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From Crisis to Resolution: Navigating the Challenges of the International Criminal Court with Special Emphasis on Africa

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ABSTRACT

This paper critically analyzes the contemporary challenges confronting the International Criminal Court (ICC), with a focus on structural limitations, legitimacy concerns, and geopolitical resistance. Central to this inquiry are persistent allegations of selective prosecution, particularly the perception of a disproportionate focus on African states as well as the Court's lack of effective enforcement mechanisms in cases of non-cooperation by member and non-member states alike. The paper explores the implications of pending arrest warrants on the ICC's investigative and judicial processes, analyzing how such challenges undermine the Court's ability to fulfil its mandate under the Rome Statute. Special attention is given to Africa's complex and often contentious relationship with the ICC, highlighting political tensions arising from the prosecution of sitting officials, concerns of judicial overreach, and the broader discourse surrounding the abuse of universal jurisdiction.

Looking ahead, the study assesses the potential evolution of the Court's caseload and geographic scope, arguing for a more diversified and balanced approach to case selection. Further, it also proposes institutional and policy reforms aimed at reinforcing the ICC's independence, credibility, and overall effectiveness in advancing international criminal justice. The paper concludes with targeted recommendations for enhancing global cooperation with the Court, promoting greater complementarity with domestic legal systems, and ensuring that the ICC remains a legitimate and impartial guardian against the most serious crimes of concern to the international community.

***Keywords**: International Criminal Court (ICC), Enforcement Mechanisms, Universal Jurisdiction, Selective Prosecution.*

I. INTRODUCTION

The Rome Statute's ratification in 1998, which birthed the International Criminal Court (ICC), drastically transformed the landscape of international criminal justice. This marked the first instance in history where a standing court was instituted to prosecute those bearing the greatest

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responsibility for severe human rights violations, encompassing war crimes, crimes against humanity, and genocide. This extraordinary pledge by the global community, permitting the scrutiny of its constituents' actions by an autonomous international entity, was not devoid of obstacles. Nonetheless, it signified a pivotal stride towards the realization of global justice and accountability. ICC prosecutor adheres to a comprehensive set of procedural rules to ensure that its legal actions and judgments uphold the highest standards of fairness and impartiality. However, the ICC does not have a standing police force to arrest those accused of genocide, crimes against humanity, and war crimes. Its effectiveness relies on state cooperation. This dependency has raised concerns about the potential for state leaders and authorities to disregard the court's requests or exploit the ICC's legitimacy for political gain. A growing concern is the disparity between the ICC's ambition to pursue justice, irrespective of political consequences, and the efforts of state and international diplomats in negotiating peace settlements. Some argue that the ICC's interventions have complicated the execution of peace agreements.

Despite these concerns, some believe that there is no conflict between justice and peace. ICC officials have responded to these challenges by asserting the court's impartiality and apolitical nature. They maintain that the court's actions comply with the due process and legal requirements of the Rome Statute. It is crucial to acknowledge the ICC's unique status in the interstate system. Unlike domestic courts, which can rely on police forces to enforce arrest warrants, the ICC lacks such a mechanism. This necessitates some level of negotiation with the accused, defining the court's unique political status as a legal body in the interstate system. This negotiation requirement could be seen as a positive-oriented political capacity to reach mutual accommodation. However, this view is debatable, as reaching mutual accommodation is a political and diplomatic priority, not a judicial responsibility.

Many believe that the court was never intended to serve a diplomatic function or require a prosecutor to act as a diplomat, which could compromise its impartiality and neutrality. The court derives its authority, respect, and trust from operating in accordance with the Rome Statute. The argument can be made that the International Criminal Court (ICC) should enhance its diplomatic capabilities to encourage mutual accommodation, rather than solely pursuing justice and accountability under the Rome Statute. The diplomatic effectiveness of the ICC underscores its unique role as an autonomous judicial entity in the interstate system and signifies a pragmatic and strategic approach to address the political issues arising from its interventions and deference to national jurisdictions.

