

OUTSOURCING JUSTICE: AFRICA AND THE POLITICS OF THE INTERNATIONAL CRIMINAL COURT

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How do states respond to the increasing transnational character of criminal justice and the international diffusion of human rights norms and regimes? Whereas it is often argued that such transnational regimes of criminal justice may erode state sovereignty, my dissertation explores the ways in which states — especially those presumed to be weaker in the international system — use the International Criminal Court (ICC) as leverage in their domestic conflicts and to empower themselves in the pursuit of their political interests. To that end, with the ICC as a focal point, I argue that African states engage in the perversion of international legal norms and regimes.

The premise of my arguments is based on the exploration of the ways in

which African states engage in political calculations of the costs and benefits of referring “situations” in their territory to the ICC. It appears that the states that have used the self-referral mechanism in an attempt to pursue their own political agendas by inviting the ICC to deal with their local adversaries — whether political opponents or rebel leaders. Through an internationalization of the crimes that may have been committed in their territory, these states forsook their responsibility to investigate and prosecute.

By exploring the ways in which states self-refer cases to the ICC prosecutor, I posit that the political elites are mostly guided by their self-interests, not the rules and expected norms of behavior for upholding human rights and delivering

justice. The end result may be either a violation of the norms and their de-legitimization, or simply their perversion, by which I mean their use for purposes other than what they were intended for.

Using an interpretive methodology, my dissertation research is grounded in Critical Theory of International Relations with an empirical component focused on the relationship between the ICC and four African states: Kenya, Uganda, Côte d’Ivoire, and Libya. Therefore, my project seeks to shed light on the intersection of state power and interests vis-à-vis international human rights norms and regimes of transnational criminal justice. Moreover, I offer a critical reading of transnational legal processes that challenges the conception of an international criminal justice regime as an unmitigated good.

In May and June 2014, I completed six weeks of fieldwork at the ICC in The Hague, Netherlands, where I did archival research, and interviewed officials in the Office of the Prosecutor, the Public Affairs Unit, and defense lawyers. While at The Hague, I also interviewed representatives of civil society organizations working in the area of international criminal justice. As a participant observer, I was also able to watch the Court proceedings of the trials of Kenyan Deputy President William Ruto, former DRC militia leaders Germain Katanga, and Thomas Lubanga, and the admissibility challenge of the Libyan government before the ICC.

The next step in my project is to do fieldwork research in Kenya, Uganda, and Côte d’Ivoire where I will conduct interviews with political leaders, judges, and officials at the ministries of justice who are involved in the criminal investigation and prosecution of mass atrocities. I will also do archival research focusing on primary sources in order to better understand the local debates that animate the relationship between the political and judicial apparatus in those countries with the ICC.

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