of the neo-colonialists content of every idea supported or sponsored by their former colonial masters, ricochet the transcendental principle of justice of the ICC

India for instance has consistently queried the ICC propensity for erosion of judicial sovereignty of member states. This point arises from the ambiguity that surrounds the objectives of the court. The belief generally is that the ICC is set up to help the judicial process of states that have shown evident weakness in prosecuting crimes committed against humanly. The question of assisting a state's judiciary comes up only when that state has shown obvious incapacity. The ICC is not a judicial commission for states with independent judicial system, so its functions should not be duplicated in extant judicial duties.

India's basic opposition to the ICC connects to issues of legality and protection of sovereignty. India views her judicial system as independent and capable of trying any crime against humanity and therefore does not need prodding from the court or any state. Indian refusal to kowtow to the judicial authority of the ICC hinges perhaps on the political system of Indian which pitted the interest of the ruling class against that of the masses. India's view of the ICC is the position of the government bodies in the drafting period of the accruals of state obligations under the ICC treaty.[13] Subsequent government in India have not changed this view and position because most often national interest is a targeted objectives of the ruling states, the

Indian objections to the ICC is seen as inference of the protection of the ruling state especially when most often this objection is coloured excessively by the criticism that the ICC does not respect the international law governing head of state immunity which prohibits prosecution of heads of state, even for international crimes. Generally opposition to the ICC on the basis of what it generates for national interest of states is essentially a very elitist contribution to the analysis of allocation of values of leaders.

Indian opposition to the ICC statute is also driving by what the statute does not say about nuclear weapons as the Indian State had tabled a draft amendment to list nuclear weapons among the armaments whose use is banned for the purpose of the statute. This of course is a reflection of Indian concern for nuclear proliferation amongst the states in her region. While this is of fundamental interest to India, it is outside the purview of the ICC statute and such concern can easily be referred to the Security Council of the United Nations which supervises the Non-Proliferation Treaty (NPT).

African States and the ICC

As preliminary remark, presently all situations and cases under investigation or prosecution by the ICC are in Africa and this has led to the preponderance of the view that the ICC is targeting only Africans. The purveyors of this view have listed rightly African states of Democratic Republic of Congo (DRC), Uganda, Central African Republic (CAR), Sudan, Libya, Kenya, Ivory Coast and Mali as the states, the ICC has investigated alleged violations of International Criminal Law since the statute came into being in 2002.

The proponents of this view have queried why human rights abuses in states like Iraq, Afghanistan, Palestine, Venezuela, and Colombia have not been opened for investigation however preliminary, with possible proceeding with a prosecution. The claim of Archbishop Desmond Tutu of South Africa that both Tony Blair of Britain and George Bush of the United States committed sundry human rights violations in Iraq and the fact that the ICC has continued to ignore this call presented the court as going after only those unprotected by the Security Council, again, the court has been said to be politically selective as to which human rights abuses it chooses to pursue.[14]

Some observers have noted and rooted the ICC seeming concentration on Africa in the theoretical accident which occurred during the drafting of the ICC Statute.[15] This relates to the

role which Non-Government Organizations and advocacy groups played during the debates and pressure for the establishment of a permanent international criminal court. The NGOs played critical role in the establishment of the ICC as David Davenport noted that the tactics of the NGO "was bundling the key elements of the court into a package that became a take it-or -leave it proposal but suspect in the end to further compromise".[16] What appears as almost exclusive focus on Africa was a manifestation of a global concern for the human rights situation in Africa, especially the heist in Darfur. The configuration of human rights activities and advocacy group who came together to condemn and clamour for the ICC may have led to the considerable controversy which the ICC later finds itself. There was also the point that when the ICC was to investigate the Darfur atrocities, the ICC Chief Prosecutor Luis Moreno-Qcampo did not visit Darfur but had his office relied on claims made by externally-based parties, advocacy groups and NGO submissions.[17] The point here is that since the establishment the ICC is NGO-driven and the NGOs were particular about human rights abuses in Africa hence, the focus on Africa.