Further, African support for the ICC initially stemmed from the atrocities in Rwanda in 1994 and the desire to prevent powerful nations from exploiting weaker ones. The inclusion of

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"crimes of aggression" was particularly appealing to African countries. However, relations have soured over time, with many African nations becoming critical of the ICC. The African Union has even called for non-compliance and non-cooperation with the court. To maintain credibility, the ICC requires reforms, but there's also a pressing need to bolster African judicial systems.

(A) Research Objectives

1. What are the challenges of the ICC?
2. What is the interplay between ICC and its alleged bias towards Africa?
3. What are the potential solutions for the efficient and effective functioning of ICC in the future?

II. CHALLENGES RELATED TO ICC

The ICC, and the international criminal law , have become powerful frames around which the justice issues are articulated. They have widely become to known for dealing with armed conflicts and offences of mass atrocities such as genocide, acts of aggression, crimes against humanity, etc, specifically in Africa.[2]

A prevailing discourse has emerged, positioning the International Criminal Court (ICC) atop a 'justice pyramid'. This suggests that the ICC is the optimal response to mass atrocities. While alternative justice responses exist, they are often depicted as secondary or inadequate compared to the ICC. These alternatives are frequently compelled to conform to the standards of international criminal justice.

The increasing dominance of the ICC somewhat contradicts the Rome Statute, which is predicated on the assumption that the ICC is not inherently superior as a justice response. However, there is a growing trend to reinterpret the Rome Statute in a manner that establishes increasingly hierarchical relationships between the ICC and more localized justice responses. This interpretation seems to elevate the ICC's status, potentially undermining the principle of complementarity inherent in the Rome Statute.

This revised interpretation could have significant implications for the balance of power between the ICC and national jurisdictions, and may warrant further legal examination. It's important to ensure that the ICC's role aligns with the original intent of the Rome Statute, and that alternative justice responses are not unduly marginalized.

For instance, the ICC has constructed the principle of *"complementarity"* and the *"associated*

[2] Sarah M.H. Nouwen & Wouter G. Werner, *Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity*, 13 J. Int'l Crim. Just. 161 (2015).

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admissibility criteria" in a manner that almost invariably secures its jurisdictional prerogative. Subsequently, it has also adopted an expansive interpretation of the criteria stated that a case is admissible before the ICC only if a state is "*genuinely unwilling or unable"* to undertake the requisite investigations and prosecutions (Article 17b). This is particularly evident in instances of self-referrals by states.

Moreover, the ICC has espoused a restrictive interpretation of the criteria for invoking the 'non bis in idem' principle. This interpretation is predicated on the notions of 'same conduct' and the necessity for national proceedings to be congruent with ICC proceedings. This interpretative approach has effectively transitioned the ICC from a regime of complementarity to one of 'quasi-primacy'.[3] The implications of this shift are profound, potentially altering the balance of power between the ICC and national jurisdictions. This warrants a comprehensive legal examination to ensure that the role and operations of the ICC align with the original intent of the Rome Statute, and that alternative justice responses are not unduly marginalized or subordinated.

The next potential challenge is the recent introduction of the principle of *"reverse complementarity"* in the provision establishing the Special Criminal Court for the Central African Republic (SCC), which gives the ICC primacy over the SCC and the courts of Central Africa. The implications of this provision, whether beneficial or challenging, remain uncertain. However, it set s a significant precedent by modifying a foundational principle upon which the International Criminal Court (ICC) operates. This development highlights its importance in the evolving landscape of international criminal justice.[4]

Another major challenge of ICC is its weak record of prosecutions. For instance, according to a 2020 record, the court had successfully convicted only around eight defendants.[5] Among the eight adjudications, one was reversed on appeal (pertaining to Bemba), one was the result of a plea of guilt (Al Mahdi), and four were consequences of offenses under Article 70 relating to the administration of justice. These four offenses originated from the investigation in the Central African Republic and resulted in relatively lenient sentences ranging from 6 months to 3 years.

