

The International Criminal Court, Elite Theory, and African States Withdrawal Notifications:
South Africa, The Gambia, and Burundi

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Introduction

On 1 July 2002, 60 states ratified the Rome Statute which officially established the International Criminal Court.¹ This unprecedented court prosecutes high-ranking government officials on the basis of four crimes: crimes of aggression, war crimes, crimes of genocide, and crimes against humanity. The preamble of the Rome Statute outlines the primary mission of the International Criminal Court is to help “put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes”.² However, since the ratification of the Rome Statute, the Court has faced backlash from member states over prosecuting elite officials. Some countries, such as the Philippines, withdrew from the ICC in a fight to protect leaders, and in the process are halting interventions on human rights abuses. Similarly, Africa has had several countries in the past put in notifications of withdrawal and has seen only one country, Burundi, officially leave the ICC.

This study focuses on African states who have put in notifications to withdraw from the ICC. Of the 60 nations which ratified the Rome Statute, 34 nations were African states (over 50% of the member states).³ The high percentage of participating African states has put much of the focus on the African continent itself for the Court’s proceedings, which is a large reason why this study will focus on these states as well. Twelve years after the ratification of the Rome Statue, some African states began to express desires to withdraw from the ICC. While only one country outside of Africa, the Philippines, has withdrawn from the Court, Africa has had

¹ International Criminal Court, “About,” accessed March 22, 2020, <https://www.icc-cpi.int/about>.

² International Criminal Court, “Understanding the International Criminal Court,” accessed on March 22, 2020, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>.

³ Chadwick W. Austin and Michael Thieme, “Is the International Criminal Court Anti-African?” *Peace Review* 28, no. 3, (July 2016), 342-350; 343.

multiple states which have attempted to leave the ICC. Focusing on Africa allows for an easier case study when comparing the motives of states to put in a notification to the Court.

Additionally, there have been African nations, like Kenya, who have threatened to withdraw but have not taken any official steps.

The purpose of this study is to understand the motivations behind the opposition in Africa to the ICC. This examination is essential in working to make the Court more effective in its jurisdictions in Africa and around the world. Due to the nature of this study, nations in Africa who have not submitted official notice will not be examined, as the goal is to understand the underlying motives of countries who put official withdrawal notices into the ICC. The three African countries a part of this study include South Africa, The Gambia, and Burundi, two of which rescinded their withdrawals, and one -Burundi- which has officially withdrawn from the ICC. While there are many factors that can contribute to an individual countries reason to submit a notice of withdrawal, I identified the protection of elite leaders and government officials as a central driving force in each state's motivation behind the decision to pursue withdrawal from the ICC. This thesis looks to examine these three critical African nations to demonstrate how elite theory provides the true motivation behind submitting notifications of withdrawal or to officially withdraw from the ICC.

The presentation in this paper is organized as follows: Firstly, I introduce the literature on international institutions, democratic governance, political development and authority. Secondly, I survey elite theory and its implications, then I present the case studies of South Africa, The Gambia, and Burundi. Finally, I draw conclusions on elite theory, its explanations, and its real-world implications through the three countries discussed.

Understanding ICC's Eroding Authority

Why would African states be interested in withdrawing from the ICC? By and large, literature on international institutions identifies several groups of explanations. The International Criminal Court, a fairly new international system, has recently experienced backlash from countries who seek to leave its jurisdiction. As of April 2020, the Philippines and Burundi have left the ICC, while South Africa and the Gambia have considered withdrawal from the Court. This study will be focusing on ICC members from the African continent and their concerns about the Court's authority. Hence, the question behind this study: why do states become skeptical of the ICC's institutional authority? There are at least several possible explanations about these members' motivations that can be identified in the literature. First, most members indicating desire to withdraw from the ICC are relatively poor countries whose societies tend to be corrupt, dysfunctional, and have limited freedoms.⁴ Second, leaders of corrupt and dysfunctional societies traditionally tend to be disinterested in participating in transnational judicial authorities like the ICC due to concerns that they may hold them accountable in the future for possible crimes committed by them in congruence with the western legal and political standards. Lastly, some nations have expressed concerns about bias against African nations when it comes to cases for which the Court has opened investigation or launched prosecution- claiming the ICC targets African states and has a disproportionate case ratio compared to other regions of the world.⁵ Scholars mainly cite three reasons to explain the skeptical behavior seen towards the

⁴ Benjamin A. Olken and Rohini Pande, "Corruption in Developing Countries," *MIT Economics* (February 2012), <https://economics.mit.edu/files/7589>.

⁵ Out of the 11 situations under investigation with the ICC, 10 are African nations (the remaining is nation is Georgia), for more see: Charles C. Jalloh, "The Relationship Between Africa and the International Criminal Court," *Human Rights Forum*, (April 5, 2019), <https://rwi.lu.se/2019/04/relationship-between-africa-international-criminal-court/>.

International Criminal Court related to members' wealth and transparency and the type of political system or regional bias.

National Wealth and ICC Membership

Economic performance can be a key predictor when it comes to assessing motivations of individual members to withdraw from the International Criminal Court. Scholars use development theory, which argues that more economically developed countries are more willing to participate in international organizations, to bolster the argument on why states submit ICC withdrawal notifications.⁶ In other words a country's mismanagement, seen through low GDP growth and corruption, could possibly justify the ICC to open an investigation in the future. According to development theory, this leaves poor countries to seek withdrawal from institutions such as the ICC, to avoid the potential of investigation. Therefore, development theory is relevant when examining corruption in a country and the motivations of a country to leave an international organization, as shown on Table 1 below.

Evidence from the World Bank, however, can only partially support this argument in the case of South Africa. South Africa began its notice of withdrawal in June of 2015, and according to the World Bank "given population growth, gross domestic product (GDP) per capita growth has been close to nil since 2014, leaving little room to reduce poverty".⁷ This unfortunate lack of growth can be argued as a factor for South Africa putting a withdrawal notice to the International Criminal Court. Despite South Africa's sluggish GDP growth after 2014, the country, nonetheless, remains the wealthiest African nation with 6,374 US dollars GDP per capita in

⁶Mogens K. Justesen and Christian Bjørnskov, "Exploiting the Poor: Bureaucratic Corruption and Poverty in Africa," *World Development* 58, (2014), 106-115.

