

The International Criminal Court under Threat by the United States and the United Kingdom: Is the Court Still Relevant for Africa?

Paul S. Masumbe*

Abstract

This article examines the challenges facing the International Criminal Court (ICC) under pressure from the United States and the United Kingdom. It further evaluates the ICC's relevance and benefits for Africa, with a focus on issues of power, legality, and fairness in international criminal justice. The article addresses the following questions: (i) How many heads of state around the world have been tried at the ICC? (ii) Is the ICC unfairly targeting African heads of state? (iii) How do threats from powerful states affect the status of the ICC? This article examines whether Africa should withdraw entirely from the ICC, given that some member states and non-member states appear untouchable. The article critically evaluates the strategic value of ICC membership for Africa and explores whether alternative regional mechanisms, such as a strengthened African Court of Justice, may offer a more equitable and context-sensitive approach to accountability. Hence, the article concludes that Africa should strengthen the African Court of Justice and withdraw from the ICC, which is threatened by every major power and cannot ensure justice for anyone. The study is qualitative and uses existing literature, including primary and secondary sources.

Keywords

International Criminal Court, African heads of state, US–UK sanctions, international justice, African Court of Justice.

1. Introduction

The International Criminal Court (ICC) is one of the most significant achievements in international justice, yet it faces unprecedented challenges from powerful nations that threaten to undermine its foundational mission of ending impunity for the world's most serious crimes.¹ While some scholars argue that the ICC unfairly targets African leaders,² the ICC remains Africa's most vital instrument for achieving justice, accountability and the

1 'The International Criminal Court: A Pillar of Global Justice' <https://thelawtoknow.com/2025/02/07/international-criminal-court/#google_vignette> accessed 08 February 2026.

2 Eneyew, A 'The Relationship between the International Criminal Court and Africa: From Cooperation to Confrontation?' (2012) 3(1) *Bahir Dar University Journal of Law* 110. See also Jalloh, CC & Bantekas, I (eds) *The International Criminal Court and Africa* (Oxford University Press 2017).

* LLD, Associate Professor & Head of School of Law (IYunivesithi Walter Sisulu, School of Law) <<https://orcid.org/0000-0002-9997-4125>>; email: pmasumbe@wsu.ac.za.



rule of law.³ The recent threats and sanctions from the United States (US) and the United Kingdom (UK) go beyond mere pressure on the ICC. The ICC's beginnings highlight Africa's essential role, as African nations were key to enacting the Rome Statute via their majority ratification.⁴ The robust backing from Africa arose from the continent's agonising history of genocide, war crimes and crimes against humanity, especially highlighted by the Rwandan genocide, which emphasised the critical need for a lasting ICC.⁵

Generally, the Rome Statute marked a new phase where those who had committed mass atrocities could no longer evade justice via ineffective or reluctant domestic systems.⁶ The ICC was created by the Rome Statute, a treaty adopted by multiple countries.⁷ The Rome Statute obligates state parties to assist the ICC, including in matters of arrest and surrender; non-parties may also have similar responsibilities when the ICC operates based on a United Nations Security Council (UNSC) referral.⁸ Article 86 of the Rome Statute requires state parties to completely assist the ICC in investigating and prosecuting offences under its jurisdiction.⁹ The Rome Statute clearly states that sitting heads of state are not immune from the ICC.¹⁰

Furthermore, the ICC remains Africa's only global system for prosecuting the most serious offences and safeguarding peace. Despite its shortcomings, the ICC serves as

3 Okurut, E & Among, HC 'The Contentious Relationship between Africa and the ICC' (2018) 10(3) *Journal of Law and Conflict Resolution* 19. The ICC has been a crucial instrument for achieving justice, accountability, and the rule of law in Africa. It has actively pursued justice in conflict zones such as Uganda, Sudan, Kenya, and the Central African Republic. The ICC's involvement in Africa has sparked intense debate, with some viewing it as a mechanism for delivering justice where domestic systems fail, while others see it as a selective tool targeting African leaders. Despite these controversies, the ICC remains a vital institution for ensuring accountability for grave crimes and providing a voice to victims of atrocities.

4 Mangu, AM 'The International Criminal Court, Justice, Peace and the Fight Against Impunity in Africa: An Overview' (2015) 40(2) *Africa Development* 7.

5 The 1994 Rwandan genocide highlighted the urgent need for a permanent international criminal court. The genocide, which took place over 100 days from April to July 1994, resulted in the deaths of an estimated 800,000 Tutsi individuals and some moderate members of the Hutu ethnic group. The genocide was a state-led effort to destroy the Tutsi minority and was marked by extreme violence, widespread sexual violence and the systematic killing of Tutsi civilians by Hutu militias. The international community failed to provide a political, diplomatic or military response to prevent or halt the genocide but played a significant role in the aftermath. The genocide highlighted the urgent need for a permanent international criminal court to prevent such atrocities from happening again.

6 The Rome Statute establishes the ICC, which has the authority to prosecute individuals for serious crimes of international concern, including mass atrocities. It marks a significant advancement in international criminal law by ensuring that offenders can no longer evade justice through ineffective or reluctant domestic systems. The Statute emphasises the complementarity of the ICC with national criminal jurisdictions, allowing the ICC to exercise jurisdiction only when national courts are unwilling or unable to prosecute.