The remaining convictions for core crimes include the following cases: Katanga (DRC) was sentenced to a term of 12 years but was ultimately transferred back to DRC custody with the

[3] Carsten Stahn, *Admissibility Challenges Before the ICC: From Quasi-Primacy to Qualified Deference?*, in *The Law and Practice of the International Criminal Court* 233 (Carsten Stahn ed., Oxford Univ. Press 2015).
[4] Patryck I. Labuda, *The Special Criminal Court in the Central African Republic: Failure or Vindication of Complementarity?*, 15 J. Int'l Crim. Just. 192, 194 (2017).
[5] Douglas Guilfoyle, *Part I – This is Not Fine: The International Criminal Court in Trouble*, EJIL: Talk! (Apr. 30, 2024), http://www.ejiltalk.org/part-i-this-is-not-fine-the-international-criminal.

status of "sentence served" after only 8 years; Lubanga (DRC) was sentenced to a term of 14 years; Al Mahdi (Mali) entered a guilty plea and was sentenced to a term of 9 years. Most recently, the ICC Trial Chamber convicted an additional defendant, Ntaganda, on several charges of crimes against humanity and war crimes. As of the present date, sentencing for this defendant has not been carried out.[6] However, given the severity of the crimes for which Ntaganda was convicted, it can be reasonably anticipated that the sentence imposed will be substantial.

Although it is not possible got any court to have a 100 percent conviction rate, another major challenge which needs to be highlighted is that of the court's prosecutor for initiating very few prosecutions and for presenting weak cases by focusing only on high-profile levelled cases. In the case of *Gbagbo,* which culminated in an acquittal, the Trial Chamber severely criticized the Office of the Prosecutor (hereinafter referred to as "OTP" or "Prosecutor") for presenting a case that was both disorganized and weak. From the outset, the Prosecutor faced significant challenges in the *Gbagbo* case. At the stage of confirming charges, the Pre-Trial Chamber reproached the Prosecutor for attempting to construct a case of crimes against humanity based predominantly on hearsay evidence derived from NGO reports and press articles. Consequently, the Pre-Trial Chamber granted the Prosecutor an additional five-month period to gather further evidence that could withstand rigorous scrutiny and lead to the confirmation of charges against Gbagbo.

Throughout *Gbagbo's* trial, the prosecution summoned numerous witnesses and submitted thousands of pages of documents. Despite these efforts, the prosecution failed to establish a connection between Gbagbo and the violence that occurred in Cote d'Ivoire. Upon the conclusion of the trial, which spanned several years, the Trial Chamber requested the Prosecutor to submit an additional brief to clarify and better organize the evidence that the OTP had presented during the trial. On January 15, 2019, the Trial Chamber acquitted Gbagbo after granting a no-case-to-answer motion at the conclusion of the prosecution's case. The Trial Chamber was exceptionally critical of the prosecution, with judges reproaching the Prosecutor for her inadequate management of physical evidence, her reliance on hearsay testimony, and her distorted evidence gathering.[7]

III. ROLE OF ICC IN THE CONTEXT OF AFRICAN BIAS

African states initially welcomed the creation of the ICC. Subsequently, many African states

[6] Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, Judgment, ¶ 1203 (July 8, 2019).
[7] ID

were actively engaged in the negotiation of the Rome Statute in the 1990s. Even today, Africa is still the largest regional bloc of the court, with 33 signatories. However, the relationship between the both has deteriorated majorly due to the increased issuance of warrants of arrest in the 2000s to African officials and for crimes committed outside the country. Beyond the allegations of bias, the International Criminal Court's (ICC) pursuit of retributive justice seemed to be in conflict with Africa's inclination towards restorative justice. This divergence has raised questions about the ICC's approach and its compatibility with African legal traditions.[8] The ICC enjoys the cooperation of African states such as the DRC, Rwanda, Uganda and Mali, which had surrendered wanted persons in their territories.[9] During the AU talks of an Africa-wide withdrawal from the ICC, Nigeria , Senegal and Côte d'Ivoire reaffirmed their commitment to the court.[10]