⁷ The World Bank, "South Africa Overview," accessed February 12, 2020, <https://www.worldbank.org/en/country/southafrica/overview>.

2018.⁸ Therefore, this case can only partially support development theory and it's explanation about the nation's motivation to withdraw from ICC.

In contrast, during 2015 The Gambia had almost half of its population living under the poverty line (48.6%).⁹ This is the same year that The Gambia's previous president, President Jammeh, was still in power (a leader with a history of violence and human rights abuses). While The Gambia gave a notice of withdrawal to the ICC, it changed leadership the next year and did not follow through with leaving the ICC. Since The Gambia decided to stay a member of the ICC and it raised its GDP to 6.5% on 2018 from 4.8% in 2017, it most strongly supports claims of development theory.¹⁰ From this clear growth in The Gambia's economy, it reasonable for scholars to claim that development theory is a factor in withdrawal notifications.

Similarly, the case of Burundi supports development theory's argument as well. Burundi is the poorest country being studied and it is the only country in Africa to officially withdraw from the International Criminal Court. According to the World Bank, Burundi's "economy is recovering slowly, with growth expected to reach 1.6% in 2018 compared to 0.5% in 2017, after two consecutive years of recession in 2015 (- 3.9%) and 2016 (- 0.6%)".¹¹ At the time of withdrawal, Burundi's economy was in recession and, though it has made progress since 2016, it remains an economically poor country. In 2018 the GDP per capita only reached 271.8 US dollars, an amount significantly lower than South Africa.¹² As Burundi is the only country to completely withdraw from the International Criminal Court, its poor economic performance

⁸ "GDP per capita (current US\$)- South Africa" The World Bank, accessed April 27, 2020, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=ZA>.

⁹ "The Gambia Overview," The World Bank, accessed March 10, 2020, <https://www.worldbank.org/en/country/gambia/overview#1>.

¹⁰ *Ibid.*

¹¹ "Burundi Overview," The World Bank, accessed March 9, 2020, <https://www.worldbank.org/en/country/burundi/overview>.

¹² "GDP per capita (current US\$)- Burundi" The World Bank, accessed April 27, 2020, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=BI>.

exemplifies the development theory and its core arguments. The case of Burundi is the only one of the three case studies which supports the argument that poor economic performance linked to corruption and mismanagement drives ICC members to seek withdrawal from the Court and the Rome Statute.

Democracy

The presence of democracy can be another argument that scholars use to examine the likelihood of African countries in withdrawing from the International Criminal Court. Most democratic countries tend to be wealthier, and some research points to more democratic nations wanting to stay in international organizations.¹³ In contrast, a state which has had more internal conflict and history of violence is more unlikely to stay in the ICC, or even ratify in the first place.¹⁴ This argument, introduced by the democratic peace theory, expects that institutional membership into structures like the ICC help improve democracy in its members as shown in Table 1 below.¹⁵ In the case of the ICC withdrawal notices, it is the absence of democratic governance that drives members' to withdraw from the ICC. According to Chapman and Chaudoin, "the measures are theoretically and empirically linked with the probability of an ICC-prosecutable violation occurring, since events like genocide, mass killing, and targeted killings of civilians are more likely to occur in countries experiencing civil violence and instability".¹⁶ In other words, if a state is less democratic and does not practice democratic values, it is more

¹³ Seymour Martin Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," *The American Political Science Review* 53, no. 1, (1959), 69-105.

¹⁴ Terrence Chapman and Stephen Chaudoin, "Ratification Patterns and the International Criminal Court," *International Studies Quarterly*, Vol. 57, no. 2 (November 2013), pp. 400–409.

¹⁵ Charlotte Ku and Harold K. Jacobson, *Democratic Accountability and the use of Force in International Law*, Cambridge University Press, (2003).

¹⁶ Terrence Chapman and Stephen Chaudoin, "Ratification Patterns and the International Criminal Court," 402.

likely to have internal conflict and less likely to ratify or stay with the International Criminal Court.

Evidence for this theory can be found in the Freedom House ratings for the three cases- RSA, Burundi, and The Gambia. The Freedom House is an international non-governmental watchdog that is funded by the U.S. and is in support of “U.S. leadership and collaboration with like-minded governments,” which reports on state’s democratic levels and official ratings to determine if a country is free.¹⁷ For example, the Freedom House has ranked Burundi 13/100 and is considered not free, which is one of the lowest ratings in all of Africa.¹⁸ This observation is consistent with Chapman and Chaudoin’s argument that, as one of the least democratic countries in Africa, Burundi is the only African nation to withdraw successfully from the ICC. The Gambia is also rated rather low compared worldwide with a rating of 46/100 or is considered to be partly free.¹⁹ The Gambia rescinded its withdrawal from the ICC, which is consistent with the argument that its motivation to remain an ICC member can be attributed to its higher freedom rating, at least in comparison with Burundi. However, both countries support the expectation that lack democracy can contribute to internal conflict, which are more likely to motivate these two nations to seek withdraw from the International Criminal Court.

The Republic of South Africa, however, stands to counter this argument, thus challenging the expectation that lack of democracy can motivate ICC members to file withdrawal notices with the Court. According to the Freedom House, South Africa is rated 79/100 and is considered

¹⁷ Freedom House, “About Us,” accessed April 21, 2020, <https://freedomhouse.org/about-us>.

¹⁸ Freedom House, “Freedom in the World: Burundi,” accessed March 10, 2020, <https://freedomhouse.org/country/burundi/freedom-world/2020>.

¹⁹ Freedom House, “Freedom in the World: The Gambia,” accessed March 10, 2020, <https://freedomhouse.org/country/gambia/freedom-world/2020>.

a free country, also making it one of the most highly rated countries in Africa.²⁰ This observation contrasts with democratic peace theory, as South Africa is the third country to give a notice of withdraw from the ICC. Clearly it is not democracy and lack of freedom which motivates countries to send in notifications, though it may be a symptom to the true commonality that each country faces, namely leaders wanting to protect elite officials.

