

Is the International Criminal Court Unfairly Targeting Africa? Lessons for Latin America and the Caribbean States

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Abstract

Africa, Latin America and Caribbean countries share many common features including a history of colonisation, the ongoing fight against human rights abuses and the resultant pursuance of sustainable peace and justice. One of the tools at these countries' disposal is the International Criminal Court (ICC) where these two blocks are experiencing different fortunes. Except for the Georgia case, all the other cases dealt with by the ICC were from Africa and the court is yet to open an investigation in Latin America and the Caribbean, a situation which allows for lessons for the latter to be drawn from the former's relationship with the ICC. Using the decolonial perspective I argue that the targeting of Africa by the ICC is part of the colonial project which started with slavery and is now in the coloniality phase. The conclusion is that willingly or unwillingly, the way the ICC has treated Africa is tantamount to targeting. This perception can only be changed if the ICC successfully opened new cases elsewhere, especially in the west.

Keywords: International Criminal Court; decoloniality; transitional justice; Africa; Latin American and the Caribbean; war crimes; Rome statute

Introduction

Africa, Latin America and the Caribbean share many commonalities which inadvertently bind them together¹. They share a common history of slavery, colonialism and coloniality dispensed by the same culpable nations, generally referred to as the West. These countries (Africa, Latin America and the Caribbean) also share a theoretical perspective, namely decoloniality studies which originated in Latin America and are finding acceptance, relevance, application and growth in African scholarship. This perspective argues that the current asymmetrical relationship between the former colonisers and the formerly colonised people is a continuation of colonialism executed in other forms. One of the forms of perpetuating colonialism is through the (mis)use of multilateral institutions such as the United Nations Security Council (UNSC), and the International Criminal Court (ICC), *inter alia*. Despite the many similarities between Africa, Latin America and the Caribbean, they face contrasting circumstances at the ICC. Africa is the ICC's major client while none of the Latin America and the Caribbean states has been investigated by this court, despite numerous cases of crimes against humanity and war crimes committed over decades. These contrasting fortunes present a propitious opportunity for the Latin America and Caribbean states to draw lessons from the ICC/Africa relations on how to work together with the court in curtailing genocide, war crimes, crimes against humanity and the crime of aggression. These lessons will be drawn as part of answering the central research question: whether the ICC is unfairly targeting Africa.

The article is organised into six main sections. The first section introduces the article by outlining the relationship between the ICC and Latin America and the Caribbean and then traces the genealogy of the international system and locates the birth of the ICC within this system. The second section explores the relationship between the ICC and the Latin American and Caribbean countries. This culminates in a section which foregrounds the ICC/Africa relationship. The debate whether the ICC is unfairly targeting Africa is unpacked in the fourth section where it is pointed out that it can be argued that the perceived unfair targeting of Africa is a wrong perception based on political emotions and is legally unacceptable. The counter argument is presented in the fifth section and is premised on the fact that Africa is the major source of the cases that

1 This article is a product of an earlier paper which the author presented at the 24th World Congress of Political Science held in Poznan, Poland from 23 to 28 July 2016. The author is grateful to members of IPSA's Research Committee 26.04 on Democratic Consolidation through Transitional Justice who provided initial comments on the article.

the ICC has dealt with thus far (except for the Georgia case on 26 January 2016)². This culminates in the sixth section which draws lessons from the ICC/Africa relations for Latin America and the Caribbean countries. It must be admitted from the onset that while the general African Union's (AU) position is that of non-cooperation with the ICC, there are individual African countries who continue to recognise the ICC. These include Senegal, Nigeria and Botswana. The conclusion of the article is that, willingly or unwillingly, the way the ICC treated Africa is tantamount to targeting and that this perception can only be managed if the ICC opened new cases elsewhere, especially in the west.

The International Systems and the ICC: Evil Twins or Symbiosis?

In a debate of this nature, it is imperative to begin by theoretically locating the genesis of the acrimonious relationship between the ICC and Africa. In order to do so, the actual point in history when the ICC was conceived needs to be pinpointed. From a decolonial perspective, the idea of the ICC is traceable back to 1429 when the current international world order was created. While the world order remained the same, the world system continuously changes in order, *inter alia*, to address new challenges such as decolonisation (Wallerstein 1987, 309). This international system was perfected in 1642 when the Treaty of Westphalia was signed (Croxtton 1999). This endowed Western nations with state sovereignty while denying the same recognition to their colonies, a situation which persists until today (Mamdani 2009, 273). Without state sovereignty the colonies in Africa and elsewhere are treated as subjects that lack writing, history, education, health, civilisation, human rights, democracy, development and most importantly, law and order (Grosfoguel 2007, 214). As such, Africa was, and is still being treated as a problem to be solved using western benevolence and intelligence and not as a people with a problem to be solved. This calls into question the circumstances under which the ICC was formed, specifically the question of who is in charge of world order and by extension, for whose benefit or inversely, at whose loss? More relevant to this article is the question as to why, to date, the vast majority of the cases dealt with by the ICC involve only Africans³, more so in a world awash with impunity from Iraqi, Afghanistan, Colombia, Palestine, Syria, Israel and many others.

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- 2 The ICC was also looking into the issue of British soldiers accused of torture in Iraq and also into the atrocities allegedly committed by Israel in Gaza in Rafah in 2001 on what came to be known as 'Black Friday'. It must be noted that the British and the Israeli cases are not yet fully-fledged investigations. The ten current (July 2017) fully-fledged cases are: Georgia, CAR (two cases), Mali, Ivory Coast, Libya, Kenya, Darfur in Sudan, Uganda and the DRC.
 - 3 These cases involve the following countries: the Democratic Republic of the Congo (DRC), Uganda, the Central African Republic (CAR), Darfur/Sudan, Kenya, Libya, Ivory Coast, and Mali. Only on 27 January 2016 did the Prosecutor open a non-African case when the Georgia case was open via *proprio motu*.