It all started, in 2009, when the ICC issued arrest warrant for Sudanese President Omar al-Bashir, against genocide, war crimes, crimes against humanity , the AU started to reject the court's jurisdiction for the same.[11] Sudan, not being a signatory to the Rome Statute, was referred to the International Criminal Court (ICC) by the United Nations Security Council (UNSC) via *Article 13(b) of the Rome Statute*, which was met with significant opposition. The article allows the UNSC to refer a 'situation' to the ICC if it receives eight or more affirmative votes, even if the situation involves a non-state party. This referral can be made under Chapter VII of the UN Charter if the council deems the situation a threat to peace.

On the other hand, the UNSC can use its power under *Article 16* to defer an investigation or prosecution by the ICC in a state for up to a year. The five permanent members of the UNSC can veto decisions to refer or defer ICC investigations with a single vote. The UNSC's deferral power could be used to ensure fairness in the application of international criminal law, provided the council is open to considering deferral appeals from other states. However, this has not been the case so far. For instance, when the ICC's Pre-Trial Chamber received a warrant of arrest application for al-Bashir in July 2008, the African Union's Peace and Security Council (PSC) urgently appealed to the UNSC to use its *Article 16* power to defer the ICC process temporarily. Unfortunately, their request was not granted.

[8] Mangena F, *Restorative Justice's Deep Roots in Africa*, 34 S. Afr. J. Phil. 1, 1-12 (2015).
[9] The Prosecutor v. Thomas Lubanga Dyilo, op. cit.; The Prosecutor v. Germain Katanga, op. cit.; The Prosecutor v. Dominic Ongwen ICC-02/04-01/15; The Prosecutor v. Bosco Ntaganda ICC01/04-02/06; The Prosecutor v. Ahmad Al Faqi Al Mahdi, op. cit.
[10] African Union, *Withdrawal Strategy Document*, Draft 2, Version 12.01.2017 (Apr. 28, 2023), https://www.hrw.org/sites/default/files/supporting_resources/icc_withdrawal_strategy_jan._2017.pdf.
[11] The Prosecutor v. Omar Hassan Ahmad Al Bashir ICC-02/05-01/09, 2009; The Prosecutor v. Omar Hassan Ahmad Al Bashir ICC-02/05-01/09-95, 2010.

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IV. INTERPLAY BETWEEN AFRICA AND UNIVERSAL JURISDICTION

The concept of *"universal jurisdiction"* gives rise to a whole new range of concerns. For instance, although the proposals regarding how the principle must apply only to state referrals was rejected during negotiations for the ICC, the main question was whether the UNSC should refer a situation under *Article 13(b) of the Rome Statute,* which grants the ICC jurisdiction over an offender, irrespective of the place of commission of the offence, the identity of the perpetrator, or the ratification status of the Rome Statute by the involved state. Universal jurisdiction remains a highly debtable topic in both theoretical and practical realms of international law due to its perceived infringement upon sovereignty, a fundamental principle in the international order. Sovereignty, crucial for maintaining stability in the absence of a centralized authority governing state interactions, underscores the respect for states' rights to self-determination, free from external interference. However, this principle encounters challenges in the face of grave human rights abuses, justifying intervention through doctrines like the *"Responsibility to Protect (R2P)."* Additionally, crimes such as genocide, with their potential to trigger refugee crises and threaten national security, transcend domestic boundaries. Consequently, some states have adopted universal jurisdiction in their domestic legal frameworks, recognizing that certain offenses are of such gravity that they impact humanity as a whole, necessitating international cooperation in the pursuit of justice.