The Working of the ICC

This part is deliberate and natural to the main argument in this work. The ICC has been accused for primarily targeting people from Africa. Understanding the working of the ICC however reveals otherwise. There are two issues which determine ICC operations in any state (a) the state of national judicial system of state parties and (b) the general jurisdiction of the ICC as contained in Part 2, Article 5 of the Rome Statute. The state of national judicial system of states also refers to the reference and utility of the jurisdiction and statute when national courts are unwilling or unable to investigate or prosecute crimes captured under the statute.[18]

The implication of this is that the ICC is intended to complement and not to trump national judicial system. The question now, and that is where the point of targeting African States needs re-development, is that by far crimes committed against humanity in most African states are perpetrated by individuals who have tremendous political influence. This influence in most cases extrapolates to the mechanism with which to seek justice. A state therefore as matter of responsibility should have capacity to investigate and prosecute crimes occurring within its jurisdiction. The current ICC president Sang-Hyun Song has described the ICC as a:

> *"failsafe justice mechanism which holds that states have the primary responsibility to investigate and prosecute Rome Statute crimes".* [19]

The current situation in Africa does not reflect this possibility as most of these crimes are committed by heads of government or agency of government and in collaboration with the national judicial system.

The Court has four judicial mechanisms:

a. If the accused is a national of a state party to the Rome Statute.
b. If the alleged crime took place on the territory of a state party
c. If a situation is referred to the court by the United States Security Council and
d. If a state not party to the Statute accepts "the court's jurisdiction". [20]

The Rome Statute specifically in Part 2, Article 5 lists four groups of crimes which should be of serious concern to the international community. There are: genocide, crimes against humanity, war crimes and crime of aggression. These crimes are defined unequivocally and their parameters well coordinated. The only exception is the definition of what constitute crime of aggression because the statute provides that the court will not exercise its jurisdiction over the crime until when a time states parties agree on a situation of the crime and set out the conditions under which it may be prosecuted. By the title of the Statute it is not likely to have a prosecution of crime of aggression until 2017.[21]

The basic issue relating to Africa here is the issue of dateline. The ICC can only trial crimes committed after July 1, 2002, the founding date of the ICC. This dateline is critical in the analysis of political events around the world. The millennium appears to be very turbulent for African political system, yet, the era represents a configuring of resolution of conflict in order parts of the world as leadership becomes steeper in Africa.

The horror in former Yugoslavia seemed to have embarrassed continental Europe to such an extent that a resolve emerged not to allow such heist to bedevil the continent again. Although, the fragmentation of former Yugoslavia was expected after the demise of Boris Tito, European leaders were caught napping to see extermination of a race in Europe in the 20th century. The Special Tribunal which tried the crimes in Yugoslavia seemed to have ended the necessity of such tribunal in Europe, not because the ICC come into existence, but because all the vagaries and potentials of crime against humanity seemed to end with the fragmentation of Yugoslavia.

Africa on the other hand which experienced similar situation in Rwanda did not draw any lesson from the Rwandan situation. Similar and indeed identical situations became sporadic in major

parts of Africa and as the ICC came into existence in 2002, African crime harbingers had stimulated enough concern for justice as national judicial system had proved incapable of trying these crimes. The court's jurisdiction does not apply retroactively and is intended as a court of last resort investigating and prosecuting only where national courts have failed. Article 17 of the Statute provides that the court cannot prosecute if:

(a) The case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation or prosecution.
(b) The case had been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the state genuinely to prosecute.
(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the court is not permitted under article 20, paragraph 3.
(d) The case is not sufficient gravity to justify further action by the court.[22]

Article 20, paragraph 3, specifies that if a person has already been tried by another court, the ICC cannot try again for the same conduct unless the proceedings in the other court:

"(a) were for the propose of shielding the person concerned from criminal responsibility for crime, within the jurisdiction of the court or
(b) otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.[23]

The debate relating to whether the ICC is targeting Africans and Africa is a theoretical deflection, derailing the focus from prosecutory details covered by the court's jurisdiction. The ICC operations are based on jurisdiction which states parties have freely entered into or where there are referrals, from the United Nations Security Council. The basic issue here is that the ICC operations in African speaks directly to the level of criminality that goes on in the continent,

in fact the preponderance of ICC criminal investigation of African origin is a confirmation of the general political instability which technically is responsible for the crimes captured by the Rome Statute.

ICC and Africa

The international Criminal Court has opened investigation into crimes committed against humanity in eight countries and all of them are in Africa. The inactivity of the court in other regions of the world has fuelled the criticism that the court was established to try African leaders and not crimes committed by a US President or the Prime Minister of Britain.[24] This criticism although pungent, did not take into consideration that four of those investigations were at the instances of the affected African states whose judicial systems had shown incapacities to try the crimes. The remaining are referrals, from the United Nations Security Council.

