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Department of Political Science and Public Administration

CRIMINAL PROSECUTIONS OF THE INTERNATIONAL CRIMINAL COURT A STUDY ON COURT STANDARDS FOR CRIMINAL JUSTICE IN AFRICA

Master Thesis

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Turkish Abstract : Bu nedenle tez, ICC'nin adalet ve hakkaniyete ilişkin konumunu açıkça tartışmakta, dolayısıyla ICC ile Afrika ülkeleri arasındaki dostluğun değişmesinin nedenini analiz etmektedir. Bunu yapmak için, tez, görüşmelerin kullanılması yoluyla nitel bir araştırma metodolojisini benimsemiştir.

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DECLARATION

I hereby declare that in the preparation of this thesis, scientific ethical rules have been followed, the works of other persons have been referenced in accordance with the scientific norms if used, there is no falsification in the used data, any part of the thesis has not been submitted to this university or any other university as another thesis.

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SUMMARY

A major element of justice is that it must apply to all, regardless of power, status, or position. The International criminal court (ICC) was founded as a global court to ensure that every individual is held responsible for international crimes that they commit. However, the support enjoyed by this court is fast waning out owing to principles such as anti-impunity, complementarity and referral powers granted to the United Nations Security Council (UNSC). The ICC which was once greatly supported by African nations is now regarded as a racist organization by most African countries of its position in ensuring that justice is served to all.

For this reason, the thesis explicitly discusses the position of the ICC regarding fairness and equity, therefore, analysing the reason for the change of friendship between the ICC and African countries. To do this, the thesis adopted a qualitative research methodology, using interviews. Interviews were made with 7 research participants who were professors and diplomats in Nigeria and Uganda. Nigeria and Uganda were selected since Nigeria is seen as a supporter of the court, whereas Uganda is an opposition of the ICC.

Based on the interviews conducted, it was seen that the Nigerian research participants appraised the position and duties of the ICC, whereas the Ugandan participants expressed their concerns over issues such as the anti-impunity norm, and the UNSC referral rights which they felt should be scrapped or amended.

The theoretical framework of the study is based on the norm localization model of Amitav Acharya, explaining how weaker states may want to repel or revolt against norms that they felt are not satisfactory or against their wishes. The repellent, in this case, is shown by African nations who believe that African leaders should enjoy immunity- a wish which goes against the general belief of anti-impunity.

Keywords: International Criminal Court, Norms, African Union, Complementarity, Conflict, Justice.

ÖZET

Adaletin önemli bir unsuru, güç, statü veya konum ne olursa olsun herkese uygulanması gerektiğidir. Uluslararası ceza mahkemesi (ICC), her bireyin işlediği uluslararası suçlardan sorumlu tutulmasını sağlamak için küresel bir mahkeme olarak kurulmuştur. Ancak cezasızlık, tamamlayıcılık ve Birleşmiş Milletler Güvenlik Konseyi'ne (BMGK) tanınan sevk yetkileri gibi ilkeler nedeniyle bu mahkemenin aldığı destek hızla azalmaktadır. Bir zamanlar Afrika ülkeleri tarafından büyük ölçüde desteklenen ICC, adaletin herkese sunulmasını sağlamadaki konumu nedeniyle bugün Afrika ülkelerinin çoğunluğu tarafından ırkçı bir örgüt olarak görülüyor.

Bu nedenle tez, ICC'nin adalet ve hakkaniyete ilişkin konumunu açıkça tartışmakta, dolayısıyla ICC ile Afrika ülkeleri arasındaki dostluğun değişmesinin nedenini analiz etmektedir. Bunu yapmak için, tez, görüşmelerin kullanılması yoluyla nitel bir araştırma metodolojisini benimsemiştir. Nijerya ve Uganda'da profesör ve diplomat olan 7 araştırma katılımcısı ile görüşmeler yapılmıştır. Nijerya mahkemenin bir destekçisi olarak görüldüğü için Nijerya ve Uganda seçildi, Uganda ise bir muhalefet.

Yapılan görüşmelerde Nijeryalı araştırma katılımcılarının UCM'nin pozisyonunu ve görevlerini değerlendirdikleri, Ugandalı katılımcıların cezasızlık normu, BMGK sevk hakları gibi konularda endişelerini dile getirdikleri veya iptal edilmesi gerektiğini düşündükleri görüldü. değiştirilmiştir.

Çalışmanın teorik çerçevesi, Amitav Achraya'nın norm ikincil modeline dayanmaktadır ve daha zayıf devletlerin tatmin edici olmadığını düşündükleri normlara veya isteklerine karşı nasıl isyan etmek veya isyan etmek isteyebileceklerini açıklamaktadır. Bu davadaki itici güç, Afrika liderlerinin dokunulmazlığa sahip olması gerektiğine inanan Afrika ulusları tarafından gösteriliyor - bu, cezasızlık karşıtı genel inanışa aykırı bir istek.

Anahtar Kelimeler: Uluslararası Ceza Mahkemesi, Normlar, Afrika Birliği, Tamamlayıcılık, Çatışma, Adalet.

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ABBREVIATIONS

AU:	Africa Union
BBC:	British Broadcasting Corporation
ECOWAS:	Economic Community of West African States
ICC:	International Criminal Court
ICTR:	International Criminal Tribunal for Rwanda
ICTY:	International Criminal Tribunal for Yugoslavia
JEM:	Justice and Equality Movement
SLM:	Sudan Liberation Movement
UK:	United Kingdom
UN:	United Nations
UNSC:	United Nations Security Council
US:	United States

CHAPTER ONE

BACKGROUND OF THE STUDY

1.1 Introduction

Having gone through two world wars as well as multiple conflicts and armed violence across the globe, it became of increased concern for the international community to organize a permanent judicial institution which would hold persons responsible for the crimes that they commit. Similarly, conflicts which occurred before the formation of the International Criminal Court (ICC) usually proceeded through the usage of temporary ad-hoc. For this reason, there were noninstitutionalized provisions on how to judge cases relating to international crimes since they were no permanent international courts for this purpose.

As a means of solving the issue of a lack of a permanent international court, the United Nations and other international actors made calls toward the establishment of a judicial body (Slany, 1972). The call to formulate a permanent international court is borne out of a global realization that the world needs a structured global approach to punish offenders of international crime and to ensure that every person is provided justice when needed. Similarly, it was inherently difficult to set up an ad-hoc tribunal or commission for every international crime committed, therefore, it became extremely important to establish a permanent court which will prosecute offenders of international crimes.

To formulate the international court, the International Law Commission (ILC) was set up after World War II which then provided a draft statute for an international court in 1984 (ILC, 1984). This draft statute would later be signed by 120 states in Rome on July 19, 1988, hence, becoming the Rome Statute which established the (ICC) (Bosco, 2014, p. 24).

As a permanent international court, the ICC was bestowed with the power to investigate and prosecute offenders of international crimes. Based on the Rome Statute, international crimes include genocide, war crimes, crimes against humanity, and crimes of aggression (Du Plessis, 2008, p. 15). As mentioned by Hopgood (2013, p. 24), the jurisdiction of the ICC as highlighted in the Rome Statute showed that the main purpose of the court was to promote and protect human rights, especially in places where such protections are not easily provided. Therefore, the ICC became a court where individuals are sure of getting justice in cases where their human rights are abused.

It is pertinent to note that conflicts and mass human rights violations are common in the international society, human continue to record alarming levels of civil conflicts, international wars, and even political and social disturbances over the years. These events created human violations in various parts of the world, some of which occurred on a large-scale drawing both local and international concerns. The results of wars and conflicts are regarded as a common experience since the international system and human nature may be viewed as conflictual according to the realist school of thought, however, these results are usually man-made and judicial action must be taken to hold everyone responsible for the crimes committed.

This shows the focus of the ICC which seeks to ensure that every party to an international conflict is held responsible for their actions, therefore, victims are not left to suffer without justice, nor can offenders go free without having to face to law. Since it is eminent that human rights violations must occur in a conflict, the position of the ICC to protect the rights of all persons is increasingly important. Owing to the jurisdiction of the ICC, it is essential to understand the elements of conflicts that are admissible by the ICC due to the belief that not all conflicts are hostile. According to the International Court of Justice (ICJ) (1945), some common elements of conflicts include; loss of human lives, loss of property, inhumane treatment, human abuse, and even loss of means of livelihood. For this reason, perpetrators of atrocities during conflict times must be punished and face justice.

Conflicts do not just occur in the political sector, rather, they could be a result of accumulated challenges in both local and international settings in all sectors. When two parties enter any conflict, deliberations are made with hopes to establish a peaceful settlement. However, in instances where peaceful settlement areas are not reached, then the accumulated political challenges become a state of chaos and confusion which may then eventually lead to domestic or international conflict. It becomes inherently important for violators of human rights during these conflict times to be held responsible for their actions, leading to the creation of judicial organizations exhibiting both local and international jurisdiction (Austin and Thieme, 2016, p. 348). Similarly, these judicial organizations are founded to ensure that victims of conflicted regions are granted justice and the offenders are held responsible.

In its quest for the provision of justice and prosecution of cases related to human rights violations, there have been a series of international judicial provisions, tribunals, and ad-hoc courts created to efficiently prosecute offenders of international crimes. As highlighted by Okpe (2018), some examples of these international arrangements include the Leipzig Trial and

Nuremberg Tribunals which were created to prosecute Germany after World War II. Other examples include the International Criminal Tribunal for former Yugoslavia (ICTY) which was created to prosecute offenders during the Yugoslavian war and the International Criminal Tribunal for Rwanda (ICTR) which was the main judicial provision by the international community to prosecute offenders of the Rwandan Genocide.

It is pertinent to note that similar to other international organizations, the international tribunals and trials highlighted above all had their jurisdiction and principles under which it acts under. Similarly, the Rome Statute which is the founding treaty of the ICC is the binding arrangement under which the member states are supposed to act. Similarly, since this is the founding principle of the ICC, member states are encouraged to abide by the rules highlighted under the Rome Statute.

Following the enforcement of the Rome Statute on July 1, 2002, there have been multiple debates on the legitimacy of the ICC and its function as an independent and equitable institution. More particularly, the ICC is constantly faced with opposition from persons who accuse the court of being biased in its dispensation of justice since most of its cases are from African countries. This has created a discussion of selectivity and biasness, which for others may even be referred to as racism.

Similarly, the increased number of African cases at the ICC despite the increased human rights abuse by Western nations has led the majority of African countries to think the ICC is just fulfilling a world order where the developed West are available to mostly punish the undeveloped third world nations. Additionally, this generates a debone of inequality which for an international permanent court is regarded as a serious problem. As highlighted by Ofuho (2000, p. 109), the comparison of African cases with other continents raises a concern of selective bias targeted at African nations, even though there is more than enough evidence to hold persons in other continents responsible for human rights violation.

