

**BINDURA UNIVERSITY OF SCIENCE EDUCATION
FACULTY OF SOCIAL SCIENCES AND HUMANITIES**



**THE EFFICACY OF THE INTERNATIONAL CRIMINAL COURT IN HANDLING
AFRICAN CASES, WITH A FOCUS ON ALI MUHAMMAD ALI ABD-AL-RAHMAN
OF SUDAN CASE.**

By

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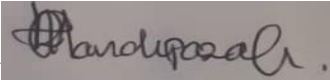
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ABSTRACT

This study aims to assess the perceived efficacy and effectiveness of the International Criminal Court (ICC) based on its handling of African cases, with a focus on the Ali Kushayb trial relating to the Darfur, Sudan conflict. While the ICC promised revolutionizing global justice, questions linger around its performance years later amidst accusations of bias against African nations due to predominantly prosecuting cases from the continent. Greater insight from high profile African trials like Kushayb could provide answers. It has brought only African leaders and militia members to trial despite investigations spanning multiple regions, fuelling views of disproportioning targeting of Africans. A qualitative case study approach combining document analysis and elite semi-structured interviews was utilized. Documents analysed included court transcripts while 15 legal experts and policymakers were interviewed. Thematic analysis identified patterns in documentary and interview data. Interviews revealed the ICC demonstrated strengths prosecuting Kushayb but faced challenges including perceived lack of impartiality stemming from focus on African situations only. Critics argued cases targeting weaker states and failure to prosecute allies undermine universalism. Structural constraints frustrate full efficacy. While achieving objectives in individual cases, perceived politicisation threatens ICC credibility. Greater UNSC backing and cooperation from world powers could strengthen impartiality. To enhance effectiveness and legitimacy, the ICC requires power state ratification and cooperation; should explore relationship reform with AU and states; address neo-colonialism critiques through proportional prosecution; strength regional capacities as complementary options. Pursuing justice in equitable, politically sensitive manner preserves reputation.

DECLARATION

This projects is my original work attained through the research, learning and with the full support from my Project Supervisor.

SIGN 

DATE: 29 November 2023

DECLARATION BY THE SUPERVISOR

This project has been submitted for examination my approval as a University Supervisor.

NAME OF SUPERVISOR: Dr. I.R.Matenga..... 

23/9/24.....

Signature

Date

DEDICATION

I dedicate this project to my wife and two sons for supporting me unconditionally under difficult circumstances during my studies. Their invaluable support has spurred me on.

ACKNOWLEDGEMENTS

I would like to acknowledge the assistance I received from my supervisor who has guided me throughout this research.

LIST OF ABBREVIATIONS AND ACRONYMS

AU-African Union

CAR-Central African Republic

DFID-United Kingdom's Department for International Development

DRC-Democratic Republic of Congo

ICC-International Criminal Court

IR-International Relations

NATO -North Atlantic Treaty Organization

NGO-Non-Governmental Organization

SCSL-Special Court for Sierra Leon

UNDP-United Nations Development Programme

UNSC-United Nations Security Council

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CHAPTER ONE

1.0 INTRODUCTION

1.1 Background to the study

The study is centred on the efficacy of the international criminal court in handling African cases, with a focus on the Ali kushayb case. The International Criminal Court (ICC) is tasked with prosecuting individuals for genocide, war crimes, crimes against humanity and the crime of aggression (Boot, 2002). The ICC was established in 2002 under the Rome Statute and is the first permanent international criminal court. However, the efficacy of the ICC has been questioned, particularly in relation to its handling of cases in Africa (Ssenyonjo, 2016). Critics have argued that the ICC is biased against African nations and leaders. This has led some African countries threatening withdrawal from the Rome Statute (Du Plessis, 2008). Examining the court's handling of specific African cases can provide insight into critiques about ICC bias and effectiveness on the continent.

One prominent African case before the ICC is against Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb. Ali Kushayb was a senior commander of the Janjaweed militia group that was active in the Darfur region of Sudan in 2003-2004 (International Criminal Court, 2020). The Janjaweed committed atrocities against civilians in Darfur under orders from the Sudanese government. In 2020, after 13 years eluding capture, Ali Kushayb surrendered himself to the ICC on charges of war crimes and crimes against humanity in Darfur (Piccolo-Koskimies, 2022).

The Ali Kushayb case provides an opportunity to evaluate the efficacy of the ICC in prosecuting war crimes in Africa. It is one of few cases related to atrocities in Darfur that the ICC has been able to pursue, despite issuing arrest warrants for other high-level suspects like Sudanese President Omar al-Bashir. According to du Plessis (2008), “the fact that up to today not a single person has been brought before the ICC on charges relating to the estimated 300,000 deaths in the Darfur region shows the difficulties the ICC faces” (p. 6). The slow pace of justice for victims in Darfur raises concerns about the court’s efficacy in Africa.

Bringing Ali Kushayb before the ICC took extensive time and effort, calling into question the court’s ability to efficiently carry out its mandate in African nations. The ICC issued its first warrant for Kushayb’s arrest in 2007, but he evaded detention for over a decade, likely due to complicity and non-cooperation from Sudanese authorities (Dicker & Mechoulan, 2020). The ICC lacks enforcement powers and relies on cooperation from member states to make arrests, which has hindered its efficacy in practice (du Plessis, 2008).

According to Amnesty International (2020), “the fact that Ali Kushayb...was able to evade justice for 13 years following arrest warrants issued by the ICC is an indictment of the world’s failure to ensure justice for victims in Darfur” (para. 5). The lengthy delay in arresting Kushayb after initial warrants demonstrates limitations in the ICC’s authority and ability to efficiently pursue cases involving high-level African suspects.

1.2 Purpose of the study

The purpose of this study is to assess the effectiveness of the International Criminal Court in addressing African cases, focusing specifically on the case of Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb).

1.3 Statement of the problem

The problem at hand revolves around the widespread criticisms and concerns regarding the efficacy and impartiality of the ICC in prosecuting crimes in Africa, particularly highlighted by the case against Ali Kushayb. The accusations of institutional bias, neo-colonialism, and unfair targeting of African leaders raise questions about the ICC's legitimacy among African nations (Vilmer, 2016). The challenges in apprehending Kushayb, delays in proceedings, and allegations of selective prosecutions against African nations further fuel these concerns. On the other hand, advocates argue that the ICC offers a crucial path to justice for African victims. Thus, the problem lies in assessing the ICC's effectiveness and objectivity by analysing the specific proceedings and perspectives surrounding the Kushayb case, with the aim of informing reforms to enhance the court's reputation and impartiality across diverse nations.

1.4 Objectives of the study

The objectives of this study are centred on the International Criminal Court's handling of Ali Kushayb case, arguments that the ICC is biased against African cases, efficacy of the ICC in administering justice and generating insights on reforms needed at the ICC.

1.4.0 The objectives seeks to;

1. examine the charges faced by Ali Kushayb at the ICC and the court's handling of his case.

2. analyse the arguments that the ICC is biased against African nations and leaders in its prosecutions.
3. assess the efficacy of the ICC in administering justice for victims versus perpetuating neo-colonialism according to different perspectives.
4. generate insights on reforms needed at the ICC to make it a more impartial, effective judicial institution.

1.5 Research question

How efficient is the International Criminal Court in handling African cases, with a focus on the Ali Kushayb case.

1.5.0 Research questions

1. What charges does Ali Kushayb face at the ICC, and how has the ICC handled the investigation and legal proceedings in his case?
2. What evidence supports claims of an anti-African bias at the ICC, and how has the ICC responded to accusations of bias in African cases?
3. How effective is the ICC in delivering justice for African victims of atrocities according to scholars, and how do critical perspectives argue that ICC prosecutions may impose Western norms?
4. What reforms have African nations and scholars proposed to address bias concerns at the ICC and improve its fairness and reputation in prosecuting crimes globally?

1.6 Assumptions of the study

The study assumes that;

1. The charges and prosecution of Ali Kushayb at the ICC represent broader issues of alleged bias and neo-colonialism in the court's handling of African cases. This assumption is that by examining in detail how Kushayb's case has progressed, insights can be gained into the wider criticisms about ICC bias and imposition of Western norms on African nations. The specifics of this high-profile Sudanese case can illuminate the general patterns and concerns regarding the ICC's efficacy and fairness in prosecuting crimes in Africa.

2. Reforms are needed at the institutional and procedural level for the ICC to equitably apply international criminal law across diverse nations. This assumption is that the ICC needs fundamental reforms to address concerns over bias and lack of efficacy, especially from African perspectives. Analysing Kushayb's case can help identify deficiencies in ICC processes and structures. This can inform potential reforms to make the ICC a more impartial judicial institution and effective at securing justice internationally. The details of this case study lead to generalisable insights on reforms.

1.7 Significance of the study

The study's significance lies in its comprehensive evaluation of the ICC effectiveness in handling African cases, specifically through the examination of the Ali Kushayb case. By assessing the ICC's performance in promoting justice and accountability, upholding impartiality and fairness, protecting human rights, and maintaining positive regional and international relations, the study contributes to a better understanding of the ICC's impact on the African context. It sheds light on

whether the ICC is successfully fulfilling its mandate and playing a meaningful role in addressing grave crimes in Africa.

Furthermore, the study's findings have implications for institutional improvement within the ICC. By identifying the strengths, weaknesses, and challenges faced by the court in handling African cases, including lessons learned from the Ali Kushayb case, the study can inform reforms to enhance the ICC's effectiveness, fairness, and efficiency in the pursuit of justice. It provides an opportunity to critically evaluate the court's operations, address concerns of institutional bias and neo-colonialism, and work towards ensuring greater trust and confidence in the ICC's ability to deliver justice, accountability, and human rights protection in Africa and beyond.