It is also be noted that the African Union(AU) which represents Africa and Africans, has taken a strict stance regarding the abuse of the *"universal jurisdiction"* principle to the detriment of Africa and Africans post the second quarter of 2008.[12] The resistance of Africa against the principle can be traced back to the indictment of nine Rwandan officials in France, which included Kabuye, the presidential officer of protocol, as well as the issuance of forty arrest warrants for current or former Rwandan officials by a Spanish investigative judge. This action is perceived across Africa as part of a subtle 'legalized campaign' against states in Africa, while specifically violating the independence, territorial integrity, and sovereignty of Rwanda as a state.[13]

Africa's resistance to the principle of *"universal jurisdiction"* led to joint sessions between the African Union (AU) and the European Union (EU). The AU continued to express concerns, citing the perceived abuse of universal jurisdiction despite various recommendations from the sessions. African leaders and personalities were frequently indicted, contrasting with their

[12] African Union (A.U.) Ass., *Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction*, 5(i)–(ii), A.U. Doc. Assembly/AU/Dec.199(XI) (July 2008).
[13] Lantz, *supra* note 47, at 442.

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counterparts in Europe and North America. This raised fears of negative impacts on international relations for African states. Some also argue that EU states unfairly target African leaders, especially given that many of those indicted are serving officials. However, it was contended that universal jurisdiction has been exercised against individuals from various countries, including those outside Africa such as China, Cuba, Iran, Iraq, etc. Furthermore, it is also argued that most cases against Africans in European courts are initiated by private parties, often with the support of non-African human rights organizations. Africans also contend that disregarding immunities violates sovereignty and territorial integrity, evoking memories of colonialism when perpetrated by former colonial powers.[14]

The true picture of the position of Africa with respect to universal jurisdiction is accurately captured in the opinion and observations made by the delegate of Zimbabwe in the the United Nations General Assembly's Sixth Committee (Legal) in 2021.[15] The representative highlighted how the "*universal jurisdiction"* principle should be emphasised more to be used as a last resort apart from being used for good faith. Subsequently, the delegate stated how this principle should be used as a preferred mechanism only in cases where the domestic courts are not willing, or interested or are unable to take action with respect to specific cases. Apart from that, since different states have different domestice legislation dealing with this principle, in the absence of standard rules, its application becomes problematic. For instance, in South Africa, "*The implementation of the Rome Statute Act*" eliminates immunity from prosecution thus, directly contradicting the amnesty laws as highlighted in the *Diplomatic Privileges and Immunities Act*.[16] On the other hand, it might not be the case with all states even if a majority of states might practice a similar approach. Thus, the delegate emphasized about how seeking the consent of the national jurisdiction can be obtained prior to the application of this principle.[17]

V. SCOPE OF INTERNATIONAL CRIMINAL JUSTICE IN AFRICA

Some of the African member states dilution of relationship with the ICC has led to the need for stronger African judicial institutions and mechanisms. The Malabo Protocol, which expands the jurisdiction of the future African Court of Justice and Human Rights (ACJHR) to try crimes under international law in a manner akin to the ICC, was adopted by the African Union Assembly of Heads of State and Government in June 2014 as a workaround for the ICC's

[14] African Union-European Union Expert Group, *The AU-EU Expert Report on the Principle of Universal Jurisdiction*, Brussels, 8672/1/09, REV 1 (Apr. 16, 2009).
[15] United Nations General Assembly Sixth Committee, *Concluding Debate on Universal Jurisdiction Principle*, 76th Sess., A.G. Doc. A/76/10 (Oct. 2021), https://www.press.un.org/en/2021/gal3642.doc.htm.
[16] Diplomatic Privileges and Immunities Act, 2001, § 4, No. 37, Acts of Parliament, 2001 (S. Afr.).
[17] ID

"Africanisation." The agreement forbids the indictment of African heads of state and government representatives, in addition to protects them against being charged with a crime before the envisaged African Court. Prior to the announcements made by Burundi, Kenya, and South Africa signaling their departure from the Rome Statute that formed the ICC, the AU Assembly adopted a policy in January 2017 that called for a collective withdrawal from the ICC.