Therefore, the thesis is inherently important to discuss the legal arrangements of the ICC and to understand the current relationship between the ICC and African nations. Most importantly, the thesis seeks to discuss the principles applied by the ICC which may be viewed as problematic or unacceptable to African nations, therefore, creating a basis for the negative relationship between the ICC and African nations. Most importantly, the study is organized to understand whether the ICC is biased in its provision of justice as argued by its oppositions.

1.2 Statement of the Problem

International judicial institution founded as a world court to prosecute and punish offenders accused of committing heinous crimes relating to international law is now accused to be biased and racist in its actions (deGuzman, 2018, p. 12). The ICC garnered support from numerous African countries, the African nation Senegal was the first country in the world to ratify the Rome Statute (ICC, 2022). Similarly, other African countries followed suit in voicing their support for the ICC when it was newly founded. However, the same level of support and friendship established between the ICC and Africa is lost.

Similarly, the majority of the cases presided by the ICC since its inception in 2002 are mostly from its African member states that were referred by the heads of these African countries. Hence, it is immensely surprisingly to understand the negative turn of the relationship between the ICC and African countries. The ICC which was once seen as the protector of African countries is now profiled as a witch hunter, created specifically to hunt African nations (Immanuel, 2015). Additionally, owing to the accusation of selective justice levied against the ICC, there has been an increased pushback on the sovereignty of the court in Africa, which has limited the flow of justice in the continent.

For most African leaders, the complementarity principle, as well as the anti-impunity norm of the ICC, ICC has formed the basis for the opposition, especially since the ICC is mostly indicting heads of states from Africa. Additionally, African leader argues that the constant legal proceeding taken against them by the ICC is aimed at promoting the belief that Africa is primitive with a very weak judicial system, therefore, creating racist views from the Western World against Africa.

The frequent judicial actions taken by the ICC against African leaders are also seen as a neo-colonialist policy from the Western world to continually gain control over the African continent, therefore, the AU has in recent times instructed African states to reject the legality of the ICC. These oppositions continue to create huge setbacks for the flow of justice in Africa, considering that post-election conflicts and other forms of violence are rampant in the continent.

The thesis, therefore, considers the legality of the ICC and how this legality has been challenged by the African nations through the African Union. Similarly, the principle of complementarity and anti-impunity which are the founding principles of the ICC is being

challenged for being discriminatory. Hence, the thesis explains in detail the position of these principles and answers if these are discriminatory as understood to be.

Finally, the United Nations Security Council (UNSC) is granted the power to refer cases to the ICC, even though only 2 of the 5 members of the UNSC have signed the Rome Statute. This referral power from the UNSC has also become a basis for neo-colonialist discussion, hence, this will be included in the thesis to understand the working nature of the ICC. Although there are few publications and discussions in the literature concerning the relationship between the ICC and African nations, there is no available discussion on the norm subsidiarity model between these entities. Therefore, this thesis aims to provide a complete understanding of the characteristics and norms of the ICC, by doing so, it seeks to show the various aspects of these norms that are contrasting with African countries and how these countries repel or oppose these norms.

1.3 Purpose of the Thesis

The ICC was founded as an organization to ensure the strict adherence to international criminal law whose major aims are to combat global crime, increase state responsibility to fight against crime and finally ensure global justice. Judging from these objectives, we can then understand that the ICC is saddled with the responsibility of punishing offenders of international law, regardless of their position, status, or economic power. Due to this responsibility, the ICC can only function if it applies an anti-impunity norm which allows it to indiscriminately punish every offender, including heads of state and presidents. This principle of justice has created uproar, especially in countries where domestic or local justice is not guaranteed.

Most African countries have witnessed wars, post-election violence, and civil conflict, most of which brought about large scale human rights violations. Similarly, in these countries, domestic judicial arrangements are flawed by corruption, ineptitude, and favouritism, hence, limiting the flow of justice. To this end, the ICC was founded as a court of last resort to try and prosecute erring individuals. This action from the ICC has created enmity between the court and some African countries. The ICC is likewise been scrutinized to be an apparatus in the possession of western forces to advance colonialism (Allison, 2016). The African states through the African Union consider the court to be a colonialist apparatus for Western forces to practice control on more vulnerable countries, particularly African Nations. Hence, this

thesis shall provide a valid discussion, highlighting the characteristics and elements of the ICC that is viewed as problematic by the African nations. Similarly, the thesis shall discuss the importance of the ICC in the international law arena.

The creation of international tribunals was essential to ensure that persons who commit international crimes were arraigned before the law and punished if found guilty. It is also important to note that since there was no permanent international criminal court during this time, the creation of a tribunal became an essential provision of justice, hence, offenders were held responsible for their crimes. Similarly, the creation of the ICC was to ensure that people who commit international crimes were held liable, irrespective of their position in the society. Similarly, whilst serving justice to the offenders, the ICC also provided judicial support to disadvantaged persons in regions of ongoing conflict. Because the international environment is ladened with conflicts, the foundation of the ICC in the global judicial sphere made it possible for justice to be served, especially in areas where justice is selective and biased.

The ICC operates on two major principles; complementarity principle and anti-impunity. It is important to study these principles as this is the basis for understanding the problems between the ICC and the African continent. The anti-impunity norm is an important characteristic of the ICC because this ensures that offenders are duly punished irrespective of their role or position in society. Anti-impunity simply highlights that no one is above the law, and this element of the ICC has become a major concern of African nations as will be discussed in the thesis.

It is no doubt that powerful members of the societies are usually the masterminds of crimes against humanity, war crimes, and other international crimes. Therefore, should these powerful persons enjoy impunity, it means that the ICC becomes less functional. Similarly, the provision of immunity to these strong offenders of the law means an abetting of crimes, hence, increasing the risk of continuity of conflict. This thesis is important as it shows how leaders, especially African try to escape justice through impunity.

1.4 Methodology

The thesis has adopted a qualitative study method where an exploratory discussion of the relationship between ICC and African countries is provided. Similarly, the study shall explore the available discussion about the norm localization model of Amitav Acharya, while referring to other norm repellence discussions in the literature. Primary data for the study was collected through interviews. The researcher conducted interviews with 7 research members.

Out of these 7, 3 are academicians in universities in Nigeria, 2 are academicians in universities in Uganda, out of the last 2 persons, one is a worker in the Economic Community of West African States (ECOWAS), and the other works with the Ugandan Ministry of Foreign Affairs.

The selection of persons in Nigeria and Uganda is to provide a comparison of how the ICC is viewed in these countries. Nigeria is regarded as a supporter of the ICC, whereas, Uganda under President Museveni is seen as an opposition, therefore, the position of the countries regarding the ICC may influence the data provided by the research audience. Similarly, based on the position of the countries concerning the ICC, a more diverse discussion is provided.

During the interviews, semi-closed interview questions were asked, wherein the research participants were provided with the opportunity to provide an in-depth analysis of the questions asked. This form of interview ensures that the participants remain within the research topic, therefore, providing a deeper understanding of the research area.

The study also made use of secondary sources such as data from the Rome Statute, scientific journals, internet sources, academically published books, and official government reports.

The thesis is based on three major assumptions which are:

1. The presence of the anti-impunity norm of the ICC significantly limits the participation of African nations in the court.

2. There is no relationship between the ICC principles and African nations.

3. As the ICC continues to maintain its principles, greater participation from African countries is recorded.

To test these assumptions, the Norm localization model of Amitav is used as the theoretical framework for the study. The theoretical framework for our study is based on the Norm Localization Model by Amitav Acharya. Amitav Acharya postulated the Norm Localization model as he tried to explain how weaker or less powerful states try to manage or adapt to the pressure exerted on them by international organizations or stronger countries. Based on this definition, the weaker states may either make revisions or completely reject these norms, therefore, they (weaker states) introduce the option of flexibility as their manoeuvre through the straining conditions placed on them by stronger countries or international organizations (Acharya, 2011). In relating the Norm Localization Model to our topic, the rules,

policies and principles created by the ICC are viewed as being oppressive to African nations, hence, they try to either change these rules or completely avoid being bound by the ICC.

Concerning the AU story and the ICC which is the main focus of the thesis, it was understood that the principle of complementarity, as well as the Anti-impunity norms, were problematic for African countries, therefore, African nations through the AU advocated for the ICC norms to be changed. Therefore, it could be understood that when the AU could not conform to the norms and elements of the ICC, opposition against these norms grew, hence, creating a negative relationship between the ICC and the AU.

The repellant of the ICC norms and principles by African nations were justified by these nations as an act of maintaining their sovereignty and protecting themselves from the control of foreign powers, whereas, it could also be argued that the rejection of these norms was mostly aimed at supporting African leaders from facing the consequences of their actions.

1.5 Research Questions

1. What are the principles responsible for the change in the relationship between the ICC and AU?

2. How can the relationship between the ICC and the AU be described?

3. Why is the ICC accused of racism by the AU?

1.6 Thesis Outline

Chapter 1: Discussed in the first chapter are the objectives of the study, the significance of the study, introduce the background to the relationship between the ICC and the African continent. Similarly, the chapter explains the purpose, significance and statement of the problem associated with the thesis. Finally, this chapter shall briefly discuss the methodology of our study and define the key concepts that will be used in our study.

Chapter 2: This chapter will discuss the literature review and theoretical framework that will be employed in our study. In this chapter, we aim to provide the contributions made by various authors concerning the relationship between ICC and Africa. We shall talk about the position of various scholars relating to poverty in developing nations. In discussing the theoretical framework, we will discuss the Norm Localization Model of Amitav Acharya and how it applies to our topic of discussion.

This chapter also discusses the formation of the ICC, its elements, characteristics and its relationship with African nations. It begins by discussing the formation of the Rome Statute (statute forming the ICC), it then moves to describe the nature of the relationship between the ICC and Africa upon the formation of the court.

Chapter 3: This chapter analyses the era when the relationship between the ICC and African nations took a bad turn. Similarly, it discusses the defence provided by the ICC, explaining why its supposed "hunting" principles are only aimed at ensuring justice.

Chapter 4: This chapter discusses the interview session held with the research participants. Highlighting the interview questions and responding to the research participants.

Chapter 5: This also provides a discussion of the findings and conclusion of the thesis.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

There are numerous discussions within the literature about the position of the ICC as an international court for prosecuting international crimes. As the world's first permanent international criminal court, the ICC boasts of members from all parts of the globe whose major aim is to ensure that perpetrators of war crimes are held accountable for their offences. Additionally, the continuous interaction between states has further increased the recognition of the ICC as a last resort for prosecuting international crimes.

As the ICC's popularity increased, most African countries signed the Rome Statute to be a part of the ICC. The increased number of African members in the ICC was applauded at inception as it showed that African countries were highly interested in fighting against crimes and international offences. However, the relationship between the ICC and Africa has become highly tumultuous. This is drawn out of the belief that the ICC continues to try cases in Africa while allegedly paying lesser attention to heinous offences in other parts of the world.