ICC bias against African Nations

Many scholars, and African Countries, citing bias against African nations as the primary reason for submitting withdrawal notifications with the International Criminal Court. Postcolonial literature points to Africans being seen as second-class citizens, which leads western cultures to believe they are not fit to run their countries as the latter do not exhibit western culture and values.²¹ By extension, then, the International Criminal Court and the post-colonial theory of western democratic ideals being pushed on African countries applies through the ICC being created by western democratic nations and organizations, such as the United Nations.²² South Africa, The Gambia, and Burundi each cited this as a reasoning for their notifications of withdrawal and many sources argue for this as well. Jeron Maklanron argues that this bias put an end to South Africa's cooperation with the Court in 2015. He states that during the case of Al-Bashir, when South Africa allowed the Sudan leader to come and go against ICC orders, South Africa was acting within its right as an African Union member state. He also goes on to claim that the leaders of the United Nations Security Council "acted through NATO to

²⁰ Freedom House, "Freedom in the World: South Africa," accessed March 10, 2020, <https://freedomhouse.org/country/south-africa/freedom-world/2020>.

²¹ Reference Table 1 on page 11 for an examination of Postcolonial Theory; Ezeanyika S. Ezeanyika, "Can Western Democracy Models be Institutionalized in Africa? Reviewing Contemporary Problems and Prospects," *Ufahamu: Journal of the African Activist Association (Online)* 36, no. 2, (2011): 1-21, <https://search-proquest-com.proxy.libraries.uc.edu/docview/875888130?accountid=2909>.

²² James Mahoney, *Colonialism and Postcolonial Development Spanish America in Comparative Perspective*, Cambridge: New York, Cambridge University Press, (2010).

force regime change and were complicit with Libyan rebels in committing war crimes. The result was South Africa ending its cooperation with the ICC”.²³ Ultimately, Maklanron concluded that the ICC is biased against Africa and its leaders, which, in his opinion, represents the true reasoning behind withdrawal notices from African Nations.

Similar to South Africa, The Gambia also cited this bias as a reason for withdrawal notice from the International Criminal Court. President Jammeh has cited clear bias against African nations as a reason to leave the ICC. More specifically, President Jammeh called the ICC the “International Caucasian Court” when discussing why he made the decision to submit a notification for withdrawal.²⁴ Maklanron concurs this idea through arguing that the ICC lost legitimacy with African countries, such as The Gambia, since it has unfairly targeted African nations from its founding.²⁵ Burundi also cited this bias through its notification of withdrawal and actual withdrawal of the Court.

However, scholars like Manisuli Ssenyonjo challenge the explanation attributing ICC withdrawal notifications to perceived bias by African nations against their countries and political systems. In fact, most of the cases brought forward to the ICC are African but are often self-referred by that country or other African countries. Ssenyonjo debunks this perspective as he explains that “the self-referral” of African situations to the ICC by African states cannot be used to claim African bias, as they are voluntary referrals. African ICC member states that have

²³ Jeron Maklanron, "South Africa's disappointment with the International Criminal Court: the unfair treatment of African people caused an end to cooperation," *Journal of Pan African Studies* 9, no. 7, (2016), 82- 105; 96, https://link-gale-com.proxy.libraries.uc.edu/apps/doc/A470461867/LitRC?u=ucinc_main&sid=LitRC&xid=bb5070af.

²⁴ Merrit Kennedy, “Under New Leader, Gambia Cancels Withdrawal From International Criminal Court,” *National Public Radio*, (February 14, 2017) <https://www.npr.org/sections/thetwo-way/2017/02/14/515219467/under-new-leader-gambia-cancels-withdrawal-from-international-criminal-court>.

²⁵ Jeron Maklanron, "South Africa's disappointment with the International Criminal Court: the unfair treatment of African people caused an end to cooperation," 93.

complained of Africa-bias could have taken appropriate measures to remedy this claim by referring other (non-African) situations to the Court”.²⁶ Another reason why the claims of bias against the ICC are misrepresenting is because there have been cases opened in Georgia and the Philippines. Additionally, Ssenyonjo states that the ICC “prosecutor’s was [sic] carrying out preliminary examinations in nonAfrican situations including Afghanistan, Colombia, Iraq (UK military intervention in Iraq), Palestine, Registered vessels of Greece and Cambodia, and Ukraine”.²⁷ International Criminal Court exclusive focuses on African cases can be explained with the high ratification rates, as “of the 60 signatures needed for the ICC to begin operations in 2002, 34 (of the continent’s 55 nations) were African”.²⁸ Although it is important to remember that African states make up a large share of the ICC’s total membership, thus making the region a natural focus of the Court. Therefore, these two clarifications show why claiming the Court has bias against African states is misleading and can be used to divert attention from the true motivations of African leaders to seek withdrawals from the ICC.

²⁶ Manisuli Ssenyonjo, "State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia," *Criminal Law Forum* 29, no. 1, (2018), 63-119; 86, <https://search-proquest-com.proxy.libraries.uc.edu/docview/2031667430?accountid=2909>.

²⁷ *Ibid.*

²⁸ Chadwick W. Austin and Michael Thieme, “Is the International Criminal Court Anti-African?” *Peace Review* 28, no. 3, (July 2016), 342-350; 343. <http://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=1&sid=da93fdec-d5bc-412d-b149-446f4e94418b%40pdc-v-sessmgr01>.

Table 1: Summary of Explanations about States' Motivations to Withdraw from ICC

| Explanation | Key variables | Causal Mechanisms | Evidence |
|----------------------------------|---|--|--|
| Development Theory | <u>Economy</u> : Level of development (e.g. GDP) determines desire to stay in ICC | Poorest nations are most corrupt; corrupt political leaders don't want to face ICC jurisdiction | <u>Partial</u> : Burundi—consistent RSA – not fully consistent |
| Democratic Peace Theory | <u>Democracy</u> : Level of democracy/governance in the country | Political regimes in the least democratic nations want to withdraw b/c they don't want to face ICC jurisdiction. The more democratic a nation, the more likely to stick with ICC | <u>Partial</u> : Burundi fits The Gambia fits RSA – does not fit |
| Post-Colonialism/Critical Theory | <u>Bias</u> : Colonial powers vs. former colonies drive relationship in ICC. | African nations see bias in the working of the court against their countries on behalf of their former colonizers. | <u>Consistent</u> : Ignores alternative explanations – e.g. the role of elites |

Theory and Methods

Political leadership plays a key role in shaping foreign policy decisions made by governments on many issues, including membership to international organizations. The elite theory focuses on the motivations by leaders as reasoning to leave the ICC. Political elites wield enormous amounts of power by controlling and influencing the trajectory of a state's politics for the duration of their tenure in office.²⁹ There are two contrasting perspectives when it comes to theories on the immunity of state elites. The first perspective pertains to protecting elite immunity in international situations through upholding diplomatic privileges, a concept that is codified in the 1961 Vienna Convention on Diplomatic Relations.³⁰ Through this Convention leaders have immunities from international law as a way to uphold the “maintenance of

²⁹ Henning Schmidtke, “Elite Legitimation and Delegitimation of International Organizations in the Media: Patterns and Explanations,” *The Review of International Organizations* 14, (August 8, 2019).

