

Op-ed: “Minister Chinamasa: You are wrong about the ICC”¹

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“Minister of Justice and Legal Affairs, Patrick Chinamasa stated in the Zimbabwe Mail that Zimbabwe rejects the notion of ratifying the Rome Statute, the founding treaty of the International Criminal Court (ICC), because he believes that the Court is biased against some regions—Africa in this case—and leaves others untouched. This not a new argument, but it continues to be difficult to understand.

The ICC was established in 2002 with the goal of ending impunity for the worst crimes known to humankind: crimes against humanity war crimes and genocide. African states played a key role in the 1998 Rome Conference which culminated in the adoption of the treaty. They did not want a repetition of the 1994 genocide in Rwanda or of the other grave crimes committed in Africa and other regions around the world throughout the 20th century. That commitment—shared by the 119 states that so far have joined the Court—to ending impunity wherever it may be is why African states have remained active participants at the ICC. The 119 ICC state parties include the strong, the weak, the rich, the poor, the big and the small. Each state that has joined is making a commitment to fight against the commission of grave international crimes and to ensure their investigation and prosecution should they occur.

It is true that all of the ICC’s seven current investigations—Central African Republic (CAR), Democratic Republic of Congo (DRC), Ivory Coast, Kenya, Libya, Darfur (Sudan), and Uganda—are taking place in Africa. But it is equally true that some of the worst crimes in the world are being committed on African soil and African victims are calling out for justice whether by the Courts of their land or by the ICC. By focusing on the perpetrators, is Minister Chinamasa suggesting that Africans who commit these massive crimes should not be punished and that African victims do not merit justice? If this is his suggestion then it defeats the purpose of Article 4(h) of the constitutive act of the African Union (AU) which explicitly rejects impunity for crimes against humanity, war crimes and genocide and further defeats the objectives of the African states who met in Rome in 1998 to make that historic contribution to the principle of accountability in establishing the ICC.

It must also be highlighted that the ICC is undertaking preliminary examinations in Colombia, Afghanistan, Georgia, Honduras, Guinea, Nigeria and the Republic of Korea and is analyzing whether it has jurisdiction over the Palestinian territories. In time, there will be ICC investigations in these or other parts of the world. However, a close

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assessment of how the ICC came to open its first seven investigations is what really undercuts the African bias argument made by Minister Chinamasa.

Between 2003 and 2005, the governments of DRC, Uganda, and CAR referred situations occurring on their territory to the Office of the Prosecutor (OTP) of the ICC. These governments, all ICC states parties, recognized the lack of capacity of their national courts to address the grave acts occurring on their respective territories and requested the Court to open investigations into these alleged crimes in accordance with the complementarity principle of the Rome Statute—which states that the ICC can only open an investigation if national authorities are unable or unwilling to genuinely do so.

The fourth investigation, in Darfur (Sudan) was referred to the Court by the United Nations Security Council (UNSC) in 2005. There were no dissenting votes among UNSC members, which included African states, on the resolution referring the situation to the Court. Both Benin and Tanzania voted in favour while Algeria abstained from voting.

The situation in Libya, the Court's sixth investigation, was also referred by the UNSC in 2011. This time, the vote was unanimous with all states voting to refer the situation, including the African states present—Gabon, Nigeria and South Africa. Lastly, in the seventh ICC situation in Ivory Coast (or Côte d'Ivoire), both former-president Laurent Gbagbo and current president Alassane Ouattara accepted the jurisdiction of the ICC and requested the opening of an investigation in their country.

With this assessment it is clear that the selection of ICC investigations has come in part through recommendation of states themselves and in part through the recommendation of the UN Security Council. The OTP used its power to self-initiate an investigation twice: in Kenya and Ivory Coast. Far from being biased against Africa, the Court has shown itself to be on the side of victims of violent conflict in Africa. It is working toward a future in which all parts of the world, Africa included, can thrive with societies based on justice and the rule of law, rather than being mired in conflict and impunity.

The Coalition for the ICC, the organization that we represent, is made of likeminded civil society organizations around the world (800 strong in Africa) who have come together to support the idea that justice can and should be done for grave crimes. We advocate for all states to join the ICC and to keep strong their commitments to justice.

Minister Chinamasa may not support the notion of Zimbabwe joining the growing majority of states in Africa (33 out of 55) and around the world in rejecting the idea of impunity and signing up to the ICC. But we are patient. We look forward to the day when Zimbabwe's leaders will have changed enough so that they no longer fear justice. Minister Chinamasa, the citizens of Zimbabwe are waiting."