

THE INTERNATIONAL CRIMINAL COURT: JUSTICE FOR WHOM?

By Dr. Stephanie M. Burchard

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Kenya's president Uhuru Kenyatta, center, sits amid his defense team members before the International Criminal Court in The Hague, Netherlands, to appeal for the crimes against humanity case against him to be dropped for lack of evidence. The International Criminal Court's chief prosecutor dropped all crimes against humanity charges against him on December 5, 2014. (Source: AP Photo/Peter Dejong, Pool, File.)

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MADAGASCAR: IMPEACHMENT ATTEMPT HIGHLIGHTS RENEWED TENSIONS

By Alexander Noyes

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In this photo taken Wednesday, May, 27, 2015, Madagascar member of parliament, Malemit Liahosoa, seated on right, surrounded by fellow members, hands documents to the High Constitutional Court in Antananarivo, Madagascar, alleging that President Hery Rajaonarimampianina has repeatedly violated the constitution. (Source: AP Photo/Martin Vogel.)

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IDA's Africa team focuses on issues related to political, economic, and social stability and security on the continent.

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International Justice, Pre- and Post-Rome Statute

Before the ICC was established in 2002, no single body was responsible for trying cases related to war crimes, genocide, and other such mass atrocities. For the most heinous of offenses, ad hoc tribunals such as the [Nuremberg Trials](#), the [International Criminal Tribunal \(ICT\) for the former Yugoslavia](#), and the [ICT for Rwanda](#) were used, at significant expense. It is estimated that the ICT for Rwanda cost approximately [\\$17 million per indictree](#). In addition, the cases that were selected were argued to be arbitrary or capricious and based on the [preferences of donor countries](#).

The [Rome Statute](#) was drafted in July 1997 to address these concerns—especially the perceived politicization of cases. The statute affords the ICC jurisdiction “over the most serious crimes of concern to the international community as a whole,” including genocide, crimes against humanity, and war crimes. In 2002, after a critical mass of countries (120) had signed and adopted the Rome Statute, the ICC came into being. As of 2015, [123 countries](#) are party to the Rome Statute.

Over the past few years, the ICC has come under increased scrutiny and criticism by African leaders. The President of Kenya, Uhuru Kenyatta, has been especially critical. Kenyatta claims that the ICC is a continuation of a “[century of exploitation and domination](#)” by Western countries. Robert Mugabe, President of Zimbabwe, claims that African countries “[don't want it in this region at all.](#)” Gwede Mantashe, secretary general of the African National Congress, the ruling party of South Africa, recently stated that the ICC is “[a tool in the hands of the powerful to destroy the weak.](#)” Does the ICC unduly target Africa?

The ICC and Africa

On their face, these allegations of selective justice might appear to have some merit. The ICC has initiated more cases in Africa than in all other regions combined. There are currently open [cases](#) under investigation for crimes allegedly committed in the Democratic Republic of Congo, Central African Republic, Uganda, Sudan, Kenya, Libya, and Côte d'Ivoire. Moreover, of the 18 individuals charged by the court and the eight cases either heard or pending on the docket, [all are based on crimes committed in Africa.](#)

There are several reasons as to why Africa might be overrepresented by the ICC's docket. First, of the [123 countries that are party to the ICC](#), the largest contingent is from Africa (34). At the same time, around two-thirds of the [UN-member states not party to the ICC](#) (approximately 60) are outside Africa. In general, crimes committed within non-party states cannot be considered by the court. Second, the court is allowed to hear cases only under very specific conditions: (1) a party state is unable or unwilling to bring charges and a party state requests an investigation, or (2) the

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United Nations Security Council refers a case to the ICC. The majority of the cases that the ICC has considered or is planning to consider have been referred by countries themselves (Central African Republic, Uganda, the Democratic Republic of Congo, and Mali) or with the explicit support of the country of origin (Côte d'Ivoire). The UN Security Council has referred only [three](#) cases for alleged crimes committed in Africa—in Libya, Sudan, and Kenya. To date, the ICC has refused to hear only three cases that have been brought before it. The court's docket is therefore limited by its jurisdiction and the cases that are referred to it.

Third, the statute was drafted in [close consultation](#) with the majority of African countries and with the participation of more than [800 civil society organizations](#) based in Africa. Forty-three African countries are signatories to the treaty, and 34 states have also ratified the treaty and are party to its jurisdiction. Twenty-one countries in Africa had coalitions for the ICC that actively assisted in helping their countries implement the Rome Statute. If the ICC is predominantly focused on African perpetrators, perhaps it is because Africans themselves were so instrumental in the Court's creation.

The ICC was established as a means to end immunity for crimes committed that are of broad concern to the international community. It was hoped that a permanent international body would be a less political method of punishing the most egregious of offenses. Now, it appears the ICC has become a political tool, but not exactly in the way its critics allege. African political elites are using the ICC in a self-serving way as a wedge issue, portraying themselves as struggling against Western imperialism.