The technical question is why should the court target Africa, if there are similar and preponderance of such cases in places like Argentina, Myanmar and even Iraq? The situations and cases before the court despite being African in character, are justified from a legal stand-point. There are reasonableness in the extent of the works of the court in Africa judging from the nature of crimes and widespread systematic conflicts in Africa. The Court's activities, it would appear, speaks directly to the lack of capacity to hold perpetrators of crimes down to their actions in African state. This of course is due to the political influence which most of the perpetrators wield in their states. This situation again helps to justify the non-intervention of the court in areas (outside Africa) where their judicial processes have not being comprised. Examination of few of the cases before the ICC may help dictates a tone of fairness in the conduct of the court's affairs.

Selected Cases

Omar Al Bashir

Omar al-Bashir was indicted on 4th March, 2009 on five counts of crimes against humanity and two other counts of war crime. During Darfur crisis (April 2003 – 14 July, 2008) al-Bashir was accused of using state apparatus to attack the people of Fur, Masalit and Zaghawa because of their support for insurgents. He is accused of intending to partially destroy the population of Fur, Masalit and Zaghawa, causing serious bodily or mental harm and deliberately inflicting condition of life calculated to bring about physical destruction of the ethnic groups.[25]

Since warrants of arrest were handed down on the Sudanese President and his refusal to appear before the court, by the standard of the statute, al-Bashir is a fugitive. However, the relevance of an international jurisprudence put to test in the case of the Sudanese President because the quest for justice which the ICC anticipate would be unattainable in situation where political leaders are perpetrators of crimes regains a revalidation in this case. Not only did the President refuse to surrender himself to the court, there is a state policy not to cooperate with the court. There have also been issues relating to cooperation, from state parties to the Rome Statute as al-Bashir had visited Chad, Kenya, Djibouti, Malawi and Nigeria without any of these countries fulfilling their obligation under the Rome Statute.[26]

Jean Pierre Bemba

Jean Pierre Bemba was indicted on 23 May, 2008 on two counts of crimes against humanity and courts of war crimes with regard to the situation in the Central African Republic (CAR) on June 10, 2008, the arrest warrant was amended and the charges charged to three counts of crimes against humanity and five counts of war crimes. Bemba is alleged to lead the Movement for the liberation of the Congo (MLC), a Congolese rebel group, into CAR after Central African President Ange-Felix Patasse Sacht Bemba's assistance in addressing a rebellion by Francois Bozie. Bemba was accused of being criminally responsible for acts of rape, torture, "outrages upon personal dignity", murder, and pillage that occurred in the towns and cities of Bangui, Bossangoa, Bossembélé, Damara, and Mongoumba from 25 October 2002 to 15 March 2003.[27] Bemba was arrested in Belgium on 24 May 2008, transferred to the Court's custody on 3 July 2008, and first brought before the Court the next day. The confirmation of charges hearing was held from 12 to 15 January 2009, and on 15 June 2009 Pre-Trial Chamber II partially confirmed the charges against Bemba, finding that he would stand trial for two counts of crimes against humanity and three counts of war crimes. Specifically, Pre-Trial Chamber II declined to confirm the charges of torture or "outrages upon personal dignity".[28] The trial against Bemba began on 22 November 2010 and is ongoing.

Charles Blé Goudé

Charles Blé Goudé was indicted on 21 December 2011 with four counts of crimes against humanity with regard to the situation in the Republic of Côte d'Ivoire. As the leader of the Congrès Panafricain des Jeunes et des Patriotes, the youth organization that supported Ivorian

PresidentLaurent Gbagbo, Blé Goudé is alleged to have been "an indirect co-perpetrator" in Gbagbo's organized plan of systematic attacks against civilians in and around Abidjan, including in the vicinity of the Golf Hotel, during post-election violencethat began on 28 November 2010. Fighters under the command of Gbagbo are alleged to have murdered, raped, persecuted, and inhumanly treated civilians who were perceived to be supporters of Alassane Ouattara, Gbagbo's opponent in the 2010 presidential election.[29] Blé Goudé was arrested on 17 January 2013 in Ghana, and extradited to Côte d'Ivoire the next day.[30] On 22 March 2014, the Ivorian government transferred Blé Goudé to the Court's custody.[31] He arrived at the Court's detention center in The Hague on 23 March.[32]