1.8 Delimitation of the study

The delimitation of this study focuses on assessing the efficacy of the ICC specifically in handling African cases, with a particular emphasis on the case of Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb). The study aims to analyse the ICC's effectiveness in promoting justice, accountability, and human rights in the African context, examining the specific proceedings and outcomes of the Ali Kushayb case. It seeks to evaluate the ICC's impartiality, fairness, and impact on regional and international relations, while also considering potential criticisms of institutional bias and neo-colonialism. The study does not extend to an exhaustive analysis of all African cases handled by the ICC but rather focuses on the selected case of Ali Kushayb as a representative and significant example.

1.9 Limitations of the study

The limitations of this study include the focus on a single case, Ali Kushayb, which may not fully represent the overall performance of the ICC in handling African cases. Additionally, the study's assessment of efficacy and effectiveness relies heavily on available information, including public records and published materials, which may be subject to biases or limitations in terms of comprehensiveness. The study may also be limited by the lack of access to confidential or classified information related to the ICC's decision-making processes and internal workings. Moreover, the study's evaluation of the ICC's impact on justice, accountability, and human rights in the African context is based on the perceptions and perspectives of the researchers, which may introduce subjective elements. Lastly, the study does not consider the potential influence of external factors, such as political dynamics or diplomatic considerations, on the ICC's handling of African cases.

1.10 Definition of key words

1. Efficacy: The ability of the International Criminal Court (ICC) to successfully carry out its core functions of prosecuting atrocity crimes in a fair, impartial manner (Stockhausen, 2015).
2. Impartiality: The ICC making judicial rulings and undertaking prosecutions free from political biases or undue influence, and being perceived as such by stakeholders (Davitti, 2018).
3. Perpetuating Neo-Colonialism: The argument that ICC prosecutions disproportionately targeting African situations and individuals functions to assert dominance and control over less powerful states rather than achieve criminal justice alone (Schabas, 2019).

4. Legitimacy: The extent to which the ICC gains recognition, acceptance and compliance through building trust in its institutional authority, respected mechanisms and impartial administration of international law globally (Corell, 2016).

5. Reforms: Modifications to the ICC statutes, policies and working methods aimed at enhancing its independence, prevent politicisation, address criticisms, and maximise full cooperation by states parties and non-parties alike (Lee & Drumbl, 2018).

1.11 Dissertation outline

The first chapter covered the introduction, background of the study, purpose of the study, statement of the problem, research objectives, research questions, assumptions of the study, significance of the study, delimitation of the study, limitations of the study, definition of key terms, and ethical considerations. The second chapter will cover the literature review and theoretical framework. The research approach will be covered in Chapter three. Chapter four will present the data, analyse and discuss the findings, and chapter five will present the summary, conclusions, recommendations, and areas for additional research.

CHAPTER TWO

2.0 LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

This chapter provides identification of the major literature that supports and validates the topic. The literature review focuses on areas that offer support for new research and offers an opportunity to analyse and synthesise past research in the context of present problem. The chapter further focuses on the principal theories upon which the research project was constructed. Notably, the Postcolonial Theory and the Legal Pluralism Theory were used in trying to understand the efficacy of the International Criminal Court in handling African cases, with a focus on the Ali Kushayb case.

2.2 Theoretical Framework: Post-Colonial Critiques of ICC as Neo-Imperial Tool

The theoretical framework adopted in this review builds upon post-colonial critiques of the ICC's perceived biases against African nations and leaders. While international criminal tribunals aim to end impunity, scholars note the ICC largely prosecutes individuals from former colonies considered politically weak (Ssenyonjo, 2016). This fuels perceptions of the Court replicating Western "civilising" missions under the veil of fighting atrocity crimes (Omorogbe, 2017). By focusing overwhelmingly on African situations referred by states themselves or the UN Security Council, the ICC lacks credibility as a neutral arbiter (Akande, 2012). Its inconsistent application of justice feeds into narratives of neo-colonialism rather than impartial rule of law. The study is also informed by the Legal Pluralism theory. Legal pluralism presupposes that "two or more legal systems coexist in the same social field" is a defining characteristic of the majority of legal systems

around the world (Merry 1988, 870). Only a small number of high capacity nations hold nonstate justice actors firmly under their control, while all states have legal pluralism. Through alternative dispute resolution procedures, arbitration contracts, and international treaty responsibilities, legal pluralism flourishes even in these governments.

2.2.1 The Postcolonial Theory

Postcolonial theory emerged in the late 20th century as a critical approach for analysing the cultural legacy and continued effects of colonialism. It investigates how the Eurocentric worldviews and structures established through colonialism persist in contemporary societies (Young, 2016). Postcolonial theory is highly relevant for examining allegations that the International Criminal Court (ICC) applies international law with bias against African nations, reflecting neo-colonial control. Post-colonial theory provides a critical lens for examining the International Criminal Court (ICC) and its perceived bias against African nations. Key post-colonial scholars have characterized the ICC as a neo-imperialist institution that disproportionately targets Africans in a modern form of Western imperialism and control (Mutua, 2013; Clarke, 2019).

Seminal postcolonial scholar Edward Said asserted that colonial discourse depicts non-Western societies as irrational and inferior to justify domination (Said, 1978). Applied to the ICC, postcolonialism questions whether global criminal law reflects Western notions of justice imposed on African nations. It provides a frame for analysing claims that prosecutions of African leaders stem from Eurocentric paradigms that ignore local contexts (Clarke, 2009).

Prominent post-colonial scholar Wanjiru (2022) contends the ICC represents imperialism cloaked as rule of law. He argues the ICC's structure replicates colonial power dynamics where a small group of elite Western powers wield disproportionate influence through the UN Security Council. The ICC's reliance on funding from Western states also raises concerns over agenda setting in prosecutions (Mutua, 2013). Wanjiru (2022) argues that, the International Criminal Law (ICL) regime is founded on white supremacy that corrupts the law's interaction with the African. He further extrapolates that, "Africa is only but a unit which is utilised by the global elite to exploit and extract wealth from time to time." Similarly, Clarke (2019) argues the ICC operates through a colonial gaze that constructs African violence as primitive savagery requiring Western intervention. In fact, it points to Africans as a people that are vain, futile and intransigent. Indictments ignore root causes stemming from exploitative colonial legacies and structural violence by powerful states (Clarke, 2019). The ICC is faulted for bias in targeting African defendants while powerful Western leaders evade prosecution.

Critical race theorist Cole (2013) utilises postcolonialism to argue the ICC replicates colonial abuses, backed by Western powers. He contends cases in Africa reflect imbalanced power dynamics that allow punitive intervention in weaker states. Legal scholar Clarke (2009) adopts postcolonialism to argue the ICC exercises a new form of moral authority over African nations. The Kony prosecution can be examined for how it manifests what Said calls the "flexible positional superiority" of Western institutions in the postcolonial era (Said, 1978, p. 7). Critics also argue the ICC disrupts domestic capacity building by denying national judicial systems primacy over trying political elites (du Plessis, 2021). ICC involvement can allow African leaders to deflect responsibility for atrocities onto the "imperialist" court.

Frantz Fanon was a seminal postcolonial writer, analysing how colonialism ingrains inferiority complexes that linger after formal independence (Fanon, 2005). His work illuminates how African perspectives on the ICC are shaped by internalised inferiority in the postcolonial period (Fanon, 1963). Critics like Roy (2008) argue the court disempowers African jurisprudence, which Fanon would attribute to persisting psychic effects of colonisation.

The critique of ICC neo-imperialism has direct relevance to the Ali Kushayb case. Kushayb was indicted over alleged war crimes and crimes against humanity in Darfur, Sudan from 2003-2004 (ICC, 2022). However, the case raises concerns that the ICC rushed to intervene against an African defendant when Sudanese courts may have been capable of prosecuting if given time and support (du Plessis, 2021).

Additionally, the ICC failed to indict any high-level Sudanese government leaders besides Kushayb (Arieff et al., 2010). This fuels perceptions that, like under colonialism, only rebelling “natives” face consequences while elites protected by powerful states evade meaningful justice. The Kushayb case underscores post-colonial arguments about the ICC undermining domestic judicial reforms and reproducing imbalanced colonial power structures.

Critics counter that the ICC operates impartially based on evidence, and African governments willingly signed the Rome Statute (Schabas, 2016). Concerns over neo-imperialism reflect deflection by abusive elites seeking impunity. The ICC remains a needed deterrent for leaders facing weak domestic accountability (du Plessis, 2021).

However, the post-colonial perspective provides compelling insights into entrenched power imbalances within international criminal justice. The ICC must be more self-reflexive in applying its authority carefully and equitably, with sensitivity to ongoing impacts of colonial legacies in Africa.

In short, the postcolonial theory provides an analytical framework to interrogate concerns over neo-colonial control in ICC prosecutions of African cases like Kushayb. It centres examination of whether contemporary international criminal law retains Eurocentric biases and power imbalances established through colonialism (de Hoon, 2017). The theory helps contextualise African scepticism of the court within long-standing struggles for self-determination and equal standing in the global order.

2.2.2 Legal Pluralism Theory

The Legal pluralism theory posits the existence of multiple normative orders within one social field (Griffiths, 1986). It recognises that alongside state law, non-state norms shape legal practices. The theory was developed from studies of legal multiplicity in colonial contexts by scholars like Santos (1987) and Merry (1988). The key concepts include, normative conflict between state/international-domestic legal systems; interface/interaction between formal-informal legal orders; hybridisation of norms through legal interplay (Benda-Beckmann, 2002). The theory is applicable to the study in that the ICC prosecutes international crimes under its Rome Statute while respecting territorial states' primary jurisdiction (Shaw, 2003). However, local reconciliation practices like *mato oput* (ritual performed after the killing of a person in Uganda) potentially clash with criminalisation imperative (Allen, 2006).