The example of Kenya is especially illustrative. With an ICC court case pending against him, referred by a commission created by his own government, Uhuru Kenyatta still decided to campaign for president in 2012. The man Kenyatta ultimately chose as his running mate, William Ruto, was also facing charges at the ICC. Some allege their political union was [forged out of mutual desire to evade prosecution](#) at the ICC. The ICC featured prominently in the 2013 Kenyan presidential election, with some reducing the contest to a referendum on the ICC's legitimacy. Kenyatta, who once publicly stated that he preferred an ICC investigation into the post-election violence as opposed to a local tribunal, made a significant about-face when it was politically expedient to do so, framing the ICC's prosecution as an imperial persecution against Africans. Upon his election as president, Kenyatta used his victory as a mandate of sorts to lobby the ICC to drop the charges against him, arguing that he was now a sitting president and should therefore enjoy immunity. He began lobbying other African leaders, some of whom had been accused of crimes against humanity in their own countries, and found sympathy and support. Ultimately, the charges against Kenyatta were withdrawn, but a cloud remains as the government was deemed [uncooperative](#) by the ICC, and several witnesses were reportedly [intimidated or disappeared](#) in the months leading up to the trial.

Conclusion

It is not surprising that some African political leaders seek immunity to shield themselves from the consequences of offenses they have committed while in office. They are supported by political elites that benefit from non-democratic rule, and they have created a problem of perceived illegitimacy for the ICC in Africa. On the other hand, [African civil society groups](#) remain supportive of the ICC, perhaps because they see it as addressing existing gaps in justice. The bottom line seems to be that the ICC, created with input from a broad swath of African leaders and civil society members, is currently functioning as it was intended. But continued manipulation and interference by African political elites could work to undermine the Court's most essential function: to bring justice to those no other court is willing or able to try.

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From Instability to Reconciliation and Back Again?

Madagascar has a long history of political instability, with frequent bouts of electoral violence and military intervention in politics. A long-standing feud between two former presidents—Marc Ravalomanana and Andry Rajoelina—has overshadowed Madagascar's politics since Rajoelina overthrew Ravalomanana in 2009 with backing from the military. After four years of international isolation, a peaceful election in 2013 brought Hery to power, and political and economic [improvements](#) soon followed. International cooperation quickly resumed and, as reported in the February 5 [edition](#) of Africa Watch, Hery presided over several impressive reconciliation initiatives.

Hery [freed](#) Ravalomanana from house arrest (where he had remained since his unannounced return from exile in South Africa in October 2014), pardoned a number of prisoners allied with Ravalomanana, and hosted dialogues with four former presidents (including Rajoelina and Ravalomanana) under the auspices of the Council of Christian Churches in Madagascar (FFKM). A national [conference](#) on reconciliation held in early May by FFKM, however, had the opposite effect—actually helping to precipitate the impeachment vote—when FFKM called for the [dissolution](#) of all political institutions except for the presidency.

Impeachment and Aftermath

The threat of a dissolved parliament seemingly brought the supporters of Rajoelina and Ravalomanana together, with the impeachment vote gaining 121 out of 151 votes in parliament. The political opposition is led by Rajoelina's Mapar party (Miaraka amin'ny Prézidà Andry Rajoelina), which has the most seats in parliament with [49](#). Ravalomanana's party, TIM (Tiako-i-Madagasikara), has the second most, with 20. The remaining parliamentary seats are held by non-aligned independents and single-person parties. Hery came to power on the back of support from Rajoelina but then distanced himself from Rajoelina's camp once in office, losing support from Mapar. Although a fledgling [alliance](#) between Hery and Ravalomanana appeared to be [gaining](#) ground before the impeachment vote, TIM's (Ravalomanana's party) vote for impeachment ostensibly has ended such cooperation. After the impeachment vote, Tinoko Roberto, of Rajoelina's Mapar party, [said](#) Hery had skills as an accountant, but "he doesn't know how to run a country."

The high court's rejection of the impeachment has spared Hery, at least temporarily. After the decision, the African Union [called](#) on political stakeholders to respect the ruling and to show "restraint," while France urged dialogue, [calling](#) on "all parties to undertake a frank and constructive dialogue and push for a climate of appeasement and stability in the greater interest of the Malagasy people." Hery warned against returning the country to crisis and also [called](#) for dialogue: "We must fight to ensure that the crisis will not return to our country. Each of us has learned from

what happened . . . I call on the Malagasy population, including opponents, to take account of the best interests of the nation, to join hands, to dialogue, to work together and enhance development.” Former Prime Minister Camille Vital, however, [said](#) that presidential elections, scheduled for 2018, should be held early: “An early presidential election is the solution the country needs regardless of the decision of the High Constitutional Court. It belongs to the National Assembly [parliament] to decide the next step.”

Conclusion

It appears that the extended rivalry between Rajoelina and Ravalomanana will continue to play out in Madagascar, with Hery stuck in the crossfire. Despite signs of an alliance between Hery and Ravalomanana earlier in the year, Ravalomanana’s support for the impeachment vote reveals Hery’s acute political isolation as well as Ravalomanana’s political opportunism. The role and allegiance of the military remain uncertain. Both Rajoelina and Ravalomanana are believed to enjoy [continued](#) support from factions in the security sector. Recognizing the importance of the military to political life in the country, Gen. Dominique Rakotozafy, the defense minister, [asked](#) political leaders to respect the court’s judgment and “to refrain from any attempt to lead the security forces into actions contrary to their missions.”

Hery’s political life was saved by the court’s rejection of parliament’s impeachment vote, at least in the near term. But given the president’s lack of support in parliament and the continued influence and political maneuverings of Rajoelina and Ravalomanana, the brewing political crisis in Madagascar appears far from over. International and regional actors should continue to urge dialogue and restraint by all parties.

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