Laurent Gbagbo

Laurent Gbagbo was indicted on 23 November 2011 on four counts of crimes against humanity with regard to the situation in the Republic of Côte d'Ivoire. As the President of Côte d'Ivoire, Gbagbo is alleged to have organized, along with members of his inner circle, systematic attacks against civilians during post-election violence that began on 28 November 2010.[33] National security forces, the National Armed Forces, militias, and mercenaries under the command of Gbagbo are alleged to have murdered, raped, persecuted, and inhumanly treated civilians who were perceived to be supporters of Alassane Ouattara, Gbagbo opponent in the 2010 presidential election[34] According to the arrest warrant for Gbagbo, the crimes occurred in and around Abidjan, including in the vicinity of the Golf Hotel, and in the western part of the country from 16 December 2010 to 12 April 2011[35] Gbagbo was detained by forces loyal to Ouattara in the presidential residence on 11 April 2011.[36] On 29 November 2011, Gbagbo was transferred to the Court. On 5 December 2011 he made his first appearance before the Court and the confirmation of charges hearing took place from 19 to 28 February 2013 before the Pre-Trial Chamber.[37] The Pre-Trial Chamber is now deliberating and will issue its ruling.

Simone Gbagbo

Simone Gbagbo was indicted on 29 February 2012 on four counts of crimes against humanity with regard to the situation in the Republic of Côte d'Ivoire. As the wife of Ivorian PresidentLaurent Gbagbo, Ms. Gbagbo is alleged to have co-organized, as a member of her husband's inner circle of advisers, a policy targeting against civilians during post-election violence that began on 28 November 2010.[38] National security forces, the National Armed Forces, militias, and mercenaries acting pursuant to the policy are alleged to have murdered,

raped, persecuted, and inhumanly treated civilians who were perceived to be supporters of Alassane Ouattara, Laurent Gbagbo opponent in the 2010 presidential election.[39]According to the arrest warrant, the crimes occurred in and around Abidjan, including in the vicinity of the Golf Hotel, and in the western part of the country from 16 December 2010 to 12 April 2011.[40] Gbagbo was detained by Ivorian forces loyal to Ouattara in the presidential residence on 11 April 2011.[41] On 22 November 2012 the warrant of arrest was unsealed.[42]She has not been transferred to the Court and the Ivorian government has yet to extradite her. Additionally, a case against her with regard to the post-election violence is being prepared by Ivorian prosecutors.[43]

Germain Katanga

Germain Katanga was indicted on 2 July 2007 on three counts of crimes against humanity and six counts of war crimes with regard to the situation in the Democratic Republic of the Congo (DRC) [44] On 26 June 2008, the charges were revised to four counts of crimes against humanity and nine counts of war crimes.[45] He was alleged to have been the leader of the Front for Patriotic Resistance in Ituri (FRPI), an armed group composed mostly of members of the Ngiti ethnicity that was active during the Ituri conflict. On and around 24 February 2003, he is alleged to have ordered his forces to attack the village of Bogoro in a military operation coordinated with the Nationalist and Integrationist Front (FNI), an allied armed group composed mostly of members of the Lendu ethnicity. The target of the attack was alleged to have been both the village's predominantly Hema civilian population and the base of the Hema armed group, the Union of Congolese Patriots (UPC), located in the center of the village. Katanga is alleged to be responsible for the resulting crimes committed by FRPI and FNI fighters, including the intentional attack on the civilian population of Bogoro, the destruction and pillaging of Bogoro, the killing of at least 200 civilians, the use of child soldiers during the attack, rape, outrages upon personal dignity, "inhumane acts of intentionally inflicting serious injuries upon civilian residents", and "cruel treatment of civilian residents of, or persons present at Bogoro village by detaining them, menacing them with weapons, and imprisoning them in a room filled with corpses".[46] Katanga was arrested by Congolese authorities on 1 March 2005 in connection with an attack that killed nine United Nations peacekeepers.[47] After the Court issued a warrant for his arrest, Katanga was transferred to the Court on 17 October 2007. His trial began on 24 November 2009. The Trial Chamber delivered the judgment in the case on 7 March 2014, finding Katanga guilty of four counts of war crimes and one count of crime against humanity.[48] Sentencing will take place on later date.