The international system which led to the formation of the ICC was rightly characterised by Grosfoguel as ‘hierarchical, capitalist, Christian centric, patriarchal, colonial, modern, Western and Eurocentric’ (2009, 10-38). This system is very resistant to decolonisation such that in order to withstand the onslaught of decolonisation it used several tactics such as the creation of new orders. For example, after the 30 years’ war, the Westphalian sovereignty based state system (Osiander 2001, 251) was created. After World War I the League of Nations was created, and after World War II the United Nations (UN) (Ndlovu-Gatsheni, personal communication, 2015). This brings up the question of the role of order in the international system which the ICC is meant to create and maintain (Rome Statute, Preamble). The role of order is threefold; it disciplines anti-system movements and behaviours; it accommodates anti-system movements and behaviours, and finally it conceals the system (Ndlovu-Gatsheni 2015). This article posits that the ICC, as part of the international system, was created to perform all of the three functions above. By concentrating on prosecuting Africans, the court gave credence to innuendoes that the ICC is targeting Africa in an endeavour to maintain world order and will proceed in due course to do the same in Latin-America and the Caribbean. In order for orders to be carried out, institutions must be created to legally fulfil that mandate. Hence, the creation of UN specialised agencies to ‘police’ specific aspects of human life, such as health by the World Health Organisation, as well as international justice by the ICC and the International Court of justice, etc.

It is against this background that three camps exist, one supporting the work of the ICC in Africa as progressive in the fight against impunity (du Plessis, Maluwa and O’Reilly 2013, Branch 2017) and the other arguing that the ICC is unfairly targeting Africa (Mamdani 2010, 53-67, Boehme 2017, Lugano 2017). The third camp argues that the ICC and Africa are in a ‘mutually vulnerable’ ‘lose-lose’ situation and hence they need each other (Jalloh 2012). Those who consciously support the ‘Africanisation’ of the ICC premise their views on the belief that Africa is a perennially chaotic continent akin to Thomas Hobbes’ (2009 and 1973, 89) state of nature in which life is brutal, barbaric, short and nasty.

The ICC, Latin America and the Caribbean States

As of March 2017, 27 Latin America and Caribbean states were state parties to the Rome Statute (ICC website). That makes them the second biggest bloc after the African states. Together with African states, they comprise just below 50% of ICC members states. Unlike the AU, the Organisation of American States (OAS) does not have an acrimonious relationship with the ICC. The OAS has made significant advances in promoting international humanitarian law such as the adoption of the *Promotion of the International Criminal* which is a guiding set of principles on judicial cooperation with the ICC (Carrasco 2010, 462). However, the existence of this cooperation framework notwithstanding, the OAS member states face serious challenges owing to the lack of

implementation of sections of Rome Statute, particularly the Principle of Complementarity (Articles 1). Some of the areas where the OAS/ICC relations will come into focus relate to the following: the (mis)use of amnesties and other measures to avoid criminal prosecution, victims' right to truth and the irrelevance of personal immunity when it comes to international crimes (Carrasco 2010, 464). It is for such reasons that the OAS needs to draw proactive lessons from Africa regarding how to manage its relationship with the ICC.

The second reason why Latin America and the Caribbean need to learn from the ICC/Africa relations is because of the manner in which the former dealt with matters of post-conflict peace and justice. Latin America gave birth to the famed Truth and Reconciliation Commission (TRC), which was later popularised by South Africa, yet some key tenets of the TRC such as the offering of amnesties in exchange for the truth are illegal under Article 29 of the Rome Statute. Yet without amnesties, the TRC as a transitional justice mechanism will be less effective. Political considerations such as the pursuance of fragile post conflict peace in lieu of justice will surely bring the OAS and the ICC to loggerheads just as was the case with Africa. As Latin America and the Caribbean grapples with decades-old conflicts such as Mexico's drug wars, the Colombian conflict (since 1964), Peru's internal conflict (since 1980), and the Paraguay's People's Army insurgency (since 2005), tools such as amnesties and personal immunities are required to be at their disposal, tools which are not available under the Rome Statute (Articles 24 and 25).

As the struggle against impunity, insurgency and drug wars intensifies in Latin America and the Caribbean, the ICC will become involved, either through state party referrals (Article 14), UNSC referrals (Article 13(b), or on the Prosecutors' *proprio motu* basis (Article 15 (1)). With calls for the ICC to widen its scope beyond Africa, chances are Latin America and Caribbean nations will be next. Sooner rather than later, the ICC will become involved in the fight against human rights abuses in these countries, hence the OAS countries need to draw some lessons from the current ICC/Africa relations which are characterised by acrimony and allegations that the ICC is unfairly targeting Africa while casting a blind eye elsewhere including Latin America and the Caribbean states where worse atrocities have been committed. Colombia's 52-year-old conflict in which an estimated 220 000 deaths occurred mostly as a result of the fighting between government forces and the Revolutionary Armed Forces of Colombia (FARC) rebels (Cappelli 2017) is often cited as a case where the ICC needs to begin its work to Latin America and the Caribbean.

Background to the ICC/Africa Acrimony

The Rome Statute which came into effect on 1 July 2002 officially created the ICC. In principle, while it is based in The Hague, its proceedings can take place anywhere

(Article 3 (3)). The ICC has jurisdiction over four crimes; genocide (Article 6), crime against humanity (Article 7), war crimes (Article 8) and the yet-to-be defined crimes of aggression (Article 5). In principle, the ICC is complimentary to national judiciaries, that is, it is the court of last resort regarding the four crimes mentioned above (Article 1). According to Article 17 (1) (a), the ICC will only investigate cases where national authorities are either *unwilling* or *unable* to do so. In terms of geographical representation, there are 123 countries and territories that are state parties to the Rome Statute. Africa is the most represented continent with 34 member states making the African Union the largest regional grouping of countries within the ICC's Assembly of State Parties (ICC website).

Whether Africa is being targeted by the ICC or not is one of the most topical and divisive contemporary transitional justice issues. The issue has been discussed by many, such as Akande et al. (2010), Abbass (2013) and Tladi (2009, 2013 and 2014). However, most of these analyses were mainly from a legalistic or liberal peace perspective. A comprehensive attempt at grasping the ICC/Africa relationship was undertaken in a special issue of the *New Africa* magazine published eight years ago and is now outdated. This analysis is important because the overall success of the ICC, especially in Latin America and the Caribbean largely depends on how it handles the African question. The ICC needs to win more respect and prove that it was not set up solely to prosecute Africans. Otherwise, its chances of succeeding in Latin America and the Caribbean will be very slim. Sixteen years into its mandate, the ICC has been dealing with 22 cases and nine situations all of which, except for Georgia, involve Africans as the accused, a development that deserves to be interrogated.