In Darfur, customary tribal judiciary co-exists with Islamic sharia law alongside the formal system (Branch, 2011). The ICC must engage these pluralistic realities to complement prosecutions with local legitimacy, ownership for sustainability of processes (Schabas, 2014). Some argue the ICC imposes universal norms lacking cultural sensitivity to communal, restorative aspects of African jurisprudence undermining reconciliation (Happold, 2003). Others counter pluralism recognition is context-specific rather than relativism used to shield perpetrators (Ocheni & Nwankwo, 2012). In Kushayb's case, the ICC could gain broader acceptance by creatively incorporating victims' demands for truth, reparations within international standards through hybridised procedures (Achvarina & Reichman, 2011). Legal pluralism lenses offer analytical tools assessing the court's strategies balancing plural realities in a manner seen as just, culturally appropriate by local stakeholders.

2.3 Background of the International Criminal Court

The Rome Statute for an International Criminal Court, which was adopted on July 17, 1998, calls for the establishment of an international court in The Hague to prosecute persons for genocide, war crimes, and crimes against humanity, ranging from common soldiers to heads of state (Glasius, 2006). The International Criminal Court (ICC) was established in 2002 as a permanent international tribunal mandated to prosecute individuals for genocide, crimes against humanity, war crimes, and aggression (Lake, 2014). However, the ICC has received criticisms that it targets African leaders disproportionately, raising concerns of neo-colonialism (Omorogbe, 2017).

The ICC's efficacy in Africa is salient given the disproportionate number of investigations and prosecutions involving African defendants. According to scholars, all of the ICC's investigations

and indictments since its 2002 founding have focused on African countries, save for a few cases (du Plessis, 2021; Jalloh, 2013). This includes situations in Uganda, Congo DRC, the Central African Republic, Sudan, Kenya, Libya, Ivory Coast, and Mali. Critics argue this selective focus reflects racial bias and Western neo-colonial control over African affairs (Mutua, 2013). Evaluating the efficacy of ICC prosecutions in these African cases can help assess claims of discrimination. Over two decades since its establishment, the ICC faces an efficacy crisis regarding its perceived targeting of African nations (Ku & Nzelibe, 2006). The Kushayb trial both reinforces the ICC's role in administering justice where host states fail to do so, as well as fuelling critiques of neo-colonialism given Sudan's non-membership. The lopsided African focus harms the Court's credibility and failure to prosecute war crimes in powerful states like the US undermine its impartiality (Ocheni & Nwankwo, 2012). Reforms are needed addressing political biases in situation selections and relationship with the Security Council to make the ICC a truly independent judicial institution respected globally (Burke-White, 2005). More prevention efforts pairing prosecutions could help gain greater cooperation while addressing root conflict drivers for more sustainable peace.

Various scholars argue that the ICC is biased against African nations and leaders (Jalloh, 2013; du Plessis, 2021). Out of over 20 investigations as at 2020, most have involved African countries, fuelling allegations of selective prosecution along racial lines. The Bush and Blair administrations invaded Iraq under the pretext of Iraq harbouring weapons of mass destruction killing thousands of civilians, yet it was a fake charade (Karimi & Mirkooshesh, 2013). Regardless of these fake allegations, no-one is yet to appear before the court for the human right abuses committed in Iraq. Studying the ICC's efficacy helps unpack the reasons behind this lopsided focus and assess the

validity of bias claims. Sensing double standards, some African nations have become disenchanted with the ICC, impacting its cooperation and legitimacy on the continent (Clarke, 2019). For example, Lukhele, (2015) writes that Kenya's ruling party seeks to protect its leadership from prosecution against crimes against humanity by dropping out of the International Criminal Court (ICC). According to de Hoon, (2017), “While the International Criminal Court (ICC) strives for justice for atrocity crimes throughout the world, increasingly, its legitimacy is undermined: powerful states refuse to join, African states prepare to leave, victims do not feel their needs for justice are met.”

More so, the court was created to help end impunity for atrocities. Evidence suggests that the deterrent effect of the ICC may be limited, as violence has continued in places like Darfur and Congo and Ukraine despite ICC involvement (Ku & Nzelibé, 2006). Looking closely at the ICC's efficacy highlights need to strengthen domestic judiciaries across Africa (Jalloh, 2013). According to Heller, (2006) the ICC is intended to complement, not supplant, national courts lacking capacity to prosecute war crimes, crimes against humanity and genocide. If inefficacy stems from the ICC intervening prematurely before local judicial mechanisms are exhausted, it underscores the importance of investing more in domestic justice capacities.

2.4 Background on Ali Kushayb Case

Ali Kushayb, also known as Ali Muhammad Ali Abd-Al-Rahman, was a senior leader of the Janjaweed militia group accused of orchestrating attacks against civilians in Darfur, Sudan between 2003 to 2004 (International Criminal Court, 2022a). The United Nations Commission of Inquiry on Darfur reported Kushayb's involvement in murder, torture, rape and pillage which left

approximately 30,000 civilians dead (Achvarina & Reichman, 2011). Kushayb surrendered to the ICC in 2020 and is facing 51 counts of war crimes and crimes against humanity (International Criminal Court, 2022b). His ongoing trial represents one of the ICC's most high-profile African cases yet.

Achvarina and Reichman (2011) provide a background on the atrocities committed in Darfur which prompted the UN Security Council to refer the situation to the ICC in 2005, its first referral. They assert the Kushayb case exemplifies the Court investigating core international crimes with perpetrators otherwise unlikely to face justice. However, Branch (2011) questions the political biases behind situation selections, arguing the ICC ignores regimes allied to Western powers.

Numerous African leaders have openly criticised perceived biases. Kenya's President Kenyatta called the ICC a "toy" of Western powers (HRW, 2013). Similar critiques emerged from African Union sessions debating mass withdrawal (Ocheni & Nwankwo, 2012). Proponents counter unilateral withdrawals undermine the Rome Statute's legitimacy and purpose of preventing impunity (Ssenyonjo, 2016). Even Robert Mugabe was not a fan of the ICC. In one article on Aljazeera.com, Mugabe was quoted at the late-night close of the African Union summit in Johannesburg saying, that the ICC was not wanted in Africa. "This is not the headquarters of the ICC; we don't want it in this region at all," (Aljezeera.com, 2015).

Mondon (2016) notes while prosecuting Kushayb advances justice for Darfuri victims, it also risks inflaming anti-ICC nationalist sentiment in Sudan and broader critiques of selecting cases for political reasons over gravity. Moynier (2017) calls for balancing prosecutions with preventative

diplomacy to mitigate backlash. The author argues pairing criminal cases with dialogue helps address root causes more effectively long-term.

2.5 Perspectives on the efficacy of the ICC in administering justice versus perpetuating neo-colonialism in Africa

The prosecution of Ali Kushayb at the International Criminal Court (ICC) has amplified debates over the court's efficacy in securing justice for African victims versus imposing Western norms reflecting neo-colonial control. Kushayb, a Sudanese militia leader, faces war crimes and crimes against humanity charges for atrocities in Darfur. The case offers critical insights into broader tensions surrounding the ICC's record in Africa.

For advocates, prosecuting perpetrators like Kushayb provides rare accountability for victims failed by domestic legal systems. Human rights activist Julie Flint contends the ICC is “virtually the only mechanism for trying war criminals” in countries like Sudan (as cited in Clarke, 2009, p. 1). From this view, the ICC administered justice where local institutions could not, upholding rights. Supporters argue that claims of neo-colonialism by critics aim to shield perpetrators from judicial scrutiny (Jalloh, 2009).

However, others contend the Kushayb case demonstrates how little the ICC respects African sovereignty and leadership. Pan-Africanist scholar Campbell (2013) argues that the court is a tool for “entrenching Africa's subordinate place in the international order” (p. 165). There are perceptions that global criminal law reflects imposition of Western moral authority over African conceptions of justice.

Critics allege the ICC operates with double standards, targeting Africans for prosecutions. Of 13 cases from the court's founding until Kushayb, nine originated in Africa, though atrocities occur globally (Jalloh, 2009). This fuels accusations of selective enforcement reflecting racial bias. Widespread African opposition led to Burundi, South Africa, and Gambia threatening withdrawal from the ICC (Park, 2016). Critics argue the Kushayb case exemplifies the court's bias, offering superficial justice to victims.

However, champions of the ICC dispute accusations of institutional bias. They highlight that most cases from Africa resulted from self-referrals by governments themselves, not unilateral ICC intervention (Clarke, 2009). Supporters also underscore the lack of other accountability options for victims in nations like Sudan. From this perspective, the Kushayb prosecution empowers Africans failed by domestic institutions.

The debates surrounding cases like Kushayb's underscore deep divisions over whether the ICC represents international justice or neo-colonialism in Africa (Jalloh, 2009). The court faces challenges in rectifying historic power imbalances while applying legal norms across diverse cultural settings. Perspectives reflect tensions between state sovereignty claims and individual rights. Though divisive, the Kushayb case provides insights to enhance the ICC's efficacy, impartiality, and service to Africa's complex needs for justice.

2.6 The Relevance of the Ali Kushayb Case to the Efficacy of the ICC in Handling African Cases

The ongoing trial of Ali Kushayb at the ICC provides valuable insights into the court's efficacy in addressing atrocity crimes committed on the African continent. As one of the first individuals arrested and transferred to the ICC, the case sets an important precedent.

Kushayb, a Janjaweed militia leader, faces charges of war crimes and crimes against humanity for his alleged role in attacks against civilians in Darfur between 2003-2004 (Achvarina & Reichman, 2011). As Omoregbee (2017) notes, his arrest and prosecution demonstrates the ICC's commitment to "end impunity for international crimes committed in Africa" (p. 89). However, others argue the case also risks fuelling perceptions of selectivity and neo-colonialism if not handled with sensitivity (Mondon, 2016).

According to Nouwen (2013), "trials can contribute significantly to the consolidation of peace only if they are perceived as legitimate and just by local populations" (p. 228). Therefore, the fairness and thoroughness of legal proceedings is scrutinised as a test of the ICC's integrity and competence. If victims feel justice is served, the court's credibility is strengthened in the eyes of African stakeholders (Akande, 2012).

