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Third World Countries and Executive Lawlessness: An Appraisal of the Role of International Criminal Court in Ensuring Good Governance in Africa

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Abstract

Executive lawlessness indeed has been and still remains one of the most challenging threats to good governance process in the third world countries. This has persistently resulted in systemic abuses of human rights using institutions of state, financial impropriety by public officials, over bearing power of the presidents and heads of government (the executive arm of government), reckless molestation, suppression, repression and muzzling of opposition political parties using the security agents of state. In the light of the above concerns global attention has been drawn to the seemingly irredeemable phenomenon of executive lawlessness in third world countries and the need to ensuring good governance. Noted that, the mandate to ensuring good governance reforms that is capable of transforming third world countries has been most emphatically communicated in the majesty of the democratic process and its consolidation; the dream is for a bold and audacious transformational leadership to pilot a transformation programme that will radically, fundamentally, structurally and massively transform the third world economies, reinvent the politics of their nations, secure the polity, ensure rule of law and respect for fundamental human rights, care for the underprivileged, and provide responsible, responsive and credible leadership to the countries of the third world, especially in Africa. This paper sought to fill the glaring void by succinctly appraising the role of the International Criminal Court in ensuring good governance in Africa. In this context, the study identified the governance challenges confronting Africa and indeed third world countries in general and the extent to which the ICC has by virtue of its mandate moderated, adjudicated and mediated in checking the excesses of political leaders in Africa so as to bring about good governance.

Keywords: *Appraisal, Good Governance, Lawlessness, International Criminal Court, Third World Countries*

Introduction

Leadership as an integral part of every organization or nation is a determinant of her goal accomplishment. The peace and development of any nation depend on the commitment of leaders at all levels ranging from the family unit, religious institutions, and traditional settings to national politics. On the other hand, leadership flaws affect the citizenry and national development adversely. Leadership, therefore, is a catalyst that kindles the maximization of individual potentialities, human and natural resources of a nation for sustainable development. In the case of Africa and most third world countries colonialism and the colonial masters set the tone for the type of leadership we witness today in Africa and indeed the entire third world countries. French, Portuguese and British colonialists introduced a

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paternal, centralized and authoritarian administrative system in those colonies they ruled. This system was largely adopted by these countries after independence, and marked the beginning of a centralized and authoritarian presidency. In previously colonized African states, the leaders after independence wished to also enjoy the privileges that came with authoritarian colonial administrative rule as seen being enjoyed by the colonialists, “they had seen the efficiency with which control of state institutions had enabled the colonial elite to convert the “national” economy into some kind of private estate” (Wanyama, 2000).

Therefore, the fragmented political structure was rejected by African leaders immediately after independence. After a brief stint with plural politics, African leaders across the continent argued that a fragmented structure would curtail national unity, would divide people along ethnic lines and it was not conducive to a traditional African lifestyle which is communal, hence united under one leader. Such arguments provided African leaders with enough reason to return to the authoritarian rule of the colonial period. One-party political systems developed as a result and constitutional arrangements that were in place at the eve of independence were undermined as leaders rushed to republicanism. From this time, the republican system of government established executive presidents in African countries with awesome power, and as a result dictators ruled sub-Saharan African states with relentless vigour after independence. Post independence leaders that enjoyed unlimited power included Nkrumah’s rule in Ghana, Siaka Steven in Sierra Leone, Guinea under Sékou Touré, Côte d’Ivoire’s Houphouët-Boigny, Idi Amin’s rule in Uganda, and the most notorious autocratic ruler of the time was Mobutu Seso Seko of Zaire (Botha, 2012; Van Wyk, 2007; Tripp, 2005; Schlesinger, 1973).

However, at the end of the 1980s a wave of democratization swept through the continent due to popular protest and civic activism and led to unprecedented political liberalisation and constitutional reforms. In the process, “some of Africa’s longest-serving and most notorious autocrats have been brought down and many more forced by new constitutional rules to face the prospect of electoral defeat or foreseeable exit through presidential term limits” (Kwasi-Prempeh, 2007). Despite this democratic wave ridding Africa of autocratic leaders and bringing about regime change, the phenomenon of “imperial presidency”, as Arthur Schlesinger calls it, still persisted throughout sub-Sahara Africa. The term “imperial presidency” refers to a presidency that is characterized by greater power than the constitution allows. President Nixon of the United States is one case study discussed by Schlesinger to demonstrate the notion of Imperial presidency. Nixon and his advisors became very arrogant in their rule giving way to several incidences of abuse of power, one such incident being the Watergate scandal where Nixon acted as if he was above the law and constitution of America. The separation of powers stipulated in the constitution was failing as it became clear that most of the power was situated in the office of the executive. Although this term was coined in order to describe President Nixon’s style of leadership, as democratization spread across the African continent it became evident that most presidential power tended to assume this “imperial presidency” character. The term imperial presidency will be used throughout this thesis to explain the most dominating style of leadership in Africa. The most obvious African example of imperial style presidency is Robert Mugabe of Zimbabwe; he regarded himself

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Unfortunately, in developing democracies the notion that power corrupts and absolute power corrupts absolutely can still be seen in heads of states clinging to power to ensure that their states continue on serving them. This problem is especially evident in Africa where leaders enjoy unprecedented power and stay in office for decades. The longer leaders stay in office the more autocratic and dictatorial they become and corruption becomes a way of rule. As a result thereof, public sector performance deteriorates, living standards drop, the rule of law is absent and intra- and inter-state conflict increases.