In response, Africa stands almost united against the ICC as exemplified by the AU's refusal to cooperate with the court regarding the arresting of the ICC's most wanted war criminal, Sudanese President Omar Al Bashir. Bashir is still at large and enjoying the support of most African countries except Malawi, Botswana and Uganda (Benyera 2014, 97). These countries reaffirmed their commitment to abide by their international legal obligation to arrest ICC suspects in the wake of the July 2009 AU summit's decisions calling for non-cooperation in the execution of such requests (Boehme 2016, 51). The AU's official position on the ICC issue was reached at their 17th summit held from 30 June to 1 July 2011 in Malabo, Equatorial Guinea where African leaders decided to withdraw their cooperation regarding the effecting of ICC warrants of arrest as outlined in paragraph 6 of the *Decision on the Implementation of the Assembly Decisions on the International Criminal Court* (Thipanyane 2011, 4). This position was reaffirmed by the AU when it moved its summit from Malawi to Ethiopia in 2012 after the latter promised to arrest al Bashir and other African leaders issued with arrest warrants by the ICC (Newstime Africa, June 4, 2012). As for South Africa, the al Bashir case resulted in its tendering a notice to withdraw from the ICC in October 2016, only

to withdraw its withdrawal albeit for procedural reasons with all indications that it will resubmit its intention to withdraw in due course.

While the African cases were brought before the ICC through various channels, it is the self-referrals that demonstrate Africa's problematic relationship with the ICC which can be characterised as ambiguous at times and resentful at other times, but never as smooth. At a glance, the role played by other African countries in these cases challenges the allegations that Africa is being unfairly targeted. According to the ICC Prosecutor, Fatou Bensouda:

The DRC, Benin and Tanzania voted in favour of the UN Security Council referral of the Darfur situation to the ICC; South Africa, Gabon and Nigeria voted in favour of the UN Security Council referral of the Libya situation to the ICC. Ivory Coast accepted the jurisdiction of the ICC and undertook to cooperate with the ICC. Kenya's President Kibaki and Prime Minister Odinga pledged support to the Prosecutor's independent decision to open an investigation into crimes in Kenya *proprio motu*. Most recently, Mali referred to the ICC the crimes occurring on its own territory since January 2012 and this was supported by ECOWAS (Bensouda 2014).

The words of the ICC Prosecutor attests to multiple relational complexities, among them intra Africa relationships, the ICC/UNSC relationship and the African Union/ICC relationship.

Given the multiplicity and complexities of the ICC/Africa relationship, it implies that there are various perspectives for undertaking this analysis. One of the orthodox ways is to use the liberal peace interpretation under which the sole focus of the ICC on Africa is interpreted in terms of Africa's undemocratic rule which results in its poor human rights record. Another useful perspective is a purely legal one which assesses each of the African cases before the ICC on their individual merits minus the political emotion. A useful tool in unpacking the ICC/Africa relationship is the concept of decoloniality. Coloniality is the sum of all the negative experiences suffered by Africa, Latin America and the Caribbean and other parts of the formally colonised world in the hands of Euro-America. These experiences include slave trade, imperialism, colonialism, apartheid, neo-colonialism, neo-liberalism and lately globalisation which includes the globalisation of justice as actualised by the formation of the ICC in 2002. Ndlovu-Gatsheni (2013, 11) defines coloniality as "a global power structure that sustains asymmetrical power relations between the Euro-American World and the Global South". Decolonisation differs from decoloniality in that the former was about the removal of the coloniser from the colony back to the metropolis while the later seeks to eradicate the very foundation and edifice of colonisation. Decoloniality helps us understand the constitution and *modus operandi* of the world order. As a concept, decoloniality is efficacious in unearthing, *inter alia*, canonical conundrums such as: who

designed multilateral regulatory institutions and who benefits from them? Whose behaviour must be regulated and whose behaviour must not? Du Sousa Santos' (2007, 45-89) abyssal lines become effectual in understanding the theatre called Africa in which the ICC's legal jurisprudence is being played out.

The views of African countries on the ICC fall into three categories. The first group, which forms the bulk of these countries, believes that the ICC is an imperialist project, a continuation of the subjugation of Africa by the West through the use of institutions such as the ICC (Mamdani 2010, Ndlovu-Gatsheni 2016). These include South Africa, Burundi, Uganda, Sudan, Zimbabwe (not a member), Kenya, Rwanda and Gambia. Of the 34 African members states to the ICC, only two, Nigeria and Senegal were completely opposed to Africa's mass withdrawal from the ICC. Stated differently, of the 132 ICC member states, 32, which is just over one quarter, wanted to leave the court. The second group consists of countries who believed that the court is an ineffective, but necessary instrument. This group includes Gabon and Senegal whose Justice Minister, Sidiki Kaba is also the President of the ICC's Assembly of State Parties. The last group of countries were those that support the ICC and the work it is doing in Africa. Nigeria, Malawi and Botswana belong to this group. Though loose and somewhat general, this categorisation helps in mapping the views and attitudes of African countries towards the ICC. Based on political pronouncements from the AU such as the Sirte Declaration of 16 November 2010 and the decisions by the Gambia, South Africa and Burundi to leave the court, it can be concluded that these precedence-setting withdrawals will certainly trigger more withdrawals from the court. Yet, the counter-argument, pursued in the following section, suggests that Africa is not being targeted but is rather being prioritised, a situation which must be celebrated by those who side with the victims of human rights abuses and desire to see despots held to account, the argument goes.

Of Despots and Cry-Babies

It can be argued that the allegations that the ICC targets Africa lacks merit if one considers the circumstances under which the contentious cases were brought before the court. For du Plessis and Louw (2011, 3), the ICC's heavy workload in Africa need not be exploited by the detractors of the court as a sign of bias. Three of the seven situations under investigation by the ICC involving the DRC, Uganda and the CAR were self-referrals, thereby defeating the claim for victimisation. According to the ICC Prosecutor, who is an African, the unfair targeting of Africa must be viewed as a positive step by Africa which took its responsibility for international justice seriously by being part of the ICC (du Plessis 2008, 24). Only two situations, Kenya and Ivory Coast were opened at the insistence of the Prosecutor (Akhanav 2009, 646). Sudan (UNSC Resolution 1593 (2005)) and Libya (UNSC Resolution 1970 (2011)) were UNSC referrals. The same can be said about the ICC's predecessors, the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone. These were

established by the UNSC at the request of Rwanda and by Sierra Leone respectively to the UN to help deal with impunity in those countries (Fritz and Smith 2001, 402).