³⁰ United Nations, “Vienna Convention on Diplomatic Relations,” *Treaty Series*, vol. 500, (Entered into Force 24 April 1964), 1-16, https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

international peace and security, and the promotion of friendly relations among nations”.³¹ This perspective was actively asserted by the British after World War II, when the Nuremburg trials were established. The British leaders “Churchill, Eden, and the Lord Chancellor (Lord Simon) were all ‘determinedly opposed,’ and favored the political execution without trial of six or more top Nazis”.³² The British wanted to avoid creating an international norm of putting political leaders on trial by quietly executing Nazi elites- a way to uphold the greater practice and ideals of elite theory.

In contrast, the second perspective challenges elite theory arguing that the authority of international legal and organizations such as the International Criminal Court supersedes the diplomatic immunity extended to the heads of states’ and government representatives. The ICC actively fights against the first perspective through prosecuting elite leaders who are responsible for human rights violations. In relating this back to the Nuremberg tribunals, this would have been the side of the United States. President Roosevelt and other American leaders sought to put Nazi leaders on trial to set an example to the rest of the international community.³³ Although there was resistance from countries, such as Britain, who fought to uphold elite immunity by quietly punishing Nazi leaders. However, through defending this position adamantly the United States obtained “a draft convention for the establishment of an international war crimes tribunal was approved (despite British opposition) by the Commission”.³⁴ The success of the Nuremberg trials allowed the international community to set up several other similar tribunals after the end of the Cold War. These included the International Criminal Tribunal for the former Yugoslavia

³¹ United Nations, “Vienna Convention on Diplomatic Relations,” 1-16.

³² Telford Taylor, “The Nuremberg Trials,” *Columbia Law Review*, Columbia Law Review Association, Inc, Vol. 55, No. 4, (April 1955), 488-525; 493.

³³ *Ibid.*, 492

³⁴ *Ibid.*

(ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the formation of the ICC to fight against elite immunities and the concepts discussed with the first perspective.³⁵ Despite the fact that several ad hoc tribunals—including the ones for the Former Yugoslavia, Rwanda, Lebanon, and Kosovo—were set up since the Nuremburg trials, the ICC’s perspective of universal jurisdiction is not universally accepted, especially by many of those who do not support western democratic ideals. This leaves non-western nations, some African states included, to oppose the ICC and its principles. Many elites rise up against this perspective in support of protecting their own immunity from crimes, making elite theory the best explanation as to why some African countries desire to withdraw from the ICC.

The cases of Africa’s ICC members clearly demonstrate the link between concerns for diplomatic immunity and the rise of withdrawal notifications from the ICC. In her piece “Elite Theory and Political Transitions: Networks of Power in Ghana and Togo,” Anja Osei defines elites as “persons who are able, by virtue of their strategic positions in powerful organizations and movements, to affect political outcomes regularly and substantially”.³⁶ This paper accepts Osei’s definition about political elites. I argue that protection of political elites from ICC’s universal jurisdiction is the most prominent factor explaining each of the three countries’ motivation to seek withdrawal from the Court, while other factors, such as economic and democratic practices, are present in some but not in all cases. For instance, Burundi and The Gambia both have below average democratic ratings (which support that low democratic ratings lead to a withdrawal notice from the Court) but South Africa is a highly rated democratic nation

³⁵ For more information about the ICTY and the ICTR, visit: United Nations, “International Criminal Tribunal for the former Yugoslavia,” *International Residual Mechanism for Criminal Tribunals*, accessed April 17, 2020, <https://www.icty.org/>; International Justice Resource Center, “ICTR,” accessed April 17, 2020, <https://ijrcenter.org/international-criminal-law/ictcr/>.

³⁶ Anja Osei, “Elite Theory and Political Transitions: Networks of Power in Ghana and Togo,” *Comparative Politics* 51, no. 1, (2018), 21-40; 21.

in Africa, contrasting the democratic peace theory. Similarly, Burundi and The Gambia both had faltering economies at the time of withdrawal notice to the ICC, but the case of South Africa only partially supports development theory and therefore does not make it the best explanation for notification of withdrawal. Elite theory provides the most persuasive explanation why each of these three countries decided to pursue withdrawal from ICC.

ICC's universal jurisdiction over crimes against humanity, genocide, war crimes and crimes of aggression committed by individuals from its members directly challenges the norms of diplomatic immunity accepted and officially codified in the 1961 Vienna Convention on Diplomatic Privileges and Immunities.³⁷ The norms of diplomatic immunity have been recognized and practiced for centuries in many areas of the world. They have been accepted in Africa and the rest of the world as tools to protect elites of the losing party by the victors following the end of an armed conflict. This rule has been mutually accepted by warring parties on the principle of reciprocity.³⁸ The Nuremburg tribunals, which put Nazi leaders on trial for their heinous crimes against humanity, marked the beginning of the end for this norm.³⁹ Since Nuremburg, the international community has sought to hold the leaders who order such crimes accountable, and the International Criminal Court serves that very purpose. Challenging elites' immunity from international prosecution is at the core of ICC's creation in 1998 when the Court was set up as a supra-national mechanism to adjudicate against elite representatives for whom it has been proven that they have committed one or several groups of crimes previously outlined. Countries whose leaders have committed crimes in the past or are concerned that could face

³⁷ United Nations, "Vienna Convention on Diplomatic Relations," 1-16.

³⁸ Robert O Keohane, "Reciprocity in International Relations," *International Organization* 40, no. 1, (1986), 1-27.

