

Why Africa quits the ICC

Perhaps the time has come to manage our own political, economic and judicial affairs, given how it ‘targets’ us

Analysis

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THE decision for the South African government to leave the International Criminal Court (ICC) has been one of contention and mass speculation. Many have stated that the ICC serves as a body of accountability and that this decision has been a sad day for justice in SA.

However, the critique by African member states as to what the reasons are for leaving need to be fully unpacked, while also understanding the extent to which the ICC is fully representative of the global world order.

The question of why African countries should not leave has been a nuanced one, yet we would need to look at the opposite, namely what are the reasons for African countries to leave the ICC?

Firstly, we need to look at SA’s reasoning for pulling out of the ICC. According to a statement by the SA government, the country will be withdrawing because “its obligations are inconsistent with laws giving sitting leaders immunity”. Furthermore, the continent’s leaders have been unanimous in their opinion that there is disproportionate targeting of countries from Africa.

This perspective cannot be ignored; of the current ongoing investigations by the ICC, only one (Georgia) out of the nine countries is not in Africa. This is not the first time in history where Africa has been the target of a “neoliberal playground” of laws, rules and regulations which end up causing more harm than good (like structural adjustment programmes in the 1980s/1990s).

Secondly, there is a massive paradox at play. On one hand Africa needs to ensure that there are internal mechanisms which can hold countries accountable, yet at the same time, the credibility of such internal institutions that have been attempted to be set up can be questioned. This is seen as the Africa Union’s (AU’s) aim to consolidate its power, while also challenging other international institutions.

Power dynamics in international relations in the past have arguably favoured the West, and SA’s decision to withdraw may just be challenging the inherent status quo. The ICC sees itself as playing a non-partisan role in ensuring credible and reliable means of prosecuting crimes committed against humanity.

Yet the it receives support from the UN, whose interests are focused on the major international role players such as the USA, China, and the UK to name but a few.

It does not become a public outrage when a country such as the US does not submit itself to the ICC, as the international scrutiny redirects itself to those that have to play into dominant interests, that is African countries adhering to international law.

If African countries leaving the ICC indicates the promise of consolidating a similar legitimate structure, then this is something



AFRICA NORMS AND VALUES: The ICC in The Hague, The Netherlands that has been criticised for selective justice as far as Africa is concerned, which makes the continent question whether it should remain or create its own justice system. PICTURE: GETTY IMAGES

that can be applauded.

In the future, we could see a functioning branch of the AU that would resemble the idea of a Pan-African Criminal Court, then this would be a step forward in ensuring the AU’s capabilities are multifaceted.

Yet you cannot hold your breath as there have been previous attempts to fill this vacuum (for example, the SADC tribunal), without much success. The clash of ideologies and the future of African solidarity are central to this issue, as we navigate the many ways in which Africa can have its own stamp on the world, while also trying to keep its own interests at the forefront.

While some scholars of international relations have labelled the ICC the most ambitious initiative in the history of modern international law, it has not achieved its goal. The failure of the ICC to act as a world court and conduct investigations worldwide renders the court ineffective and unfair thereby performing what one may call “selective justice”.

It has failed to deliver “even justice” and serves as a platform for western powers to showcase their foreign policy prowess. The fact that George Bush and Tony Blair continue to walk free and are praised as leaders of the free world shows the selectivity of international justice and the limits of international law.

The talk of Africa rising should consist also

Key points

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of Africa building its own transparent judicial system and not just building its economic and political institutions.

For far too long Africa has relied on the West for help. In this continent, we have come to accept the principle or belief that some country in another continent or some regional organisation outside of Africa will come to help us with any issues we have. This type of dependency should be eradicated.

Many scholars who believe that Africa should stay in the ICC while the African

countries build up the Pan-African court fail to realise that Africa has the potential to create independent and credible regional commission of inquires that can be used in the meantime while the mentioned court is being established.

A Pan African court will allow cases to be tried on the norms and values of Africa as outlined by Agenda 2063.

As much as the term “conflict” can be defined generally one needs to realise that conflicts differ from region to region because of various “anthropological complexities” of cultures and many other issues.

The use of African norms and values as outlined in Agenda 2063 will help the Pan-African criminal court to look at cases brought before it from an African perspective.

History has shown us many times that Western countries do not sign treaties that are not in their interest, so why should Africa stay in a court that clearly gets its credibility from choosing whom to prosecute and whom not?

Perhaps the time has come to manage our political, economic and judicial affairs. *Ijeoma Opara is an international relations (honours) student at Stellenbosch University (SU). She is a former president of the Stellenbosch Political Science Students Association (SPOSSA). Patrick Kadima is a final-year political science student at the same university, a former president of the SPOSSA and a former student union leader on SU’s Institutional Forum*