In the case of Ivory Coast, although it was then not a member of the ICC, it is the accused, Laurent Gbagbo who accepted ICC jurisdiction in April 2003 when he was leader of the country as provided under the provisions of Article 12 (3) of the Rome Statute. The fact that he was the first Ivorian to be charged under the laws that he had assented need not be interpreted as victimisation. According to Kirsten (2009), if Gbagbo accepted the ICC jurisdiction for any other reason, “then it must have been his desire to have his political opponents prosecuted at The Hague”. The latest call for the ICC to act in Africa came from West African regional bloc, Economic Community for West African States (ECOWAS), who mandated six of their member states to act on behalf of the regional group in resolving the Mali crisis. The group called for the ICC to investigate alleged war crimes in Northern Mali (ICC website)⁴. This was in a statement issued by the ECOWAS Contact Group at the end of a summit on the Malian crisis held in July 2012. The ECOWAS Group requested the ICC to, “to initiate the necessary enquiries in order to identify the perpetrators of these war crimes and to initiate the necessary legal proceedings against them” (ECOWAS 2012). According to those in favour of the work of the ICC in Africa, this cannot be labelled as victimisation.

The number of African cases at the ICC can be taken as a manifestation of Africa’s commitment to end impunity. This view takes the alleged targeting of Africa as a victory for victims of human rights violations in Africa. In any case, the ICC cannot be accused of unfairly targeting Africa because it is not the court of first resort. The principle of complementarity provides that the ICC can only issue warrants of arrest for cases in which there is *unwillingness* or *inability* to prosecute (Article 17(b)), according to Jenks and Corn (2011, 2). In fact, the ICC was criticised for its lack of action in cases where alleged human rights abuses had occurred. These include the atrocities committed by Israel in Gaza in the three-week 2008-2009 war (UN Human Rights 2012), the atrocities committed by President Assad in Syria and the Georgia South Ossetia war of 2008 (du Plessis 2013). For du Plessis, this type of criticism where the ICC is attacked for the failure of the UNSC to secure investigations for Russia, Israel and Syria among others can be equated to the proverbial “choosing the wrong whipping boy” (du Plessis 2004, 11).

While the will to prosecute may exist within the domestic judiciaries of most post-conflict African countries, it is the ability to prosecute that is often lacking due to a number of reasons. This is the case in most conflict and post conflict African states

4 The ECOWAS Contact Group on Mali comprised of the following countries: Benin, Cote d’Ivoire, Niger, Nigeria, Liberia and Burkina Faso and Togo.

where the judiciary systems will be in need of reform before they can fully perform their duties. In the case of Kenya, the “Kenyan-owned/Kenyan-led processes, failed when the parliament could not pass the necessary laws to create a Special Tribunal thus giving the ICC jurisdiction” (Nmaju 2009). It can also be argued that to claim that the ICC targeted Africa is tantamount to arguing that the cases before the court are all frivolous and unfounded. Since the ICC is not the court of first resort, most African cases end up at the ICC owing to the weak state of Africa’s domestic judiciary systems. In this regard, the best way Africa can avoid being ‘targeted’ is by strengthening local courts so that African countries will not have to turn to the ICC. Stated differently, a more effective way which African governments can use to avoid being ‘targeted’ is by improving their human rights record.

One way of reducing human rights abuses in Africa is by making leaders accountable to superior deities and gods that they are familiar with, whom they fear, respect and at times worship⁵. Thus, instead of using the colonially inherited legal system of swearing by the Holy Bible or the Quran when assuming office, they can be made to swear by a god or deity they are familiar with. This way, African despots can be forced to respect human rights fearing punishment from their own gods and deities. The counter argument is the question of what then happens to *bona fide* Christians and Moslems who are ‘genuine despots’?

The ICC is not singling out Africa; instead, this undesired position comes automatically with being an undemocratic member in the international political system. This position was made clear in a speech, *The doctrine of the international community*, delivered in Chicago on April 22, 1999 by Tony Blair. Blair argued that the international system had to change and that the United Kingdom and its western allies would henceforth take action in ending conflicts and preserving human rights in other countries, thereby making themselves (the West) secure (Fairclough 2005). To those who support this view, this makes sense, given the fact that the ICC is an institution without the machinery to enforce its writ. Economically and militarily weak African countries living on western aid do not possess the ability to aid the ICC in enforcing its decisions and the best they can do is to improve on their human rights record.

Regarding the instrumentalisation of the ICC by Africa leaders, it must be stressed that African leaders stand guilty of selectively supporting the ICC when they use it as an instrument to reign in rebel leaders as demonstrated by ECOWAS’ call to the ICC to indict Malian rebels. However, they sing a different tune when the same court tries to

5 Some of the popular African gods and deities include Yoruba’s Shango the storm god, Olorun the ruler of heavens, Eledumare the supreme creator, and Olofi who is the conduit between the heaven and the earth.

arrest one of their own. The reality is that while the ICC can be used in dealing with rebel leaders, it can also be used to bring to justice sitting Presidents, something that African leaders vehemently oppose. Justice Richard Goldstone (2009) who is the former Chief Prosecutor at the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda noted the huge discrepancy between African leaders' silence when the ICC prosecutes former rebel leaders and the political opponents of national governments, and their loud protests against proceedings directed at a fellow president. For Goldstone, the ICC is not a court of convenience to be supported only when it is politically expedient, but a court that tries human rights abuses.

Those who argue that the ICC is targeting Africa can be viewed as guilty of siding with perpetrators of gross violations of human rights instead of celebrating the fact that African victims are getting accountability and justice. In the same vein, places that are not being 'targeted' miss out a chance to get accountability and justice. These places include Iraq, Pakistan, Afghanistan, Israel and Palestine. This view is shared by former UN Secretary General Kofi Annan (2013) who acknowledged the targeting of Africa by the ICC, but instead looked at it as a positive development. While giving a keynote address at the University of Western Cape to mark the 82nd birthday of Archbishop Desmond Tutu, Annan posited that it was time to begin asking why African leaders should not celebrate this focus on African victims. Annan further questioned whether the lack of prosecutions in other parts of the world justifies ceasing prosecutions in Africa. He noted:

I am surprised to hear critics ask whether the pursuit of justice might obstruct the search for peace. Justice is not an impediment to peace but a partner. In adopting the Rome Statute, the international community courageously tipped the balance away from impunity in favour of justice. I was proud that so many African countries, where judicial systems are weak and divisions run deep, provided such strong support for the Court. I am therefore concerned by recent efforts to portray the Court as targeting Africa. I know this is not the case... It is the culture of impunity and individuals who are on trial at the ICC, not Africa (Annan 2013).