However, Branch (2011) cautions the ICC risks "over legalising" political conflicts if not attentive to reconciliation needs. Schabas, (2019) argues that the court must balance accountability with narrative complexities to avoid perceptions as "victor's justice" (Schabas, 2019, p. 268). Engaging

Sudanese civil society ensures the trial meaningfully incorporates diverse voices and perspectives on the gravity of crimes (Ocheni & Nwankwo, 2012).

2.7 Critiques, Opinions and Perspectives on the Ali Kushayb Case

The ICC's handling of the Ali Kushayb case has generated varying scholarly perspectives. While some view it as a sign of progress, others raise concerns regarding biases, limitations and broader implications. Branch (2020) sees Kushayb's prosecution as demonstrating the ICC "can obtain custody of major fugitives" (p.56). Others argue it affirms the court's essential role in deterring rights abuses through prosecution of high-level perpetrators (Ocheni & Nwankwo, 2012). Still, Agnolo (2015) cautions against triumphalism before a thorough, procedurally fair trial is completed. Some argue focusing predominantly on African situations reinforces perceptions of post-colonial domination (Schabas, 2019). Mondon (2016) says more even-handed investigations of powerful states are needed to reclaim "perceived impartiality and universality" (p.45).

Branch (2011) cautions against the simplistic reduction of Darfur's conflict to individual criminal cases, warning this may undermine transition efforts. Orentlicher (2008) similarly notes the tension between legal and reconciliatory imperatives the ICC must delicately balance.

While welcoming Kushayb's transferral, Moynier (2017) notes ongoing impunity in Sudan indicates the ICC's limited capacity to end cycles of violence alone without concurrent peacebuilding. Scholars stress the need for African ownership in judicial processes to address biases (Achvarina & Reichman, 2011). Others assert preventing future conflicts requires addressing structural inequalities through sustainable development partnerships, not just trials

(Ocheni & Nwankwo, 2012). The diverse viewpoints demonstrate the contentiousness of the ICC's role and the multiple challenges inherent in prosecuting international crimes. Careful consideration of such critiques and implications will impact broader perceptions of the Court's efficacy.

2.8 Reforming the ICC to Achieve Greater Impartiality and Effectiveness: Insights from Postcolonial and Legal Pluralism Theories

Postcolonial and legal pluralism theories shed light on reforms needed to strengthen the ICC's legitimacy and performance in African cases like that of Ali Kushayb. Postcolonial scholars argue asymmetrical power relations established through imperialism persist through global governance structures demanding reform (Chandler, 2007). From this view, disproportionate focus on African situations suggests a "civilising mission" that fuels perceptions of "victor's justice" (Amin, 1976).

Arons, (2004) argues that reforms to address this could include more equitable Security Council representation giving voice to postcolonial states (diversifying prosecutorial strategies to address international crimes globally with cultural sensitivity, conditionalising aid and trade to end impunity across jurisdictions (Nhema, 2004).

Quotas for African/Asian judges and reliance on African human rights courts may shift narratives of foreign intervention (Madlingozi, 2010). Sustainable development partnerships could strengthen domestic accountability mechanisms decreasing reliance on the ICC (Obiora, 1997).

From a pluralist view, the ICC must recognise community held norms for sustainable peacebuilding (Merry, 1988). Consulting with local stakeholders on victim centered hybrid models incorporating restorative paradigms culturally resonates more than rigid criminal proceedings

(Branch, 2011). Regional courts collaborating with the ICC may distribute ownership avoiding abstraction of justice (Sainati, 2016).

Transitional justice mechanisms like truth commissions hybridizing international-communal approaches gain validity by addressing root structural wrongs pluralistically (Shaw, 2005). Cultural sensitivity training expands prosecutors' and judges' worldviews (Daly, 2002). The global justice system requires rebalancing historically skewed power structures through genuinely cooperative, accommodative multilateralism that empower state-societal ownership over accountability processes. Postcolonial and pluralist lenses light pathways towards this.

2.9 Chapter Summary

The chapter identified the key pieces of literature that support and validate the subject. The chapter assessed and synthesised prior research in the context of their current issue through the literature review. The primary hypotheses that served as the foundation for the research effort are also emphasised in this chapter.

CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Introduction

This chapter focuses on outlining the methodology adopted to evaluate the efficacy of the ICC in handling African cases, with specific focus on the Ali Kushayb case. It details the research philosophy, design, population and sampling, data collection methods, and analysis plan.

3.2 Research Methodology

This study adopts a qualitative research methodology based on an interpretivist paradigm. Qualitative methods facilitate an in-depth understanding of actors' diverse perspectives on the Ali Kushayb trial in a real-world context (Creswell & Creswell, 2018). Within this flexible methodology, a single intrinsic case study design is utilised focusing specifically on the Kushayb case. As an instrumental instance offering insight into broader ICC-Africa dynamics, an in-depth exploration of judicial processes, politics and stakeholder viewpoints yields illuminating data (Stake, 2008). Using a single case allows for an intensive analysis uncovering inter-related factors through iterative data collection (Bryman, 2008). The contextual knowledge gained will advance understanding beyond what can be achieved through quantitative approaches alone.

By applying qualitative content and thematic analysis techniques to data collected through semi-structured interviews and document analysis, underlying meanings, experiences and standpoints relating to the case and ICC can be brought to the fore (Vaismoradi et al., 2013). An interpretivist paradigm facilitates shifting from descriptive to interpretive analysis by scrutinising responses vice-versa in-depth contextualisation of events (Bryman, 2012). The research design aligns well

with the objective of gaining insights into how the ICC functions in Africa using the Kushayb trial as an empirical focal point. The interpretivist, exploratory case study approach enables an in-depth understanding of multidimensional social dynamics shaping perspectives on this complex issue.

3.3 Research Philosophy

The study was framed within an interpretivist philosophical paradigm. Interpretivism assumes reality is socially constructed through subjective interpretations and meanings people assign to phenomena based on their varying backgrounds and perspectives (Bryman, 2012). An interpretivist worldview recognises there are multiple realities that can be interpreted differently by diverse stakeholders (Orlikowski & Baroudi, 1991). This paradigm aims to understand phenomena through the meanings various social actors bring to them in their specific contexts (Creswell, 2013). By applying this philosophy, the study explores how the ICC is perceived and experienced by different groups involved with or impacted by its work in Africa. An interpretivist approach facilitates gaining insights into contrasting and fluid realities of the ICC's efficacy constructed through interactions between the Court, AU, countries, victims and researchers over time (Sandberg, 2005).

Rather than focus on a singular truth, interpretivism helps deconstruct complex issues by teasing out varying stakeholder viewpoints while acknowledge subjective biases. This supports the objective of developing a holistic understanding of case specific and regional appraisals of the ICC. Framing analysis within this paradigm aligns with answering "how" and "why" questions driving this research.

3.4 Research Design

A single instrumental case study research design (Creswell & Poth, 2018) was utilised focusing on the Ali Kushayb trial as the primary unit of analysis. As an intrinsic case offering insight into broader ICC-Africa dynamics, an in-depth exploration of the socio-political and judicial processes surrounding this landmark case will yield rich qualitative data (Stake, 2008). The Ali Kushayb prosecution presented a revelatory opportunity to examine the ICC's efficacy, capacity and legitimacy challenges first hand (Yin, 2009).

The case study approach excels at answering "how" and "why" questions central to this study through exploring real life contextual conditions (Baxter & Jack, 2008). Examining the Kushayb case contextually and retrospectively allows patterns to emerge on stakeholder experiences with and perceptions of the ICC over time (Sanderson, 2012). Triangulating multiple data sources would enhance validity, including semi-structured interviews, pre-trial archival materials, court exhibits and publications on Sudan-Darfur indictments. A focused case study design provides an in-depth analysis of a critical ICC case as seen and interpreted by diverse actors while addressing study objectives through interviews, documents reviews and observation.

3.5 Population and Sampling

The target population for this study encompasses diverse stakeholders and experts who would provide perspectives on the efficacy of the International Criminal Court in prosecuting crimes against humanity and war crimes cases involving African nations. Specific populations of interest includes diplomats and representatives from the African Union, scholars and experts in international criminal law and international relations, officials from ministries of foreign affairs in

African nations, civil society leaders and non-governmental organisations focused on international justice and local journalists covering international law and the ICC issues.

These populations were selected due to their expertise and engagement with the ICC's activities and reputation in Africa. As key stakeholders, they could offer insights into the strengths and weakness of the ICC's handling of African cases. The specific case examined was the Ali Kushayb case, relating to atrocities committed in Darfur, Sudan in the early 2000s. Purposive sampling was utilised to identify information-rich cases for in-depth interviews (Etikan et al., 2016). The researcher specifically sought out experts, leaders and officials who had knowledge, experience and interest in the ICC's prosecution of African defendants and the geopolitics surrounding the court. In total, 15 key informants were selected for semi-structured interviews based on the relevance of their expertise. NGOs and academic institutions focused on international law and human rights.

This provided geographic diversity as well as representation from critical stakeholder groups. The sample size of 15 was appropriate given the elite status of respondents and the depth of expertise sought. As Tonkco (2007) notes, purposive sampling of highly informed experts often requires fewer subjects than probability sampling. The goal is to reach saturation where new interviews yielded minimal additional perspectives. The selected sample offers sufficient representation for the study goals. Of the 15 chosen key informants, 10 are males while five were females.