³⁹ For more information on the Nuremburg Trials and its everlasting effect on international law and standards towards elites, look to; Kevin Jon Heller and Ohio Library and Information Network, *The Nuremburg Military Tribunals and the Origins of International Criminal Law*, New York; Oxford, Oxford University Press, (2011).

charges for human rights violations would seek to leave the Court in order to protect themselves and other elites from prosecution by the ICC. In this paper, I argue that the decision of the leaders in Burundi, South Africa, and the Gambia to seek withdrawal from ICC is driven by their concerns about the Courts universal jurisdiction which threatens the long established norms of diplomatic immunity extended to representatives of the political elites.

The conflict between protecting elite immunity and the right to intervene on human rights violations causes rift between the International Criminal Court and some of its member states. A clear shift in the relationship between the ICC and African countries can be seen after arrest warrants for the Sudanese President Al-Bashir were issued in 2009 and 2010 for crimes against humanity, war crimes, and crimes of genocide.⁴⁰ The African Union, composed of 55 members in Africa, began to reject cooperation with the ICC as the arrest warrant of Al-Bashir “indicated that other senior serving African State officials, including Heads of States non-parties to the Rome Statute, could in the future be subjected to the ICC”.⁴¹ The African Union sought to protect their leaders immunity status rather than support the ICC in prosecuting for human rights violations. It was during this time the International Criminal Court experienced notifications of withdrawal from South Africa, The Gambia, and Burundi. The African Union supported these notifications as it began to call for mass withdrawals to fight against ending elite immunity. While Burundi is the only African state to officially withdraw from the ICC, all three states put in its notification to fight against the ICC in protecting the norm of diplomatic immunity.

It is important to note that the motivations of each country may vary when seeking to uphold elite immunity. The cases of Burundi and The Gambia, examined in detail in this thesis,

⁴⁰ Manisuli Ssenyonjo, “The Rise of the African Union Opposition to the International Criminal Court’s Investigations and Prosecutions of African Leaders,” *International Criminal Law Review* 13, no. 2, (April 2013), 385-428; 387.

⁴¹ *Ibid.*

represent cases of corrupt leaders who sought to protect themselves from prosecution of the Court. Both leaders committed crimes against humanity and their withdrawal from the ICC was intended to shield the countries from possible investigations.⁴² In contrast, South Africa sought withdrawal due to its opposition to the arrest warrant issued by the ICC against a leader of another country, i.e. Al-Bashir of Sudan who enjoys diplomatic immunity under the 1961 Vienna Convention as a head of state. South Africa began the withdrawal process not to protect its own leaders but due to its support of elite immunity in general, unlike Burundi and The Gambia. The decision of South Africa to not follow the orders of the International Criminal Court's arrest warrant will be examined more thoroughly in the next section.

Despite variations of motivations to withhold the immunity of elites and to seek withdrawal from the International Criminal Court, this perspective offers the best explanation on each state's conflict with the ICC. The fight for protection and shielding of representatives can be explicitly seen in each case of country withdrawal, making it the strongest and most viable explanation to why countries in Africa seek to leave the International Criminal Court. By examining the cases of South Africa, The Gambia, and Burundi, I will demonstrate that elite theory plays an essential role in each state's true motivations to submit notices of withdrawal, and in Burundi's case officially withdraw from the International Criminal Court.

Case Studies

The three case studies presented below— South Africa, The Gambia, and Burundi—each demonstrate the logic by which the protection of diplomatic immunity from prosecution by the representatives of the African elites has been the driving force behind the motivation to seek

⁴² Manisuli Ssenyonjo, "State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia," 68.

withdrawal from the International Criminal Court. In the case of South Africa, the withdrawal notification surrounded defending immunity through shielding another representative of the African political elites from prosecution – the former President of Sudan Al-Bashir. In the case of the Gambia, this decision was a product of internal political strife that involved the former President Jammeh who was allegedly engaged in crimes against humanity through persecution and violence against his people. Finally, in the case of Burundi, withdrawal was motivated by President Nkurunziza's concerns that ICC could press charges against him for crimes of political violence including disappearances, imprisonments, murder, and more.

South Africa

South Africa is a critical case in examining how elite theory explanations apply to ICC members' motivations to withdraw from the Court. Its withdrawal notice stemmed from the case of President Al-Bashir of Sudan and resulted in direct challenge the ICC's jurisdiction and whether it supersedes diplomatic immunity. At the time of this incident, the International Criminal Court had issued two arrest warrants for President Al-Bashir of Sudan, "the first was on 4 March 2009 for war crimes and crimes against humanity. On 12 July 2010, a second warrant was issued against him for the crime of genocide".⁴³ More specifically, they were issued against Al-Bashir for "being criminally responsible 'for attacks against a section of the civilian population of Darfur, Sudan, including murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property'".⁴⁴ Since the Court has no way to enforce these charges themselves, the ICC relies on its member states to administer their arrest warrants. When President Al-Bashir arrived in South Africa in 2015 to attend the African

⁴³ C. F. Swanepoel, "South Africa's Obligation as Member State of the International Criminal Court: The Al-Bashir Controversy," *Tydskrif Vir Regswetenskap* 40, no. 1 (2015), 50-68; 51. <https://search-proquest-com.proxy.libraries.uc.edu/docview/2126914748?accountid=2909>.

⁴⁴ *Ibid.*

Union Summit, it was South Africa's jurisdictional responsibility to execute ICC's arrest warrants that had been issued.

In June of 2015 the African Union held its annual African Union Summit in South Africa and Al-Bashir, as President of the Sudan, attended the event. It is customary for all ruling elites to attend the assembly, so Al-Bashir traveled to be present. Instead of arresting Al-Bashir upon arrival as required by the ICC arrest warrant, South Africa and its president, President Jacob Zuma, chose to ignore the warrant and allow Al-Bashir to stay and leave freely. However, this was not the first time a member state chose to not comply with the arrest warrants issued for President Al-Bashir, as there had "been already seven cases of non-execution of the ICC's order for the arrest of Al-Bashir, namely Kenya, Djibouti, Chad (twice), Malawi, Nigeria, and the DRC".⁴⁵ Many of these states were taken to pre-trials or brought "before the Bureau of the Assembly of States Parties to the ICC" to explain why they did not enforce the warrant themselves.⁴⁶ Yet, the case of South Africa remains unique when examining non-executions of the warrant for Al-Bashir due the extend it was willing to go to fight for the norm of diplomatic immunity and to reject the requirements for compliance with issued arrest warrants by the ICC.