The recent events in North Africa showcased just how detrimental heads of state refusing to give up power can be to a nation. It started in Tunisia where President Zine El Abidine Ben Ali, who vowed that never again will Tunisia be ruled by an ageing dictator, stayed in power for 23 years. His corrupt and suppressive rule was ended by mass riots in January 2011. Next in line was President Hosni Mubarak of Egypt, whose 30 year reign ended in an embarrassing resignation after being ousted by his own people. President Laurent Gbagbo of Côte d'Ivoire was also forced by the citizens of the country to resign power after rigging the 2010 elections in order to remain in power. Then there was Muammar Qaddafi, once hailed as the champion of the oppressed and admired by the developing world, recently brutally murdered by rebel soldiers in a battle to get rid of their president of 42 years. In all the above cases intra state violence, and in the case of Libya, war erupted due to leadership nuances.

Heads of state ruling for decades, abusing their power and creating not only intra-state conflict but inter-state conflict, is a saddening reality in most African and third world countries. In sub-Saharan Africa, Paul Biya, the president of Cameroon, has been in power for over three decades, with endless scandals over corruption and abuse of power linked to his name. In Southern Africa, President Robert Mugabe of Zimbabwe ruled for nearly four decades and in November 2010, the International Monetary Fund (IMF) described the Zimbabwean economy under his reign as "completing its second year of appalling economic growth" (IMF, 2010) due to his tyrannical rule. That brings us to East Africa, and in particular Uganda, where President Yoweri Kagame Museveni, once hailed as a beacon of hope in the region, is increasingly losing face in the international arena and at home. President Museveni has just been re-elected into his fifth term in office and, even before his swearing in, intra-state conflict has sporadically erupted across Uganda in protest against this once seemingly "big man".

These situations are worrisome to the extent that the constitutions of these countries are rendered impotent and inferior to the overriding imperial powers of these individual leaders. In the quest to find lasting solution to these challenges this paper takes recourse to appraising the role of international criminal court in abating executive lawlessness and ensuring rule of law in third world countries especially in Africa.

Objective of the Study

The main focus of this study was on Third World Countries and Executive Lawlessness: An Appraisal of the Role of International Criminal Court (ICC) in Ensuring Good Governance in Africa. To realize the above objective, the following specific goals shall be pursued:

1. To review the Concepts of Executive Lawlessness and Good Governance Issues in Africa and third world countries in general;
2. To take an insight into the trajectory of Executive Lawlessness in Africa;
3. To determine the role of the International Criminal Court (ICC) in ensuring Good Governance in Africa and the associated challenges; and
4. To proffer measures towards good governance in Africa going forward.

Research Methodology

The descriptive method of research is used for this study. Descriptive method is mainly concerned with describing the nature or condition of a present situation. It is applied in order to investigate and explore the causes of a particular phenomenon. Descriptive studies provide a detailed highly accurate profile of people, events or situations. It also locates new data that contradicts past data and it clarifies a sequence of steps or stages. Additionally, a descriptive study reports on the background or context of a situation. In this study, the descriptive research method was employed to identify the role the presidency play in conflict in Africa.

This is a qualitative study; the use of the qualitative method is advantageous as it is more open to change and refinement of research ideas as the study progresses. Furthermore, secondary data will be used for this study, as well as, newspaper articles and academic reviewed articles as a primary source of information. “In choosing media sources, the study prioritized those with a reputation of credibility, and sought to ensure diversity of geographical regions and of perspectives” (Cotula, Vemeulen, Leonard, Keeley; 2009).

Theoretical Framework

There is ample academic literature regarding the genesis and nature of the African presidency. Most of the literature focuses on the “path dependency” that has led to the persistence of presidential dominance in African states since independence. The main theoretical sources that serve as a point of departure and that provides insight into the persistent nature of presidential dominance are Kwasi Prempeh’s Presidential power in comparative perspective: the puzzling persistence of imperial presidency of post-authoritarian Africa (2007) and Gary Rosen’s the time of the presidents (2006). Both articles agree that despite the democratic waves that have led to great political liberation and freed the continent of autocratic leaders through constitutional reforms, the phenomenon of presidential dominance still persist. Furthermore, these articles define “imperial presidency” in post authoritarian Africa, elaborate on the nature of the dominant African president and the factors that contributed to the persistence of presidential dominance.

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These sources are supplemented by Oloka Onyango's "New-Breed" leadership, conflict, and reconstruction in the Great Lakes region of Africa, his body of work elaborates on the notion that the period from the mid-1980's generated a new breed of African leaders, although three decades later these rulers are looking more and more like the old breed. On the topic of theory, Robert Jackson and Carl Rosberg's Personal rule: theory and practice in Africa (1984) provide an insightful look at the theory of "personal rule" which has been an important facet of politics and is based on Machiavelli's The Prince. An additional source Democratic ideology vs. Autocratic practice: Is Africa a victim of her past by Kaniki considers the dominant political ideologies in African politics and the autocratic practices that the leaders apply to their rule. Such forces have their origins in the formation of a "defensive state" that survives on a personalized political power structure woven around the presidency. It is in this context that the African presidency takes centre stage as is deserving of academic attention with recourse to the trajectory of executive lawlessness and good governance.

