CHAPTER 33

International Politics and Policy Considerations for the Inappropriate Targeting of Africa by the ICC OTP

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Summary

Though the ICC has jurisdiction over persons accused of international crimes following its statutes, it has been blamed for targeting only Africa while turning a blind eye on perpetrators in other regions of the world where it also has jurisdiction.

The Rome Statute clearly states the scope of the ICC’s jurisdiction. Notwithstanding, the Prosecutor of the ICC is accused of inappropriately targeting Africa in the exercise of prosecutorial discretion within its first decade of existence, while overlooking international crimes perpetrated in other parts of the world. The Prosecutor concedes but argues forcefully that her targeting of Africa is not inappropriate. The Prosecutor raises a number of reasons why her intervention is not only appropriate but also salutary. In my opinion, some of the reasons for targeting Africa, apart from the reasons she may have given, are policy considerations, which in effect are based on international politics. The inappropriate targeting of Africa is both contextual and focused. In the cases opened in Africa by the Prosecutor, the focus has hardly justified the stated rationale for the intervention.

Regrettably many African leaders are mere puppets of neo-colonial interest that has helped them to eternalize power in exchange for defending the neo-colonial economic and hegemonic agenda. It is often under these circumstances that crimes falling under the jurisdiction of the ICC are perpetrated. For these neo-colonial puppets, the ICC referral procedure has become the new weapon of silencing opposition, while to some who hold the veto power in the United Nations Security Council it is a viable weapon to support regime change.

The strain in the relations between the Prosecutor and the African Union (AU) is profound and calls for a quick solution. Leading the charge, the AU and some critics of the Prosecutor’s policy on Africa that transcend ethnic, racial, cultural, and regional barriers allege that ICC prosecutorial policies towards Africa are destabilizing and insensitive to other avenues put in place by the AU to provide African solutions to African problems. The ICC Prosecutor’s policy towards Africa raises significant weighty, legal, political, and ideological problems. The targeting and then neglecting of Africa in time of need is not limited to the ICC, but extends to the United Nations which, to a significant extent, is responsible for the inappropriate focus blamed on the Prosecutor.
International Politics and Policy Considerations

The UN through international justice has failed reasonably to apply the UN Charter’s stated goals in its relations with Africa and the settlement of African conflicts. The ICC needs to go after those who commit international crimes as well as those who facilitate the commission of these crimes. When the Prosecutor of the ICC adopts this policy, she will see a compelling need to investigate international crimes all over the globe.

This chapter attempts to answer the question, “Has the ICC inappropriately targeted Africa?” My answer is in the affirmative. I examine the complexity of this serious problem and make proposals on how to resolve it. I conclude that within this decade of exclusive focus on Africa, a reasonable appraisal of the influence, relevance, and performance of the ICC as a global institution established by the Assembly of States Parties to “exercise jurisdiction over persons for the most serious crimes of international concern” cannot reasonably be ascertained. The ICC is little known outside Africa and commands little respect or attention in other conflict regions of the world.

Argument

Protected Values

The question whether the exclusive focus of the ICC’s Prosecutor on Africa in the ICC’s first decade of existence is inappropriate seems easy and straightforward at face value, considering the fact that the Prosecutor admits to the exclusive focus but denies that the focus is inappropriate. The Prosecutor provides a number of measured compelling reasons to support the manner in which she has exercised her prosecutorial discretion in total rejection of the criticism. The reasons provided by the Prosecutor find support from a number of African civil society organizations and foreign organizations present in Africa. The coalition of Civil Society Organizations supporting the ICC’s mandate in Africa also makes a compelling case for an improvement of the relations between the African Union and the ICC, but fail comprehensively to address the concerns of the AU and many on the African continent.

The AU and Africa Challenge must be put in perspective. There are some who enjoy the support of neo-colonial interests, who are riding on the concerns and opposition of the AU and many people in Africa in the hope of shielding themselves from being held accountable for the massive crimes perpetrated by them which fall within the jurisdiction of the ICC. In perspective, I venture to mention the situation in the Democratic Republic of the Congo and the criminal responsibility of some regional leaders who are opposed to the ICC. The inability of the ICC to investigate and prosecute these individuals in cases in which it has nevertheless intervened, opting rather selectively and discriminatorily to target peripheral individuals, is one rationale for Africa’s