For this reason, the relationship between the ICC and African nations through the African Union continues to deteriorate over time. As shown in this thesis, the complementarity principle of the ICC makes it possible for the court to intervene in domestic matters that are not prosecuted by member states. Therefore, the ICC is accused of abusing the sovereignty of its member states. Similarly, the anti-impunity norm which ensures that everyone is held accountable under the law is also viewed as a problem by African nations, hence, leading to an increased level of unfriendliness between the ICC and Africa. This literature review comprises various academic sources that have discussed the nature of the relationship formed between the ICC and African states. Similarly, the literature review explicitly discusses the main principles and policies of the ICC that most African countries have pointed to being the reason for their dissatisfaction with the court.

The literature review begins by discussing the elements of the ICC before providing necessary information concerning the jurisdiction of admissibility of the ICC which is seen as a major stumbling block, hindering the relationship between the court and Africa. This section analyzes the factors that influenced the creation of the court. The chapter then moves to discuss

ICC and Africa relations in chronological order, discussing what the situation used to be and what is currently available. Similarly, this chapter shall analyze the theoretical framework which is the Norm Localization Model. By discussing the norm localization model, an understanding of how African countries continue to repel the principles of the ICC is provided.

2.2 Elements of the ICC

Looking at past international events, it is understood that the international society has experienced all sorts of criminal offences, ranging from two world wars (WW I and WW II), the Holocaust committed against the Jewish nation, the war of former Yugoslavia, the Rwandan Genocide, the Cyprus conflict, the Kosovo conflict, and other numerous domestic and international conflicts which occurred in other parts of the world. While the nature of the international system is to be blamed for these conflicts, various temporary judicial arrangements were made by states as well as international organizations to prosecute offenders.

To manage these conflicts, for example, the international society created ad-hoc tribunals in Germany known as the Nuremberg Tribunal for its part in WW II, the International Criminal Tribunal for Yugoslavia to prosecute offenders during the Yugoslavian war, as well as the International Criminal Tribunal for Rwanda, was founded as a reaction against the Rwandan Genocide. These tribunals being only ad-hoc in nature were created to only serve the function upon which they were created, hence, limiting their functions and productivity.

As international crimes continue to increase, especially following the massive end of colonialism in most African countries, conflicts began to be more inevitable (Okpe, 2020, p. 1083). States that had a multi-ethnic society witnessed social instability in many ways, therefore, it became inherent for the international system to find a lasting problem to settling these crimes rather than forming temporary ad-hoc commissions. As mentioned by Slany (1972), despite the importance of ad-hoc commissions, there was a need of creating a permanent organization for fighting large scale international offences, for this reason, the ICC was created.

Concerning the formation of the ICC, Shamsi (2016, p. 91), mentioned that like other international treaties, all signatories of the Rome Statute are by law required to obey the policies and principles of the court. As mentioned by Lamony (2013), signing any legal treaty means signifying allegiance to the authority of that treaty. Hence, the Rome Statute which formed the ICC is binding on all members parties. To further discuss the legal character of the Rome Statute, Iyasu and Aston (2011, p. 633) posit that all aspects of the Statute are binding on all

members, as it is impossible to select what principle to follow and what not to follow. This, therefore, means that African nations cannot decide to follow all aspects of the ICC except the complementarity principle or the anti-impunity norm which will be discussed in the next section.

This explains why Fish (2020, p. 1705) discusses that the complementarity principle is viewed as problematic as this holds everyone responsible for their actions, regardless of the position that they serve in society. This principle is seen as the major element in maintaining and sustaining justice in regions where perpetrators of crimes are not punished.

The legally binding nature of the Rome Statute is highlighted under Art. 5 (a) which goes thus:

> "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction following this Statute concerning the following crimes:
>
> (a) The crime of genocide;
>
> (b) Crimes against humanity;
>
> (c) War crimes;
>
> (d)The crime of aggression" (Rome Statute, 1998. Art. 5 (a)).

It can therefore be deduced that based on the above-mentioned article of the Statute, the ICC is founded to punish international criminal offences that plague human rights protection as well as political stability in any country. The various structures and divisions of the ICC are highlighted in Article 34 of the Rome Statute (Rome Statute, 1998, Art. 34). Based on Article 34, the ICC is composed of the following divisions:

i. Presidency: The president oversees the presidency and the selected by the judges in the judicial department. The role of the president is assisted by the first and second vice-presidents. It is pertinent to note that despite the position of the presidency, the prosecutor is independent of the presidency.

ii. Judicial divisions: This division comprises 18 judges. The judicial division is further divided into 3 divisions which are the "**appeals division, trial division and pre-trial division**". As highlighted in

Article 126 of the Rome Statute, these 18 judges are scattered across the various divisions according to their competence, experience, and speciality (Rome Statute of the International Criminal Court, Art. 126, 1998).

iii. Prosecutor: According to Article 42 of the Rome Statute, the Prosecutor is bestowed with the function of initiating proceedings, conducting an investigation, and where possible issuing warrants for indicted persons. The Prosecutor is the head of the office of the prosecutor and this department functions independent from the presidency.

iv. Registry: The office of the registry is headed by the registrar who supervises all administrative duties of the court. It is essential to note that every non-judicial aspect of the ICC is handled in the registry.

Similarly, per the structure of the ICC, the court is an independent international judicial body which is different from the International Court of Justice (ICJ). For this reason, it is essential for ratifying nations of the Rome Statute to conform their national laws to the principles and elements of the ICC.

The legal division of the court is highlighted in Article 34 of the Statute which divides the court into three main divisions which are the pre-trial division, the trial division and the appeal division. Similarly, to ensure fairness, only one judge is selected from a particular state at a given time to fill the 18 independent judges' seats. The judges are not available for re-appointment once their tenure finishes, hence, providing an avenue for judges from other countries to also serve as a judge in the ICC.

2.3 Admissibility and Jurisdiction of the ICC

Article 17 of the Rome Statute discusses the admissibility criteria of cases to the ICC which provides the understanding of what case is deemed admissible to the court. Admissibility is inherently important since this is a legal element that determines if a court has the power to listen to the case or otherwise. The article is shown below:

"*1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:*

(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 has 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 of sufficient gravity to justify further action by the Court" (Rome Statute, 1998, Art. 17)

As mentioned by Akande and Sangeeta, (2010, p. 832) the admissibility of the ICC has been an issue for discussion as a majority of the opposition argues that most cases in the court regarding African nations should not be admissible from the start. However, it can be seen that in most places around Africa where influential persons are indicted for various offences, the local courts are very biased towards these persons or may even provide them with immunity. Therefore, the admissibility criteria of the ICC are seen as another issue as t majority of African leaders are not used to facing justice in their home courts but are now liable to be prosecuted in the international court.

Based on Article 17 of the Rome Statute, three major elements can be deduced as a necessity before a case can be admissible, these are:

a. Interest of Justice: The ICC considers the nature of the case to be admissible before deciding if it meets the entry criteria. The interest of justice, in this case, is essential as it explains the outcome of the case when decided in regards to judicial purposes. A case which will not provide any positive approach to justice will not be deemed admissible by the court (Kurt, 2018, p. 117).

b. Gravity: The intensity of the case is also considered by the ICC before admissibility. Cases that are of lesser gravity or consequences are not admitted by the court. Similarly, cases that are not under international criminal law are rejected by the court.

c. Complementarity: The complementarity principle is an essential element to be considered by the ICC when admitting a case. This is based on the arrangement that the ICC will intervene in cases where the states do not conduct judicial proceedings. This highlights the importance of the ICC as

> an organization of justice for every person, therefore, enforcing that everyone, regardless of their position in the society is not above the law. It is important to note that based on this arrangement, cases that are currently being initiated in courts are not admissible (Rome Statute, 1998, Art. 17).

Similarly, in terms of the referral of cases to the ICC, there are various conditions to be considered before a case is deemed admissible based on a referral from another state. For example, in Article 12 of the Rome Statute (1998), a case is deemed admissible if the referral state is a member of the ICC, the state being referred is a member of the ICC, or if the individual indicted is a citizen of an ICC member state. Additionally, the UNSC may refer cases to the ICC under the chapter VII of the UN Charter.

According to Kersten (2019), one of the problems with the Rome Statute is the authority granted to the UNSC to refer cases to the ICC, despite the absence of the majority of UNSC members as part of the Rome Statute. This is regarded as a problem since only 2 out of the 5 UNSC members are part of the Rome Statute. For this reason, oppositions target the ICC, calling it a supporter of imperialism and post-colonialism.

As stated by Benyera (2018, p. 11), in addition to the admissibility of the complementarity principle of the ICC outlines that the court will intervene to ensure justice if the local or domestic courts of the offender could not enforce judicial proceedings. For Bosco (2014, p. 24), the complementarity principle of the ICC is what grants it a supranational factor over its member states, therefore, positioning the court as a supporter of the anti-impunity norm.

In the support of the complementarity principle of the ICC, Du Plessis (2013, p. 8) mentioned that impunity is an inhibitor of justice as it grants power to influential members of society to escape justice and continue to create harm. Hence, it is essential for persons who escape justice in their home countries to be held accountable by the international court. Similarly, Okpe (2020, p. 1080) posits that impunity when present in any judicial arrangement may create a form of un-democracy, especially if political office holders are benefactors of impunity, therefore, these actors may try by all means necessary to remain in power so they enjoy this benefit of impunity. It must be noted that despite the position of an individual, the rule of law underlines that no one is above justice, hence, everybody under the law is equal and must be tried accordingly.

The ICC seeks to combat impunity by ensuring that every member of the society, irrespective of their class, status, or position is held responsible for their actions. However, understanding that some powerful individuals may escape justice in their home state, the principle of complementarity was initiated to ensure that the international court intervenes to enforce justice. As the number of African nations increased in the court, the greater the cases from Africa. However, African nations are against this anti-impunity norm of the ICC, causing a great antagonism against the position of the ICC.

For the prosecution to take place, three main jurisdictional elements are considered by the court as shown below:

Relating to the subject matter (*Ratione materiae*): This jurisdictional element refers to the nature of the crime committed. As highlighted in the Rome Statute, the ICC was founded to try international crimes, hence, actions that are beyond the international crime scope are not considered by the ICC. The admissible actions of the ICC are highlighted in Article 5 of the Rome statute which states that:

a. "*The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction by this Statute concerning the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression;*

b. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations (Rome Statute of the International Criminal Court, Art. 126, 1998)".

Territorial or Personal Jurisdiction: This discussion of territorial and personal jurisdiction relies on the geography in which the crime is committed. In an event for proceedings are initiated for a crime, it is expected for that crime to have occurred in a member state of the ICC. Similarly, persons who are accused of crimes are expected to be citizens of member states of the ICC for the case to be prosecuted in the court. However, it should be noted that some exceptions may apply for the sake of justice. For example, in a situation where neither the person nor area is under the ICC jurisdiction, the UNSC may refer these cases to the ICC for prosecution.