Review of the Concepts of Executive Lawlessness and Good Governance Issues

The executive is an administrative arm of government which carries out policies and enforces law enacted by the legislature. The chief executive is directly elected by the electorate through a universal suffrage; the officers under the chief executive are the president and the state governor. More simply, executive is the organ of government whose duty is to carry out government decision and enforce its laws. They are responsible for the implementation and execution of laws, policies and directives made by the legislative organ of government. The executive arm of government is headed by the prime minister in a (parliamentary system and the president in a presidential system of government. Its functions include the general administration of the whole country or the state as the case may be. There is usually an Executive Council, chaired by the President or Governor, and which includes, the Vice or Deputy, and all Ministers or Commissioners, and all other relevant political appointees. This scenario is equally played out at the Local Government Areas, where the Chairman is ably supported by the Vice-Chairman, Supervisory Councilors, and various appointees in the administration of the area.

By whatever nomenclature so employed; executive lawlessness, recklessness, abuse, authoritarianism or autocracy, in the present there is no deviating from the central tendency and meaning of the subject matter. Africa like other third world countries share similar characteristics, which differentiate them from the First world or developed countries. Third world countries especially Africa has remained the theatre of dramatic and manifest power play in the palaces of power. Been products of colonial repression the leadership in these countries have assumed all the major attributes, characteristics and rapacious inclinations of colonial oppression and repression. Thus the leadership that emerged post colonial employ all available means, tactics and stratagem to safeguard their hold unto power, clamp down on opposition and muzzle the masses into loyalty. This is the scenario largely responsible for executive lawlessness in third world countries, especially in Africa. This indeed gives cause for serious concern.

Good governance is not only a normative model that can be used to judge upon acts and deeds of public bodies; it is also an explanatory model that explains and predicts the effect of public policy, including the support for public bodies and decisions of these bodies. Principles of good governance are therefore relevant when it comes to implementation and enforcement of public policy. To understand the concept of governance let's take recourse to UNESCAP (2011), which describes it as the process of decision-making and the process by which decisions are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance. Another way of putting it is defining governance as a process, a use of powers or authorities to manage public affairs. It comprises of mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (UNDP, 2011). The World Bank defines governance as the manner in which power is exercised in the management of a country's economic and social resources. In this perspective, there are three distinct aspects of governance: the form of political regime; the process by which authority is exercised in the management of a country's economic and social resources for development; and the capacity of governments to design, formulate, and implement policies and discharge functions (World Bank, 1992).

Therefore, the operational definition of governance is a manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services. Governance is actually the entire process of decision-making. It is not only the substantial decision on the content of the public policy, but also the more organizational decisions on the design of the institutions, the actors involved in implementing the policy and the legal form of the agreements between these actors. With the addition of 'good', the term 'governance' receives a normative meaning. Apparently governance can either be 'good' or 'bad'. Majority of scholars understand the concept in these perspectives: the capacity of the state, the commitment to the public good, the rule of law, the degree of transparency and accountability, the level of popular participation, and the stock of social capital. Without good governance, it is impossible to foster development. No amount of resources transferred or infrastructure built can compensate for - or survive - bad governance.

With the above in mind it is imperative to note however, that, the primary essence of government is to ensure good governance and the protection of lives and property of the citizens. But this notwithstanding there is prevalence of good governance deficit and consequential executive lawlessness among African leaders. This is evident in state failures and problems resulting from executive lawlessness and culture of impunity in the continent. In the submission of the Human Rights Watch (2007) good governance has been equated to political and institutional processes and outcomes that support the exercise of legitimate authority by public institutions in the conduct of public affairs and management of public resources, so as to guarantee the realization of sustainable human development. The true test of "good governance" is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights. The key question is: are the institutions of

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governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?

It is disheartening that over 70% of African citizens live below the poverty line (International benchmark is \$1.5 per day), and Nigeria in particular is ranked 156th out of 187 countries in the world ranking of nations using the Human Development Index (UNDP, 2011). Yet between May 1999 and June 2008 alone, the country earned over \$205 billion from petroleum alone (Wokoma, 2008). In Switzerland, just 7.4% of the population is below the poverty line. Similarly, Human Development Index of Sub-Saharan Africa at average of 0.463 lags behind the world average of 0.682. The inequity-adjusted HDI is even further disappointing at 0.278. The low point in the global scale is 0.456. The Multi-Dimensional Poverty Index (MPI) shows that 54.1% of the population lives in poverty, with 57.3% in intense deprivation; Other HDI for sub Saharan Africa includes: Life expectancy 51.9 years; Education index 0.442; Multi-Dimensional Poverty Index 0.310; and Gross National Income per capita 2,069. Current statistics reveal that 1% of Africa's population; enjoy the privileges of 80% of its national resources. Thus, 99% of the populations have barely 20% of the overall wealth to struggle over (Yusuf, 2010).

Nigeria is ranked 14th as the world's most failed state in the 2011 rankings released by Fund for Peace, an American independent non-profit research and educational organization. The survey which considered 177 countries used the following criteria: Group Grievance, Uneven Development, and Legitimacy of State, Public Services, Security Apparatus, and Factionalized Elite. Nigeria's position dropped sharply from 54th in 2005, to 22nd in 2006, and 14th in 2010 and 2011. Nigeria was only better than the likes of Somalia, Chad, Sudan, Afghanistan, Pakistan, Haiti and Iraq. All these are evidently third world countries. In fact, today Nigeria is in a worst case scenario and much more a failed state than as indicated in the 2011 ranking. More so, the nation's Misery Index is on a persistent rise. Indeed, a Preston curve on income distribution in the world indicates that Nigeria is one of the three poorest nations of the world, where more than 80% of the population earn less than \$1 per day (Agwu, 2007). If this is the case of a so called giant of Africa; what is the condition in other African countries. Yet African leaders are more preoccupied with perpetuating themselves in power, hoodwinking the opposition, personalizing and emasculating the power of state than ensuring good governance and sustainable development.