South Africa's Chief Justice Sandile Ngcobo (quoted in Laurence 2010) expressed a similar interpretation of the debate, stating that abuses committed in Sub-Saharan Africa were among the most serious, and that the ICC's criteria for the selection of cases was certainly legitimate. He characterised the allegations as "troubling but largely unfounded". Addressing a conference at the University of the Witwatersrand on the future of the international justice system Ngcobo was of the opinion that, "...abuses in sub-Africa (sic) ranked with the most serious in the world and intervention was thus in the interests of international criminal justice". The other reason why Africans, especially war victims, believe that Africa is being targeted emanates from the misunderstood role

of the ICC by victims. For example, in Northern Uganda's Kitgum District a community leader from one of the war-ravaged villages in Acholiland noted that victims expected the ICC to compensate them and return them to their homes after the atrocities committed by both the Lord Resistance Army and the Ugandan state⁶. When that did not happen, they became hostile to the ICC. What that key informant interview revealed is that the ICC is in urgent need to clarify its role if it is to appeal to victims in Africa.

The above notwithstanding, there are those who are opposed to the ICC, primarily on the grounds that it is unfairly targeting Africa to the point of victimisation. This phenomenon is called coloniality of power (Quijano 2000). This is a situation in which the international justice system is bifurcated, deliberately designed and implemented in such a way that it ensures that Africa remains trapped in the colonial matrices of subjectivity and subjugation through the use of pseudo legal institutions that masquerade as courts of law (Ndlovu-Gatssheni 20014: 193).

By Any (Legal) Means Necessary

That Africa is the ICC's favourite 'customer' is undeniable. The ICC was described as a Western court to try African crimes with radicals naming the ICC, the International Criminal Court for Africa. Among these discerners is Mahmood Mamdani (quoted in New Africa 2012) who noted that:

The fact of mutual accommodation between the world's only superpower and an international institution struggling to get its bearings is clear if we take into account the four countries whereby [by 2009] the ICC had launched its investigations: Sudan, Central African Republic, Uganda and D R Congo. All...are places where the US has no objection to the course charted by the ICC investigations ... The ICC's attempted accommodation with the powers that be has changed the international face of the Court. Its name notwithstanding, the ICC is rapidly turning into a Western court to try African crimes against humanity. Even then, its approach is selective: it targets governments that are adversaries of the US and ignores US allies, effectively conferring impunity on them.

Mamdani continued:

In Uganda, for example, where nearly a million people have been forcibly displaced in the throes of a government-executed counterinsurgency, the ICC has charged only the leadership of the LRA but not the pro-United States government. Mamdani (2009, 283)

This does not present the ICC as an impartial international justice institution, but rather one which is a willing instrument of major powers in pursuing and attaining their

6 Key informant interview with the author on Tuesday September 22, 2011 in Kitgum, Northern Uganda.

national interests. Those who consciously support the Africanisation of the ICC base their views on the belief that Africa is a perennially chaotic continent akin to Thomas Hobbes' state of nature in which life is brutal, barbaric, short and nasty (Hobbes 2009, 89). As such, the argument goes, Africa is still in need of civilisation and is therefore a legitimate theatre of the ICC to develop its jurisprudence. Such arguments supporting the ICC's work in Africa are guilty of arguing from a colonial positionality that sees Africa as a problem to be solved using western benevolence and intelligence.

This view is best represented by Rwandan President, Paul Kagame who in a radio interview on 31 July 2008, dismissed the ICC saying it was made for Africans and poor countries and that Rwanda will not be part of colonialism, slavery and imperialism (Arief, Margesson, Browne 2009: 23). Kagame's views were given weight by former British Foreign Affairs Minister, the late Robin Cook who was unapologetic about this perception. In a widely quoted interview with Jon Holbrook (quoted in Bosco 2014: 66), he stated that, "...If I may say so, this is not a court to bring to book Prime Ministers of United Kingdom or the Presidents of the United States".

From the above sentiments, it can be concluded that such explicit views by high-ranking officials of a powerful western nation contradict the views that the ICC is a global impartial court. Odero (2011, 155) alleges that the ICC's cases were limited to Africa because of geopolitical pressures, either out of a desire to avoid confrontation with major powers or as a tool of western foreign policies. Similar sentiments were expressed by the then President of the AU Commission Jean Ping when he addressed a news conference at the AU summit in Addis Ababa in January 2011. Ping categorically stated that the ICC always targeted Africans. He queried why nothing happened to those responsible for human rights abuses in Gaza, Iraqi, Argentina, Sri Lanka, Myanmar, Colombia or the Caucasus. Ping concluded that the ICC has double standards, asserting at the AU Summit of February 2009 in Addis Ababa that, "...we think there is a problem with the ICC targeting only Africans, as if Africa has been a place to experiment with their ideas" (quoted in du Plessis et al. 2013, 11). Regimes that enjoy western support such as Museveni's Uganda have not been referred to the ICC especially for its invasion of the DRC in 1990 (Okowa 2006, 744). This attests to the view that the ICC is a creature of politics rather than justice. However, it can also be argued that many anti-west African leaders with ghastly human rights abuses records also tend to criticise the ICC as being a colonial instrument. Zimbabwe's Robert Mugabe is an apt example of such leaders who opportunistically criticise the ICC and present themselves as victims of western imperialism yet they will be despots and tyrannies at home.

Besides Rwanda's Kagame, Mugabe also castigated the ICC. Addressing the UN General Assembly in September 2011 Mugabe labelled the ICC a blind kangaroo court with no jurisdiction over Zimbabwe just as it has no jurisdiction over the United States. He observed that the ICC turned a blind eye to the human rights violations committed

by western nations under the guise of North Atlantic Treaty Organisation (NATO). Mugabe (quoted in The Sunday Mail September 23, 2011) reiterated that:

...the leaders of the powerful western states guilty of international crimes like [George] Bush and [Tony] Blair, are routinely given the blind eye. Such blatant selective application of [international] justice eroded the credibility of the ICC on the African continent.

Since the Rome Statute does not include geography as part of its prosecution criteria, what then explains the fact that 100% of those under ICC prosecution are Africans, more so in a world awash with war criminals? Until a non-African, or better still, a person from the western nations is prosecuted, the ICC will retain the label that it targets Africa. More evidence that the ICC targets Africa can be found in its case selection criterion which is open to manipulation especially by powerful nations. Great power politics lies at the root of the ICC's flawed case selection criteria in which a political organisation (the UNSC) has control over a legal entity (the ICC). This annihilated the separation of powers which is necessary for checks and balances to occur. Additionally, and as contended by Clark (2008: 765-837), the design of the ICC case selection criterion leaves room for manipulation as the Prosecutor is allowed too much discretion. From Clark's argument, it can be deduced that the selection criterion was so loose that its existence amounts to non-existence. This led to Africa being used as a guinea pig, with the Prosecutor being too selective against Africa when it comes to arresting, indicting and prosecuting perpetrators of war crimes and crimes against humanity. This argument responds to Africa's self-referrals which have been largely politicised by the referring countries such as Uganda which aimed to reign in the Lord's Resistance Army while downplaying state-led atrocities.