7 Adopted on 17 July 1998, and entering into force on 1 July 2002, the Rome Statute comprises a Preamble and 13 Parts, outlining the ICC's jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression. As of January 2025, 125 states are party to the Statute, reflecting its global reach and commitment to addressing serious international crimes.

8 International Criminal Court 'Title of Document' <https://legal.un.org/icc/statute/99_corr/9.htm> accessed 09 February 2026.

9 Article 86 of the Rome Statute.

10 Masumbe, PS 'States Cooperation in Arresting Senior State Officials and Sitting Heads of State under International Criminal Law: Quo Vadis ICC' (2003) 1 *Criminal Justice* 186.

Africa's final avenue for addressing serious breaches of human rights and humanitarian law.¹¹ This is particularly important, as options such as the African Court are largely ineffective due to insufficient ratification and political backing. Accusations of bias overlook the complementarity principle, which limits the ICC to cases where national courts cannot or will not act. Additionally, the ICC has been criticised for focusing on cases in African countries, thereby fuelling perceptions of partiality.¹² This focus is not due to prejudice, but because African nations either referred the cases or lacked the capacity to prosecute them at home. The ICC has received voluntary referrals of cases from the Central African Republic, Mali, Uganda, and the Democratic Republic of Congo, reaffirming the need for the ICC and its legitimacy.¹³

Furthermore, perceptions of the ICC's bias against African member-states are exaggerated, and the ICC has begun to challenge major powers.¹⁴ The ICC's recent arrest warrants against Israeli officials and its investigations into situations involving Western allies demonstrate its growing independence and willingness to apply international law universally, regardless of political pressure.¹⁵ The idea that the ICC consistently focuses on African countries is increasingly disputed by its developing legal principles. Furthermore, Du Plessis has observed that claims of prejudice against African nations are overstated and that the ICC has begun to hold significant powers accountable.¹⁶ It has been reported that in 2024, the UK's foreign secretary, David Cameron, privately threatened to defund the ICC and withdraw from it.¹⁷ The sanctions and threats from the US and the UK in response highlight the hypocrisy of influential countries that call for accountability from others while seeking protection for themselves and their partners.¹⁸ These actions fundamentally

11 Chipaike, R, Tshuma, N & Hofisi, S 'African Move to Withdraw from the ICC: Assessment of Issues and Implications' (2019) 75(3) *India Quarterly* 334.

12 Manley, S, Tehrani, PM & Rasiah, R 'The (Non-) Use of African Law by the International Criminal Court' (2023) 34(3) *European Journal of International Law* 555.

13 This action demonstrates their recognition of the ICC's legitimacy and necessity in addressing serious human rights violations and crimes against humanity.

14 Du Plessis, M, Maluwa, T & O'Reilly, A 'Africa and the International Criminal Court' (2013) 11(3) *Criminal Justice* 563.

15 'What's next after ICC issued arrest warrants against Israeli leaders' <<https://www.timesofisrael.com/whats-next-after-icc-issued-arrest-warrants-against-israeli-leaders/>> accessed 11 February 2026.

16 Du Plessis, M 'Implications of the AU Decision to Give the African Court Jurisdiction over International Crimes' (2012) 2012(235) *Institute for Security Studies Papers* 16.

17 In April 2024, it was reported that David Cameron, the former UK Foreign Secretary, privately threatened to defund and withdraw from the International Criminal Court (ICC) if it pursued plans to issue arrest warrants for Israeli leaders, particularly Prime Minister Benjamin Netanyahu. Cameron reportedly warned that such actions would be akin to "dropping a hydrogen bomb," indicating that the UK would "defund the court" if the ICC proceeded with the warrants. This threat came after the ICC had announced its intention to seek arrest warrants for Netanyahu and other Israeli officials over alleged war crimes in Gaza. The UK government has since denied any such threats, stating that Cameron was unaware of the conversation that led to the alleged threat.

18 The US and the UK have imposed sanctions on countries like Russia, Iran and North Korea, which are seen as threats to their interests, while simultaneously criticising other countries for their actions. This duality in approach highlights the complex and often contradictory nature of international relations, in which the pursuit of national security and economic interests can lead to disregard for international norms and accountability.

compromise the ICC's autonomy and reveal that resistance to the ICC often stems from power politics rather than genuine concern for justice.

The proposed mass withdrawal of African nations from the ICC would be disastrous for the continent's efforts to combat impunity. Not every African nation endorses such an approach, and a withdrawal would leave victims of mass atrocities without access to international justice.¹⁹ Alternative mechanisms suggested by the African Union, though possibly beneficial in the long run, still fall short of replacing the ICC's established processes, expertise, and global legitimacy. Apart from prosecutions, the ICC has bolstered local legal frameworks across Africa by promoting the ratification and incorporation of the Rome Statute, which establishes explicit definitions of international crimes and requires states to bring offenders to justice.²⁰ This simply means that the way Africa addresses ongoing challenges will shape the future of international justice, as well as the continent's commitment to the rule of law, human rights, and the fight against impunity.