Temporal jurisdiction: This admissibility requirement is concerned with the time in which the crime was committed. The ICC came into force on 1st July 2002, therefore, the court can only prosecute cases that happened after this time. In an instance where a member state ratifies the ICC statute on a later date, the member can refer previous or past cases to the court, provided the crimes occurred before 1st July 2002. For example, if state A ratifies the Rome Statute in 2021, this state can refer to the ICC a case that occurred in 2005 for prosecution.

The next section explains in detail the theoretical framework of the study which is the norm localization model of Amitav Acharya. From understanding the theoretical framework, we can then relate this to the evolution of the relationship between African nations and the ICC. The norm localization model to a greater extent shows how leaders of African nation tries to repel the principle of the African nation as they try to introduce the norms or principles that best suits them.

Theoretical Framework

The theoretical framework for this study is the Norm Localization Model wherein we aim to study how the relationship between African nations and the ICC has evolved. The Norm Localization Model between Africa and the ICC shows how the African nations try to repeal the principles and provisions of the Rome Charter in other to suit their personal or regional aims and desires. For this reason, the theoretical framework explores in detail the norm localization model of Amitav Acharya before progressing to discuss the relationship between this theory and African countries in the ICC.

2.4 Norm Localization Model

As mentioned by Acharya (2011, p. 99), in an international setting, norms to guide the actions of members are provided. Based on the policy of cooperation postulated by the liberal school of thought, the international system has become increasingly closer than ever. According to Risse, Ropp, & Sikkink (1999, p. 143), it is a normal occurrence for international norms to be easily adopted by one group in comparison to the other. This is borne out of the numerous differences that may abound in the domestic politics of various states or a particular region. Additionally, Cortell and Davis (2000, p. 77) in their discussion of norm localization highlight that domestic implications may influence the behaviour of a state, hence, there is a possibility that a state may find itself in an international setting that is different from what they are already used to.

According to Acharya (2011, p. 99), norm localization could be seen as a process whereby norm takers contest, protest or detest the introduction of foreign norms in contrast to what is already practised. Considering this view, Cappie (2008, pp. 645) relates norm localisation to mean a refusal to adapt to new principles or beliefs that are unrelated to current principles, therefore, supplying an understanding of how transnational norms are refused.

Another important contribution to the theory of norm localization was provided by Bourgouin and Haarstad (2013, p. 45), wherein they explored a populist approach to explain why norms are repelled. Populism involves the act of convincing a wider audience that a considerably smaller group is aiming to control and subdue them, hence, calling for resistance from the wider audience. This is manifested in the relationship between the ICC and Africa Union.

Legro (1997, p. 47) in the discussion of why norms matter provides a discussion of how various social and cultural entities may influence the acceptance of transnational norms. Similarly, as mentioned by Finnemore (1996, p. 54), transnational norms are usually contested as it does not reflect in most cases the accepted local practices of its member state. African countries are mostly faced with issues of corruption, inequality, and injustice, hence, it could be regarded as an almost impossible event to hold African leaders responsible for their actions in Africa.

The introduction of the complementarity principle through the ICC seeks to hold these leaders responsible for their wrongdoings, an event that for many is new in the African region. For this reason, African leaders continue to employ the tactics of populism in gathering support that the ICC is racist towards African nations. This relates to the provision of Moffitt and Tormey (2014, p. 347) where it is shown that influential members of the society may gather support from the masses to repel or resist a culture that is unusual to them.

In explaining why the norms of the ICC continue to be repelled by African states, Eimer, Lutz, & Schuren (2016, p. 461) highlight that to ensure congruency in transnational norm formulation, consideration of local principles is important. However, in matters of justice, no one is above the law as is mentioned by the ICC complementarity principle which seeks to hold everyone responsible for their actions, irrespective of their power or position.

In the position of African nations, Shawki (2011, p. 183) highlights that the aim of achieving norm localisation is to regulate the level of compulsion and arrangement with a higher central power. Hence, in understanding how norm localization is influenced by African

countries in the ICC, it is important to analyse the evolution of a friendship between the ICC and Africa.

As highlighted by famous realists such as Morgenthau (1978, p. 7), the international system is anarchic and international actors, most states are self-interested, only looking out for their self-interest, which in most cases may be tied to using aggressive measures to achieve their aim. The realist approach to understanding international relations became prominent following the outbreak of WW II and the fall of the League of Nations (Arditi, 2007, p. 213). For this reason, the relationship between states is seen as one where self-security is important. Similarly, Realists according to Mearshmeier (2001, p. 34) understand that human nature is inherently selfish and aggressive, hence, humans would do anything in their power to achieve their selfish gains. This introduces the nature of crimes and explains mostly why crimes occur.

2.5 Evolution of Friendship Between the ICC and Africa Based on the Norm Localization Model

Kurt Mills (2018, p. 118), highlighted that from the creation of the ICC, the African Union (AU) encouraged a mass admission of African nations to the court. The rationale behind joining was to increase security in African nations as well as to influence global judicial standards in the AU. Additionally, Okpe (2020, p. 1081) mentions that a majority of the African nations were inspired by the events from the Rwandan Genocide to ensure that they provide stability and security for their state as well as for the regime. The African continent welcomed the ICC with open hands, which explains why the first nation to ratify the provisions of the ICC was an African country known as Senegal.

According to the Sudan Tribune (2009), the friendship between the ICC and the African countries began to take a downward spiral as the court started initiating legal proceedings against the former President of Al-Bashir of Sudan. Al-Bashir was accused of crimes of ethnic cleansing against the non-Arab population of Darfur in 2003, this counts as an international crime that is under the jurisdiction of the ICC. Hence, he was indicted, and this angered other African countries. As mentioned in Article 16 of the Rome Statute (Rome Statute, 1998. Art. 16), the Security Council of the United Nations (UNSC) has the power to refer cases to the ICC This authority granted to the UNSC is rooted in the policy of using all means necessary to maintain peace and order.

Based on Article 16, Al-Bashir was referred to the ICC, a move that forced the AU to release a statement saying the Sudanese president is an important figure in the conflict, his absence will lead to exacerbation of the conflict (Rome Statute, 1998. Art. 16). Additionally, as highlighted by Khoza (2017), the African leaders wanted immunity for the President based on his position, this request, unfortunately, goes against the anti-impunity norm of the ICC that holds all members of the society responsible, despite their position, authority, power, or status in the country. From this moment, the once cherished and loving relationship between the ICC and Africa took a different turn, with African nations, especially Gambia, Kenya, and Uganda publicly accusing the ICC of racism and particularly targeting African countries.

The Gambia for example, under former President Yahya Jammeh, rebranded the ICC as the International Caucasian Court saying it is used as a tool mostly to hunt African leaders by strong Western states in the UNSC (Hersher, 2016). Schabas (2013) calls this an act of Western Imperialism against African Nations by stating that the ICC failed in prosecuting Israel for its role in the Palestinian conflict. It must be noted that Israel has continuously encroached on the Palestinian lands with the support of the United States, hence, providing an inference that the ICC could not act based on the presence of the US in the Israeli-Palestinian situation.

Additionally, it could be argued that the biased nature of the ICC shows in its swiftness to ensure justice in Africa while abandoning other places of evident human rights abuse in other parts of the world. This, as argued by Gambian authorities is an imperialist nature of the ICC and Gambia called for a mass withdrawal of African nations from the court (AU, 2013). Despite the appointment of the Gambian Fatou Bensouda as the prosecutor of the ICC, this did not deter the Gambia from submitting its withdrawal application from the court which was later rescinded after Jammeh lost power (Al-Jazeera, 2018).

As mentioned by Okpe (2020, p. 1083), the opposition from the Gambia may be a result of the undemocratic principle of President Jammeh, who during his regime was accused of numerous human rights abuses, abuse of citizens, restriction of the press, and even violent suppression of the minority. Hence, it is expected for such a leader to be against laws that enforce justice and fight against the immunity of heads of state.

In discussing the Kenyan example, it is important to refer to the principle of complementarity. As earlier mentioned, this principle allows the ICC to intervene in events where domestic courts are lacking and where perpetrators of criminal offences are not held accountable for their crimes. Kenya, in 2007 was flung into a stage of post-election violence

and this spiralled into mass abuse of human rights. The ICC through the support of Kofi Annan instructed the Kenyan Government to create the ***Waki Commission*** as an Adhoc judicial arrangement to prosecute guilty parties of the election violence, however, this commission was not created, leading the court to act based on the complementarity principle in indicting accused parties (Okpe, 2020. p. 1082).

Similarly, since, this was a post-election case, among the indicted persons are the current President and Vice President of Kenya. Hence, African leaders through the AU kicked against this, claiming that it was a ploy to ensure regime change in Kenya. Allison (2006) highlighted that this move to prosecute Kenya leaders was met with increased resistance from the AU as they were already aggravated by the Sudanese occurrence. As mentioned by Aregawi (2017), the AU complained that numerous cases around the world needed pressing attention from the ICC, however, they were most concerned by the events in Kenya with lesser humanitarian consequences than those obtainable in other countries.

In Uganda, Mills (2017, p. 115) mentioned that the country was the first to refer a case to the ICC. Therefore, indicating the support of Uganda to the court. However, Uganda, under President Museveni joined the bandwagon of African countries to attack the ICC, calling the court a *useless thing* whose main aim is to hunt African leaders. This thought was again echoed in 2016 by the Foreign Affairs Minister who expressed satisfaction in the push for mass withdrawal by African nations from the court.

In addition to these three notable examples, other strong opposition countries to the ICC are Burundi which withdrew from the court based on post-election violence cases (2015), and Namibia which accused the court of being a tool by the UNSC to colonise Africa (Milhench, 2016). These various accusations to the ICC were based on the fact that the ICC sternly rejected the impunity norm which held all members of the society, irrespective of their position, guilty of human rights offences and international crimes.

CHAPTER THREE

AFRICA AND THE ICC: A CHANGING RELATIONSHIP

3.1 Introduction

Synonymous with every international organization, the ICC was founded based on an agreement of various state parties. As highlighted in the previous chapters, the international system has been faced with multiple inter-state and intra-state crises, hence, leading to the creation of different ad-hoc tribunals to prosecute offenders in these crises. However, the conflicts increased which led to the formation of a permanent court for trying international offences.

A look into the 20th Century, the world faced two world wars as well as other conflicts most of which were violent. Similarly, because of decolonization, most countries were faced with internal political stability which spiralled into full violent conflicts, and loss of lives, land as well as property. As a result, the international community sought ways to provide justice to victims of international crimes. Additionally, the creation of the ICC meant a permanent international judiciary organ, whose major target would be to serve as a global defender of human rights, especially in regions where human rights offences are committed.

This chapter discusses in detail the road to the formation of the ICC, highlighting the past events leading to the need for a permanent international court. Similarly, to understand the relationship between African nations and the ICC, the chapter discusses the jurisdiction that is bestowed on the court as well as the elements of the court. The principles of the ICC are important to discuss since they reflect the working structure of the ICC. Finally, the chapter looks into the beginning of the ICC and African relationship as this will set the foundation for discussing the evolution of the relationship between the ICC and African nations.