The African Court, established in June 2004, stands as the sole operational court within the African Union (AU). It has encountered early operational difficulties in its early years, while being endowed with jurisdiction over disputes pertaining to the interpretation and execution of the African Charter on Human and Peoples' Rights and other relevant human rights treaties signed by member states. Nonetheless, a lot has changed since the court's final rules were adopted in 2010—180 applications have been received by the court thus far. One of its most notable decisions was rendered in 2011, in response to an application by the African Commission on Human and Peoples' Rights, holding Libya responsible for abuses of human rights.[18]

In 2009, authorities began discussing expanding the African Court of Justice and Human Rights' (ACJHR) authority to encompass international crimes via a third chamber. This resulted in the Malabo Protocol being adopted in 2014, which, if ratified by 15 AU member states, would give the ACJHR jurisdiction over a larger range of offenses than the ICC, including ten more crimes considered endemic in Africa. Despite receiving signatures, both the Merger and Malabo Protocols are undergoing sluggish ratification. *Article 46A of the Malabo Protocol*, which grants protection to incumbent African heads of state, has been criticized for potentially granting leaders to retain power. However, this protection is limited to the official's tenure and does not prohibit inquiry or testimony after leaving office. [19]

Apart from these, financial constraints pose a significant challenge to the ACJHR's effectiveness, with the AU heavily reliant on international funding. Efforts to address this include proposed reforms by AU Chairperson Kagame, such as financing the AU through a levy on goods entering Africa. However, the impact of these reforms on the African Court's funding remains uncertain, despite Kagame's advocacy for AU self-reliance and criticism of the ICC. Further, The Malabo Protocol fails to address the problem of how the ACJHR operates

[18] African Court on Human and Peoples' Rights, http://en.african-court.org (last visited Apr. 30, 2024).
[19] Abraham G, *Africa's Evolving Continental Court Structures: At the Crossroads?*, S. Afr. Inst. Int'l Aff. Occasional Paper 209 (2014), https://www.saiia.org.za/occasional-papers/669-africa-s-evolving-continental-court-structure-at-the-crossroads/file (last visited May 1, 2024).

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alongside the ICC. The establishment of two courts with the same mandate may cause issues for African states that desire to remain members of the International Criminal Court.Failure to resolve overlap and disparities might lead to increased divisions in Africa over international criminal justice. International law does not have a clear hierarchy, making it difficult to determine which court is superior. The development of an African court has ramifications for the ICC, yet the Rome Statute's principle of complementarity supports the concept of regional courts.

VI. A POTENTIAL SOLUTION: ALTERNATIVE JUSTICE SYSTEM IN THE AFRICAN CONTEXT?

The challenges of establishing alternative justice systems in Africa amid historical repression and enduring conflicts are complex. Advocates favor addressing past injustices through domestic mechanisms like national courts and truth commissions over international prosecutions, aligning with the principle of complementarity in the Rome Statute. However, defining genuine investigations and prosecutions meeting international standards poses challenges due to the lack of specific criteria. Despite the ICC's limited capacity, supporting alternative justice mechanisms is crucial to bolstering national courts. Yet, these mechanisms often combine domestic trials, amnesty, or truth and reconciliation processes, which may not fully satisfy international justice standards. While Article 17 of the Rome Statute emphasizes complementarity, alternative justice mechanisms like amnesty or truth commissions may find accommodation under Article 53. Ultimately, the implementation of alternative justice systems in Africa requires a delicate balance with international justice standards, emphasizing due process and fair trial principles outlined in the Rome Statute.[20]