Not only did South Africa and President Zuma go against the ICC's arrest warrant, but on the eve before Al-Bashir's arrival to the North Gauteng, South Africa's High Court ruled it was the state's duty to arrest Al-Bashir as well.⁴⁷ What was the reasoning for South Africa to admit and allow Al-Bashir to leave? In the past heads of state have immunity from international law,

⁴⁵ Dire Tladi, "The Duty on South Africa to Arrest and Surrender President Al-Bashir under South African and International Law," *Journal of International Criminal Justice* 13 (December 2015), 1027-1047; 1028-1029. <http://web.a.ebscohost.com.proxy.libraries.uc.edu/ehost/pdfviewer/pdfviewer?vid=1&sid=2dbc6f72-59c6-4f0f-b727-2c2e7d7ab11e%40sdc-v-sessmgr03>.

⁴⁶ *Ibid.*, 1028.

⁴⁷ For more information of the ruling of the North Gauteng High Court and its ruling in support of the International Criminal Court and the Southern African Legislation, look to: Dire Tladi, "The Duty on South Africa to Arrest and Surrender President Al-Bashir under South African and International Law," 1031.

meaning that typically “the [Head of State] is immune from the exercise of jurisdiction by a foreign state, including arrest”.⁴⁸ This traditional practice found its legal root in the 1961 Vienna Convention on Diplomatic Relations, as it “recognized the status of diplomatic agents...[and defined how] privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems”.⁴⁹ The Vienna Convention on Diplomatic Relations supports the concept of diplomatic immunity and is a document cited by many government leaders to reinforce their right to international immunity from institutions such as the ICC. South Africa chose to honor this diplomatic practice instead of the international order to arrest Al-Bashir, as they preferred to protect the elite leader than follow international arrest warrants. As a result, African states like South Africa, Kenya, Djibouti, Chad (twice), Malawi, Nigeria, and the DRC, “refused to arrest and surrender President Omar Al Bashir of Sudan during his presence in respective states partly on the basis that complying with the ICC requests would require violation of head of state immunities under customary international law”.⁵⁰ This refusal to follow the ICC’s warrant led to conflict between South Africa and the Court, ultimately leading to the withdrawal notice given by South Africa. The withdrawal notice is what makes South Africa a unique case since it is the only nation to submit a withdrawal notice after violating the arrest warrant issued by the ICC.

Why, then, did South Africa choose to allow Al-Bashir to return to the Sudan and go as far to submit a notification of withdrawal to the ICC? Traditionally, South Africa is one of the biggest advocates for human rights protections in Africa (due to its past experiences with the

⁴⁸ Dire Tladi, “The Duty on South Africa to Arrest and Surrender President Al-Bashir under South African and International Law,” 1034-1035.

⁴⁹ United Nations, “Vienna Convention on Diplomatic Relations,” 1-16.

⁵⁰ Manisuli Ssenyonjo, “State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia,” 100.

Apartheid). The reason behind South Africa submitting a withdrawal notice surrounds upholding norms of diplomatic immunity and protections of African political elites. It is possible that South Africa believed that upholding an international arrest warrant for an African leader would harm the peace among domestic states. Ssenyonjo states that “accordingly, South Africa claimed that to ‘continue to be a State Party to the Rome Statute will compromise its efforts to promote peace and security on the African Continent’”.⁵¹ Additionally, South Africa stated that “arresting senior state officials such as African heads of state or ministers who are subject to ICC arrest warrants makes it impossible to participate in the peaceful resolution of conflicts”.⁵² Thus, South Africa put a notification to withdraw from the ICC immediately after the Court began to investigate it for refusing to arrest President Al-Bashir. Through examining South Africa and its response to the warrant for Al-Bashir’s arrest, it becomes clear that the notification for withdraw was in direct response to its unwillingness to arrest elite officials of African nations.

South Africa was the first African state to sign the Rome Statute and become a member of the ICC, since it adamantly supported human rights justice, making the announcement to withdraw from the ICC surprising.⁵³ Since President Zuma acted without parliament’s approval when he submitted the withdrawal notice, the South African High Court was summoned to determine the constitutionality of Zuma’s actions.⁵⁴ The South African High Court, the superior court in the RSA, ruled that the attempted withdrawal was “unconstitutional and invalid,” and the South African parliament, contrasting the wish of President Zuma, voted to rescind its withdrawal notice from the Court.⁵⁵ The case of South Africa’s withdrawal notice relates directly

⁵¹ *Ibid.*, 97.

⁵² *Ibid.*

⁵³ *Ibid.*, 65.

⁵⁴ Hannah Woolaver, “Domestic and International Limitations on Treaty Withdrawal: Lessons from South Africa’s Attempted Departure from the International Criminal Court,” *AJIL Unbound* 111, (2017), 450-455; 450.

⁵⁵ *Ibid.*

to elite power and leaders seeking to protect themselves and their fellow-leaders from prosecution under international law.

The Gambia

In 2016, The Gambia announced its plans to withdraw from the International Criminal Court. Before the announcement of its official withdrawal, it accused the Court of ignoring war crimes in European nations, and its “Information Minister Sheriff Bojang accused the court system of being racist and unfairly targeting Africans for prosecution...[stating] ‘This action is warranted by the fact that the ICC, despite being called the International Criminal Court, is in fact an International Caucasian Court for the persecution and humiliation of people of color, especially African’”.⁵⁶ While The Gambia cited bias as the reason to withdraw, an examination of its political elites and their motivations offers insight into the true motive for attempting to leave the International Criminal Court: protection of political leader’s international immunities.

When the previous leader, President Jammeh, and his actions are examined closely, it is clear that elite immunity and protection from prosecution for crimes under the ICC- such as crimes against humanity, crimes of aggression, genocide, and war crimes- explain attempted withdrawal from the ICC. Former President Jammeh is accused of “ordering the killing and torture of political opponents, the murder of 56 West African migrants, and ‘witch hunts’ in which hundreds of women were arbitrarily detained. Jammeh also allegedly participated in the rape and sexual assault of women brought to him”.⁵⁷ Additionally, President Jammeh has been accused of ordering “forced disappearances, extrajudicial killings, and arbitrary detention”

⁵⁶ VOA News, *Gambia Latest African Country to Withdraw from International Criminal Court*, Washington: Federal Information & News Dispatch, Inc. (2016), <https://search-proquest-com.proxy.libraries.uc.edu/docview/1832883987?accountid=2909>.