ICC's Three Centres of Power and Accountability

In principle, the ICC is accountable to the state parties. In practice, the UNSC has a bigger influence on the court than the state parties. This dotted line of accountability is drawn from Chapter 5, Article 24(1) of the UN charter. It states that,

In order to ensure prompt and effective action by the UN, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

A third and finer line of accountability, yet equally strong is that ascribed to the funders, most of whom are UNSC members. This creates a dilemma of accountability at the ICC, more so when the three power centres (the UNSC, ICC state parties and the funders of the ICC) are in conflict or hold divergent views on a matter. African State parties to the ICC, for example, prefer sequencing when it comes to dealing with African problems

whereas the UNSC prefer criminalising the respective heads of states accused of committing international crimes. Massive atrocities have been committed elsewhere under the nose of the ICC yet it remained inactive, only to regain its voice where Africa is concerned. There are many cases that have been ignored by the Prosecutor including, but not limited to the 2008 case in which the UN reported that US, NATO and Afghan forces were responsible for over 828 civilian deaths in Afghanistan (Miller 2010: 174). Most of these were the result of US and NATO air strikes. This can be juxtaposed against the death of 157 protesters during a demonstration in Guinea Conakry (CBC News September 29, 2009) which is the subject of an official ICC investigation. Whilst the death of 157 protestors is regrettable and not condonable, the death of 828 Afghan civilians is also condemnable and worth the ICC's attention.

Major Western Powers and the ICC

The influence of major western powers appear not to be limited to case selection alone as they are also the major funders of the ICC. This raises more fears in Africa that the ICC lacks independence which concomitantly affects its autonomy and effectiveness. It can also be argued that the international community monopolises the conceiving, implementation and funding of the bulk of the transitional justice programme in Africa. According to Ooman (2005, 175-202) funds transferred to 'developing' and 'transitional' states under the headings of 'human rights' and 'legal and judicial development' grew from less than US\$500,000 in 1988 to US\$581 million in 2002. This argument is corroborated by the fact that up to July 2007, EU member states contributed 75.6% of the ICC's budget (Wouters and Basu 2009, 21). According to the same report, this was before Japan started funding the ICC which saw the EU's contribution shrink to 57.4%. As of 2014, Japan was still the court's major contributor with US\$23,097,900.00 followed by Germany US\$ 15285375.00 (Escritt and Williams 2015).

The European Union still dominates the court's funding. While in principle, there is nothing wrong with western nations funding the ICC, Africa feels aggrieved when those funding the ICC are also expected to be investigated by the same court, an event that remains a pipe dream judging by the current trajectory of the international justice system. Calls by Israel to its friendly nations to stop funding the ICC is clear testimony of the instrumentalisation of the ICC by those with political, military and economic power (ibid). The sticking point is Africa's inability to fund its own version of the ICC, in this case the African Human Rights Court. The need of such an additional supra national court was seen by Nsonguroua (2003) as a needless duplication of the work being done by the ICC. However, Mutua (1999, 342) was of the opposite view, noting that the court could serve three purposes; first, the "development of the law of the African Charter and other relevant human rights instruments", second, bridging the gap

left by the African Union and third to “penetrate the legal and political cultures of African states to inspire, encourage, and ensure the internalization of human rights”.

Instrumentalisation of the ICC

One of the greatest challenges facing the ICC/Africa relations stems from the perceived instrumentalisation of the ICC, especially by major western countries and their allies. Branch (2012, 121-137) provides several reasons why the ICC is open to international political instrumentalisation. He points to the deliberately flexible and undefined concepts in the international justice system such as the Responsibility to Protect (R2P) and humanitarian intervention which are open to instrumentalisation because of their vagueness and lack of objective criteria. To that effect, Branch notes that the ICC has proved itself to be a willing and useful tool in the American foreign policy arsenal, especially in Uganda and the Sudan. This was done by aligning itself with the Ugandan government in pursuit of the LRA rebels, and then using the UNSC, a political entity, to bring in the ICC to prosecute the LRA rebels (Branch 2007). What the international justice system simply did was twofold: (1) It legitimised Ugandan government’s atrocities, (2) it allowed a non-ICC member to determine how the ICC operates. In Libya, the stoic enthusiasm with which the ICC launched the case speaks volumes about the extent to which it has allowed itself to be abused. The speed and manner with which the prosecutor launched this case also betrays the ICC's willingness to be instrumentalised as part of the UNSC politics.

The Use of Gravity to Determine Case Severity

One mechanism used by the ICC through the Office of the Prosecutor to target Africa is the use of loosely formulated provisions in the Rome Statute. One of these formulations is the use of gravity to determine the seriousness of a crime. The Statute requires that the Prosecutor consider the ‘gravity’ of a case as enshrined in Articles 17 and 53. This is despite the fact that the actual meaning of the term is mysteriously not made clear in any of the ICC’s founding texts. Former Prosecutor Luis Moreno-Ocampo (2002-2012) adopted a broad interpretation of ‘gravity’ (Stegmiller 2009). The notion of ‘gravity’ is not defined in either the Rome Statute nor the Rules of Procedure and Evidence. This leaves the notion as a grey area in the work of the ICC. In principle a broad interpretation as adopted by Moreno-Ocampo takes into account several factors such as, but not limited to, the number of victims, the nature of the crimes alleged and their ‘impact’ both locally and internationally (Stegmiller 2009, 550-551). It does not surprise those opposed to the ICC’s biased operations in Africa that the 14 deaths of AU peacekeepers, while regretted, warranted the issuance of a warrant of arrest while that of estimated 600 000 civilians in Colombia does not. When presented in the form of a question, this problematic can be posed as: how does one compare an attack on peacekeepers to genocide? The net effect of this ambiguity is that while the rest of the

world will remain as 'situations' before the ICC, African cases rapidly accelerate from 'situation' to 'case' with most starting as straight cases.

The notion of selectivity within the international criminal justice is traceable to the days of the ad hoc tribunals. Richard Goldstone pinpointed this selectivity when he stated that:

The problem with the UNSC is that it says no in the case of Cambodia, Mozambique, Iraq and other places where terrible war crimes have been committed, but yes in the case of Yugoslavia and Rwanda. It is noteworthy that no ad hoc tribunals would ever be established to investigate war crimes committed by any of the five permanent members of the United Nations Security Council or those nations these powerful states might wish to protect (in Imoedemhe 2015, 80).