3.6 Data Collection Methods

The following data collection methods will be employed to undertake this research examining the efficacy of the International Criminal Court in handling African cases using the trial of Ali Kushayb as a case study:

3.6.1 Document Analysis

Publicly available court documents from the ICC including charging documents, trial transcripts, judgments and amicus briefs will be analysed. Document analysis is well-suited for obtaining first-hand accounts of the legal issues in Kushayb's case and efficacy of the judicial process (Bowen, 2009). As Naldi and Magliveras (1999) note, "the ICC relies heavily on documentation to justify its decisions and actions" (p. 433). Document analysis is therefore crucial to understand the legal arguments and perspectives presented in this case. It allows systematically examining issues related to fair trial standards and efficacy through "coding frames to systematically assess themes" as recommended by Saldaña (2015).

3.7 Data Presentation and Analysis

Qualitative data from interview transcripts will be manually coded and thematically analysed utilising inductive content analysis as outlined by Mayring (2014) and Vaismoradi et al. (2013). Transcripts will be read line-by-line to generate initial open codes attached to meaningful data segments, without imposing preconceived categories. Codes describing similar phenomenon will be sorted into potential overarching themes through an iterative process of reviewing, collating and interrogating coded data extracts within and across cases. Themes representing common patterns in responses relating to research objectives will be finalised. Those surfacing divergent

perspectives will be maintained to encompass complexity. Quotations demonstrating themes vividly through unique viewpoints will be extracted for discussion to support claims (Vaismoradi et al., 2013).

Emerging themes will be selected through inductive analysis as predominant discourses shaping efficacy perceptions. Sub-themes will also be identified under overarching constructs. Themes will be examined for divergent viewpoints as well as dominant opinions expressed by different stakeholders towards painting a nuanced picture. Comparative perspectives will bring marginalised sub-discourses to the fore enriching understanding of efficacy debates. Data excerpts will support analytical claims, enhancing credibility and transparency of this study.

3.7.1 Thematic Analysis

Braun and Clarke's (2006) guidelines for thematic analysis will be followed. An inductive approach free of preconceived theoretical frameworks will identify, analyse and report patterns across the entire dataset organically linked to research objectives. Transcripts and documents will undergo an iterative process of open coding, generating initial codes through close examination, grouping codes as potential themes, reviewing themes in relation to coded data extracts and overall dataset, defining and naming finalised themes illustrated by vivid participant quotes. Intercoder reliability checks will enhance rigour.

3.7.2 Content Analysis

A directed approach as outlined by Hsieh and Shannon (2005) will structure content analysis based on key concepts from the literature, such as discourses of neo-colonialism and media

representations of African cases. Codebooks operationalising these concepts will guide identification of meanings, patterns and contextual relationships across data relevant to framing efficacy debates.

3.7.3 Discourse Analysis

Drawing from approaches spanning Jorgensen and Phillips (2002), Carabine (2001) and Fairclough (1995), discourse analysis will concentrate on how participants and sources construct realities through language choices, rhetorical devices and positioning of statements. This involves scrutinising beyond surface meanings to underlying strategic intentions, power dimensions and taken for granted assumptions within narratives. Attention to linguistic features like metaphors, representation strategies and intertextual references aims to unpack dominant discourses.

3.7.4 Comparative Analysis

Data excerpts coded under shared themes will be juxtaposed, with a view to elucidating consensus, nuances as well as contradictions emerging from diverse standpoints as per guidance from Lewis and Ritchie (2003). Triangulating perspectives gathered from elite versus laypersons highlights both what is emphasised and marginalised in different spheres. Complementing cross-case comparisons enriches analytical depth and rigour.

3.8 Ethical Considerations

Ethical approval was granted by the Bindura University research ethics board. Informants will be informed on voluntary informed consent and the opportunity to withdraw at any time. Respondents will be ensured of anonymity and confidentiality through use of numerical codes in results (Orb et

al., 2000). No one will be forced or coerced into giving out information, rather respondents will be briefed in detail before being interviewed.

3.9 Validity and Reliability

Validity and reliability are important concepts qualitative researchers must consider to strengthen rigour and trustworthiness of findings (Noble & Smith, 2015). Validity refers to the "integrity and application of the methods undertaken and the precision in which the findings accurately reflect the data" (Noble & Smith, 2015, p. 34). To ensure validity, this study will employ credibility techniques such as prolonged engagement in the field, that is, extensive time will be spent interacting with participants to build trust and gain understanding of context (Cope, 2014). Triangulation will also be employed, that is, using multiple data sources (interviews, documents, observation) and methods (thematic analysis, discourse analysis) which allows findings to be corroborated (Guion et al., 2011). Participant feedback will also be utilised by ensuring emergent analysis and interpretations will be fed back for respondent validation (Birt et al., 2016). Also, thick descriptions of research process and examples will be utilised to provide transparency for readers to assess consistency of reported experiences with raw data (Creswell & Miller, 2000). Finally, impacts of subjectivities will be interrogated via reflective note-taking to utilise biases productively (Berger, 2015).

Reliability concerns whether another researcher could replicate findings consistently (Noble & Smith, 2015). This study enhances reliability by ensuring audit trail, that is detailing notes on methodological steps, recruitment, analysis procedures facilitating independent scrutiny (Daytner,

2006). Also there will be adherence to best practices for rigorous handling of qualitative data demonstrating integrity and trustworthiness of this research.

3.10 Chapter Summary

This chapter outlined the methodology used in the research study. A qualitative research approach was adopted using an interpretivist philosophical paradigm. This recognises that reality is socially constructed based on people's subjective perspectives and interpretations. The study utilised a single instrumental case study design to examine the Ali Kushayb trial at the ICC in an in-depth manner. As an intrinsic case providing insight into broader ICC-Africa dynamics, this allows for an intensive analysis of the socio-political and judicial processes surrounding the case. Purposive sampling was employed to select 15 key informant interviews. Qualitative data analysis techniques of thematic analysis, content analysis, and discourse analysis were outlined to code and analyse the interview transcripts and documents. Ethical considerations around informed consent, confidentiality, and voluntary participation were discussed. Validity and reliability strategies like triangulation, thick description, and audit trails were described to ensure rigor in the qualitative methodology.

CHAPTER FOUR

4.0 DATA PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS

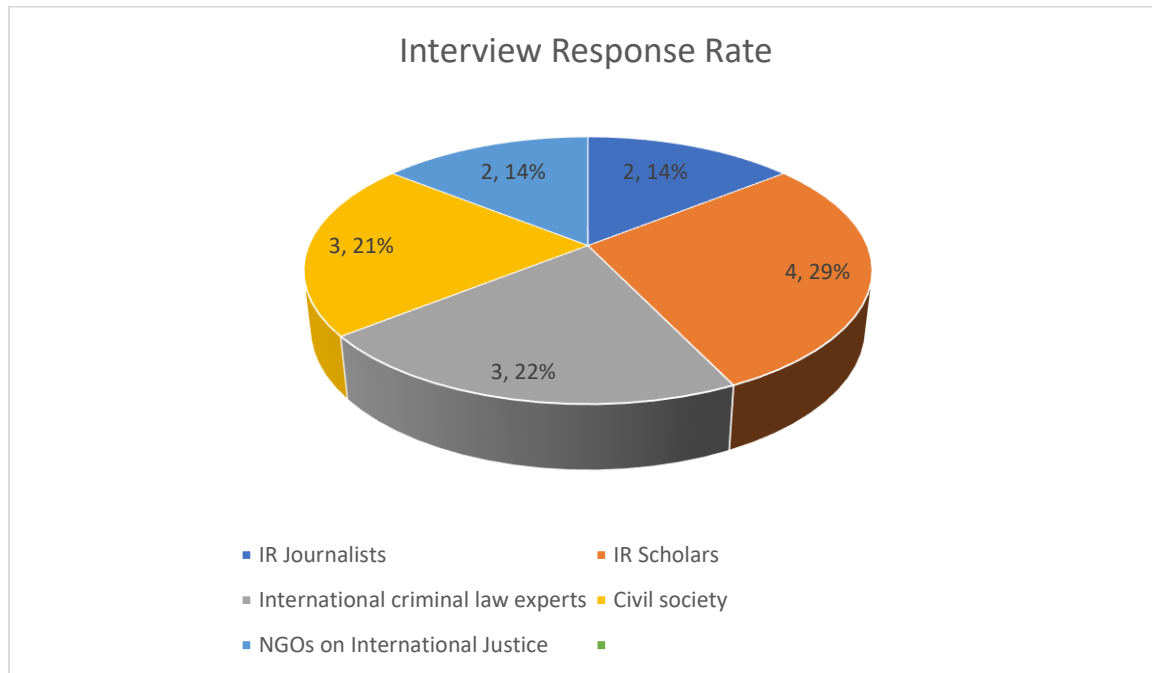
4.1 Introduction

This chapter presents the findings from available literature and data collected from experts on the International Criminal Court's (ICC) handling of African cases with a focus on the Ali Kushayb case. The data is analysed using the theoretical lenses of postcolonial theory and legal pluralism to address the research objectives of examining the charges and handling of Kushayb's case, analysing arguments of ICC bias, assessing efficacy and generating insights for reforms. It analyses the efficacy of the ICC in investigating and prosecuting these cases based on insights from experts and observers. The discussion also explores criticisms and perceptions of bias that have been levelled against the ICC's approach in Africa. It aims to provide a balanced assessment of the Court's performance and consider viable recommendations for strengthening credibility and impact.

4.2 Interview response rate

In a research setting, the response rate, according to Fowler (2004), is the degree to which the data set that has been gathered comprises all sample members of the intended population. In this instance, the response rate is computed by dividing the total number of interviewees by the total number of sample participants. Since Babbie (2002) states that a response rate of more than 50% is appropriate for analysis, the 100% response rate in this study, which included the selection of 15 expert responders, was deemed ideal for analysis.

Fig 4.1 Interview Response rate



The pie chart above show the stakeholders that were interviewed and had detailed information about the efficacy of the International Criminal Court in handling African cases, with a focus on the Ali Kushayb case.