The 2011 Ibrahim Index of African Governance released by the Mo Ibrahim Foundation, ranked Nigeria 41st out of 53 African countries studied. The Index seeks "to provide a robust, comprehensive and quantifiable tool for civil society and citizens to hold governments to account, to stimulate debate on governance and to provide a framework to assess governance quality in Africa" The Index ranks good governance in four major areas: Safety and Rule of Law, Participation and Human Rights, Sustainable Economic Opportunity, and Human Development. Some of the scores proved quite interesting: Cape Verde scored 78.0, Ghana 66.0, Sao Tome 60.2, and Nigeria 46.5 (Obi, 2012). Nigeria "the giant of Africa" is thus proving the point that "possessing mere potentials seem to be inadequate for transformation to greatness. Good leadership is critical as it provides the required governance that can

exploit all the potentials for the good of the citizenry” (Obi, 2012). The Mo Foundation also instituted an annual Prize for good leadership in Africa. In 2007, the prize was won by Joaquim Alberto Chissano, former President of Mozambique. In 2008, Festus Gontebanye Mogae of Botswana received the prize. The question remains: when and which Nigerian leader will ever receive such prize?

Given this sad and inglorious profile, how does Nigeria in particular and Africa in general break out of the logjam of executive lawlessness and associated governance challenges? How can the country resolve these fundamental problems? The situation is indeed complicated as a result of a debilitating combination of a bloated, corrupt and inefficient public sector-led economy and a private sector that grows a “rent seeking and unproductive culture of over-dependence on government patronage and contracts, with little or no value added” (Harneit-Sievers, 2004); these further breeds high level of poverty; unabated scourge of corruption in public and private life; and gross absence of security as well as abuse of the budget process (budget padding).

The Trajectory of Executive Lawlessness in Africa: an Insight

Whereas the culture of impunity reigns supreme at the heart of political life in Africa in the modern era lays a painful paradox. A popular yearning for political democracy was a driving force behind movements for national independence, and has remained powerful ever since. The nationalist elites’ commitment to democratic practices and principles has been rhetorically strong. Yet, with a few exceptions, dictatorship has become the rule. Instead of representative institutions, governmental accountability and respect for individual rights and freedom, there is widespread repression, terror, clamping down on the opposition and gross violations of human rights. Strangely enough, there is very little by way of explanation beyond a few works on authoritarianism in Latin America, and even fewer essays on Asia and Africa. This paucity seems related to an enduring consensus in modern political theory since at least the 19th century, that the concept and practice of democracy is alien to non-European societies. Democracy in the Third World does not exist as an analytical or political problem. Popular theories such as “oriental despotism” did not bother to consider the complex social dynamics which, in fact, made for highly decentralized and pluralistic polities. Today the influential modernization theorists are convinced of the inevitability, perhaps even desirability, of authoritarian rule in the Third World. As Thomas (2001) points out, Marxists too often dismiss political democracy as a purely “bourgeois” deception. “This, allied with vulgar interpretations of what a ‘dictatorship of the proletariat’ represents, has paved the way for a very dangerous brand of left authoritarianism”. Thomas argues that the authoritarian state appears at a particular moment as a specific response to a configuration of historical and structural forces. These are related not only to local “internal” conditions but also to global economic and political developments.

Thomas relates the development and forms of the state to changing economic compulsions, from colonial slavery to the subsequent era of “free” labor and “classical” imperialism. Colonialism bequeathed highly developed administrative and repressive institutions, but

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underdeveloped participatory and democratic ones. The exclusion of the people, absence of separation of powers and the dominance of the executive over other branches of government; these were inherent in the logic of the colonial state. This state was an imposition from the top designed to introduce forcefully capitalist accumulation. The external orientation of capitalist development inhibited, with a few exceptions like India, the growth of strong indigenous bourgeois or working classes, which could become driving forces for political democracy. Instead, the colonial state produced a relatively large petty bourgeoisie, which eventually led the nationalist struggle, Thomas opines.

Since independence, the power of the state and the authoritarian tendency inherited from colonialism has grown. Thomas argues that the petty bourgeoisie, large in number but politically weak, comes to rely entirely on the state for its survival and growth. This ruling class has little social base outside of itself, which makes democratic procedures risky and encourages reliance on authoritarianism. This tendency is reinforced by crises and interruptions which are integral to capitalist accumulation and have been a key feature of the capitalist world economy since the mid-1970s. The authoritarian state emerges as a response to the exhaustion of primary product exports and import substitution industrialization as models of accumulation. The state's task is to cut the growth of real wages and the standard of living, and at the same time maintain productivity, profits and social and economic domination. This role is facilitated by massive military and economic aid from the metropolitan countries. Finally, the ideology of "development" and "modernization," so popular among the ruling elites and their ideological mentors in the West, itself encourages elitist tendencies. Thomas' discussion on ideology unfortunately does not sufficiently dwell on the deep legitimacy crisis of the authoritarian state. This crisis has been the Achilles' heel of the state in the periphery. Thomas' book goes a long way in helping us understand the rise of authoritarian states and executive lawlessness in Africa.