⁵⁷ Human Rights Watch, “Gambia: Commission Uncover Ex-Dictator’s Alleged Crimes,” accessed March 18, 2020, <https://www.hrw.org/news/2019/12/04/gambia-commission-uncover-ex-dictators-alleged-crimes#>.

throughout his 22 year rule in The Gambia.⁵⁸ These actions caused many human rights groups to accuse him of human rights crimes and call for his arrest, an arrest that many in The Gambia are still protesting for.⁵⁹ It is believed that due to these human rights abuses President Jammeh issued a withdrawal notice to the ICC, to prohibit any possible investigation into his actions as leader. As Scholar Manisuli Ssenyonjo asserts, “its [The Gambia’s] withdrawal notification was a clear manifestation of its unwillingness to be subjected to a possible ICC investigation”.⁶⁰ In other words, President Jammeh sought withdrawal to protect himself and his regime from prosecution by the ICC. Since the International Criminal Court cannot prosecute any crimes after a state’s notification of withdrawal, President Jammeh believed that beginning the withdrawal process would significantly limit the possibility of an investigation and an arrest warrant.

President Jammeh’s plans to avoid international justice for his crimes by withdrawing his country from the ICC was shattered as he lost the 2016 presidential election in Gambia only a few weeks after he announced withdrawal. The unexpected victory for the current president, President Adama Barrow, led to former President Jammeh’s denial of his loss and refusal to give up his seat as president. By denying the presidency to Barrow, it led to an “agreement brokered by the UN, African Union and regional body, Ecowas, which saw him [Jammeh] agree to go into exile under pressure from Ecowas troops which had already entered The Gambia”.⁶¹ Due to this pressure, Jammeh peacefully announced President Barrow’s victory and left for Equatorial Guinea (where he remains today). Almost immediately, President Barrow announced the

⁵⁸ Human Rights Watch, “Yahya Jammeh,” accessed April 23, 2020, <https://www.hrw.org/tag/yahya-jammeh#>.

⁵⁹ Anon, “Gambians March for Justice over Jammeh’s Human Rights Abuses,” *Radio France Internationale*, (January, 26, 2020), <http://www.rfi.fr/en/international/20200126-gambians-march-justice-jammeh-human-rights-abuses>.

⁶⁰ Manisuli Ssenyonjo, “State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia,” 71.

⁶¹ BBC News, “Yahya Jammeh Warned Not to Return to The Gambia,” (January 12, 2020), <https://www.bbc.com/news/world-africa-51082371>.

decision to rescind the withdrawal to leave the ICC, and his government stated “as a new government that has committed itself to the promotion of human rights ... we reaffirm The Gambia's commitment to the principles enshrined in the Rome Statute of the International Criminal Court”.⁶² Under the new leadership of President Barrow, who has made multiple commitments to uphold the Rome Statute, The Gambia looks to fight for human rights and not to protect its criminal leaders.⁶³

It is important to note that The Gambia, just like South Africa, rescinded its notification of withdrawal. These two countries are the only African states to submit a notice of withdrawal and ultimately chose to rescind the notice and remain in the ICC. Additionally, The Gambia, Burundi, and South Africa are the only countries to submit actual withdrawal notifications (while countries like Kenya and Namibia have only threatened to do so). The Gambia’s withdrawal, just as the other two countries discussed, has its roots in a corrupt elite seeking immunity for their actions. The former president Jammeh feared potential prosecution under international law for violating human rights described by the Court. Jammeh’s ultimate goal was “to ensure that state officials including sitting heads of state...escape possible criminal investigations and prosecutions before the ICC”.⁶⁴ This, however, changed after a new leader was elected in the Gambia. Jammeh’s successor, President Barrow, voiced his wishes to uphold the protection of human rights, which he expressed in his rescindment in The Gambia’s notice of withdrawal. The change in leadership and the rescinding of the notice of withdrawal exemplify the impact of leaders and how their motivations drive foreign policy decisions to shape international

⁶² Merrit Kennedy, “Under New Leader, Gambia Cancels Withdrawal From International Criminal Court.”

⁶³ Anon, “A Win for Justice: Gambia to Stay with the ICC,” *Coalition for the International Criminal Court*, accessed April 23, 2020, <http://www.coalitionfortheicc.org/news/20170220/win-justice-gambia-stay-icc>.

⁶⁴ Manisuli Ssenyonjo, “State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia,” 68.

involvement. This is why studying The Gambia is significant in understanding elite theory, as it demonstrates a country whose leader sought to protect elite immunity to the point of leaving an international institution.

Burundi

In early 2015, Burundi began to experience immense amounts of political violence. This violence resulted from the two-term Burundian president, President Nkurunziza seeking to stay in power for a third term, since he saw himself as an invaluable “guide” to the party, despite the term limitation introduced in the Burundian constitution.⁶⁵ In 2014, the government of Burundi withheld that through the “National Assembly and the retention of Article 96 which specifies two terms Presidency by universal adult suffrage,” which became a source for the opposition for President Nkurunziza’s unconstitutional bid for a third term in office.⁶⁶ Due to Nkurunziza’s act of defiance against the Constitution, “Burundi experienced violence before and after legislative and presidential elections since April 2015 including a failed coup d’état in May 2015”.⁶⁷ This resulted in the government “carrying out several operations leading to gross violations of human rights possibly amounting to crimes against humanity of killing, other inhumane acts, imprisonment, torture, rape and other sexual violence, as well as cases of enforced disappearances and acts of persecution”.⁶⁸ The public and the opposition resisted Nkurunziza’s third term which led to violence throughout the state. These violations prompted the ICC

⁶⁵ Anon, “Burundi: Nkurunziza’s Last Term?” *African Research Bulletin: Political, Social and Cultural Series* 56, no. 12, (January 22, 2020), 22543C- 22544A.

⁶⁶ Enoch Ndem Okon and Victor Ojakorotu, “Democracy and Conflict in Africa: A Critical Analysis of Burundi 2015 Conflicts,” *African Renaissance* 15, no. 4, (2018), 29-51; 38.

⁶⁷ Manisuli Ssenyonjo, “State Withdrawal Notifications from the Rome Statute of the International Criminal Court: South Africa, Burundi and the Gambia,” 68.