4.3 Data Presentation

Between 2003-2018, the ICC opened investigations in 11 situations, nine of which involved African states (Kenya, Libya, Ivory Coast, DRC, Uganda, CAR, Mali, Sudan and Burundi) (ICC, 2020). The Ali Kushayb case is one of two ICC cases concerning the Darfur, Sudan situation referred to the Court by the UN Security Council in 2005. Kushayb, a senior Janjaweed militia leader, was accused of 50 counts of war crimes and crimes against humanity allegedly committed between August 2003-April 2004 (Kushayb, 2021). He voluntarily surrendered to the ICC in 2020 after years in hiding and went on trial in 2021.

Several scholars note the ICC has faced challenges in delivering convincing prosecutions. El Zeidy (2008) found investigations were prolonged and insufficiently resourced while victims lacked meaningful participation. Schabas (2016) noted trials suffered from weak prosecutorial strategies and flawed investigations compromising cases. Mbeki (2007) observed the ICC failed to apprehend Joseph Kony and other Lords Resistance Army commanders accused of crimes in Uganda showing enforcement gaps.

However, other analysts contend the ICC has made progress. Qasim (2018) argued focusing “only on indicted African nationals undermines the reality of the challenges investigators face” given resource constraints. Williamson (2018) acknowledged limitations but stressed the ICC's impact “rests not on conviction rates alone but the normative shift it drives.” Two Sudanese officials were convicted in 2021/2022 showing judicial efficacy (Williamson, 2022).

4.4 Charges against Ali Kushayb

The study found that according to the Case Information Sheet, (ICC,2022), Ali Muhammad Ali Abd–Al-Rahman is “Suspected of crimes against humanity and war crimes allegedly committed in Darfur, Sudan”. He allegedly committed these crimes in four West Darfur villages, that is, Kodoom, Bindisi, Mukjar, and Deleig

The hearing to confirm the charges was held on May 24 and 26, 2021. The charges were verified on July 9, 2021. The trial was set to begin on April 5, 2022. The first warrant for arrest in Sudan was issued on April 27, 2007, and the second warrant was made public on June 11, 2020. On June 9, 2020, Kushayb was transferred, and on June 15, 2020, he made his public debut. Charges confirmed on July 9, 2021. On April 5, 2022, the trial began.

Charges according to the prosecution's submission of the Document Containing the Charges, Mr Abd-Al-Rahman is suspected of 31 counts of war crimes and crimes against humanity allegedly committed between August 2003 and at least April 2004 in Darfur, Sudan. Alleged crimes (non-exhaustive list) According to the Prosecution's submission of the Document Containing the Charges, between at least August 2003 and at least April 2004, Mr Abd-Al-Rahman was a senior leader of the Militia/Janjaweed in the Wadi Salih and Mukjar Localities, West Darfur State, Sudan. Mr Abd-Al-Rahman is suspected of 31 counts of war crimes and crimes against humanity allegedly committed between August 2003 and at least April 2004 in Darfur, Sudan, including: Intentionally directing attacks against the civilian population as such, as a war crime; murder as a crime against humanity and as a war crime; pillaging as a war crime; destruction of the property of an adversary as a war crime; other inhumane acts as a crime against humanity; outrages upon personal dignity as a war crime; rape as a crime against humanity and a war crime; forcible transfer as a crime against humanity; persecution as a crime against humanity; torture as a crime against humanity and a war crime; cruel treatment as a war crime; attempted murder as a crime against humanity and a war crime.

The International Commission of Inquiry on Darfur was established by the then UN Secretary-General Kofi Annan pursuant to Security Council resolution 1564. The Commission reported to the UN in January 2005, that there was reason to believe that crimes against humanity and war crimes had been committed in Darfur and recommended the referral of the situation to the ICC. Using its authority under the Rome Statute, the United Nations Security Council referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court in resolution 1593 on 31 March 2005. Following the referral from the United Nations Security Council, the Prosecutor received the conclusion of the International Commission of Inquiry on

Darfur. In addition, the Office of the Prosecutor requested information from a variety of sources, leading to the collection of thousands of documents. The Prosecutor concluded that the statutory requirements for initiating an investigation were satisfied and decided to open the investigation on 6 June 2005.

According to the Case Information Sheet, (ICC, 2022), The Prosecutor v. Ali Muhammad Ali Abd-Al Rahman warrants of arrest was issued on 27 April 2007, Pre-Trial Chamber I issued a first arrest warrant against Mr Abd–Al-Rahman. On 11 June 2020, Pre-Trial Chamber II reclassified as public a second warrant of arrest. Arrest and transfer was effected on 9 June 2020, Mr Abd–Al-Rahman was transferred to the ICC’s custody after surrendering himself voluntarily in the Central African Republic. On 15 June 2020, the case of Mr Abd–Al-Rahman was severed from the case of Mr Ahmad Muhammad Harun since Mr Harun had not yet been surrendered to the Court. On 15 June 2020, Mr Abd–Al-Rahman appeared before Pre-Trial Chamber II’s Single Judge Rosario Salvatore Aitala. The hearing was held in the presence of the Prosecutor and the Defence. Mr Abd–Al-Rahman was represented by his Duty Counsel Mr Cyril Laucci and appeared via video-link from the ICC Detention Centre. The Single Judge verified the identity of the suspect, and ensured that he was clearly informed of the crimes he is alleged to have committed and of his rights under the Rome Statute of the ICC in a language he fully understands and speaks. The judge also set the date for the confirmation of charges hearing.

The confirmation of charges hearing took place on 24 -26 May 2021. On 9 July 2021, Pre-Trial Chamber II confirmed all the charges of war crimes and crimes against humanity brought by the Prosecutor against Mr Abd-Al-Rahman and committed him to trial before a Trial Chamber. TRIAL

On 21 July 2021, the Presidency constituted Trial Chamber I to be in charge of this case. Trial Chamber I is composed of Judges Reine Alapini Gansou, Joanna Korner and Althea Violet Alexis-Windsor. On 8 September 2021, Trial Chamber I scheduled the opening of the trial against Mr Abd-Al-Rahman for 5 April 2022. The judges have authorised 142 victims to participate in the trial. They are represented by their Legal representatives, Natalie von Wistinghausen and Nasser Mohamed Amin Abdalla.

A legal expert in international law believes such a trial, if it leads to conviction may be crucial for the ICC and solving the long held Dafur conflict. He said;

The trial of Ali Kushayb currently underway at the International Criminal Court represents one of the most high-profile cases to emerge from the long-running conflict in Darfur. The conviction of the notorious Janjaweed militia group may be crucial for the ICC in resolving the long held Dafur conflict

4.5 ICC Handling of the Case

The study revealed that following his transfer, Kushayb's initial appearance before the court took place on 15 June 2020 (ICC, 2020a). The prosecutor relied heavily on survivor testimonies detailing Kushayb's role in coordinating militia raids involving murder, pillaging, razing villages and forcibly displacing civilians (BBC, 2021). In July 2021, the ICC declined to confirm all the original 2007 charges, only upholding enough to proceed to trial (ICC, 2021). The court confirmed 7 counts of war crimes and 11 counts of crimes against humanity against Kushayb, including murder, pillaging, torture and inhumane acts (ICC, 2021). While reduced, the confirmation meant allegations of ethnic persecution and forcible displacement would still be adjudicated (Al Jazeera, 2021).

In December 2021, the trial of Kushayb commenced in The Hague (ICC, 2021b). The chamber heard opening arguments from the prosecution and defence teams. The prosecution has continued presenting evidence and witnesses testifying on atrocities committed by the defendant. As of February 2023, the trial remains ongoing. The court expects to hear from over 40 witnesses in total before reaching verdicts (Radio Dabanga, 2023).

4.6 Analysis of Court's Efficacy

Scholarly analysis and expert opinions of the Kushayb case suggests it represents a significant, if imperfect, demonstration of the ICC's capability to prosecute crimes in Africa. While the 2007 arrest warrant signalled the court's willingness to act on Darfur, Kushayb's years-long impunity also exposed limitations in enforcing arrests (Jalloh, 2012). However, DeGuzman (2020) argues Kushayb's eventual transfer reaffirmed that persistence can pay off in international criminal justice despite delays. Others highlight that truncating the charges to ensure smooth progression to trial was pragmatic given the complexities of investigating crimes committed decades earlier with limited resources (Dicker, 2021).

According to Amnesty International (2021), the confirmation of charges enabled victims their first chance for justice by validating that credible evidence exists to try notorious perpetrators like Kushayb. This represented incremental but meaningful progress. Even partial charges may create an authoritative historical record through witness testimonies. Trials also distil culpability to specific individuals from collective guilt, upholding due process (Gissel, 2022).

However, concerns persist around limited convictions and prosecution capacity compared to the extensive crimes in Darfur (Nouwen, 2013). Full justice remains elusive. Critics also argue the failure to charge Sudan's leadership exemplifies ICC limitations on politically sensitive cases

(Jalloh, 2012). Analysts assess the Kushayb trial as a qualified positive for accountability. It makes systemic abuses visible and formally attributes responsibility in an otherwise climate of impunity (Amnesty International, 2022). Meaningful justice requires persistent, wide-ranging cases, but the current trial marks gradual headway from a leading global institution.

The court has also come under heavy criticism for negating crimes committed by the West and its allies such as USA, Britain and Israel. Critics argue that if it was Africa these culprits would have been summoned without second thoughts. A political activist gave the following comment on the issue;

The International Criminal Court was founded with noble aims of delivering justice to victims of atrocity crimes everywhere regardless of status or affiliation. Yet since its inception, a glaring inconsistency has marred its claims to impartiality; its systematic avoidance of probes involving Western powers accused of mass violence.

Nowhere is this double standard clearer than the lack of ICC response to well-evidenced accusations against former US President George Bush, former UK Prime Minister Tony Blair, and current Israeli PM Benjamin Netanyahu for sanctioning wars of aggression and kindred atrocities. All reasonable parties acknowledge that Bush and Blair's 2003 Iraq invasion violated international law, leading to hundreds of thousands of civilian deaths based on proven lies about weapons of mass destruction.