3.2 The ICC as a Permanent Human Rights Protector

As explained by Mangu (2015, p. 16), the constant conflicts and international crimes at play in the international arena prompted the creation of the ICC to succeed other ad-hoc judicial institutions that have been created to prosecute offenders of international crimes. Before the

creation of a permanent international judicial institution, ad-hoc tribunals were created to preside on cases. For example, because of WW II, the Nuremberg Tribunals were initiated to prosecute Germany for the role it played in the war. Similarly, the Tokyo Tribunals were created to punish Japan for the activities it played during the war.

In international relations, conflicts are bound to happen as states and other actors interact with each other. In some cases, conflicts may be violent/armed or non-violent, therefore, in an event of an armed conflict, human rights offences are inevitable. Also, in armed conflict, war crimes, genocide and crimes against humanity may go unabated in places where justice is lacking. This, therefore, leads to a further increase in violence and as such become a basis of international concern. A major example of this is the Yugoslavia crisis where the former Yugoslavia faced violent ethnic clashes, resulting in a genocide.

To provide justice in the Yugoslavia case, the UN Security Council (UNSC) in 1993 created the International Criminal Tribunal for Former Yugoslavia (ICTY) by adopting UNSC resolution 827 (ICTY, 1993). As an ad-hoc judicial arrangement, the jurisdiction of the ICTY fell within the conflict of the former Yugoslavia. Shortly after the genocide in former Yugoslavia began, the African nation of Rwanda was also faced with a widescale genocide caused by the deterioration of relations between the Tutsi and the Hutu. Shortly after the conflict in Yugoslavia, a genocide was also committed in Rwanda, forcing the UNSC to set up the International Criminal Tribunal for Rwanda (ICTR) by adopting UNSC Resolution 955 in 1994 (UNSC, 1994).

In a similar manner to the ICTY, the ICTR was also only concerned with violations in the Rwandan genocide and was mandated to prosecute offenders of international crimes. Another adhoc initiative created by the UNSC was the Special Court for Sierra Leone which was mandated to prosecute serious violations of both international humanitarian law and Sierra Leonean law UNSC RES 1315. They were other ad-hoc tribunals created in other parts of the world such as the Khmer Rogue Tribunal in Cambodia which was founded by the Cambodian government in conjunction with the UNSC (About ECCC, 2003).

As mentioned by Okpe (2020, p. 1086), ad-hoc tribunals exercised limited jurisdiction and they were greatly challenged on basis of legality. More so, hybrid ad-hoc tribunals (tribunals involving international and local judicial elements) such as the Sierra Leonean and Cambodian tribunals were often conflicted with each other, thus, leading to an international

concern of creating a stable international court. For this reason, the ICC was founded as a tool for fighting international offences while providing stability and order in conflictual areas.

The creation of a permanent court to prosecute international offences was signed in Rome on 17 July 1998 with signatories from representatives of over 120 states. As a result of this event, the Rome Statute establishing the International Criminal Court (ICC) was made. The Rome Statute came into force on 1 July 2002 after sixty signatory states had deposited their instruments of ratification with the UN Secretary-General. As mentioned by Slany (1992), the ICC enjoyed maximum support from African states as these countries were mostly faced with internal and external problems. Similarly, Mangu (2015, p. 16) highlighted that African countries were very influential in bringing the Roe Statute into force as a majority of the ratification states were from Africa.

According to the Rome Statute, the major aim of the ICC is to "prosecute offenders and decide on cases regarding crimes against humanity, war crimes and also international crimes of genocide" (ICC, 2022). Similar to other international organizations, there are different organs, mandates, jurisdictions, and functioning of the ICC. Therefore, the next section of the chapter discusses in detail the elements and jurisdiction of the court. From this analysis, and understanding of the ICC relationship with Africa will be discussed.

The ICC as of May 2022 has 123 member states. These member states are bounded by the Rome Statute upon which they have all signed and ratified. It is essential to highlight that only 2 (the United Kingdom and France) out of the 5 permanent members of the UNSC have signed the Rome Statute. Therefore, the legality of the ICC is continually questioned by the opposition, especially due to the limited support that it enjoys from the UNSC.

Where necessary, a member state may withdraw from the Rome Statute as stated in Article 127 (1) which goes thus:

"*A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date* (Rome Statute of the International Criminal Court, Art. 126, 1998)".

To date, only Burundi (ICC, 2018) and the Philippines (Calayag, 2018) have withdrawn from the ICC. Countries such as the Gambia and South Africa submitted resignation proposals, but these were rescinded before the 1-year withdrawal gap as mentioned in the Rome Statute

(AFP, 2017). Currently, there are over 33 member states from Africa, wherein, Senegal was the first country to sign the Rome treaty (ICC, 2022).

3.3 International Criminal Court Vs. Africa

As an organization which was created as a judicial instrument. The foundation of the ICC for many countries was greeted with great joy and optimism. Not only was the ICC going to serve the purpose of holding members of the international community accountable for their crimes, but it was also going to ensure that citizens were protected from tyranny. In most regions where hostility is persistent and citizens are usually under undemocratic rule, the status of the ICC for citizens of this region meant hope for a just society.

Similarly, due to its position as a judicial institution, people from undemocratic regions were delighted with the formation of the ICC as they believed it will hold their leaders responsible for human rights abuse and other forms of violence against humans. Based on this precept, the ICC indicted leaders such as Omar Al-Bashir from Sudan, a step which many praised the ICC for in its fight against impunity. However, this move also came with numerous backlash from persons in governmental positions, African states and the African Union who were against the ICC's indictment of heads of states. Hence, the position of the ICC in Africa is divided into supporters and oppositions group.

On the one hand, the supporters claimed that the ICC acted under its principle of complementarity to ensure that justice is served to all. Similarly, the supporters argue that justice must apply to everyone, or else international organizations would be obsolete. The opposition on the other hand argues that the ICC is aimed at fulfiling a Western agenda that only seeks to hunt the African nation. For this reason, the study explicitly discusses the opposition and supporters' argument on the position of the ICC in Africa.

Before taking into consideration key factors which led to the change in the relationship between the ICC and African countries, the realist school of thought must be considered as it explains the behaviour of states in the international system. It is no doubt that according to realism, the international system is anarchic, therefore, making a possibility for constant wars and conflicts in the international system due to the absence of a central government. Based on these arrangements, states become self-interested, only looking out for their survival and acting according to their wishes.

In comparison to the realist approach to the international system, constructivist schools argue that although the international system lacks a central government. The creation of norms and principles has become efficient in guiding the behaviour of states which makes way for a globally accepted form of behaviour from all actors in the international environment. These norms are provided in international organizations, international treaties and other international laws, of which the ICC has the Rome Statute as its norm provider. However, they may be instances where the norms provided may be against the selfish behaviour of states, hence, forcing these states to reject this norm. This is stated in the norm localization model of Amitav Acharya.

As discussed in the theoretical framework section of the literature review, Acharya's norm theories are important in understanding the actions of states and how they adapt to pressure from the international community. It is also discussed that where necessary, a state may reject a norm or make actions for a norm to be revised according to more favourable terms for the state. Hence, shows another instance of personal needs which must be protected by the state (Acharya, 2011).

Acharya's (2011, p. 56) model of norm adaptation may be easily related to the nature of the relationship between the ICC and Africa. The complementarity which ensures that no one escapes justice as well as the anti-impunity norm of the ICC is constantly rejected by the AU because according to them, this serves as an abuse of the sovereignty of African states. For this reason, the norm subsidiarity discussion is important regarding international organizations as it shows how member states introduce their selfish needs in the global atmosphere which is all aimed at protecting the image of their respective states and rejecting foreign intervention.

Therefore, by considering the norm localization model, weaker states who in this case are African states begin to form defences against the norms of the ICC, leading to a disagreement on what norms to follow and which ones to repel.

Understanding the relationship between the ICC and Africa means looking at the level of support that the ICC received previously and what it is receiving currently. This support may be influenced by many factors which include the number of cases from Africa that were initiated by the ICC in comparison to those from other countries as well as the political situation of other countries, especially those with international crimes which were not admitted by the ICC.

The ICC upon its inception gained full support from African countries as they (Africa) saw it as a tool to combat foreign aggression and to protect themselves from stronger foreign states. As mentioned by Du Plessis, Maluwa, & O'Reilly (2013, p. 16), African states supported en masse the ratification of the Rome Statute right from its negotiation stage. Hence, it becomes puzzling to understand why the sudden change of events concerning the relationship between African countries and the ICC.

Having the highest number of state parties to the ICC when compared to other continents, the 33 African member states make up over one-quarter of the 123 state parties of the ICC. Thus, from the inception of the ICC, it could be agreed that African nations widely greeted the development of the court with great optimism and showed their support in ratifying the Rome Statute. This relationship, however, began to change over time as the ICC started applying the complementarity principle which held influential members of the African society responsible for their actions. Therefore, Burundi which was the 34th member from Africa rescinded its membership with the court.

This section below describes the level of the relationship enjoyed by the African nations and the ICC before the indictment of Omar Al-Bashir and how this relationship changed after the indictment. This is highlighted as the key defining element of the ICC's relationship with Africa.

3.3.1 Before Al-Bashir Period (2002-2008)

Following the creation of the ICC, the African continent expressed its unwavering support for the court, except for very few countries such as Libya and Egypt. During this period, the element of anti-impunity from the ICC was not taken into consideration by the African Union, except for Libya and Egypt which already had straining relations with foreign states. As mentioned by Mills (2018, p. 33), the African states who were opposing the ICC from the beginning were those states which were sceptical of foreign institutions as well as those which were particularly non-democratic.

It is also important to note that in a bid of spreading law and order in the continent, the AU also encouraged other African states to ratify the Rome Statute. This was what Senegal did, making it the first country in the world to add the provisions of the ICC into its domestic legislation. This support from Africa was also shown in 2003 when the court was referred to its first-ever case by the government of Uganda (Mills, 2018, p. 56).

The referral by Uganda raised great hopes for the ICC as this increased the public image of the court around the world, especially in Africa. Similarly, as mentioned by Okpe (2020, p. 1075), the Democratic Republic of Congo referred to a case of the war-lord Jean Pierre Bemba to court. This increased the ICC's popularity in Africa and showed the ICC as a global organization for trying crimes and punishing criminals. Shortly after this event, Ivory Coast ratified the Rome Statute into its domestic legislation, a move which was seen to be another win for the court in Africa (Mills, 2018,p. 32).

Things, however, began to change when the UNSC referred Sudan to the Prosecutor of the ICC. It is essential to note that Sudan is not a member of the ICC, however, as highlighted above, the UNSC may refer cases to the court in the interest of justice or as a means of ending hostility. Al-Bashir who was accused of ethnic cleansing in South Sudan was referred to the court, and this referral became a major shift in the relationship between Africa and the ICC.