For instance, The situation in Sudan differs from that in Uganda due to the referral of the Darfur situation to the ICC by the United Nations Security Council, not by the Sudanese government. Sudan has rejected the ICC's jurisdiction, citing its own capability and willingness to prosecute alleged perpetrators domestically. However, Sudan's argument against ICC jurisdiction based on non-ratification of the Rome Statute is weakened by the Security Council's referral. While Sudan has amended its laws to include crimes under ICC jurisdiction, existing immunity provisions hinder domestic accountability for senior officials. The African Union and the Arab League have supported Sudan's position, advocating for alternative mechanisms like Truth and Reconciliation Commissions. However, these efforts seem more politically motivated to shield

[20] See John Dugard , possible conflict of jurisdiction with Truth Commissions, in The Rome Statute of The International Criminal Court: A Commentary, 727 (in Antonia Cassese et al eds 2002). Dugard, note 30, p. 1009.

the Sudanese President from international prosecution rather than genuinely seeking justice. Sudan's refusal to cooperate with the ICC lacks legal merit, as its obligations under the Rome Statute and the Security Council mandate override claims of complementarity. Unless Sudan amends its laws to remove immunity for senior officials, it cannot reject ICC jurisdiction.[21]

Thus, some of the ways ICC can come with better and effective Alternative Justice Mechanisms are as follows;

- Alternative justice mechanisms play a vital role in complementing the work of the ICC, especially in regions lacking strong judicial structures to address massive crimes. While the ICC has made efforts to disseminate its work in Africa through partnerships with NGOs and civil societies, it must also prioritize being perceived as a genuine partner in justice administration, particularly by the citizens affected by conflicts. The court faces challenges regarding its independence from political influences, legitimacy in interpreting international norms, and accountability to member states. Prudent decision-making on when to intervene is crucial to its success and avoiding conflict with peace initiatives.
- To enhance its effectiveness, the ICC should collaborate with national authorities to strengthen alternative justice mechanisms. This includes sharing information, providing training opportunities, and supporting evidence preservation and case management. Strengthening ties with regional institutions like SADC, ECOWAS, ACJ, and AU can dispel perceptions of bias and promote local ownership of justice processes.
- Considering opening regional offices within Africa for conducting trials could improve the court's image and allow victims and African governments to participate more closely in proceedings. This approach also facilitates knowledge transfer to domestic justice institutions, enhancing their capacity to handle high-profile cases of serious crimes.

VII. WAY FORWARD: WHAT IS THE FUTURE OF ICC?

The ICC prosecutor should continue to build cases to broaden the scope of possible prosecutions. Rather than focusing on heads of state, efforts could be directed toward lower-ranking individuals whose guilt is easier to establish and who are more likely to be convicted.

[21] Third Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593/2005, (2 may 2024), http://www.icc-cpl.int/library/cases/OTP_ ReportUNSC_3-Darfur_English.pdf.

Examples of this technique include the successful prosecutions of individuals such as Lubanga and Ntaganda, who were convicted and sentenced to lengthy prison terms. According to Professor Guilfoyle, recent jurisprudence highlights the effectiveness of focusing on distinct prosecutions against rebel leaders, each with a specific set of allegations. The *Ntaganda* trial, in particular, embodies this paradigm, with a carefully worded verdict that upholds the prosecution's strong evidentiary base. The *Ntaganda* case provides a strategic foundation for future prosecutions, calling for thorough investigations, established in a specific setting, targeting rebel leaders, and based on a concise set of charges. Thorough investigations into crimes committed by lower-level individuals, which result in successful convictions, may pave the path for holding higher-level defendants accountable in the same country or war. The Yugoslavia tribunal demonstrates this method, beginning with the trial of Dusko Tadic, a lesser-known commander, and then convicting higher-ranking leaders like as Radovan Karadzic and Ratko Mladic. This approach implies that prosecuting lower-level matters first can lay a sound foundation for pursuing high executives. Following this methodology, the ICC might start establishing cases against lower-level offenders within existing situations, potentially leading to indictments of leaders.