Ideological and political forces shaping the state in Africa in particular are the focus of Smith (2001). He aims to "complement" both the modernization and Marxist theorists who neglect the "autonomous" influence of political and ideological forces by seeing them as being determined either by "overarching cultural values" or an economic base. In contrast to Thomas, Smith argues that the colonial state owes its origins not simply to the economic compulsions of capitalist penetration, but perhaps more to the dynamics of the European interstate system. The state in the Third World comes into being as a "more or less" deliberate creation by European statesmen and officials.

For Smith, the rise of nationalism and emergence of the post-colonial state had more political than economic roots. Colonialism, by introducing arbitrary territorial divisions and "bureaucratic homogenization," produced an "intelligentsia" with a stake in the state it sought to control. Smith's "intelligentsia" includes intellectuals, skilled technicians, diploma holders and professionals of all sorts, including bureaucrats and military officers. According to Smith, these elite are caught in a dilemma. In order for it to consolidate the territorial state, it needs not only to centralize power but also to mobilize popular support and loyalty for the state. But because the state is an alien imposition, popular mobilization often highlights

cultural, ethnic and class grievances and undermines the position of the elite and indeed imperils the existence of the state itself.

The International Criminal Court (ICC) and its Roles in Good Governance in Africa

The ICC must not be confused with the International Court of Justice ICJ, which is the primary judicial organ of the United Nations, and has operated in The Hague since 1946, resolving legal disputes between sovereign states. The Hague-based International Criminal Court, ICC, began operation only in 2002, and focuses on war crimes and crimes against humanity especially among countries that have assented to the Rome Treaty. The creation of a permanent International Criminal Court (ICC), based in The Hague, the Netherlands, signifies an important development in the quest to prevent atrocious crimes of international concern (UNGA, 2012). In the late 1990s, delegations from over 120 states negotiated the Rome Treaty, the instrument that established the ICC. The court was established to exercise jurisdiction over genocide, war crimes, and crimes against humanity, which indeed are clear cases of executive lawlessness mostly manifest in Africa and some other developing countries of the world.

The ICC carries out its investigative work through the office of the prosecutor. The court has eighteen judges, each from a different member country and elected by the member states. It requires its members to seek a gender-balanced bench, and the judiciary must include representatives of each of the United Nations' five regions. Judges and prosecutors are elected to nonrenewable nine-year terms. The president and two vice presidents of the court are elected from among the judges; they, along with the registry, handle the administration of the court.

The court has jurisdiction over four categories of crimes under international law:

- a) genocide, or the intent to destroy in whole or in part a national, ethnic, racial, or religious group;
- b) war crimes, or grave breaches of the laws of war, which include the Geneva Conventions' prohibitions on torture, the use of child soldiers, and attacks on civilian targets, such as hospitals or schools;
- c) crimes against humanity, or violations committed as part of large-scale attacks against civilian populations, including murder, rape, imprisonment, slavery, and torture; and
- d) crimes of aggression, or the use or threat of armed force by a state against the territorial integrity, sovereignty, or political independence of another state, or violations of the UN Charter.

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The court can open an investigation into possible crimes in one of three ways: a member country can refer a situation within its own territory to the court; the UN Security Council can refer a situation; or the prosecutor can launch an investigation into a member state proprio motu, or “on one’s own initiative.” The court can investigate individuals from nonmember states if the alleged offenses took place in a member state’s territory, if the nonmember state accepts the court’s jurisdiction, or with the Security Council’s authorization.

Suffice to say that personal jurisdiction of ICC was limited to nationals of ratifying states and individuals committing the relevant crimes in the territory of a ratifying state. The Rome Statute entered into force in 2003; and as of November 2008, 108 independent states have ratified it (Report of the UNO Secretary-General, 23 August 2004, S/2004/616, para. 49). The ICC represents not merely another international criminal tribunal, but rather something qualitatively different from any other international court. All other international criminal tribunals have operated with jurisdictions that were limited territorially and usually temporally. This includes the Nuremberg Tribunal following the Second World War, the "ad hoc" tribunals created by the United Nations (UN) in the 1990s to address crimes in the former Yugoslavia and Rwanda, and the hybrid national international courts for Sierra Leone, East Timor, Bosnia, Kosovo, Cambodia, and Lebanon (Sang-Hyun Song, 2013). Unlike those courts, the ICC is potentially universal in territorial jurisdiction and has continuing temporal jurisdiction over a state following that state's accession to the Rome Statute. Moreover, the ICC's regime of complementary jurisdiction (described in Sub-Part II.B.) is utterly novel on the international level.

The ICC, including its prosecutor, operates with an unprecedented degree of political independence. The prosecutor may initiate cases of his own accord (proprio motu), subject to review by the court's pre-trial chamber. In short, the ICC regime has several characteristics that are historically novel, even when compared to other recently-created tribunals. A stated goal of the ICC is to "contribute to the prevention of crimes that are grave in nature" (Botha, 2012). Debates about the wisdom and usefulness of the ICC have often focused on the likelihood that the ICC will actually succeed in preventing such atrocities smacked of executive lawlessness with direct bearing on governance deficits, especially where domestic or national courts are overwhelmed. It is important to note that, unlike most domestic crimes, the crimes adjudicated by international tribunals often occur during a severe breakdown in public order. This complicates the deterrence question insofar as an international criminal tribunal's actions can influence the quality of public order in the affected society.