3.3.2 Post Al-Bashir period (2009 to now)

As highlighted by Allison (2016), the ICC is constantly criticized for its indictment of many African leaders when compared to leaders from other continents. Similarly, a majority of the cases that are currently presided over at the ICC are from Africa, therefore, increasing the criticism of the ICC being a tool used against African nations. As discussed earlier, even though Senegal an African nation was the first to ratify the Rome Statute, the support of a majority of African states for the ICC did to transcend to anti-impunity norm.

For the opposition, heads of state and government are supposed to be granted immunity because if these persons are indicted, there is a possibility for a continuation of conflict and crisis (2017, p. 182). Therefore, the indictment of African leaders by the ICC was met with strong criticism from African nations as well as from the African Union. As mentioned by deGuzman (2018, p. 14), the call for providing impunity for leaders was rejected by the ICC, therefore, the criticism of the court in Africa continued. It is pertinent to note that most perpetrators of large-scale crimes in Africa are related to political leaders, therefore, granting them immunity means encouraging the crimes to continue.

By not removing its anti-impunity clause, the criticism of the ICC in Africa increased over time. The court has been rebranded with derogatory names such as the international criminal court of Africa, hence, inferring that the foundation of the court was only to punish Africa. The accusation against the ICC to have been a court created to target Africans was

because out of its 11 cases, 10 are from African countries (Muchayi, 2013). Owing to this factor, the court was accused of imperialism, post-colonialism, and racism against African nations.

The anti-impunity norm is seen to be problematic for most African countries. Therefore, this has led to an accusation of the ICC of being imperialist. Therefore, the anti-impunity norm and how this relates to the deterioration of friendship with the African nation are discussed. Similarly, this section discusses the accusation of Western imperialism levied against the ICC by African Union.

3.4 Anti-Impunity Norm

Anti-impunity is simply defined as the act of holding everyone accountable for their action, regardless of the position that they may hold in society. Since impunity relates to making exceptions to persons and selectively allowing people to act as they please with no consequence, anti-impunity is what makes people responsible for their actions. It is essential to note that justice must apply to all, therefore, it is a norm for all judicial institutions to apply the rule of anti-impunity, especially since most offenders of international crimes are strong members of the society.

The anti-impunity norm of the ICC is highlighted under Article. 25 of the Rome Statute which states that;

> 1. "*The Court shall have jurisdiction over natural persons under this Statute;*
> *2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment by this Statute;*
> *3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:*
>
> > *(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;*
> > *(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;*
> > *(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission; 18 Rome Statute of the International Criminal Court;*

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either;
(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
(ii) Be made in the knowledge of the intention of the group to commit the crime;
(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose;

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law" (Rome Statute of the International Criminal Court, Art. 126, 1998).

From Article 25, it is discovered that no person who meets the admissibility criteria of the ICC is above legal proceeding. This also shows that irrespective of the position of the alleged criminal, the ICC must hold trials and prosecute accordingly. The anti-impunity norm of the ICC was also discussed by David Bosco in his book "Rough Justice", wherein, the ICC is viewed as a "remarkable transfer of authority from sovereign states to an international institution" (Bosco, 2014). It could also be argued that the anti-impunity norm is the main reason why most states, especially the powerful countries around the world have refused to ratify the Rome Statute since they do not want to lose their supremacy. Owing to the absence of powerful states in the ICC, especially those of the UNSC, granting the referral right to these non-members has grown to become another trouble for the court in Africa as it is now being accused as a tool for driving post-colonialism in Africa.

3.5 Western Imperialism

A major accusation from African nations concerning the ICC is the belief that it is employed as an instrument for Western states to punish African countries. As highlighted

above, the poor representation of the court amongst members of the UNSC has made African nations consider the court to be a tool used by the UNSC to refer their non-allies to the ICC (Allison, 2016). Additionally, the blind eye turned by the UNSC towards countries such as Israel and the actions of the US in Iraq has led to further criticism of the court. Hence, most of the opposition to the court in Africa views it as a colonialist instrument for Western states.

There have been multiple criticisms of the conduct of the ICC in its maintenance of international justice, hence, Dersso argues that "*Why prosecute post-election violence in Kenya or recruitment of child soldiers in the DRC, but not murder and torture of prisoners in Iraq or illegal settlements in the West Bank?*" (Dersso, 2013). In the AU documents, the ICC which was once a yardstick for efficient justice is now viewed as a racist organization.

Former president Robert Mugabe who was the chairperson of the AU in 2015, expressed his regret in the conduct of the ICC, especially towards Africa as he accuses them of acting discriminately. Making a comparison with former British Prime Minister Tony Blair, Mugabe highlighted why is Blair and George Bush of the US not held accountable for their human rights violations in Iraq, whereas, the ICC is quick to indict African leaders for domestic abnormalities (Mugabe, 2015).

As mentioned by Jalloh (2019), the accusation of the ICC by the African nation stems from the readiness of the court to indict leaders of African nations, while turning a blind eye to the international crimes committed by those in other continents. Similarly, the African Union highlights this as an important aspect to consider as it accuses the ICC of performing selective justice, targeted at disrupting the leadership structure of African countries (African Union, 2013). According to Murithi (2013, p. 7), the ICC was swift at initiating proceedings against Kenya for issues relating to election violence, whereas, the world's strongest countries such as the US and Russia continue to perform havoc without any action from the ICC. This has led to the belief that the ICC is discriminating against Africa by showing a negative image of African countries, whereas, there are similar or worse cases in other regions.

As discussed by deGuzman (2018, p. 15), the ICC is accused of deliberately targeting weaker nations that are mostly in Africa while allowing stronger nations in the Western world to perform as they wish in the international community. It is drawn on the belief that the Western world continues to cause havoc in Palestine and other Middle Eastern countries with no repercussions from the ICC, whereas, African nations are easily charged for their crimes at

the ICC. Based on the submission of the opposition, the ICC is accused of being morally inappropriate, applying discriminatory policies to its provision of justice. Additionally, Apiko (2016), the moral inappropriateness of the ICC stems from the deliberate refusal of the court to open cases in various regions where they have been cases of international crises other than Africa.

A very common example was the unlawful invasion of the US and Britain in Iraq based on the accusation that Saddam Hussein had weapons of mass destruction. This unlawful intervention led to a huge loss of lives and properties for which George Bush who was the President of the US at that time was not held responsible. Another example is the attack of Israel on the Mavi Marmara ship which was delivering aid to Gaza. Not only was the ship attacked but persons from other countries that were on the ship were killed. However, the ICC could not start any proceedings to hold Israel responsible for this crime.

The discussion of Western imperialism as argued by the AU is partly dependent on the political nature of the UNSC which has a strong influence on the ICC. The absence of Russia, China, and the US from the ICC, yet having the power to refer cases to the court has drawn criticism amongst African leaders. Similarly, owing to the political nature of the UNSC, heads of state of countries which should be referred to the ICC have been ignored, whereas, African countries are constantly being referred by the court.

This explains why the ICC is viewed by the AU as a tool employed by foreign states to control and interfere in Nigeria's politics. Similarly, the failure of the UNSC to perform its duties efficiently in restoring peace without any bias, has led to a discussion of the ICC being more political than judicial. Similarly, this has added to the debate on the position of the court as an equitable organization as it only targets African nations and exerts little or no influence on other continents.

It is no surprise that human rights violations are common in most African countries, hence, there is an increased need for the formation of judicial organs to preside on human rights cases in Africa. The AU established regional judicial courts of which the African Court of Justice and Human Rights and the African Commission of Human Rights are key examples. However, these judicial arrangements do not have the jurisdiction of trying international crimes. This means that, without the presence of the ICC, offenders of international crimes in Africa will be allowed to go free since there are no regional courts to try them.

As mentioned by Gathii (2013, p. 252), should they be arrangements for trying African leaders for international crimes, perhaps the role of the ICC in Africa might be reduced and the discussion of imperialism might be limited. However, a lack of regional judicial arrangement means an increased international influence to ensure that justice is served to everyone. Similarly, it is seen that arguments placed against the ICC by African nations are aimed at boosting the personal image of the heads of state of these countries or to escape justice.

For example, the indictment of President Kenyatta and Vice President Ruto is based on evidence that lives were lost as a result of the post-election conflicts in the country. Hence, since Kenya could not set up the Waki Commission as recommended by foreign investigators, the ICC had to intervene to ensure that perpetrators of such widescale violence are held responsible. Should Kenya has set up the Waki Commission, perhaps, there would be no need for the ICC to be influential in Kenya based on the principle of Complementarity.

A report submitted by Bellamy and Williams (2011, p. 832) showed a submission from the International Coalition for the Responsibility to Protect that over 1,000 persons were killed with hundreds of thousands displaced owing to the 2007 post-election violence in Kenya. Therefore, the presence of the ICC becomes essential to ensure that victims of this post-election violence receive justice against wicked politically hungry leaders.

Similarly, in Sudan, the reign of Omar al Bashir was characterized by wide-scale violence in 2003 following the civil conflict between the Sudan Liberation Movement (SLM) and Justice and Equality Movement (JEM) rebel groups' tension against the Sudanese government. As reported by BBC (2019), not only did Bashir try to silence the protestors, he, however, employed a means of ethnic cleansing which led to the death of over 300, 000 non-Arabs situated in Sudan. Hence, under the recommendation of the UNSC, President Bashir was referred to the ICC for international crimes.

Concerning Burundi, the presidential interest of President Pierre Nkurunziza led to international crimes, wherein, many were pronounced dead, while thousands of others were displaced. The Burundi government was held liable for being a member of the ICC, however, in a bid of escaping justice, the government submitted its proposal of leaving the ICC in 2016 (Coalition of the ICC, 2015). Hence, this shows that a majority of African states will support the ICC when it pleases them and in cases where they are being investigated, they will show elements of dissatisfaction.

This goes in line with the norm subsidiary model of Acharya, wherein, weaker states begin to look for means of making changes to the laws or revolt against these laws entirely. It is no doubt that the ICC's position of holding African leaders responsible through the Rome Statute has led to the call for reformation of the Statute or blatant opposition of the Rome Statute by Africans.

3.6 Argument of the ICC

As highlighted above, every international organization has its treaty or statute upon which it was founded. This legal document serves as what bounds the parties of this organization and outlines the working condition of each member. The Rome Statute establishing the ICC is the working document upon which the court bases its actions. Therefore, as highlighted by Bassiouni (2008, p. 105), all members are bounded by the Rome Statute. Similarly, when members ratify the Rome Statute, they produce their agreement to be bounded by this legal document. Hence, it is essential to consider that the actions of the ICC were by what was highlighted in the Rome Statute.

As mentioned by Okpe (2020, p. 1084), the admissibility criteria were the consideration for cases to be presided by the ICC. Cases which could not be decided in the home country out of threat or intimidation of the guilty parties were opened by the ICC. It is important to note that majority of offenders are persons that have the higher political authority or economic advantage over others, hence, there is a need to create a higher institution that can hold these persons responsible for their actions. Therefore, the ICC mentioned that all of its opened conformed to the admissibility criteria outlined in the court's Rome Statute.