The ICC's prosecutor should develop a rigorous plan for future case selection. This strategy should take into account a number of factors, including the likelihood of obtaining a successful conviction, the potential for the chosen case and subsequent prosecution to spark further indictments of higher-ranking defendants, geographic diversity to ensure equitable investigation and prosecution across global regions, and careful consideration of any political ramifications associated with initiating new cases. When prosecuting cases, the Office of the Prosecutor (OTP) should guarantee that each prosecution is the result of a thorough and exhaustive investigation, utilizing greater in-country knowledge. Furthermore, during trial processes, evidence should be presented with painstaking attention to detail to ensure a consistent and logical narrative. Finally, the ICC must work to foster greater cooperation among its member states and other nations across the world. The court's effectiveness depends on host countries' willingness to cooperate with its investigations. As Douglas Guilfoyle rightly observes, "international criminal tribunals require influential patrons for successful operation," emphasizing the importance of strong support and cooperation from the ICC's stakeholders for its long-term existence. As a result, the ICC must devote resources to cultivating strong support among its member states as well as gaining broader international support.

The International Criminal Court (ICC) should maintain an unbiased attitude, serving as a stronghold of justice without regard for any one population, including Africans. Member states

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of the African Union (AU) must fully cooperate with the ICC in order to maintain Africa's united battle against impunity.

African nations should use their significant participation in the ICC to influence its policies and practices, guiding it toward a condition of balance and justice. Rather than disengaging from the ICC, proactive involvement is required to create significant change within the organization.

A human rights-based approach is critical for raising awareness and involvement among those affected by the responsibility to protect. By emphasizing human rights values, attempts to increase understanding and engagement in this field can be boosted. The international community, aside from the United States, must supplement peacekeeping resources and humanitarian aid contributions to fill the hole left by decreases in US assistance during the Donald Trump administration. Such concerted action is required to counteract the negative consequences of reduced support and assure the continued success of critical peacekeeping and humanitarian initiatives around the world. There is an urgent need for more vigilance in stabilization missions authorized to use force, as they regularly disregard citizens' safety and well-being.

Promoting women's economic freedom is critical to preventing them from becoming trapped in violent marriages. Furthermore, municipalities, in partnership with their people, should develop programs to map cases of violence and foster transformative approaches to reduce violence against women and girls. South Africa, which is plagued by the long-term legacy of apartheid, gender-based violence, and a patriarchal societal framework, must seek to restore concepts of personhood and family values. This can be accomplished by establishing family clinics, facilitating peace conversations, and building community capacity.

VIII. Conclusion

In conclusion, the debate surrounding international criminal justice, particularly in Africa, reflects complex dynamics shaped by historical legacies, political interests, and normative shifts towards accountability. While Africa has endured some of the worst atrocities, efforts to combat impunity have been hindered by challenges such as perceived bias in international institutions like the ICC and the tension between sovereignty and justice. Critics argue that the ICC's focus on Africa is a result of its limited jurisdiction dictated by the UNSC, highlighting broader issues of political influence and power dynamics in international justice. However, Africa's criticisms should not be construed as a rejection of international criminal justice principles but rather as a call for a more inclusive and effective approach.

Moving forward, it is essential to address foundational issues regarding the interpretation and

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application of international criminal law, including the exercise of immunities and the principle of universal jurisdiction. Resolving these issues requires continued dialogue, cooperation, and a commitment to ensuring accountability for international crimes. Furthermore, efforts to enhance domestic justice mechanisms and strengthen regional partnerships are crucial for promoting a more balanced and effective approach to international criminal justice in Africa. By adopting and ratifying protocols such as those for the African Court of Justice and Human Rights, African states can demonstrate their commitment to delivering justice and combating impunity.

Overall, the pursuit of international criminal justice in Africa demands a nuanced understanding of the complexities at play and a willingness to engage in constructive dialogue and action towards meaningful change.

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