Uhuru Kenyatta

Uhuru Kenyatta is the current President of the Republic of Kenya. He was indicted on 8 March 2011 on five counts of crimes against humanity with regard to the situation in the Republic of Kenya. Kenyatta, as a supporter of Kenyan PresidentMwai Kibaki, is alleged to have planned, financed, and coordinated the violence perpetrated against the perceived supporters of the Orange Democratic Movement, the political party of the President's rival, during post-election violence from 27 December 2007 to 29 February 2008.[49] Kenyatta is alleged to have "had control over the Mungiki organization" and directed it to conduct murders, deportations, rapes and other forms of sexual violence, persecutions, and other inhumane acts against civilians in the towns of Kibera, Kisumu, Naivasha, and Nakuru[50] Kenyatta was summoned to appear before the Court on 8 April 2011 and the confirmation of charges hearing was held from 21 September 2011 to 5 October 2011, in conjunction with the cases against Mohammed Ali and Francis Muthaura. All the charges against Kenyatta were confirmed by Pre-Trial Chamber II on 23 January 2012.[51]

Conclusion

The ICC is an international challenge to the principle of separation of powers in developing states. The psychological framework connects with lack of independence of the judiciary in the states. The character of the perpetrators of crimes under the jurisdiction of the Rome Statute and their political influence explain the relevance of the ICC in Africa's quest for justice. These elements epitomize dominance of state's affairs to such a degree, that justice can only be sought from other organs outside the state.

The neo-imperialist tag of the ICC as William Muchayi [52] has noted is a window for reward of perfidy, rather issues should be raised relating to why for instance the Kenyan Parliament passed a motion calling for the withdrawing of Kenya from the ICC and why the country is calling on other 34 Africa States to withdraw from the ICC. The post-investigation events in the states of the ICC indictees confirm the fear of the justice system in these states. The point illustrates simply the capacity of those individuals to thwart justice, if there are proofs that they can use states parliaments to severe judicial relations with the ICC because of their indictment. This is real capacity and not just conjectural assumption.

Although, the issue of national proceedings under complementarity is chequred as a state complement the work of the Court like in the case of the military Tribunal in Mbandaka which

sentenced Botali Itofo, a policeman to twenty years imprisonment after his conviction under implementing legislation for the crime against humanity of mass rape.[53] This type of cooperation is witnessed generally in the ICC operations in Uganda, Democratic Republic of Congo, Central Africa Republic and Mali because all these states parties referred their cases to the court themselves. Sudan and Libya who were referred by the United Nations Security Council and Kenya, Cote d'Ivoire who are *proprio motu* by the executor would not cooperate with the court, because the court represents an international inquisitorial atmosphere where judicial conspiracy is common place in their schema.

There are on the side of the ICC, instances of insidiousness on how investigations are opened. The best basis for prosecution would appear to be when cases are referred to the ICC, by states parties, next to this would be referrals from the United Nations Security Council. The authorization of the office of the prosecutor for a pre-trial chamber on the basis of information received from individuals or NGOs degenerates to a considerable degree, the fairness of the Court and again raises doubts if the Court has achieved full containment of political interests in its prosecutions and operations.

The ICCs reliance on evidence gathering and witness sourcing by local NGO, and incumbent politicians, it has been observed, has put its credibility at stake. The critical issue here is that the ICC has neglected to investigate the crimes committed by those who are assisting the court in its process of investigations. Some of them are political leaders and opponents of those whose crimes are being investigated. For instance in Congo, Joseph Kabila assisted in the investigation of Jean-Pierre Bemba, in Kenya, many blame the ICC beam light on Uhuru Kenyatta because Raila Odinga played crucial role in sourcing evidence for the ICC for his prosecution. Both of them contested elections in Kenya, and now Kenyatta is the President.

The view of this work is that the ICC work in Africa is both appropriate and necessary and the claim that the court is targeting Africa should target the structural inequalities in the national judicial system of most African states. The critical point here is that there are certain prosecutions that cannot be pursued in most African states' judicial structures and there are agents and individuals in Africa who require international law and out-post judiciary to bring them to justice. Re-developing the views about the ICC operations in Africa will save it from the allegation of being pre-emptive legal intervention and as such raises hope for its per-emptory legal character.

Notes and References

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