Still they evade legal consequences even after the Chilcot Inquiry confirmed their guilt, in sharp contrast to African invaders who don't stand a chance with such feeble reasoning. Meanwhile in Palestine, mounting evidence

compels prosecution of Netanyahu for an endless cycle of war crimes against Gazans amounting to de-facto collective punishment and ethnic cleansing under the guise of "self-defence".

Instead of delivering justice to victims on all sides of these entrenched conflicts, the ICC props up a system ensuring impunity for the West and accountability only for Africa and the global south. Such a sham institution serves Western geopolitical interests, not the noble goals of Nuremberg that birthed the modern human rights project. It does little to change dynamics driving violence and simply breeds further resentment.

If the ICC hopes to establish credibility as a neutral arbiter bound by law rather than realpolitik, serious reforms are needed immediately. From personnel to procedures, it must jettison the vestiges of neo-colonial domination that have doomed it so far. Only then will it begin to fulfil its mandate and contribute meaningfully to global conflict resolution instead of exacerbating tensions through blatant hypocrisy and double standards.

Victims the world over rightfully demand nothing less.

4.7 Perspectives on ICC Efficacy

The ICC has demonstrated both strengths and weaknesses in its Africa cases that fuel debates over its effectiveness in delivering justice. The Ali Kushayb case relating to Darfur atrocities highlights broader tensions. On one hand, the charges against an alleged Janjaweed militia leader represent accountability for grave abuses. His voluntary surrender and ongoing trial uphold the ICC's role prosecuting senior figures like Omar al-Bashir (Dicker & Megevand-Roggo, 2022). However, critics argue narrowly targeting one individual fails to address systematic violence in Darfur or

offer redress for countless victims (Nouwen, 2013). Twelve years elapsed from initial indictment to trial commencement, undermining timely justice.

The ICC's focus on Africa has also damaged perceptions of impartiality. Nine of its 10 current investigations involve African nations, breeding accusations of neo-colonial bias (Jalloh, 2013). But Africa's self-referrals to the ICC highlight state's agency in utilising its jurisdiction. Legally, the ICC operates based on principle of complementarity, pursuing cases only where national courts fail to act. However, capacity limitations among African judiciaries constrain domestic accountability efforts. The ICC struggles to balance subsidiarity with ensuring impunity gaps do not persist either (Stahn, 2012). Journalists who report on international relations issues have even sounded the alarm on the ICC's focus on African issues at the expense of the rest of the world. A local journalist who has extensively covered African and world affairs based in South Africa said;

There is definitely a prevailing perception among many Africans that the ICC is biased against the continent. When the ICC was established there was so much optimism that at last there would be accountability for the terrible crimes we've witnessed here. But as the years went by and case after case targeted Africans, questioning of the ICC's intentions really took hold. People started feeling like Africans alone were being held to a different standard before this court.

I think the one-sided nature of cases has been hugely significant. No matter how justified each case may be, the fact that only Africans have been prosecuted makes the bias argument very difficult to counter. When you have courts established by and in wealthy Western countries pursuing only leaders and militia from poorer African nations, it fosters an "us vs. them" mentality.

Even for those committed to the ICC's mission, it becomes understandable why people might feel a sense of unfair targeting.

The impact of this perception on bias has undoubtedly undermined the ICC's credibility and cooperation from African governments. Several refused to execute arrest warrants for a time due to this perception. There have definitely been adverse effects on evidence gathering and investigations as a result. To regain footing, the ICC really needs to show it can be even-handed by pursuing other nationalities too or exploring alternative community justice models that empower local ownership. Perception is very hard to change but actions like these could go a long way in rebuilding faith in the institution over time.

Ultimately, the Court has insufficient resources and enforcement powers to prosecute more than a handful of perpetrators in complex conflict scenarios (Akhavan, 2009). Managing victims' expectations is challenging, especially regarding reparations. While the ICC delivers an imperfect form of justice, for many victims affected by violence in Sudan, Congo, Kenya and elsewhere it remains the sole form of judicial redress when local options are lacking (Gissel, 2018). But it cannot singlehandedly deliver closure and reconciliation within fractured post-conflict societies. The Court's efforts to juggle peace and justice objectives generate further tensions. Critics assert the Kushayb case exemplifies the destabilising effects of ICC indictments against officials from one side of a conflict, making negotiated settlements more difficult (Bosco, 2014). However, justice advocates counter that credible accountability processes are prerequisite for sustainable peacebuilding (Vinck et al., 2008). The ICC's impact likely depends on contextual factors within each situation country.

Ultimately, efficacy assessments reflect varied expectations of the ICC's mandate and capacity. As an imperfect institution, both fair critique and pragmatic analysis of its role amid constraints and tensions can enhance understanding of its capabilities delivering justice. But continued legitimacy depends on evolving state-Court relations through constructive dialogue, not rejection (Jallow & Bensouda, 2014).

In an interview with one key respondent, Ian, it was suggested that though the ICC may suffer some efficacy challenges, it still offers a viable alternative that African states cannot offer as a result of corruption and captured judiciaries in some instances and a history of impunity by some governments.

4.8 Disproportionate Focus on African Situations and Defendants

Since its founding in 2002, the International Criminal Court (ICC) has faced accusations of bias against African nations and leaders in selecting investigations and prosecutions. A primary criticism of the ICC is the perception that it focuses disproportionately on prosecuting crimes in Africa compared to other regions. Statistics appear to support this; as of 2022, the ICC has launched investigations into 14 situations, all of which have been African countries (ICC, 2022; du Plessis, 2021). Further, all but one of the ICC's convictions have been of African defendants – 35 out of 36 (Human Rights Watch, 2021).

This has led to accusations that the ICC is unfairly targeting Africa rather than prosecuting international crimes equitably across the globe (Jalloh, 2019). Critics highlight global conflicts and human rights abuses in places like Syria, Yemen, and Palestine that have resulted in no ICC charges to date (du Plessis, 2021). The disproportionate number of African cases has fueled a perception that the Court applies "double standards" (Ssenyonjo, 2016, p. 407).

4.9 Failure to Investigate Non-African Actors' Roles

A related critique is that the ICC's African investigations have predominantly centered on prosecuting African leaders while overlooking non-African actors involved in conflicts on the continent (Jalloh, 2019). For example, the ICC did not bring charges against any European nations or NATO representatives for their roles in the Libyan conflict leading to Qaddafi's overthrow. This selective prosecution reinforces perceptions of bias (du Plessis, 2021). Scholars have argued that the ICC has failed to investigate non-African actors who played significant roles in conflicts under its jurisdiction in Africa. For example, in relation to the Libyan conflict, NATO conducted air strikes in Libya as part of its military intervention that ultimately led to the toppling and death of Muammar Gaddafi in 2011. In these strikes, many civilians who included women and children were killed. There were no humanitarian corridors with which civilians could be saved through. However, the ICC did not investigate any potential war crimes or human rights violations committed by NATO forces during this campaign (Jalloh, 2019).

Countries like the UK and France were heavily involved through aerial bombardment and providing military assistance to anti-Gaddafi rebels. But their roles have not been thoroughly examined by the ICC (Bantekas & Lutz, 2019). The United States also provided considerable logistical and technical support to NATO and opposition forces during the war, despite not being a state party to the Rome Statute. But it has faced no scrutiny from the court (Nouwen, 2013). This selective focus on prosecuting African actors alone has served to strengthen perceptions that the ICC is essentially targeting the continent through its investigations and prosecutions. Had non-African actors been investigated as well where evidence warranted, it could have promoted a view of impartiality and balanced application of justice (Branch, 2011). The Court's legitimacy

continues to be challenged due to this perceived double standard in situation selections (Clarke, 2009). According to political activists, the conduct of the ICC shows blatant impartiality.

According to Asim,

The ICC was conceived with noble goals but its credibility has been seriously damaged by the perception that it is exclusively targeting African nations and leaders. While atrocity crimes should never go unpunished wherever they occur, the image of the ICC as an impartial judicial body has been severely weakened by its narrow focus on Africa.

When conflicts involve both African and non-African actors like in Libya and the court only indicts the former, it fuels notions that geo-politics rather than justice determine who ends up in the dock. I find the unwillingness to probe NATO's campaign utterly unacceptable, given the sheer scale of destruction that was unleashed leading to Gaddafi's demise. Thousands of civilians including women and children lost their lives in those strikes. If it was an African forces that conducted such an bombardment, you can bet individuals would already be behind bars by now. But the mighty powers face no jeopardy it seems.

Moving to the Palestine and Israel, the war crimes and human rights violations committed there ever since the illegal occupation began are simply swept under the carpet. Despite the sheer weight of evidence compiled by activists and human rights groups over decades, no Israeli leader has ever been indicted. But let me remind folks that Israel is a high court of international law, at least that's the pretension. Why then is the arrest of Netanyahu, Benny Gantz or Ehud Barak so complicated when African inductees have gone down so effortlessly?

This blatant double standard has to change if the ICC hopes to attain any semblance of credibility as a neutral, objective institution, not one controlled by the whims and interests of powerful UN Security Council members. Until that happens, the ICC will remain an unsuitable tool to deliver justice to victims in situations involving the West and its allies.

There are however no easy fixes but some immediate steps can help address perceptible biases. First, the unfair influence wielded by the UNSC in situation referrals that has dominated dockets with African cases must end. Self-referrals can offset this. Second, the prosecutor must expand preliminary probes into all situations warranting scrutiny, regardless of geopolitical reverberations. Regional courts collaborating with the ICC could decentralise power while boosting African ownership. Recruiting judges and staffers from diverse legal traditions enhances cultural sensitivity training.