Similarly, it is to be observed that a majority of the opened legal cases at the ICC from Africa were submitted by the government of these countries, while few cases were referred by the UNSC. Hence, acting based on the directive of the government or the UNSC, the ICC has investigated regions where international crimes are ongoing. Contrary to popular belief, the ICC has maintained its neutrality as it is only going for cases that are within its admissibility purview.

The changing relationship between the ICC and the AU is borne out of the desire to shy away from responsibilities or accountability. This is because heads of state are mostly indicted by the courts, hence, facing justice is something impossible for them to do. As a result, African

leaders through the AU accuse the ICC of racism or deliberate witch hunting, whereas, the ICC is acting only according to the interest of justice as highlighted in the Rome Statute.

Additionally, the accusation of post-colonialism levied against the AU by the ICC is only because countries in other continents have strong regional courts where everyone can be tried, regardless of their position. For example, the Council of Europe has the European Court of Human Rights to listen to human rights cases from individuals, whereas, similar regional courts are also present in Asia and North America. However, the various courts created by the AU have all been obsolete, exerting little or no influence on the overall judicial outcome. Therefore, the ICC will also be needed, at least, until Africa can manage its legal issues on its own.

Furthermore, Allison (2016) explains that the inability of African courts both regionally and domestically to prosecute heads of state and other powerful government officials in African countries is the reason why the ICC's influence is felt strongest in the African region. Similarly, African countries established huge support following the creation of the ICC, however, this support started to dwindle when presidents and heads of state of African countries started to be held accountable for their actions by the court.

It is also noteworthy that the ICC still enjoys support from some African countries such as Botswana, Cape Verde, South Africa, Ghana, and Nigeria. However, the opposition nations are more than the supporters of the court, hence, the enmity between the ICC and African countries is in current times seen as enmity between the ICC and the African Union (AU). The opposition to the court continues to grow as the influence of the court increases in the region with some African countries calling it the "International Caucasian Court".

As mentioned by Muchayi (2013), a major reason for the deteriorating relationship between the ICC and African countries is because 10 out of 11 of the cases opened by the ICC, 10 are from African nations, hence the court is seen by most African leaders as a device by the western force for recolonization and regime change. The African leaders are against the anti-impunity norm of the court that holds every individual, irrespective of position or power responsible for crimes committed.

CHAPTER FOUR

INTERVIEW AND ANSWERS

4.1 Introduction

Making use of the qualitative research method, the study provided a semi-structured in-depth interview for 7 participants. Out of these 7, 3 are academicians in universities in Nigeria, and 2 are academicians in universities in Uganda. Of the last 2 persons, one is a worker in the Economic Community of West African States (ECOWAS), and the other works with the Ugandan Ministry of Foreign Affairs. It is believed that based on the variety of research audiences used, a concise contribution to the study discussion can be provided. The interview questions are shown below:

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

2. Do you think the ICC is functional in ensuring justice in Africa?

3. Do you think the ICC is biased in its provision of justice across the world?

4. How would you analyse the position of African leaders that are opposed to the ICC?

5. Do you think the anti-impunity norm of the ICC should be removed?

6. How would you analyse the opportunity given to the United Nations Security Council to refer cases to the ICC.

7. What necessary modifications would you suggest to the ICC in its relationship with Africa?

For sake of anonymity, the research audience is recognized using alphabets from A-G. This is essential as it protects the image of the audience and provides maximum protection to them. It is essential to note that the usage of semi-structured interviews is important to understand the topic matter in detail and to effectively understand the image of the ICC in Africa. Similarly, the in-depth interview is a key provider of essential information which will be useful to understand why situations are in their current conditions.

Hence, the next section in this chapter discusses the submission of the interviewees based on the interview questions that have been highlighted above.

Interviewee A (Professor of Political Science at a Nigerian University).

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

   Answer: The interviewer noted that there is indeed a great shift in the friendliness that the ICC enjoyed in Africa 20 years ago as compared to current events. Similarly, the interviewee noted that the deteriorating relationship between ICC and Africa is due to the increased number of cases coming from African countries when other continents are also guilty of similar or higher crimes.

2. Do you think the ICC is functional in ensuring justice in Africa?

   Answer: According to the interviewee "there is not much influence of the ICC in Africa, especially since there is a reduced level of support for the ICC by African countries". Additionally, the ICC needs Africa's support to function in Africa in an event where this support is not provided, functionality is very difficult to achieve. It was also noted that the interviewee made examples of nations such as Nigeria and Botswana which inherently supports the ICC as compared to other countries, wherein, the ICC is witnessed with a very minimal level of support. These different views have continued to affect the productivity of the ICC.

3. Do you think the ICC is biased in its provision of justice across the world?

   Answer: NO! The ICC is based on set principles which define its overall performance. Interviewee A noted that the international system of bandwagoning and alliance has greatly affected the performance of the court since the UNSC would not allow its friends in other continents to be held liable for the actions that they commit. Similarly, this session notes that the principle of anti-impunity and complementarity through which a majority of African countries are being indicted is highlighted in the Rome Statute. Hence, the ICC has not been biased in its provision of justice, it has only been faced with a structure that limits its action in other continents.

4. How would you analyze the position of African leaders that are opposed to the ICC?

   Answer: According to the interviewee "In an event where someone is fighting against justice, then there is something to worry about". In answering the question, the interviewee raises their concern about the reason why a public office holder would not want to be held liable by a judicial organization, except in instances where they are found guilty of crimes and they want to enjoy immunity.

The level of antagonizing faced by the ICC in Africa is borne out of the fact that African leaders are not used to being held responsible for their actions since they can influence the judicial outcome through intimidation, bribery, and threats. However, the introduction of the ICC to ensure that these leaders are held liable for their crimes is bound to cause opposition from them.

5. Do you think the anti-impunity norm of the ICC should be removed?

   Answer: The interviewee highlights that if the anti-impunity norm is removed, of what use is the ICC in making sure that justice is served to all? The idea of justice is to make sure that persons' rights are being upheld and respected, therefore, removal of the anti-impunity norm of the ICC would only lead to uncontrolled human rights violations from authoritarian states in Africa.

6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.

   Answer: The interviewee notes that it would be better if a majority of the UNSC members were signatories of the Rome Statute. However, the US is not a member of the Rome Statute but having the opportunity to refer cases to the court is problematic as this explains why people see the court as a witch hunter for African countries.

7. What necessary modifications would you suggest to the ICC in its relationship with Africa?

   Answer: According to the interviewee, African nations are mostly against the anti-impunity norm and the complementarity principle I would not suggest any medication to these. However, modifications could be made towards allowing the UN General Assembly to refer members of the UNSC to the court.

Interviewee B (Professor at a University in Nigeria)

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

Answer: As answered by Interviewee B, currently, the relationship between the ICC and African nations have taken a bad turn due to accusation of racism and post-colonialism from the ICC. African nations no longer rely on the equity of the ICC. This distrust has weakened the relationship between the ICC and the African Union.

2. Do you think the ICC is functional in ensuring justice in Africa?

Answer: According to interviewee B, the ICC has ensured that justice is provided to all, especially those in disadvantaged positions. Therefore, despite the problems faced by the ICC in the African community, there is still a certain level of influence that the institution exerts in Africa.

3. Do you think the ICC is biased in its provision of justice across the world?
   Answer: Interviewee B discusses that the ICC has not been biased in the dispensation of justice. According to the participant, "all international organizations have their rules, norms and principles which they go by, therefore, the ICC has acted according to its norms and rules highlighted in the Rome Statute".
4. How would you analyze the position of African leaders that are opposed to the ICC?
   Answers: Interviewee B posits that despite the increased number of cases recorded in Africa in comparison with other continents, it is unexpected for the ICC to overlook the crimes committed in Africa by African leaders. Therefore, African leaders are acting out for personal gains to escape justice.
5. Do you think the anti-impunity norm of the ICC should be removed?
   Answer: If the anti-impunity norm of the ICC is removed, then there is no need for a court. No one should be above the law.
6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.
   Answer: The UNSC is the highest organ when it comes to using all means possible to ensure peace and calm. Therefore, the position of the UNSC to refer cases to the ICC is another means through which peace and stability can be maintained.
7. What necessary modifications would you suggest to the ICC in its relationship with Africa?
   Answer: A local ICC office may be established in key sections of Africa. By doing so, African leaders would not consider the court as a foreign tool but rather see it as an African judicial arrangement.

Interviewee C: Professor at a University in Nigeria

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

Answer: The position of the ICC in Africa is not where we had expected it to be, however, it is not the worst as the ICC still has numerous supporters in Africa of which Nigeria is an example. ICC has more supporters than oppositions in Africa.

2. Do you think the ICC is functional in ensuring justice in Africa?
   Answer: Yes! The ICC is viewed as the court of last resort for offenders of international crime, especially in Africa. As mentioned by the interviewee, "you would notice that a majority of post-election conflicts, political violence, tribal conflicts, and civil conflicts are more present in Africa than in other continents. The ICC has managed to ensure that victims of such violence will receive justice, even at the last minute".
3. Do you think the ICC is biased in its provision of justice across the world?
   Answer: The interviewee is quoted saying "If we had similar multiple occurrences of violence and international crimes in other member states of the Rome Statute, then cases in these regions will increase". For this reason, interviewee C believes that the ICC has been just in its provision of justice.
4. How would you analyze the position of African leaders that are opposed to the ICC?
   Answer: Interviewee C notes that these African leaders that are opposed to the ICC are not ready to be held accountable for their actions. This is why they would do whatever it takes to reject accountability.
5. Do you think the anti-impunity norm of the ICC should be removed?
   Answer: Interviewee C highlights that the anti-impunity norm should be sustained to ensure maximum protection of human rights in the world.
6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.
   Answer: Interviewee C is quoted as saying "it is no doubt that there are fewer members of the UNSC in the ICC, therefore, granting such rights of referral may be exaggerated, perhaps, only those who have ratified the Rome Statutes should have the referral rights".
7. What necessary modifications would you suggest to the ICC in its relationship with Africa?
   Answer: A modification of the referral from the UNSC is essential as this may increase the level of trust for the ICC by African nations.

Interviewee D: Professor of Law at a University in Uganda.

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

   Answer: The ICC has lost its position of equity in providing justice, therefore, its relationship with Africa continues to deteriorate.

2. Do you think the ICC is functional in ensuring justice in Africa?

   Answer: No! The ICC has become a political institution rather than a judicial organization. The interviewee further highlights that the ICC has become influential in meeting the needs of the Western states rather than protecting the human rights of global citizens.

3. Do you think the ICC is biased in its provision of justice across the world?

   Answer: Certainly! There is a pattern of supposed "justice" from the ICC which mostly targets African countries while overlooking offenders from other countries. This may count as a form of selective justice from the ICC.

4. How would you analyze the position of African leaders that are opposed to the ICC?

   Answer: The interviewee answers that as soon as a state ratifies the treaty of an international organization, there are bound by the treaty. Therefore, African leaders are bounded by the Rome Statute, unless they decide to withdraw from the statute.