Moreover, the ICC's impact extends far beyond its courtroom proceedings. In this regard, the threats from the US and the UK reveal not the ICC's weakness, but rather its growing strength and independence.²¹ Africa's response to these challenges will determine not only the future of international justice but also the continent's commitment to the rule of law and human rights that its people deserve. Following the introduction in Part I, Part II examines the ICC's challenges. Part III covers the US and the UK's threats, which undermine the rule of law. Part IV reviews heads of state who have been tried at the ICC. Part V considers claims of the unfair targeting of African leaders. Part VI analyses the implications of threats by powerful states. Part VII evaluates whether Africa should withdraw from the ICC due to selective accountability. The final part concludes the study.

2. The ICC under threat: Challenges faced by the ICC

The ICC faces a complex array of obstacles that highlight the tension between authority, legality and equity in global criminal justice, especially in its interactions with Africa.²² The ICC operates within an international power framework that naturally favours select nations, as evidenced by the UNSC's role. The United Nations Security Council, dominated by its permanent members from the United States and Europe, can refer situations to the International Criminal Court while remaining largely beyond the Court's jurisdiction itself.²³

19 Di Sarsina, JR *Transitional Justice and a State's Response to Mass Atrocity* (TMC Asser Press 2019).

20 Plagbe, PM 'Investigating Pathways to Accountability for International Crimes in Africa: Comparative Review of Selected Justice Mechanisms' LLM dissertation, University of Pretoria. 2023 1-69.

21 'SA Condemns US Sanctions on ICC Judges, Warns of Threat to Rule of Law' <<https://vocfm.co.za/sa-condemns-us-sanctions-on-icc-judges-warns-of-threat-to-rule-of-law/>> accessed 10 February 2026.

22 Lu, H 'Does the ICC Work? Legal Innovation and Political Constraints in Global Justice' <<https://www.e-ir.info/2025/11/17/does-the-icc-work-legal-innovation-and-political-constraints-in-global-justice/>>.accessed 10 February 2026.

23 The UNSC can refer situations to the ICC under Article 13(b) of the Rome Statute, which allows it to trigger the ICC's jurisdiction. However, the UNSC has faced challenges in this process, particularly regarding the ICC's jurisdiction over non-party states.

The UNSC has exclusively referred African matters to date, even though war crimes, genocide, and crimes against humanity have occurred elsewhere.²⁴ This biased referral trend diminishes the ICC's legitimacy and perpetuates notions of partiality. Despite these obstacles, the ICC offers essential advantages to Africa that are hard to replace. As the sole court of last resort authorised to address violations of human rights and international humanitarian law, the ICC addresses shortcomings when local judicial systems fail.

The threats by the US and the UK towards the ICC signify an outright attack on the principles of global justice.²⁵ These actions highlight the hypocrisy of influential nations calling for accountability from others while seeking to shield themselves and their allies from the same legal norms. The International Criminal Court faces criticism for allegedly being influenced by powerful US and European actors, leading to investigations that primarily target groups or states not aligned with Western interests.²⁶ However, when the ICC begins to confront this selective justice, for example, by probing cases involving Western allies, the same entities respond with threats and sanctions, suggesting that the real issue is not bias against Africa but rather the ICC's growing independence and commitment to enforcing international law universally.

In this situation, the ongoing crisis confronting the ICC is a pivotal moment for global justice.²⁷ African nations must understand that yielding to pressure from the US and the UK by withdrawing from the ICC would betray the victims of large-scale atrocities and relinquish the ethical advantage to those aiming to manipulate justice for their political agendas.

24 The African Union Peace and Security Council (PSC) has been criticised for its exclusive focus on African matters, even when war crimes, genocide and crimes against humanity occur elsewhere. This has raised concerns about the council's effectiveness and the need for a more comprehensive approach to global security. The council's focus on African issues has been seen as reflecting regional bias and a lack of international cooperation in addressing global crimes.

25 Freeman, D 'What Do the Trump Administration's Sanctions on the ICC Mean for Justice and Human Rights?' <<https://www.amnesty.org/en/latest/campaigns/2025/03/what-do-the-trump-administrations-sanctions-on-the-icc-mean-for-justice-and-human-rights/>>. accessed 11 February 2026. For instance, on 6 February 2025, United States President Donald Trump issued an Executive Order authorizing sanctions on the International Criminal Court (ICC) and its Chief Prosecutor Karim Khan. This Executive Order is intended to stop the ICC from undertaking its independent mandate. It also poses a significant threat to the ICC and its staff. UN experts strongly condemned the move, calling it "an attack on global rule of law" that undermines international justice. This Executive Order is similar to one issued by President Trump toward the end of his first term in 2020, which President Biden later lifted. Trump's new executive action is a direct response to the ICC's efforts to hold Israeli nationals accountable for alleged crimes under international law in Palestine. In November 2024, the court issued arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant, as well as al-Qassam Brigades Commander Mohammed Diab Ibrahim Al-Masri, on charges of war crimes and crimes against humanity.

26 Lubaale, EC 'The Enduring Imperial Character of International Criminal Law: The ICC's Conviction Cases' (2025) 1(aop) *International Criminal Law Review* 1.

27 The ICC faces significant challenges that threaten its effectiveness and legitimacy. These include threats to its operations, such as cyberattacks and sanctions, which jeopardise its ability to investigate and prosecute serious crimes. The ICC's reliance on state cooperation, particularly from powerful nations, creates vulnerabilities when states refuse to cooperate. Additionally, the court's low conviction rates and limited enforcement powers highlight the complexities of prosecuting international crimes. The ICC's future depends on the collective responsibility to uphold the rule of law and the willingness to defend its vision of justice and accountability.