In the light of the above therefore, the ICC was created to bring justice to the world’s worst war criminals, but debate over the court still rages. The International Criminal Court seeks to hold to account those guilty of some of the world’s worst crimes. Champions of the court say it deters would-be war criminals, bolsters the rule of law, and offers justice to victims of atrocities. African countries make up the largest bloc of ICC members. The European Union is also a staunch supporter of the court; it adopted a binding policy in support of the ICC in 2011.

The ICC is intended to complement rather than replace national courts. It can only act when national courts have been found unable or unwilling to try a case. Additionally, it only exercises jurisdiction over crimes that occurred after its statute took effect in 2002. The ICC differs from the International Court of Justice; the top UN court, which settles disputes between states and is also located in The Hague—in that it prosecutes individuals. Its broad geographic reach and continuous operation distinguish it from temporary international tribunals, such as that in Rwanda.

The ICC has indicted more than forty individuals, all from African countries. Seventeen people have been detained at The Hague, nine have been convicted of crimes, and four have been acquitted. Cases have been referred by the governments of Uganda, the Central African Republic, the Democratic Republic of Congo, and Mali relating to the civil wars and other conflicts that have raged in those countries. The UN Security Council made its first referral in 2005, for alleged crimes in the Darfur region of Sudan. This was followed in 2011 by a referral for Libya. In addition, the prosecutor's office opened investigations *proprio motu* in Kenya in 2010, the Ivory Coast in 2011, Georgia in 2016, Burundi in 2017, Bangladesh and Myanmar in 2019, and Afghanistan in 2020. Preliminary examinations have been opened in eight other countries—including Colombia, Ukraine, and Venezuela—as well as in the Palestinian territories (Wikipedia, 2020).

The ICC contributes to the fight against impunity and the establishment of the rule of law by ensuring that the most severe crimes do not go unpunished and by promoting respect for international law. The core mandate of the ICC is to act as a court of last resort with the capacity to prosecute individuals for genocide, crimes against humanity and war crimes when national jurisdictions for any reason are unable or unwilling to do so. As of November 2012, the ICC is seized of 14 cases in seven country situations, involving a total of 23 suspects or accused. Three of the investigations in Uganda, the Democratic Republic of the Congo (DRC) and the Central African Republic resulted from referrals made by the States themselves; two situations in Darfur, Sudan and Libya were referred to the ICC Prosecutor by the United Nations Security Council, and the last two investigations in Kenya and Côte d'Ivoire were initiated by the Prosecutor *proprio motu*, with the authorization of the Pre-Trial Chamber of the ICC. In addition, the Prosecutor is currently conducting preliminary examinations into eight situations (Sang-Hyun, Song, 2013). Accordingly, the Rome Statute and the ICC have made particular advances in combating impunity in relation to crimes against children and women. The Rome Statute extensively codifies such acts and requires the organs of the ICC to have particular expertise on violence against women and children. In fact, gender crimes were featured in the vast majority of ICC cases to date.

According to Sang-Hyun, Song report, the ICC's first verdict was issued on 14 March 2012 and the first sentence on 10 July 2012 in the Lubanga case, where child soldiers under the age of 15 were conscripted, enlisted and used to actively participate in hostilities in the DRC. Charges relating to the use of child soldiers are also featured in several other ICC cases, and the Special Representative of the United Nations Secretary-General for Children and Armed

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Conflict has assessed that "these indictments serve as a useful deterrent against child recruitment in situations of armed conflict".

As the then United Nations Secretary-General Kofi Annan stated in 2004, the ICC makes an impact by "putting would-be violators on notice that impunity is not assured (Report of the Secretary-General, 23 August 2004, S/2004/616, para. 49). Where tensions arise, announcing publicly that the ICC is following the situation can be a powerful way to warn any potential perpetrators that they could be held liable for their actions. Moreover, it can draw local as well as international attention to the situation and induce the relevant national and other stakeholders to take necessary action to defuse the crisis. Even where the ICC's intervention is required, it does not necessarily have to lead to trials before the ICC. An ICC investigation may instead prompt the relevant national authorities to investigate the alleged crimes in an expeditious manner and to prosecute the suspected perpetrators in domestic courts.

The ICC reduces impunity not only by punishing perpetrators, but also by allowing victims to participate in the judicial proceedings and to apply for reparations. These are novel, progressive features in international criminal proceedings that empower victims and bring retributive and restorative justice closer together. As of November 2012, the ICC has received more than 12,000 applications for participation in the proceedings, the majority of which have been accepted. Its first decision on reparations for victims was issued on 7 August 2012.

The Rome Statute created not only a court, but also a new international legal system consisting of the ICC as well as the national jurisdictions of each State Party. Within this system, States have the primary responsibility to investigate and prosecute Rome Statute crimes. In his 2004 report, Mr. Annan noted that "the Court is already having an important impact by serving as a catalyst for enacting national laws against the gravest international crimes" (Report of the Secretary-General, 23 August 2004, S/2004/616, p. 16.). Indeed, the Assembly of States Parties to the Rome Statute has repeatedly stressed the importance of national implementation of the Statute and of strengthening the capacity of national jurisdictions and has considered ways to achieve those goals. Recently, discussions on these issues, under the Rome Statute concept of complementarity, have been multiplied in many forums among a wide range of stakeholders, notably the United Nations, interested States and civil society.

