

The Implications of the International Criminal Court Rulings on African Leaders: A Critical Assessment

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Abstract

The International Criminal Court (ICC) was established to deal with the unabated global cases of war crimes and crimes against humanity, and to deter intending war lords and authoritarian leaders. The activities of the court have increasingly been beamed on Africa because of the incessant conflicts pervading the continent with accompanying violation of human rights. The unnecessary search light on Africa raises questions of selective treatment by the court and the need to ensure equity in its global coverage of crimes against humanity. The paper utilized secondary data and qualitative analysis as its methodology. The paper is premised on Finnis (1980) Interest Theory of Human Rights. The theory argued that citizens within a given state have rights that should be preserved and protected by the state. The rights of the citizens such as freedom of speech, security, assembly, association and self-determination are their interest which the state should not violate. The paper found that African leaders have become the major source of intimidation and degradation by the court, while leaders in the Middle East and Europe are left scot-free. The paper recommends that African countries should collectively pull out of the signatory to the court as a protest to the bullying of the continent.

Keywords: Implications, Rulings, Assessment, Criminal, Court.

Introduction

The African continent particularly Sub-Saharan Africa has witnessed plethora of conflicts that ravaged human, social and economic base of several societies. In the 1960s there were wars of liberation elicited by the struggle for independence in Kenya, Algeria, Zimbabwe and the obnoxious apartheid regime in South Africa. The post-independent Africa also experienced ideological conflicts due to the cold war era between the East and the West on control of areas of influence (Adedeji, 1999). The differences amongst the nationalist leaders in Africa on their approach to liberation and political system to adopt has created platform for conflicts to exacerbate. For instance, in Angola and Mozambique wars were fought due to ideological differences on the establishment of government whether socialist or liberal democracy (Bassej, 2003).

The 1990s to the present is a milestone era of series of wars in Africa in countries like Sierra Leone, Rwanda, Burundi, Liberia, Central African Republic, Democratic Republic of Congo among others. These conflicts resulted to

enormous loss of lives, displacements, destruction of properties and committing of war crimes, and crimes against humanity by parties involved. The crucial issue in most conflicts in Africa is the violation of human rights which is the search light of the International Criminal Court. The genocide in Rwanda and Burundi as well as atrocities by war lords in Sierra Leone, Liberia, Democratic Republic of Congo, Darfur, Central Africa Republic and Ivory Coast are too grave to be let scot-free (Mensch, 2010).

The Universal Declaration of Human Rights in 1948 and the United Nations Charter provides for the protection of civilians in conflict zones. Civilians are not to be harmed or killed mercilessly as collateral. The international community has put in place mechanisms to check and enforce human rights violations through institutions like the United Nations Human Rights Commission (UNHRC), the European Convention on Human Rights (ECHR), the Inter-American Convention on Human Rights (IACHR) and United Nations Convention on Civil and Political Rights (UNCCPR) among others provide platform for

investigation and report by victims of human rights violations in any part of the globe (Moravcsik, 2006).

The spate of human rights violation in conflict zones in Africa and other parts of the globe necessitated the establishment of the International Criminal Court (ICC) to check the excesses of war perpetrators and bring to justice those who trample on civilian rights, and commit crimes against humanity. The justice meted on war criminals in Bosnia Herzegovina, Congo, Vietnam, Rwanda, Burundi and other similar cases is intended to serve as warning and deterrence to prospective war criminals (Wallenstein, 2007).

The UN Security Council in 1993 established the International Criminal Tribunal (ICT) for the former Yugoslavia. The tribunal served as the basis for the creation of ICC through ratification of Rome Statute by UN Member Countries. The reservations of Africa on the activities of ICC is the undue beaming of search light on the continent, and doing nothing on the atrocities committed by the United States and Israel in Iraq, Afghanistan and Palestine (Bennett & Oliver, 2002).

Methodology

The paper made use of qualitative data such as books, journals, ICC publications, non-governmental organizations publication, newspapers and magazines. The materials were derived from the library and the internet. Content analysis was adopted to examine documents, books, journals, newspapers and magazines in support of achieving the mandate of the paper. The paper is limited to the analysis of ICC in relation to its activities in pursuance of war crimes and crimes against humanity observed to be committed by some African leaders.

Theoretical Framework

The paper is anchored on Interest Theory of Human Rights by Finnis (1980). The theory argued that citizens within a given state have rights constitutionally apportioned to them, that those rights should be preserved, protected and safeguarded by the state for the citizens. In essence, the rights of the citizens such as freedom of speech, security, assembly, association and self-determination are their

'Interest' which the state shall work towards safeguarding and not to be violated.

The violation of citizens' rights by the state or other parties is contrary to their interest as provided by international and national laws. In the context of this paper, the Interest Theory of Human Rights explains the role of ICC in safeguarding the interest of citizens of states from violation by authoritarian leaders, war lords and persecution of minorities. Finnis (1980) is of the view that human rights are justified on the grounds of their instrumental value for securing the necessary conditions of human well-being. The theory is premised on the following assumptions:

- i. States and governments have duty to protect and safeguard the rights of their citizens;
- ii. The international community has moral duty to protect the rights of persecuted citizens of a state; and
- iii. That citizen has rights that give them leverage as legal residents of a state.