In this context, the ICC represents not only a legal institution but also the global community's commitment to combating impunity and protecting human dignity.

3. The US and the UK threaten the ICC: Undermining the rule of law

The threats against ICC officials and attempts to sanction the ICC fundamentally undermine the rule of law that these nations claim to champion. The ICC's jurisdiction is complementary to national criminal jurisdictions and operates in accordance with established legal principles.²⁸ For example, when powerful states threaten the ICC for following its legal mandate, they attack the very concept of international law and accountability. These actions send a dangerous message that justice is conditional on political convenience and that international law applies only to the weak and powerless. In addition, this selective approach to justice perpetuates the very inequalities and injustices that the ICC was established to address. Hodgson argued that the actions of influential Western nations have systematically eroded the ICC's legitimacy and the credibility of the international rule of law.²⁹

The US opposition to the ICC has directly threatened the universality of international justice, particularly through ongoing efforts to exempt its citizens from the ICC's jurisdiction.³⁰ A principled commitment to equality before the law is fundamentally compromised when a global superpower manipulates legal exemptions to establish parallel systems of accountability: one that is universal in theory and another that is selectively insulated in practice. Structural evaluations of the ICC further indicate that institutional design alone cannot ensure judicial independence in the context of geopolitical dominance. While the ICC formally embodies ideals of the rule of law,³¹ its functioning remains significantly constrained by political power exercised through mechanisms such as the UNSC's referral and deferral authority.³²

Furthermore, normative coherence is undermined when political influence dictates who may be investigated, resulting in a paradox in which the ICC simultaneously embodies the highest aspirations of international legality and is subordinated to power politics. These tensions have tangible, detrimental effects on international justice. For instance, a systematic analysis of state reactions to the 2020 United States sanctions against ICC officials demonstrates that states dependent on US security assurances were significantly

28 Mangu (note 4 above) 7–32.

29 Hodgson, N 'An Emerging Challenge for International Criminal Justice: Legitimacy, Pseudolaw, and the International Criminal Court' (2026) 26(1) *International Criminal Law Review* 44.

30 Weller, M 'Undoing the Global Constitution: UN Security Council Action on the International Criminal Court' (2002) 78(4) *International Affairs* 693.

31 The ICC plays a crucial role in embodying the ideals of the rule of law by providing a permanent institution for prosecuting individuals responsible for serious international crimes. Established under the Rome Statute, the ICC aims to end impunity and ensure accountability for genocide, crimes against humanity, war crimes and the crime of aggression. Its establishment reflects a global commitment to justice and the prevention of atrocities, serving as a moral and legal anchor for societies recovering from conflict. The ICC's jurisdiction is limited to crimes committed after the Rome Statute's entry into force, ensuring it remains a relevant and effective tool for upholding international law and justice.

32 The ICC is frequently described as a legal body operating within a highly political international system, often limiting its effectiveness. Its capacity to act is significantly constrained by the UNSC through its power to refer cases, defer investigations, and influence or block the ICC's work.

less inclined to publicly support the ICC.³³ This highlights a pronounced chilling effect that extends beyond the sanctions themselves.

3.1 The ICC's vital role for Africa

Despite its imperfections, the ICC remains absolutely crucial for Africa's pursuit of justice and accountability. The ICC is the only alternative court of last resort that can deal with human rights and international humanitarian law violations, as well as impunity on the continent.³⁴ Allowing US and UK pressure to weaken or destroy this institution would leave African victims of mass atrocities without any meaningful recourse to international justice. The ICC's impact extends far beyond individual prosecutions. Generally, the international community, particularly African states, must stand firmly against these threats to preserve the integrity of international justice. African states should comply with their obligations under this treaty and fully cooperate with the ICC, rather than allowing external pressure to dictate their relationship with the ICC.³⁵ The current crisis represents a defining moment for international law. Obo and Ekpe state that if the US and the UK succeed in intimidating the ICC into selective enforcement that protects their interests, this means that international justice serves as imperialism by another name.³⁶ This outcome would be catastrophic for global efforts to end impunity and protect human rights.

The international community must strengthen its support for the ICC's independence. On the other hand, Niang emphasised the need to build consensus and marshal some much-needed support for international justice in the face of these challenges.³⁷ African states, in particular, should recognise that defending the ICC against US and UK threats is not just about protecting an institution; it is about defending the principle that justice should be universal and that no nation, regardless of its power, should be above the law. The ICC's willingness to investigate situations involving Western allies demonstrates its evolution toward genuine impartiality, which should be celebrated and protected, not punished.

3.2 Evaluating the arguments against sanctioning the ICC

Primarily, US sanctions on the ICC diminish its autonomy and reduce its ability to ensure justice, indicating that influential nations can avoid responsibility while victims have restricted options for redress.³⁸ In this context, US financial sanctions targeting ICC

33 On 2 September 2020, the US sanctioned two officials of the ICC, in accordance with an executive order issued three months earlier. As a result of this sanction, more than two-thirds of ICC member states issued a statement or joint statement in support of the court.