Selectivity Within Selectivity

The ICC is also guilty of what can be termed selectivity within selectivity. Even in cases where Africa has been unfairly targeted, there is also blatant selectivity of investigation. The Ugandan case illustrates this point. The Ugandan government is not being investigated despite evidence of its involvement in human rights abuses in Northern Uganda committed in their pursuit of the LRA (Akhavan 2005, 404). This adds partisanship on top of selectivity. In 2005, Uganda was found guilty of massacring civilians, invading and plundering the resources of the DRC by the International Court of Justice (ICJ), yet the ICC took no notice of this case. In spite of the overwhelming evidence from the ICJ, the ICC ignored the crimes committed by the Ugandan authorities in DRC and instead indicted Thomas Lubanga for recruiting child soldiers (Schabas 2008, 737).

The role of great power politics in selectivity within the ICC's case selection is undeniable as exemplified by the Ivorian case. In April of 2003, President Laurent Gbagbo submitted a declaration of self-referral to the ICC accepting ICC jurisdiction (Akhavan 2009). His government invited the ICC to open investigations into 'grave abuses' allegedly committed by now President Ouattara supporters, the rebel group Forces Nouvelles (Bovcon 2014). The ICC visited Ivory Coast but took no further action pertaining to the requested investigations (Corey-Boulet 2012). In 2010, after President Ouattara, a former World Bank technocrat was sworn into office, he re-invited the ICC and called on the Court to investigate alleged crimes committed in the post-election period by his rival Gbagbo (Cook 2012, 1). The ICC was more than keen not only to open investigations but also to incarcerate Gbagbo (Cava et al. 2005, 37-46). President Alassane Ouattara's government referred the Côte d'Ivoire situation and surrendered Gbagbo to the ICC in 2011, before Côte d'Ivoire became a state party in 2013 (Heller 2016, 1). For Corey-Boulet (2012) this is victor's justice par excellence and not impartiality, no matter how it is interpreted.

Africa and other economically poor nations without strong allies in the UNSC feel targeted because the Rome Statute has loopholes that can be utilised to provide an escape route for those accused of serious crimes but with clout in the UNSC. These include Israel which enjoys strong ties with the United States and Britain and Syria, which is a strong Russian ally. African countries got UNSC referrals owing to their reduced utility post the cold war on top of their political and economic weakness. Selective referrals and the alleged coercion of non-members to submit themselves to the ICC has been criticised by both India and Zimbabwe with India stating officially that the power to bind non-state members to any international treaty is not a power given to the UNSC by the UN charter. Under the Law of Treaties (Article 34 of the 1969 Vienna Convention), no state can be forced to accede to a treaty or be bound by the provisions of a treaty it has not accepted.

The Sudan case becomes an interesting example in this regard. Of specific interest, here are the provocations which were aroused in Africa by the issuing of the warrant of arrest for al Bashir. Many believe that al Bashir was entitled to immunity as a sitting head of state (Gaeta 2009, 45-64). The AU, at the February 2009 summit in Addis Ababa, Ethiopia, expressed concern over the ICC prosecutor's intention to seek the warrant when political negotiations were on-going (AU 2009). The AU sought to have the UNSC, which had referred the case, to halt the issuing of the warrant, thereby giving dialogue a chance (Akande and Shah 2010, 815-852). Besides undermining the then on-going peace talks, the warrant risked irking supporters of al Bashir, thereby further compromising Sudan's fragile political stability (Imoedembe 2015, 89). The UNSC failed to agree with the AU's proposal for sequencing preferring to proceed with efforts to arrest al Bashir (ICC June 6, 2005).

The peak of the AU's response was a decision in Sirte, Libya on July 3, 2009 when the Fifth Ordinary Session of the AU Assembly resolved that:

because the request by the African Union has never been acted upon, the AU Member States shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC relating to immunities, for the arrest and surrender of President Omar El Bashir of The Sudan (African Union, Sirte Resolution of the African Union 2011).

These views can be summarised by quoting the words of Geis and Mundt (2009) who posited that:

...although the ICC was established as an impartial arbiter of international justice, both the timing and nature of its indictments issued to date suggest that the intervention of the ICC in situations of on-going conflict is influenced by broader external factors.

Lessons from Africa for Latin-America and the Caribbean

Whether by design or otherwise, the ICC is abusing Africa and this presents fundamental lessons for Latin America and the Caribbean countries, severally and jointly. While the purpose of the ICC as an institution for establishing and maintaining international justice is noble, the implications of the way it operates are tantamount to abusing Africa. This creates stigma attached to the ICC which needs serious and urgent attention from both parties. The destigmatisation of the ICC will benefit both the ICC and Africa, but mostly African victims of gross human rights abuse. If the situation is not normalised, negative externalities will continue to accrue to victims who assume the position of the proverbial suffering grass when elephants fight. For many Africans, the ICC will continue to be perceived as a court experimenting in Africa and on Africans using a western legal mode of international justice whose initial shortcomings reside in its stillbirth and are epitomised in its flawed Statute. The following lessons can be drawn from the targeting of Africa by the ICC.

The first lesson is that the OAS needs to adopt a united stand in favour of or against the ICC. A fragmented approach to the court in Africa includes three camps; two in favour of the ICC and one against it. Of the two camps in favour of the ICC, one believes the court is doing a great job while the other believes it is a noble cause being wrongly implemented. The final group of countries are completely against the ICC and are on the verge of withdrawing. Such a fragmented approach will weaken the resolve of the OAS as in Africa.

The second lesson is to develop continental international justice mechanism capabilities, hence reducing reliance on the ICC. The delayed operationalisation of the African Court of Human and Peoples' Rights (AfCHPR) presents key lessons for the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. The main lesson is that the court needs to have an avenue for individual victims to directly bring cases before the court or the Commission. Secondly, the Inter-American Court needs to trim its procedures and make it less judicious so that it appeals to more victims of human rights abuses. The African Court of Human and Peoples' Rights lacks jurisdiction to try ICC related crimes, hence the decision to add a third chamber to deal with international crimes (Murungu 2011). The inclusion of article 46 A Bis, which grants immunity to African heads of state, remains a contentious issue, one which renders the involvement of the ICC in Africa a continued necessity⁷. The

7 Article 46A bis amendment of the Malabo Protocol provides that: "No charges shall be commenced or continued before the Court against any serving African Union Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office".