Without the rule of law, impunity and executive lawlessness reigns. By punishing violations of international legal norms and by promoting adherence to these norms, the ICC and the wider Rome Statute system play an important part in advancing the rule of law, thereby reducing impunity. This role is critical given the nature of the specific norms that the Rome Statute concerns—norms aimed at preventing crimes which "threaten the peace, security and well-being of the world" (See Preamble to the Rome Statute of the ICC). The acts and omissions which fall under its jurisdiction are so heinous, so destructive, that every effort towards their prevention is worthwhile. Accountability is important not only for the sake of

the past, but for the future as well. Where impunity is left unaddressed, it provides fertile ground for the recurrence of conflicts and repetition of violence.

But, since its inception, the ICC has faced considerable setbacks and challenges. It has been unable to gain the support of major powers, including the United States, China, and Russia. Some countries have also withdrawn from the court, and many African governments complain that the court has singled out Africa in its operation. Burundi left in 2017, following the court's decision to investigate the government's crackdown on opposition protests. Philippine President Rodrigo Duterte pulled out in 2019, after the court launched an inquiry into his government's war on drugs, saying domestic courts are sufficient to enforce the rule of law. Gambia and South Africa notified the United Nations in 2016 that they intended to exit the treaty, but they later reversed course in the face of political upheaval and legal challenges. More recently, the administration of Donald J. Trump has ramped up U.S. opposition to the jurisdiction of the court (Wikipedia, 2020).

These challenges notwithstanding, in order to effectively perform its mandate, the ICC needs the support and cooperation of States. The international community has, on multiple occasions, declared its determination to end impunity for the gravest crimes, and cooperation with the ICC is a concrete way to give effect to that objective. As the ICC has no police force of its own, it requires States' cooperation for the enforcement of its orders and is entirely reliant upon them for the execution of its arrest warrants. Unfortunately, several suspects subject to ICC arrest warrants have successfully evaded arrest for many years, defying the international community's attempts to establish the rule of law at the international level. Political will to bring these persons to justice is crucial.

The long-term value of the ICC and the Rome Statute system lies in both the punishment of perpetrators and the prevention of future crimes. There is already evidence that it has made a significant contribution in this regard. Going forward, the ICC should remain firmly committed to bringing an end to impunity and upholding the rule of law, inspired by the common values of humanity that the Court shares with the United Nations.

Recommendations

This paper therefore recommends as follows;

1. African leaders need to eschew internal political slavery by reduction of abject poverty through equitable resource control and proper allocation of national revenue.
2. Executive lawlessness manifest in lopsided appointments in favour of a particular ethnicity and religion should be discarded to avoid political instability.
3. Promotion of Human Rights and Sanctity of life, morality, accountability and democratization should be upheld for further prevention and reduction of executive lawlessness and entronement of good governance in Africa.

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4. There is need for political leaders in African and elsewhere to always employ dialogue as a method of resolving political differences and promoting peace and harmony for sustainable development.
5. In order to effectively perform its mandate, the ICC needs the support and cooperation of States, it's therefore exigent that the UN do the needful by passing a resolution that will be binding on all state parties to abide by the Rome Treaty.

Conclusion

This paper submits that most contemporary problems of leadership in Africa are caused internally and can only be solved by African leaders with some foreign assistance. Leadership imperfection is inevitable, however; controllable flaws should be prevented and minimized for impactful governance. African backwardness in politics, security and economy has been viewed as a consequence of leadership flaws. Assumption of leaders seems patriotic at the beginning but their later performance reveals their recklessness and hidden motives.

Turning to the International Criminal Court, a brief look at those who have been indicted reveals that to date, the vast majority have been from sub-Saharan Africa, and the remaining few are from Libya, also on the African continent. While armed conflict has been more prevalent in Africa than in other parts of the world over the past decade, African leaders certainly do not hold a monopoly on the commission of war crimes. Courts build their legitimacy partly based on the cases that they choose to hear. By focusing predominantly on Africans, there is a real worry that the ICC will be perceived by non-Western countries as providing a cloak of legitimacy for the Western nations to achieve their political aims - despite the fact that the ICC's chief prosecutor Luis Moreno Ocampo has explicitly stated that the ICC is not a court "just for the Third World".

What the international community needs to guard against is allowing the ICC to become a tool that Western liberal democracies can impose on developing country leaders who have fallen out of political favour. For the ICC to remain viable, it also cannot be perceived as the backdoor by which Western powers target their political enemies.

With the above in mind, it is germane to conclude therefore, that the International Criminal Court offers new hope for a permanent reduction in the phenomenon of impunity and lawlessness; the establishment of the ICC is undoubtedly the most significant recent development in the international community's long struggle to advance the cause of justice and the rule of law. The fight against impunity for the most serious crimes of international concern has been strengthened through the work of the International Criminal Court. The contribution of the International Criminal Court in the fight against impunity is therefore

worth commending and demands the support of the major powers to bolster the legitimacy of the ICC in the promotion of good governance everywhere in the world.