34 Chipaike et al (note 11 above) 334–350.

35 Ibid.

36 Obo, UB & Ekpe, D 'Africa and the International Criminal Court: A Case of Imperialism by Another Name' (2014) 3(10) *International Journal of Development and Sustainability* 2025.

37 Niang, M 'Africa and the Legitimacy of the ICC in Question' (2017) 17(4) *International Criminal Law Review* 615.

38 Moraitou-Politz, N & Keith, A 'US Sanctions on the International Criminal Court' <<https://humanrightsfirst.org/wp-content/uploads/2025/03/QA-US-Sanctions-on-ICC-factsheet-final.pdf>> accessed 23 May 2026. See also Belfiori, O 'The (Global) Magnitsky Act (s): Has Combating Corruption and Human Rights Abuses Ever Been at the Forefront of the Sanctions Space?' (2025) 9(3) *Eastern European Journal of Transnational Relations* 25–33.

officials can significantly obstruct inquiries and legal proceedings, discourage survivors and advocates from participating, and weaken the ICC's capacity to achieve justice.³⁹ Although US foreign policy acknowledges that impunity for atrocity crimes endangers peace and stability, penalising the ICC contradicts this stance by undermining an essential tool for accountability.⁴⁰ Sanctioning the ICC to discourage investigations into the activities of United States officials is both unwarranted and unproductive, since these officials are already accountable for their actions abroad.⁴¹ Moreover, ensuring individuals are held accountable domestically provides the greatest protection against external legal intervention, as it reduces the likelihood of intervention by bodies such as the ICC.

4. The ICC under threat: Examining the heads of state tried at the ICC

The ICC remains a key tool for holding individuals accountable for the most serious crimes, but it faces serious challenges from powerful states that have traditionally supported the international legal system. For example, Phooko describes the US as one of the ICC's foremost nemeses, emphasising the country's reliance on political and economic power to contest the ICC's role in promoting global accountability.⁴² This represents a profound betrayal of justice for countless victims worldwide. Hassan highlights the US entering into bilateral agreements with ICC member states under Article 98 to protect its own citizens from the ICC's jurisdiction.⁴³ This selective approach undermines the credibility of international law, highlighting a troubling double standard in its application.

Moreover, Vinjamuri has argued that US threats have created a paradox of authority, in which attempts to exercise power have weakened the ICC's ability to protect victims and enforce accountability.⁴⁴ During Palestine's bid for membership of the ICC, US threats of withholding aid packages highlighted how powerful countries can use their financial power to escape responsibility.⁴⁵ At the same time, the ICC's intention to prosecute sitting heads of state is a major step towards ending impunity. For example, the ICC has launched

39 Ibid.

40 Ibid.

41 Ibid.

42 Phooko, MR 'Existential Threats to the International Criminal Court: Making Sense of the Convergence of Disparate Geo-political Interests and Ideological Positions' (2021) 8(1) *Journal of Law, Society and Development* 1.

43 Hassan, FM & Osman, ND 'The Obligation to Prosecute Heads of State under the Rome Statute of the International Criminal Court (ICC) and Customary International Law: The African and United States' Perspectives' (2019) 7 *Malaysian Journal of Syariah & Law* 33.

44 Vinjamuri, L 'The International Criminal Court and the Paradox of Authority' (2016) 79(1) *Law and Contemporary Problems* 275.

45 On 1 January 2015, the Government of the State of Palestine lodged a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the ICC over alleged crimes committed 'in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014'. On 2 January 2015, the State of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. The Rome Statute entered into force for the State of Palestine on 1 April 2015. On 16 January 2015, the prosecutor announced the opening of a preliminary examination into the situation in the State of Palestine in order to determine whether the Rome Statute criteria for opening an investigation had been met. Specifically, under Article 53(1) of the Rome Statute, the prosecutor must consider issues of jurisdiction, admissibility, and the interests of justice in making this determination. On 22 May 2018, pursuant to Articles 13(a) and 14 of

over seven formal investigations and indicted approximately 26 individuals. Such examples highlight the power of the ICC and also the limited power of international justice.

The opposition from the US and the UK not only challenges the ICC's authority but also reveals their ability to act with impunity. However, this also raises important questions about the ICC's impartiality and suggests that enforcement may be driven by global power dynamics rather than legal standards. The ICC is also unusually aggressive among international war crimes tribunals in prosecuting incumbent and former heads of state.

5. Examining whether the ICC unfairly targeted African heads of state

The ICC does not unfairly target African heads of state. This assertion is merely political rhetoric used by African leaders to avoid accountability.⁴⁶ Although the ICC faces accusations of selectively targeting African nations, this criticism fails to acknowledge that African states played a key role in founding the ICC and willingly referred numerous cases.⁴⁷ Generally, allegations that the ICC disproportionately focuses on African states are exaggerated: the majority of African cases were either referred by states themselves or arose when local courts were unable or hesitant to prosecute, emphasising the ICC's complementary role rather than prejudice.⁴⁸ When powerful Western nations weaken the ICC, it demonstrates selective enforcement of international law that favors their interests over global justice.