A major criticism of the Interest Theory of Human Rights is the gap associated with theory and practice of human rights. There are variations in the interpretation of what a state authority perceives as human rights and what citizens feel are their rights. So also, there are differences with respect to what the international community regards as human rights and what a government believes are recognized rights for her citizens. The interpretation dilemma is indeed a major challenge to human rights issues globally (Cali & Meckled,-Garcia, 2005).

Genesis of the International Criminal Court

Before the establishment of the International Criminal Court, the UN Security Council in 1993 created the International Criminal Tribunal for the former Yugoslavia. So also, the Security Council established another tribunal for Rwanda genocide in 1994. The indictment of war lords and criminals in the case of former Yugoslavia, Rwanda and Burundi prompted the international community to rally consensus on the need for a permanent court to try cases of war related crimes (Bennett & Oliver, 2002).

In the pursuit for the creation of a permanent court to deal with war crimes, Trinidad and

Tobago urged the UN to look into the possibility of the establishment of ICC in 1989. Europe and several African countries gave support for the creation of ICC. The UN General Assembly subsequently held a conference in Rome in July, 1998. The conference was attended by member countries of the UN to discuss modalities for the establishment of ICC. At the conference, the Rome Statute of ICC was adopted through vote, 120 countries in favour, 7 against and 21 abstentions. The ratification of the Court's Statute by sixty states led to the take-off of ICC in 2002, when the Statute entered into force (Council on Foreign Relations, 2021).

World powers including the United States, China and Russia refused to ratify the Rome Statute for reasons of protecting core national interests. Their refusal to sign the treaty has reduced the capacity of ICC to justly prosecute war crimes across the globe. So also, some countries have withdrawn their membership of ICC because of perceived one-sided approach to the handling of war crime issues. For instance, Burundi withdrew in 2017 because of ICC eagerness to investigate government's repression of the opposition. Similarly, Philippines left ICC in 2019 due to the court's decision to investigate President Duterte's crackdown on drug related offences (Council on Foreign Relations, 2021).

The ICC Headquarters is at The Hague, but also has field offices in some countries such as Darfur; Sudan, Georgia and Mali among others. The court has eighteen judges appointed by member countries and serve for a single term of nine years. The court's chief prosecutor carries out investigation on alleged cases of war crimes and institute court summon on alleged criminals. The court has a president and two vice-presidents elected from among the judges. The court's convictions and sentences require the vote of at least two out of three judges on a trial bench. A convicted person could seek appeal to the ICC appellate bench, which is made up of five judges. The judgement passed by the appellate bench is final (Bennett & Oliver, 2002).

The Rome Statute provided for the creation of three organs namely; the Assembly of States Parties, the International Criminal Court and Trust Fund for Victims. The Assembly of States

Parties is made up of state actors that ratify the Rome Statute. They meet at least once in a year at sessions to give policy direction to the court, approve the court's annual budget, and electing the court's judges. The Trust Fund for Victims was formally established in 2004 in line with Article 79 of Rome Statute. The fund gives support to victims of war and genocide through the implementation of court ordered reparations for war victims and material support for victims' family (International Criminal Court, 2021).

The ICC has jurisdiction over the following classes of crimes:

- i. War crimes or grave breaches of the laws of war which include the Geneva Convention prohibitions on torture, use of child soldiers, attacks on civilian targets; such as schools, hospitals, houses and markets;
- ii. Genocide or the intent to destroy in whole or part a national, ethnic or religious group;
- iii. Crimes against humanity or violations committed as part of large-scale attacks against civilian populations, including murder, rape, imprisonment, slavery and torture; and
- iv. Crimes of aggression or the use of armed forces by a state against the territorial integrity, sovereignty or political independence of another state or violations of the UN Charter (International Criminal Court, 2021).

The court also undertakes investigation into cases in member countries on three conditions which are as follows:

- i. A member country can refer a situation within its territory to the court;
- ii. The UN Security Council can refer a situation, or the prosecutor can initiate investigation into a member state's situation; and
- iii. The court can investigate individuals from non-member state if the alleged offences took place in member state territory, if the non-member state accepts the court's jurisdiction or with Security Council's authorization (International Criminal Court, 2021).

The International Criminal Court and African Leaders

African countries formed one of the largest blocs in the Assembly of States Parties organ of the ICC. Thirty African countries ratified the Rome Statute out of 110 countries that signed the treaty globally. The commitment of Africa to the successful take-off of ICC cannot be over-emphasized. The tremendous support of Africa to the establishment of the court indicates her willingness to ensure adherence to best global practices in upholding human rights of citizens' in states within the continent. Unfortunately, international politics of domination and dictatorship by the powerful nations has put Africa at the receiving end of the court's cases. The ICC since 2002 has indicted over forty individuals, and most of them are from Africa. Similarly, as at March, 2021 there were thirty cases before the court and all are from Africa, with seven acquittals, five imprisonments and the rest are at pre-trial or trial stages (Council on Foreign Relations, 2021).