References

- Agwu, N. (2007). *African Leadership: Insights, Meanings and Connotations, in Leadership and Management Studies in Sub-Sahara Africa, Zanzibar* 215-222.
- Ahmad, I. (1986). Authoritarian States in the Third World. *Middle East Report* 141 (July/August 1986).
- Botha, M. (2012). *African leadership and the Role of the Presidency in African Conflicts: A Case Study of Uganda's President Yoweri Museveni*. Thesis presented in partial fulfillment of the requirements for the Degree of Master of Arts (International Studies) in the Faculty of Arts and Social Sciences at the University of Stellenbosch.
- Brinkerhoff, D. W. & Goldsmith, A.A. (2002). *Clientelism, Patrimonialism, and Democratic Governance: An Overview and Framework for Assessment and Programming*. Paper prepared for U.S Agency for International Development Office of Democracy and Governance.
- Cotula, L., Vermeulen, S., Leonard, R. & Keeley, J. (2009). *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*. London.
- Freedom House (2010). *Freedom House reveals the world's worst Human Rights abusers*. Press release, June 2010. Washington DC.
- Gary, R. (2006). *The time of the Presidents*. CRS Report for Congress. Washington D.C.
- Harneit-Sievers, A. (2004). *Democratic Transition and Consolidation in Africa*. Occasional Papers. Lusaka: Konrad Adenauer Foundation.
- IMF (2010). The futility of politics of patronage. *The Independent*, Issue 147, February 2010.
- Jackson, R. H. & Rosberg, C. G. (1984). Personal Rule: Theory and Practice in Africa. *Comparative Politics*, 16, (4): 421-442.
- Kaniki, M.H.Y. (1993). *Democratic Ideology vs. Autocratic Practices: Is Africa a victim of her past*. Staff Seminar Paper No. 5, Department of History, University of Nairobi.
- Kirk, P. & Bolden, R. (2006). *African Leadership: Insights, Meanings and Connotations, in Leadership and Management Studies in Sub-Sahara Africa, Zanzibar* : 215-222.
- Obi, A. (2012). *The 2011 Ibrahim Index of African Governance: an Assessment of Issues*. Awka: Meklinks Press.
- Okoth, P.G. & Ogot, A. (eds.). (2000). *Conflict in Contemporary Africa*. Nairobi: Jomo Kenyatta Foundation.
- Okoth-Ogendo, H. W. O. (1993). Constitutions without Constitutionalism: Reflections of an African Paradox. In Greenberg et al. (eds.). *Constitutionalism and Democracy: Transition in the Contemporary World*. Nairobi: Jomo Kenyatta Foundation.
- Oloka-Onyango, J. (2011). "New-Breed" leadership, conflict, and reconstruction in the Great Lakes region of Africa, *The Observer* [Online]. Available: <http://www.theobserver.com> (2019, June 12]

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- Posner, D. N. & d Young, D. J. (2007). The Institutionalization of Political Power in Africa in *Journal of Democracy*, 18 (3): 127-140.
- Prempeh, H. K. (2007). Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency of Post-Authoritarian Africa. From the Selected Works of H. Kwasi Prempeh. New-York: Seton Hall University.
- Prempeh, H. K. (2008). Progress and retreat in Africa: Presidents Untamed. *Journal of Democracy*, 19 (2): 110-122.
- Robert, J. & Carl, R. (1984). *Personal rule: theory and practice in Africa*. London: Yale University Press.
- Rotberg, R. (2009). "Governance and Leadership in Africa: Measures, Methods and Results" *Journal of International Affairs*, 62 (2): 113-126
- Sang-Hyun, Song (2013). The Role of the International Criminal Court in Ending Impunity and Establishing the Rule of Law. Report by the President of the International Criminal Court.
- Schlesinger, A. M. (1973). *The Imperial Presidency*. Boston: Houghton Mifflin Company.
- Smith, A. D. (1983). *State and Nation in the Third World*. New York: St. Martin's Press.
- Smith, M. (2001). *Ideological and political forces shaping the state in Africa*. Paper Prepared for Codesria Conference Dar es Salam, Pp. 1-32.
- Thomas, C. (2001). *The Rise of the Authoritarian State in Peripheral Societies*. New York: Monthly Review Press.
- Tripp, A.M. (2005). The Changing Face of Authoritarianism in Africa: The Case of Uganda. *Africa Today*, 10(3): 4-26.
- UNDP (2011). *Leadership and Development in Africa: Exploring the Nexus*. UNDP Report, New York.
- UNESCAP (2011). *Governance and Good Governance in Africa*. UNESCAP Report on sub-Saharan Africa, Accra Ghana.
- Van Wyk, J. A. (2007). Political Leadership in Africa: Presidents, Patrons or Profiteers. ACCORD (The African Centre for the Constructive Resolution of Disputes) *Occasional Paper Series 2* (1):1-34.
- VonDoepp, P. (2009). *The Leadership Variable in Africa: Situating Structure and Agency in Governance Trajectory*. Paper Prepared for the Annual Meeting of the American Political Science Association, September 2009.
- Wanyama, F. O. (2000). The role of the presidency in African Conflict. In *Okoth, P.G. & Ogot, B. A. (eds.). Conflict in Contemporary Africa (30-43)*. Nairobi: Jomo Kenyatta Foundation.
- Wokoma, D. (2008). *Nigeria's Economic Indices and Governance Failure: a Call for Review*. Staff Seminar Paper No. 5, Department of Economics, University of Nairobi.
- Yusuf, B. (2010). *Human Development Indexes: African Leadership at Crossroads*. Lagos: Liberty Press.