The African victims of mass atrocities suffer most from this Western sabotage. Mutua points out that while African leaders complain about neo-colonialism, they are actually sheltering perpetrators of crimes against ordinary Africans.⁴⁹ Meanwhile, Africa's conflicts, characterised by mass atrocities and weak states, desperately need international intervention when local systems fail.⁵⁰ Hence, Schneider has concluded that accusations of ICC bias are largely unfounded. African countries were essential in the court's formation

the Rome Statute, the State of Palestine referred the situation to the prosecutor since 13 June 2014, with no end date. Such a referral did not automatically trigger an investigation, since the prosecutor still had to determine whether the statutory criteria for opening an investigation were met. On 21 November 2024, ICC Pre-Trial Chamber I also issued two decisions rejecting challenges by the State of Israel brought under Articles 18 and 19 of the Rome Statute and issued warrants of arrest for Mr Benjamin Netanyahu and Mr Yoav Gallant for crimes against humanity and war crimes committed from at least 8 October 2023 until at least 20 May 2024. Mr Benjamin Netanyahu, Prime Minister of Israel at the time of the relevant conduct, and Mr Yoav Gallant, Minister of Defence of Israel at the time of the alleged conduct, are suspected of the war crimes of starvation as a method of warfare and of intentionally directing an attack against the civilian population; and the crimes against humanity of murder, persecution and other inhumane acts.

46 Mude, T 'Demystifying the International Criminal Court (ICC) Target Africa Political Rhetoric' (2016) 7(1) *Open Journal of Political Science* 178.

47 Schneider, L 'The International Criminal Court (ICC)—A Postcolonial Tool for Western States to Control Africa?' (2020) 1(1) *Journal of International Criminal Law* 90.

48 Phooko (note 42 above) 1–21.

49 Mutua, MW 'Africans and the ICC: Hypocrisy, Impunity and Perversion' in Clarke, KM, Knottnerus, AS & De Volder, E (eds) *Africans and the ICC: Perceptions of Justice* (2016) 47.

50 Shilaho, WK 'The International Criminal Court and the African Union: Is the ICC a Bulwark Against Impunity or an Imperial Trojan Horse?' (2018) 18(1) *African Journal on Conflict Resolution* 119.

and continue to benefit from its work.⁵¹ Yet some scholars warned of serious legitimacy and existential threats when disparate enemies converge to work against the institution.

While perceptions of bias are exaggerated, the ICC has begun challenging major powers exactly when it needs support most.⁵² Niang has stated that there is an urgent need to build consensus for international justice.⁵³ When the US and the UK undermine the ICC, these countries are not just attacking a court, but they are abandoning millions of victims worldwide who have nowhere else to turn. They are telling dictators and war criminals that power trumps justice. These countries are proving that the international legal order that they helped to build means nothing when it inconveniences them. This is not just immoral; it is a betrayal of every victim who believed that justice, finally, might be universal.

6. How threats by powerful states affect the status of the ICC

The ICC is humanity's most ambitious attempt to end impunity for the world's gravest crimes, yet it faces unprecedented attacks from the very powers that should champion justice. When the US imposes visa bans on ICC officials and threatens sanctions, it does not just attack an institution; it undermines the hopes of countless victims seeking accountability for genocide, war crimes, and crimes against humanity.⁵⁴ Powerful states like the US have become the ICC's foremost nemeses, employing sophisticated strategies to delegitimise and potentially destroy the ICC.⁵⁵ These represent existential threats to international criminal justice itself.

Furthermore, when the US mandates bilateral immunity agreements and withholds UN peacekeeping support unless its citizens are exempted from the ICC's jurisdiction, this creates a dangerous precedent that could unravel decades of progress in international law. Yet the ICC's resilience shines through these dark moments. Arnould demonstrated that fears of the ICC's demise proved premature when Gambia and South Africa revoked their withdrawal notices, showing that the institution retains vital support.⁵⁶ Additionally, when the US sanctioned ICC officials in 2020, over two-thirds of member states issued public statements defending the ICC, revealing that nations with stronger rule of law traditions stood firmly behind international justice.⁵⁷ The ICC embodies the shared determination of 123 nations dedicated to eradicating impunity, instead of functioning independently.⁵⁸

51 Schneider (note 47 above) 90–109.

52 Du Plessis, M, Maluwa, T & O'Reilly, A 'Africa and the International Criminal Court' (2013) 11(3) *Criminal Justice* 563.

53 Mandiaye, N 'Africa and the Legitimacy of the ICC in Question' (2017) 17(4) *International Criminal Law Review* 615.

54 Archibong, JE 'United States Visa Ban on Officials of the ICC: International Criminal Justice on Trial' (2020) 6(4) *Journal of Social Sciences Research* 468.

55 Phooko (note 42 above) 1–21.

56 Arnould, V 'A Court in Crisis? The ICC in Africa, and Beyond' (2017) Policy Paper. <https://aei.pitt.edu/cgi/export/87212/Text_Chicago/aei-archive-87212.txt> accessed 23 May 2026.

57 Broache, MP & Reed, K 'Who Stands Up for the ICC? Explaining Variation in State Party Responses to US Sanctions' (2023) 19(1) *Foreign Policy Analysis* 28.

58 The ICC represents the collective will of 123 nations committed to ending impunity for serious crimes. It serves as a permanent international court with jurisdiction over genocide, war crimes, crimes against humanity and the crime of aggression. The ICC operates as a court of last resort, stepping in when national courts are unwilling or unable to prosecute serious offences.