In May, 2012 Charles Taylor the former President of Liberia was sentenced to 50 years in prison by the International Special Court for Sierra Leone. He was indicted of 11 count charges of war crimes, crimes against humanity and other violations of international humanitarian laws committed from November, 1996-January, 2002 during Sierra Leone civil war. Charles Taylor was fundamentally accused of being a destabilizing force in West Africa and aiding the conflict in Sierra Leone, aside from the war crimes he committed in Liberia as a war lord (Cheng, 2012).

In March, 2009 ICC Judges issued arrest warrant for the former Sudan President Omar al-Bashir for involvement in war crimes in the civil war in Darfur. The arrest warrant created panic among African leaders, who considered the order as too imperialistic and undue interference in African affairs by the ICC (Kimani, 2009). In Kenya, the 2007-2008 post-election violence generated the attention of the ICC. In March, 2011 six prominent Kenyan politicians were indicted by the ICC of crimes against humanity, and summoned to appear before the court. Among the indicted were Uhuru Kenyatta the President of Kenya, Henry Kosge, William Ruto, Francis Mathaura, Joshua Arap Sang and Mohammed Hussein Ali

(Council on Foreign Relations, 2021).

In January, 2012 charges levelled on Uhuru Kenyatta, Mathaura, Sang and Ruto were confirmed, while charges placed on Kosge and Mohammed Ali were dismissed. Similarly, the charges on Kenyatta and Mathaura were later dropped for lack of substantial evidence. In April, 2016 the charges on William Ruto and Joshua Sang were dropped due to inadequate evidence to support the charges (Council on Foreign Relations, 2021).

The indictment and trial of Kenyan politicians elicited condemnation from the African Union and other stakeholders for being selective and Africa-centered. African Union argued that the powerful nations shield themselves from the punitive measures of the court in spite of the offences they commit in their countries and elsewhere, but expose unrelentingly African leaders to the dictates of the ICC. This is indeed unfair to Africa and its people (Kimani, 2009).

In June, 2011 ICC issued arrest warrant on the late Libyan leader, Muammar Gaddafi on allegations of his responsibility of killing unarmed civilians during the Libyan revolution. Gaddafi could not be arrested but later killed with the aid of the powerful nations. For the sake of fairness ICC should have brought to justice France and United States that backed the opposition groups in Libya that killed Gaddafi (Council on Foreign Relations, 2021).

There are also instances in which African leaders refer cases to the ICC for prosecution. The Uganda government requested ICC to investigate the Lord's Resistance Army (LRA) activities in Uganda civil war. The court issued arrest warrant on Joseph Kony the Commander of LRA. The court could not arrest Kony and the war is still raging, and no end to it because the peace process has stalled as a result of ICC arrest warrant on the rebel leader (Kimani, 2009).

The ICC has indicted, arrested and sentenced to prison terms several war lords in Africa for war crime offences, among them are Bashir Abu Garda (Darfur), Jean-Pierre Bemba (Central Africa Republic), Charles Ble Goude (Ivory Coast), Germain Katanga (Democratic Republic of Congo), Ahmed Ali Mahdi (Mali) and Bosco Ntanganda (Democratic Republic of Congo). It can be adduced that the spate of

conflicts in Africa is partly responsible for the rate at which ICC is concentrating much attention on the continent. At the same time, Africa suffers from global power imbalance in international politics. The UN Security Council which Africa is not represented is empowered to use Article 13 of ICC Statute to refer cases of war crimes to ICC for investigation. This provision is at the disadvantage of African countries. The arrest warrant on Omar al-Bashir and late Muammar Gaddafi were referred to ICC by the UN Security Council. Conversely, no Member of the UN Security Council has ever been indicted by the court even though they have issues to answer on human rights violations (Kimani, 2009).

The African Union in 2009 and 2016 met to discuss the ferocity of Africa's presence at ICC indictments. There was enthusiasm that African leaders can take a common front to collectively withdraw from ICC. When the issue of withdrawal was put to vote at AU Summit, majority of members preferred to be part of ICC Assembly of States Parties. This scenario displayed the absence of political will on the part of African leaders in spite of being ridiculed by the ICC and its sponsors (Cheng, 2012).

Conclusion

The paper focused discussion on the relationship between ICC and African leaders. Africa is an important player in the formation of ICC, but the continent's leaders are the most indicted globally. The lopsidedness in the handling of ICC by the world powers brings to scrutiny the legitimacy of the court in acting as a neutral umpire at the world stage. The prosecution of thirty cases by the court emanating from Africa is a pointer to the bias shown to Africa by the court which negates the principles of fairness and justice for all nations whether big or small.

Recommendations

The following recommendations are geared towards redressing the issue of fairness in the operation of ICC:

- i. There is need for the amendment of Article 13 of the ICC statute that gives the UN Security Council power to refer cases to ICC for investigation and prosecution which is at the disadvantage of African countries.
- ii. The African Union should come up with a collective decision of pulling out of the ICC if all nations are not treated equally before the court.
- iii. African leaders should endeavour to imbibe and sustain the principle of good governance which will go a long way in reducing conflicts on the continent.

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