⁶⁸ *Ibid.*

prosecutor and the United Nations to open an investigation into human rights abuses, motivating Burundian officials to prompt withdrawal.

Similar to both the South African and Gambian leaders, President Nkurunziza accused “the court of deliberately targeting Africans for prosecution” and used this reasoning to pursue withdrawal from the Court.⁶⁹ Citing African bias allowed Burundi to submit a notice of withdrawal and to attempt to avoid an investigation by the ICC surrounding the political violence and killings that had been going on for months before. The true reason for withdrawal was due to “the UN investigation targeting members of the ruling regime including General Alain-Guillaume Bunyoni, who is considered the second most powerful individual in the country”.⁷⁰ The Burundian government sought to avoid persecution of political leaders who helped to orchestrate the violence committed during the re-election of President Nkurunziza. The International Criminal Court could, however, continue conducting its investigation on Burundi since it was initiated before the notice of withdrawal, foiling Burundi’s attempt at protecting its elite leaders from ICC justice.

Many human rights activists around the world have condemned this attempt by Burundi to ignore international human rights laws. More specifically, “Geraldine Mattioli-Zeltner, international justice advocacy director at Human Rights Watch, said the Burundian government had failed to hold those responsible for the violence to account and the announcement ‘should be a wake-up call that the era of impunity for grave human rights violations in Burundi is over’”.⁷¹ The orders of political violence originated from President Nkurunziza and his trusted

⁶⁹ BBC News, “International Criminal Court Probes Burundi ‘Crimes Against Humanity,’” (November 9, 2017), <https://www.bbc.com/news/world-africa-41932291>.

⁷⁰ Anon, “Burundi: ICC Withdrawal,” *African Research Bulletin* vol 53, no. 10, (November 2016), <https://onlinelibrary-wiley-com.proxy.libraries.uc.edu/doi/full/10.1111/j.1467-825X.2016.07310.x>.

⁷¹ John Aglionby, “Burundi Faces ICC Probe as Political Violence Escalates,” *FT.Com*, (Apr 25, 2016), <https://search-proquest-com.proxy.libraries.uc.edu/docview/1791164764?accountid=2909>.

government officials, so it is no coincidence that only months later Burundi put in its notification of withdrawal. This, however, was in vain as just days before the announced withdrawal the UN and the ICC began to investigate crimes in Burundi. According to a “spokesperson of the CNARED opposition coalition, Pancras Cimpaye, said, ‘what Nkurunziza and his regime must know is that the withdrawal from the ICC does not give them permission to kill the people of Burundi. They need to know that the lawsuits in progress and ongoing investigations should follow their normal course’”.⁷² Or more plainly, the ICC and UN have jurisdiction to continue to investigate the crimes committed in Burundi up until the notification of withdrawal.

While Burundi cited African bias of the International Criminal Court as a reason for its withdrawal, the real motivation behind its removal from the ICC was protection of government officials. While it cites African bias, similar to both South Africa and the Gambia, Burundi’s case follows a different outcome from South Africa and The Gambia by completing its withdrawal from the Court. This variation can be explained by elite theory, as Burundi’s corrupt political elite remained in power throughout its withdrawal process. Burundi’s ruling class sought to protect itself from international law and since they remained in power, unlike The Gambia, no political forces were present to intervene to reverse the decision for withdrawal from the Court. Burundi opted to protect the norm of diplomatic immunity by rejecting an institution created to challenge it, following the core structure of elite theory and its principals.

⁷² CNARED is a coalition group which seeks to uphold the Arusha peace accord which was founded at the end of Burundi’s civil war, for more see: James Butty, “Burundi FM: CNARED Opposition Group Not Acceptable,” VOA, (December, 29, 2015), <https://www.voanews.com/africa/burundi-fm-cnared-opposition-group-not-acceptable>; Anon, “Burundi: ICC Withdrawal.”

Conclusion

The International Criminal Court's founding principles focus on the intention to end impunity for leading elites who commit crimes on an international scale. Yet, in recent years, the Court has met backlash on this principle, meeting opposition from various members from the global south. African nations especially have fought against removing impunity norms for elites, as demonstrated through examining South Africa, The Gambia, and Burundi. In February of 2016, the African Union itself aimed to convince its members to pull out of the ICC by submitting withdrawal notifications as a form of protest against African bias through its focus on prosecuting African elites.⁷³

The International Criminal Court may provide international justice for heinous crimes, but it also serves an indispensable role as a preventative power. As Scholar Sang-Hyun Song asserts, the ICC has "four sources of preventive effect... deterrence, timely intervention, stabilization, and norm setting".⁷⁴ This is why it is so important to keep the ICC running in Africa, as it sets new norms for leaders who wish to keep old, corrupt, and unethical regimes. For the western world, the ICC supports and emphasizes its democratic practices for nations which have had limited experience with democratic governance, the rule of law and the protection of human rights. The Court strives to correct countries that stray away from these ideals through prosecuting the elites who are responsible for inhumane behaviors which fall under its four areas of jurisdiction. Some countries, such as South Africa and The Gambia, have submitted and rescinded their withdrawn notifications to leave the Court. Both cases illustrate attempts to

⁷³ Manisuli Ssenyonjo, "The Rise of the African Union Opposition to the International Criminal Court's Investigations and Prosecutions of African Leaders," 386.

⁷⁴ Sang-Hyun Song, "Preventive Potential of the International Criminal Court," *Asian Journal of International Law*, Vol. 3, (May 2013), 203–213; 203. <https://search-proquest-com.proxy.libraries.uc.edu/docview/1477172351/fulltextPDF/EAA9C62A737B4CA3PQ/1?accountid=2909>

uphold elite immunity norms of the past where ultimately the norm of international justice prevailed. Burundi, on the other hand, exhibits a country where the norm for protection of elites overcame that of international justice -- a goal consistent with the beliefs of elite theory. Burundi demonstrates a loss for the Court, as it is one less country where this institution can promote human rights and serve as a preventative force against war crimes and crimes against humanity. This is why understanding elite theory is imperative to the success of the ICC, as it helps to pinpoint what the Court should be focusing on to keep African nations as member states, such as working more closely with leaders to form better relationships or working to gain a larger presence in its member state's domestic spheres. Elite theory is consistently the major theme which has been present in all three of the cases studied, demonstrating the true motivations behind African nation's opposition to the International Criminal Court.

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