Hence, assaults on the ICC by influential nations weaken the worldwide agreement that backs accountability for the most serious crimes globally.

7. Assessing whether Africa should withdraw from the ICC in light of selective accountability

African states should not withdraw entirely from the ICC, despite legitimate concerns about unequal international justice. While the US and some African states have challenged the ICC's legitimacy, total withdrawal would be counterproductive.⁵⁹ The ICC remains the primary international mechanism for prosecuting human rights violations, and African states were instrumental in its creation.⁶⁰ The court's focus on Africa can be explained by objective factors, such as the prevalence of mass crimes on the continent. Researchers recommend alternative strategies, such as improving institutional cooperation, strengthening national jurisdictions, and making the ICC more representative.⁶¹ The proposed African Court of Justice and Human Rights is not yet sufficiently developed to replace the ICC.⁶² The ICC stands at a crossroads, facing unprecedented attacks from powerful nations that seem determined to undermine global justice when it threatens their interests.

Furthermore, while the US and the UK lecture the world about human rights and the rule of law, they actively work to weaken the very institution designed to enforce these principles globally. Mude demonstrated that the claims of ICC bias are largely political rhetoric advanced by African leaders to manipulate their way out of responsibility.⁶³ This manipulation serves the interests of powerful nations that prefer a world where justice remains selective and politically convenient. Mangu has argued that despite legitimate concerns about superpower interference, African states should comply with their obligations and cooperate with the ICC, from which the majority of their people still expect so much.⁶⁴ The ICC represents hope for millions of victims who would otherwise have no recourse against those who commit atrocities. Hence, abandoning this institution because of US and UK pressure would mean abandoning these victims. Chipaike has argued that the diplomatic community demonstrates practical wisdom in this approach, noting that although the ICC is not a perfect institution, it is the only court of last resort capable of addressing violations of human rights and international humanitarian law.⁶⁵

The proposed African alternatives remain inadequately developed, making ICC withdrawal premature and potentially catastrophic for justice. The ICC investigates more cases outside Africa while African states work to strengthen the institution rather than abandon it. This approach would counter US and UK efforts to weaken international justice while ensuring that accountability remains possible for all, regardless of a nation's power or political connections.

59 Phooko (note 42 above) 1–21.

60 Mangu (note 4 above) 7–32.

61 Vilmer, JBJ 'The African Union and the International Criminal Court: Counteracting the Crisis' (2016) 92(6) *International Affairs* 1319.

62 Chipaike et al (note 10) 334–350.

63 Mude (note 46 above) 178–188.

64 Mangu (note 4 above) 7–32.

65 Chipaike et al (note 11 above) 334–350.

7.1 Reassessing Africa's role in the ICC: Towards equitable regional justice mechanisms

Africa's relationship with the ICC is best viewed as a complex and evolving interaction, influenced by a dual commitment to accountability and significant worries about structural inequalities within the international legal framework.⁶⁶ African countries have actively sought domestic and regional solutions to combat impunity, fostering a deeper understanding of the Rome Statute's complementarity framework that prioritises local ownership of justice initiatives.

Simultaneously, dissatisfaction with the ICC has been exacerbated by perceptions of selective enforcement and geopolitical disparities. Brett and Gissel have highlighted the ongoing African apprehensions regarding the ICC's disproportionate targeting of African leaders, while influential Western figures appear largely shielded from prosecution.⁶⁷ Gissel further describes this trend as indicative of a growing aspiration for a more equitable global order. These criticisms have directly influenced the pursuit of alternative accountability models across the continent. Consequently, regionalisation has emerged as a strategic response to perceived deficiencies in the global justice framework. Sirleaf has contended that the Malabo Protocol⁶⁸ embodies a significant alternative vision of regional criminal justice, aiming to align accountability mechanisms with Africa's political realities while maintaining a normative commitment to eradicating impunity.⁶⁹

Despite this, the effectiveness of regional alternatives is still debated. Mangu has warned that the suggested African Union criminal jurisdiction is unlikely to eliminate impunity due to political limitations and enforcement challenges.⁷⁰ The connection between African states and the ICC is essential for the ICC's ongoing success and the advancement of international criminal law.⁷¹ Smith-van Lin has observed that African perspectives have been frequently overlooked in discussions of ICC reform.⁷² This suggests that, despite reform initiatives, African voices continue to be sidelined, and that regional frameworks remain insufficient to address impunity effectively. For instance, in December 2019, the

66 Africa's relationship with the ICC is characterised by a 'fractious' and evolving interaction that balances a genuine desire for accountability with significant, deep-seated anxieties regarding the structural and political inequities of the international legal framework.

67 Brett, P and Gissel, LE *Africa and the Backlash against International Courts* (Bloomsbury Publishing 2020).

68 The Malabo Protocol represents a significant step in the broader initiative to enhance accountability for international and transnational crimes on the African continent. It aims to align accountability mechanisms with Africa's political realities while maintaining a normative commitment to eradicating impunity. The Protocol establishes jurisdiction over a list of crimes, requires 15 ratifications to enter into force, and aims to establish a regional court for international crimes in Africa. It outlines jurisdiction over 14 crimes, enhancing the Court's legal capabilities in prosecution. Concerns exist regarding the operationalisation and funding of the African Criminal Court, and the protocol's provisions on state immunity may hinder accountability for political leaders.