5. Do you think the anti-impunity norm of the ICC should be removed?

   Answer: Anti-impunity does not belong in law. Law must apply to all, irrespective of their position or office.

6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.

   Answer: The interviewee is quoted as follows "this is a miscalculated approach because it is not wise granting such huge powers to people who do not believe in your existence, nor join in your fight. How would you provide such responsibility to 5 states, just because there are the permanent members of the UNSC? Something must be done to remove the level of referral granted to the UNSC since this is a major factor limiting the support of the ICC in Africa".

7. What necessary modifications would you suggest to the ICC in its relationship with Africa?

   Answer: The interviewee expresses total dissatisfaction with the granting of referral rights to the UNSC and wishes these might change. Similarly, interviewee D wished

that other means of referring non-members of ICC would be applied to ensure equity in providing justice.

Interviewee E (Professor of Political Science at a University in Uganda)

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

   Answer: The interviewee lamented the negative relationship between the ICC and the AU.

2. Do you think the ICC is functional in ensuring justice in Africa?

   Answer: The ICC's role in ensuring justice is very essential in Africa, however, the ICC must consider structural and local factors that may negatively influence the dispensation of justice in Africa. Currently, the numerous crises faced by the ICC have reduced its effectiveness in ensuring justice in Africa.

3. Do you think the ICC is biased in its provision of justice across the world?

   Answer: The ICC is biased in its provision of justice across the world, that is because there are numerous events on other continents which require the attention of the ICC but this has been ignored by the court.

4. How would you analyze the position of African leaders that are opposed to the ICC?

   Answer: It is normal for every country to protect its sovereignty, even against international organizations when needed. For this reason, African leaders feel threatened by the ICC, hence, the opposition. It is no doubt that this may be for personal reasons, however, it is clear that regime change has been initiated by the ICC following the indictment of many African leaders.

5. Do you think the anti-impunity norm of the ICC should be removed?

   Answer: The anti-impunity norm of the ICC should be flexible, allowing for changes where necessary. Interviewee E notes that certain conditions may amount to immunity which may be to ensure an easy transfer of government or to maintain peace.

6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.

   Answer: Interview E is quoted as saying "this is unacceptable and it shows that the ICC is dependent on states that do not respect its authority".

7. What necessary modifications would you suggest to the ICC in its relationship with Africa?

Answer: The participant answered saying a much closer relationship between the ICC and Africa or AU should be increased. It is difficult or almost impossible to maintain justice in Kenya from the Netherlands, hence, a more grassroots approach should be considered.

Interviewee F (A staff with the Economic Community of West African States (ECOWAS))

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?
   Answer: The relationship between the ICC and AU has turned very bad. The opposition from the AU regarding the ICC is overwhelming.
2. Do you think the ICC is functional in ensuring justice in Africa?
   Answer: Yes, it was meant to judge cases concerning international crimes which it is doing in some parts of Africa. The interview also mentioned that the position of the ICC in Africa would have been much better.
3. Do you think the ICC is biased in its provision of justice across the world?
   Answer: According to Interviewee G, the ICC has been biased in its provision of justice as it continues to not indict leaders of other regions who are responsible for the crimes they commit.
4. How would you analyze the position of African leaders that are opposed to the ICC?
   Answer: The interviewee answered by saying that it is essential to fight against foreign control in one's country. The African leaders feel the ICC has lost its judicial value and has progressed into a more political organization.
5. Do you think the anti-impunity norm of the ICC should be removed?
   Answer: The interviewee requested for the anti-impunity norm to be removed for heads of state to ensure peace and stability in the country.
6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.
   Answer: Interviewee F answered that the UNSC is a political organization with an interest in fostering the political position of its friends. Therefore, granting the UNSC such power will only limit the authenticity of the court.
7. What necessary modifications would you suggest to the ICC in its relationship with Africa?

Answer: The interviewee is quoted saying "it is essential for the ICC to exempt serving heads of states from the anti-impunity norm as this will increase its relationship with African countries.

Interviewee G: Worker with the Ugandan Foreign Affairs Ministry

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

   Answer: The relationship between the ICC and AU is almost non-existent as these institutions continue to clash concerning the biased nature of the ICC.
2. Do you think the ICC is functional in ensuring justice in Africa?

   Answer: The interviewee highlighted that the ICC has become less functional in Africa since its supporters in Africa continue to dwindle.
3. Do you think the ICC is biased in its provision of justice across the world?

   Answer: Definitely! The ICC has not been very open or plain with its dealings around the world. The interviewee further answered saying that the court has decided to bully Africa whereas other countries get a free pass to do as they wish.
4. How would you analyze the position of African leaders that are opposed to the ICC?

   Answer: The participants answered by supporting the government's position against the ICC. Furthermore, interviewee G mentioned saying that the ICC deserves the level of opposition that it receives, especially since it has continued to show its biased nature.
5. Do you think the anti-impunity norm of the ICC should be removed?

   Answer: The interviewee is quoted saying "leaders are granted immunity in every society why is the ICC any different? Especially seeing how biased the court is, it must remove the anti-impunity norm for it (ICC) to function properly".
6. How would you analyze the opportunity given to the United Nations Security Council to refer cases to the ICC.

   Answer: The UNSC has no business with the ICC. Hence, granting such huge responsibility to a group where a majority of its members do not value your existence is comical.
7. What necessary modifications would you suggest to the ICC in its relationship with Africa?

Answer: The anti-impunity norm should be removed and the UNSC referral should be stopped. When this is done, then perhaps they could be an increased relationship between the ICC and AU.

DISCUSSION AND CONCLUSION

The world has witnessed numerous conflicts over the years, most of which come with large scale human rights violations. It, therefore, became of increased concern to establish a permanent international court to prosecute offenders of international crimes. For this reason, the ICC was founded as an institution to hold offenders accountable for the crimes they commit. In other to fulfil this aim, the ICC had to introduce certain principles such as the principle of complementarity and the anti-impunity norm.

However, as the ICC increased its influence around the globe, especially in Africa it was faced with numerous opposition. It is no doubt that Africa is viewed as a region where large scale human rights violation takes place and this has led to an increased level of an indictment of Africans by the court. As discussed in the thesis, a majority of African leaders continue to rebel against this decision of the ICC, calling the institution racist or post-colonialist. This, therefore, weakened the level of relationship between the ICC and the AU. The thesis outlines that the principles of the ICC are regarded as problematic by African states, hence, this has created opposition against the court.

The principle of complementarity for example explains that the ICC will step in, in cases where justice is not served on a case. Based on this principle, persons who are guilty of crimes will not be exempted from facing justice, they will rather be compelled to face the law as initiated by the ICC. It is important to note at this point that a majority of African countries have very low judicial standards, therefore, in cases where rich or powerful persons are guilty of offences, these persons are exempted from facing the law. This means that the victims of such crimes do not get any justice. For this reason, there is a higher level of indictment cases by the ICC from Africa as this holds these powerful persons accountable based on the complementarity principle.

The second principle of the ICC which is viewed as problematic is the anti-impunity norm. This norm holds everyone accountable under the law, without making exceptions based on influence, power, or wealth. Since a majority of law offenders in Africa are wealthy people, they can buy their way through the justice system, therefore, these persons are usually not arranged before any court. To ensure that this does not happen, the ICC applies the anti-impunity norm, arraigning even Heads of State where necessary. This norm as highlighted above is mentioned as being problematic for African countries.

Heads of state and political leaders in Africa has highlighted that there are multiple places in the world where human rights violation takes place, however, the ICC is mostly focused on Africa. For this reason, it is argued that the ICC is biased in its dispensation of justice and continues to overlook the crimes committed in Western states across the world. A majority of cases presided by the ICC are from African nations, therefore, raising the question of equity from the ICC.

Similarly, the ICC has granted referral powers to the UNSC which the majority of African leaders think should not be available to an institution of which very few of its members believe in the legality of the court. In the UNSC, only the UK and France are members of the Rome Statute, whereas, China, the United States, and Russia have openly spoken against the ICC. Therefore, African nations are wondering why should such referral powers be awarded to states who are not members of the Rome Statute. This has created the debate on post-colonialism as it is argued that the ICC is used by great powers to punish Africa.

The thesis made use of the qualitative research method, wherein an interview was conducted. This interview was made using 7 participants selected in Nigeria and Uganda. Nigeria is a supporter of the ICC, whereas, Uganda is in the opposition, hence, the responses received from the research audience in this area differed. While the Nigerians were satisfied with the position of the ICC in Africa and called for greater support, the Uganda research audience was dissatisfied with this and wanted the removal of the anti-impunity norm as well as a removal of the UNSC referral rights.

It is no doubt that should the anti-impunity norm be removed from the ICC, African leaders will have free will to do as they please without being held accountable. Similarly, the majority of offenders are people with political positions in Africa, therefore, removal of the anti-impunity norm means granting free will for large scale human rights violations in Africa. Therefore, contrary to the African belief that the ICC is racist or against African countries, it is only realized that the ICC is focused on ensuring justice for persons in all regions, especially in places where justice is not provided.

In the absence of a judicial institution to hold our leaders responsible, they will be increased anarchy and a wide scale of human rights abuse. Similarly, the referral power granted to the UNSC could be regarded as another channel of maintaining world peace and order. This was the means used to indict Al-Bashir of Sudan after killing thousands in his country. Similarly, it is no doubt that human rights abuses occur on other continents, however, these

places have efficient courts to hold offenders responsible. The situation is different in Africa where courts are dependent on political participation and where persons can easily influence judicial decisions. Therefore, until Africa can produce efficient courts for the prosecution of every guilty, regardless of their position in the society, the ICC remains the judicial institution of last resort for the helpless.

Using the Norm Localization model of Amitav Acharya, the study showed that African leaders are repellent to the principles of complementarity and anti-impunity of the ICC mostly because they seek to protect their private interests against the need for justice for the crimes that they commit. Similarly, in events where there are not comfortable with the norms set, they tend to make revisions or do a complete removal of these principles.

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APPENDICE

Interview questions for MA thesis: International Criminal Court (ICC) and Africa: Is the International Criminal Court Haunting Africa?

The interview is held with 7 audience members. Out of these 7, 3 are academicians in universities in Nigeria, 2 are academicians in universities in Uganda, out of the last 2 persons, one is a worker in the Economic Community of West African States (ECOWAS), and the other works with the Ugandan Ministry of Foreign Affairs.

Interview Questions

1. How would you describe the relationship between the ICC and the African Union 20 years ago and now?

2. Do you think the ICC is functional in ensuring justice in Africa?

3. Do you think the ICC is biased in its provision of justice across the world?

4. How would you analyse the position of African leaders that are opposed to the ICC?

5. Do you think the anti-impunity norm of the ICC should be removed?

6. How would you analyse the opportunity given to the United Nations Security Council to refer cases to the ICC.

7. What necessary modifications would you suggest to the ICC in its relationship with Africa?