Inter-American Court also needs to initiate negotiations with the ICC on matters that they object to about the ICC's operations pre-emptively, and not reactively.

There is also a lesson to the Inter-American court in that it needs to align its transitional justice mechanisms to the Rome Statute. This will make it easy for the three levels of criminal to be aligned, i.e., the national courts, the Inter-American Court and the ICC. This was the ICC Principle of Complementarity that will be easy to operationalise. Friction between these three layers of the international criminal justice systems will be greatly reduced if the national legislations and regional courts are *intra vires* the ICC.

The ICC needs to undertake a serious introspection in order to come up with a plan of action to sell itself to Africa first and then to the rest of the world, especially to Latin America and the Caribbean. The ICC can remedy the situation by taking a number of practical steps towards the normalisation of its realisations with Africa. One such move is the opening of regional liaison offices like those planned for Addis Ababa. Hopefully, the physical presence of the ICC in multiple cities in Africa will assist normalised ICC/Africa relations, and most importantly, create a perception among the victims that the ICC is not an alien institution. The OAS can take this initiative further by collaborating with the ICC in the opening of such regional ICC liaison centres in Latin America and the Caribbean. San Jose in Costa Rica would be a good starting point, as it is the seat of the Inter-American Court of Human Rights.

Also worth considering is the option to have ICC judges working with national courts in conflict and post-conflict states of Latin America and the Caribbean. This will help expedite judiciary reforms and reduce the need to depend on the ICC for international criminal justice. The symbiosis between the ICC judges and the national courts will help in skills transfer and authenticating national justice systems in the aftermath of gross violations of human rights. Referring those suspected of worse war crimes to the ICC under these circumstances becomes much easier and will not be perceived as victimisation. Strengthening national justice systems is ideal for both the ICC and Latin America and the Caribbean in that it will afford the national justice systems an opportunity to competently handle their own cases, leaving the ICC to do what it was created to do, that is, being the court of last resort. Hopefully, this will lead to a situation where neither Africa, Latin America nor the Caribbean will need the ICC.

Another ICC/Africa contention where Latin America and the Caribbean can draw lessons is the peace versus justice debate also characterised as politics versus law by the ICC Prosecutor Ms Fatou Bensouda. How can the ICC implement its legal mandate while Latin America and the Caribbean countries execute their own political mandates without the two clashing? For the ICC, political considerations such as the need to preserve precarious peace have no place in the judicial process of the court while for Africa, Latin America and the Caribbean judicial processes must complement political

processes. Latin America and the Caribbean therefore need to start considering the management of the relationship between the international judicial mandate of the ICC and their political mandates in a symbiotic and not conflictual manner.

The ICC has also been heavily criticised for not allowing sequencing to occur in Africa, preferring what Murithi (2013: 7) termed ‘prosecutorial fundamentalism’. The lesson is that Latin America and the Caribbean need to embrace the ICC at a rapid pace. This will convince the ICC to move away from its preoccupation with ‘prosecutorial fundamentalism’ and gravitate towards the process of sequencing, which is a mechanism that allows for reconciliation to be given preference in order to stabilise conflict and post-conflict states. Preferring sequencing over ‘prosecutorial fundamentalism’ will also contribute towards preserving the revered notion of state sovereignty by allowing nations the first attempt at curtailing impunity.

A lesson drawn from the ICC’s current case selection criteria is that case selection must be done in consultation with the regional bodies so that case selection is done consistently and transparently so that allegations of selectivity are avoided. The Inter-American Court of Human Rights needs to seize the initiative and play a leading role in case selection. This can be done by actively referring qualifying cases which the Inter-American Court would have deemed to qualify for ICC prosecution. A credible case selection criterion for the Inter-American Court on Human Rights needs to pass the following tests: legality, independence, impartiality, clarity, coherency, objectivity, non-discrimination, publicity and flexibility (Boas and Oosthuizen 2010, 5). Like the AU, the OAS needs to depoliticise the Inter-American Court on Human Rights if the court is to aptly play its complimentary role, that is, acting as a link between the member national judiciaries to the ICC. This separation of powers is necessary at the ICC/Africa level, ICC/OAS level as it is desirable for the ICC/UNSC relationship. Latin America and the Caribbean countries need to develop mechanisms to identify and navigate the often purely political interests that key actors in the international justice systems such as the UNSC and some of its member states usually possess. This should take into cognisance the political aims of member states and reconciling them with the judicial functions of the ICC. More diplomacy and less confrontation would be efficacious.

Two other options worth pursuing by the Latin American and Caribbean states is encouraging the ICC to adopt an alternative interpretation of the law which is more positive and supports pursuing the amendment of the Rome Statute to render it palatable to their demands without compromising the integrity of the court.

Conclusion

The article debated the ‘victimisation’ of Africa by the International Criminal Court. It began by pinpointing the rancorous relationship between the International Criminal

Court and Africa as originating from 1429 when the current international world order was created. Conceptual, historical and political similarities between Africa, Latin America and the Caribbean countries were also mapped. The article argued that the fact that the ICC has thus far mainly dealt with African cases, is not by accident since African countries have one the poorest human rights records, and that Africa is economically and militarily weak and depends on the west for support (economic, military). From a decolonial perspective this constitutes what is termed coloniality of power, it was argued. This decolonial neo-imperial view of the ICC resonates with most African countries. Yet there are two more groups of African countries, one believing that the ICC is a good court that is only doing a bad job and the other believing that the ICC is indeed doing a very good job of curtailing impunity in Africa.

Having mapped these three broad categories of African countries' view on the ICC, the article then debated the two sides, one advocating for Africa to leave the court *en masse* and the other wanting Africa to remain within the Court and agitate for whatever changes they desire from within. Whilst the ICC has thus far only dealt with African cases and is yet to commence any investigations elsewhere in the world including the Caribbean and Latin American countries, it was argued this presents a propitious opportunity for the later countries to draw lessons on how they should deal with the ICC when the times comes. The conclusion of the article is that, willingly or unwillingly, the ICC is targeting Africa. Both Africa and the court need to take certain steps to remedy the situation. The ICC needs to open investigations elsewhere, especially in Europe and the Americas and the African Union needs to expedite the operationalisation of the African Court of Human and Peoples' Rights. As of now the court lacks jurisdiction to prosecute ICC-related crimes, hence the decision to add a third chamber to deal with international crimes. The inclusion of article 46 A Bis, which grants immunity to African heads of state, remains a contentious issue. Curtailing impunity while simultaneously developing its own capacities is the best way for Africa to avoid being targeted or 'targeted'.

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