69 Sirleaf, M 'The African Justice Cascade and the Malabo Protocol' (2017) 11(1) *International Journal of Transitional Justice* 71.

70 Mangu (note 4 above) 7–32.

71 Ibid.

72 Smith-van Lin, L 'Heard or Ignored: African States' Priorities and Independent Expert Review of the ICC' (2023) *African Journal of International Criminal Justice* 83.

Assembly of States Parties to the Rome Statute designated a group of nine independent experts to conduct an Independent Expert Review of the ICC and the Rome Statute system.⁷³ Their task was to evaluate the ICC's governance, judiciary, and investigations/prosecutions, and to make suggestions for enhancing the institution's performance, efficiency, and effectiveness. While the review was extensive, it primarily concentrated on institutional aspects related to the ICC's daily operations, neglecting to tackle wider geopolitical matters such as the ICC's position in the global arena, complementarity, the function of the UNSC, and the delicate balance between peace and justice, which are important for African nations.

Despite the crucial role that African states played in the establishment of the ICC, tensions began to rise between the ICC and its largest regional bloc after judges issued warrants for African heads of state, and the prosecutor seemed to disproportionately target African defendants.⁷⁴ Accordingly, Caroline and Enoch have characterised recent ICC reform efforts, especially those after the Independent Expert Review, as encouraging.⁷⁵ Nonetheless, these scholars further highlight that substantial structural obstacles continue to impede the successful execution of these reforms. These barriers, including limited institutional capacity, insufficient political will and unresolved jurisdictional and enforcement issues, greatly weaken the operational effectiveness of regional justice systems. In this regard, the quest for just and fair regional justice frameworks represents a genuine normative goal rather than a realised institutional fact.

Despite efforts like the African Union's regional justice framework, especially the Malabo Protocol, which show a dedication to accountability and regional responsibility,⁷⁶ the disparity between normative aspirations and practical application implies that regional justice mechanisms remain largely aspirational, highlighting the persistent conflict between principled legal reform and the tangible conditions required for its achievement.

In this regard, the ICC faces significant challenges from African states, but alternative regional mechanisms, such as the African Court of Justice, remain underdeveloped and

73 The experts began their work in January 2020 and conducted more than 270 interviews. They heard the views of court officials and staff, civil society and states parties. A general call was also issued for written submissions, and a number of state parties and civil society organisations responded. The experts also received views during meetings with relevant stakeholders. While the experts were very open to input from civil society, unfortunately, access to them was limited, especially for civil society organisations based in the countries where the ICC operates. In particular, the experts were unable to travel to countries affected by the ICC and engage directly with civil society organisations working with affected communities.

74 Ibid.

75 Caroline, A & Enoch, O 'The Role of African States in Implementing International Legal Mechanisms for Addressing Armed Conflicts and Ensuring Accountability' (2024) 6(4) *Journal of Humanities* 39.

76 The Malabo Protocol, adopted by the African Union in June 2014, represents a significant step towards enhancing accountability for international and transnational crimes in Africa. It aims to complement and enhance global efforts while asserting African ownership within the international justice landscape. The protocol expands the jurisdiction of the African Court of Justice and Human Rights to include a wide array of crimes, such as genocide, war crimes, crimes against humanity, and new categories like corruption and the illicit exploitation of natural resources.

insufficient to replace international criminal accountability. While African countries have threatened to withdraw en masse and criticised the ICC as potentially neocolonial,⁷⁷ the proposed African Court of Justice and Human Rights is not yet operational due to insufficient ratifications.⁷⁸ Lastly, Cannon et al claim that the ICC is the sole viable platform for justice in countries with ineffective judicial systems.⁷⁹ This indicates that, rather than retreating, African nations should advocate reforms that enhance ICC operations while bolstering regional judicial systems, since existing alternatives still fall short of ensuring complete accountability.

8. Conclusion and recommendations

This article has demonstrated that although the ICC faces considerable challenges from influential nations such as the US and the UK, its mandate remains a vital albeit flawed tool for promoting accountability and upholding the rule of law globally. The resistance and, at times, forceful actions taken by these nations highlight ongoing conflicts within the international legal framework, including views of uneven application and selective enforcement, especially concerning African nations. However, Africa's ongoing involvement with the ICC must not be seen as a vulnerability but rather as a deliberate effort to influence and enhance international criminal justice from within. Withdrawal would not address concerns about bias or inequality; rather, it could exacerbate the fragility of accountability systems. A more effective strategy involves joint engagement, as African nations leverage their membership to push for greater equity, reliability, and institutional change. The article recommends that African nations unite against external influence and leverage their membership in the ICC to confront disparities in global criminal justice. The ICC must improve transparency and consistency in its prosecutorial decisions to address concerns of bias and selective enforcement.

How to cite:

Masumbe, PS 'The International Criminal Court under threat by the United States and the United Kingdom: Is the court still relevant for Africa?' (2026) 6 *Turf Law Journal* 1-14.

77 Vilmer (note 61 above) 1319–1342.

78 Chipaika et al (note 11 above) 334–350.

79 Cannon, BJ, Pkalya, DR & Maragia, B 'The International Criminal Court and Africa' (2016) 2(1/2) *African Journal of International Criminal Justice* 6.