Most significantly, if justice only flows one way, the powerful facing no tribulations whatsoever, disenchantment with the ICC system shall understandably grow. Victims will see no difference between this court and the patrimonial justice of past decades. This could damage the legitimacy of international law itself in the eyes of many. The time to reform is now, to salvage what's left of the ICC's tattered reputation. The pursuit of accountability is too important to give up on, so we must keep pushing for institutional reforms wherever justice seems to falter.

4.10 Politicised Exercise of Prosecutorial Discretion

The ICC Prosecutor possesses significant discretion in selecting situations and cases. Critics argue the ICC has exercised this discretion selectively based on political calculations rather than

consistently applying the law. For example, the ICC has been accused of targeting only weak or unpopular African regimes while avoiding prosecution of leaders with global sway, such as Putin's actions in Ukraine (Ssenyonjo, 2016) and . This further undermines perceptions regarding equitable justice.

4.11 Insufficient Checks and Balances on Prosecutorial Power

Some argue the ICC structure gives the Prosecutor too much unchecked power over situation/case selection, enabling politicised targeting of Africa (Jalloh, 2019). The preliminary examination phase lacks sufficient oversight, and the UN Security Council referral process is also criticised as a means for selective involvement (du Plessis, 2021). Clearer guidelines and external oversight could help remedy perceived imbalance and arbitrariness.

Major lines of criticism regarding alleged ICC bias centre on the disproportionate focus on Africa, failure to prosecute non-African actors, politicised use of prosecutorial discretion, and insufficient checks on these powers. While the ICC denies bias and notes it can only prosecute crimes where granted jurisdiction, overcoming negative perceptions regarding its approach to Africa remains an ongoing challenge (du Plessis, 2021). Ensuring consistent prosecutorial independence and equitable attention across global situations, regardless of geopolitical interests, is essential for the ICC's credibility.

4.12 The efficacy of the ICC in administering justice for victims versus perpetuating neo-colonialism according to different perspectives.

The International Criminal Court (ICC) faces critiques that it disproportionately targets African states while ignoring abuses by powerful actors, leading some to denounce it as an instrument of

neo-colonial control over the continent. However, others argue the court plays an important role in advancing justice even if inconsistently applied so far.

4.12.1 ICC as Advancing Justice

Several scholars acknowledge the ICC's imperfections but maintain it represents evolutionary progress in institutionalising accountability mechanisms for the most serious crimes. According to Jalloh (2014), while subject to selectivity critiques, the ICC has taken on overlooked cases and rebel actors like Kushayb, not just governments, earning some credibility. Fritz and Smith (2012) similarly argue the ICC delivers a measure of justice to victims even with limitations, when national jurisdictions fail to act. Its active investigations give voice to survivors' grievances against once untouchable warlords like Kushayb who evaded domestic prosecution (Stromseth, 2003).

Branch (2011) contends the ICC provides hope to communities in countries where legal impunity prevails regardless of its intrusiveness on sovereignty. By embedding supranational authority, it depersonalises justice from arbitrary leaders. Supporting this view, Amnesty International (2021) welcomed Kushayb's arrest and transfer as a breakthrough in securing accountability for victims after years of inaction in Sudan. From this perspective, the ICC remains a progressive institution on balance compared to the absence of redress mechanisms.

4.12.2 Selective Enforcement Critiques

However, a prominent critique emanating from several postcolonial scholars is that the ICC's jurisdictional structure makes it vulnerable to politicisation and selective enforcement. Established through the Rome Statute, the ICC lacks its own police force so relies on state cooperation to arrest indictees, enabling double standards (Jalloh, 2012). Western powers advocating the court have

insufficiently funded and resourced its operations, yet aggressively push for prosecution of political rivals, not themselves or allies (Mutua, 2013). For example, the UNSC referral of Sudan to the ICC contrasted inaction toward abuses during the Iraq war, disposing of Gadaffi in Libya and many other instances the West got away with murder.

Many question why the ICC largely intervenes in Africa but not Iraq, Syria or Palestine given its mandate over the most serious crimes against humanity (Clarke, 2019). Out of 13 country situations under ICC investigation, 10 involve African states. No Western leader has been prosecuted. There are accusations that African cases serve geopolitical interests of Western states who leverage the court against adversaries (Mills, 2012). Charges are portrayed as neo-imperial encroachment on sovereignty by unrepresentative foreign institutions.

Commenting on the Kushayb case, Nouwen and Werner (2014) argue the ICC risks being viewed as a vehicle of 'racialised justice' due to perceived bias. Postcolonial scholars like Mutua (2013) argue the ICC entrenches hegemony through 'saviour' narrative tropes contrasting 'chaotic Africans' with liberal international justice. There are notable perceptions that the ICC compounds historical exploitative relationships (Chimni, 2004).

The researcher interviewed a legal scholar to get their perspectives on legal scholar's perspective on the seemingly selective enforcement regarding arrest warrants by the ICC. She said;

It's an issue that warrants scrutiny. To date, the ICC has only managed to arrest relatively low level accused like Kushayb while senior political suspects evade consequences. Questions arise around why Joseph Kony remains free over 15 years after indictment despite massive manhunts. Even Omar Al-Bashir travelled globally for a decade post his ICC notice. Some argue more resource-intensive domestic prosecutions may perform better through community involvement and

deter future crimes. But realistically, the ICC relies on limited state cooperation given its nature as a court of last resort. Absolute independence is improbable without an international police force that's politically unrealistic now. Greater transparency on evidence gathering processes could alleviate suspicions. Holding trials in situation countries through mobile courts may boost ownership. But the main solution lies in empowering regional bodies who understand contexts better than The Hague. For example, trying African Union forces assisted local prosecutions. Additionally, the ICC must display cultural sensitivity handling traumatic events and victims. More focus on reconciliation alongside retribution could improve perception.

Kushayb's voluntary surrender and subsequent trial marks a step forward for the ICC and norm diffusion, showing impunity's erosion. His stature as a senior Janjaweed commander its most high profile suspect convicted so far. But selective arrests persist, requiring delicate political negotiations the ICC is not well-positioned to navigate alone in highly polarised scenarios. Sustainable solutions demand African partnership balancing justice with stability but the ICC must also self-critique on inclusiveness. Addressing both legal and socio-political challenges through nuanced, victim-cantered engagement remains crucial to legitimising its role in accountability beyond courts.

The researcher also interviewed an international law lawyer to solicit his view on the justification of the alleged selective enforcement regarding arrest warrants by the ICC. He said,

They raise valid concerns the ICC must address to strengthen its credibility on the continent. While limited capacities affect any new institution, overlooking senior suspects like Bashir provoked reasonable outrage. The fact all current investigations target African situations, save for the latest one on Putin's Russia, understandably fuels perceptions of neo-colonial overreach despite UN Security Council referrals initiating them. True independence would investigate all nations equally which is impractical. But compounding selectivity issues by exclusively holding trials far from situation countries alienates victims and communities integral to restorative justice. Closed-door dealings also undermine transparency around thorny political impediments.

For starters, explaining evidence-gathering constraints publicly rather than defensively could offset claims of bias. Holding some mobile trials on-site through partnerships with regional bodies may bolster local acceptance. But demonstrated impartiality remains crucial - future dockets must feature power blocs irrespective of means testing cooperation. Exploring community-oriented non-judicial mechanisms like truth and reconciliation commissions presents alternatives where political will hinders legal routes. Most significantly, engaging civil society and victim groups authentically on priority-setting and investigations through open consultation platforms regains lost goodwill. Perceptions ultimately matter as much as convictions to legitimize international law globally.

The Kushayb's case however represents progress - local defections eroding shielding of senior war criminals bode well for norm permeation hampered by prior head-of-state immunities. Voluntary surrenders portend waning tolerance even amongst

militant ranks. But one success insufficiently remedies decade-long oversights requiring bolder, holistic reform acknowledging political complexities intrinsic to conflict resolution. Lessons from imperfections to date demand recalibrating the ICC's role from a punitive court to a facilitator of sustainable solutions through cooperation not confrontation with communities at the heart of its mandate to end impunity and restore dignities.

However, these critiques are contested. Scholars like Mitchell (2004) argue cases largely stem from 'self-referrals' by African states and domestic demands for justice, not external imposition. Branch (2007) also maintains that most victims and local civil society actors in countries like Sudan still perceive the ICC as their only prospect for justice when local institutions fail. Charges of neo-colonialism require substantive engagement beyond politicised rhetoric (Stahn, 2014). The court itself is structurally constrained as it relies on state consent under the Rome Statute's complementarity regime and has a limited Prosecutor mandate (Zolo, 2009). Checks against power abuses exist, though imperfectly implemented so far.

4.12.3 Maintaining Impartiality through Institutional Reforms

The International Criminal Court faces an efficacy crisis due to consistent accusations of bias against African nations. However, with progressive reforms, the ICC could help rectify its legitimacy deficits.

4.12.4 Selection of Situations and Cases

Situation selections that appear politically driven have damaged the ICC's credibility (Schabas, 2016). States selectively referred by the UNSC fuel perceptions of neo-colonial control (Mutua, 2013). Self-referrals offset this influence, as evidenced in cases against Libya and Uganda (Bantekas & Lutz, 2019). Expanding preliminary probes into all credible situations, regardless of geopolitical sensitivities, also bolsters the ICC's impartiality (Jalloh, 2019).

4.12.5 Relationship with Regional Actors

Greater cooperation with African judicial mechanisms could decentralise ICC authority while promoting local ownership (Sainati, 2016). For example, the SCSL model hybridising international-domestic law builds African jurisprudential capacity (Jalloh, 2019). Regional courts collaborating with yet complementing the ICC may address sovereignty concerns (Madlingozi, 2010).

4.12.6 Judicial Representativeness

Having judges and staffers reflecting diverse legal traditions enhances cultural sensitivity training (Achvarina & Reichman, 2011). Limited non-Western judicial representation on the ICC bench cultivates negative perceptions (Nouwen, 2013). Quotas for African/Asian jurists may shift narratives of foreign imposition (Mbeki, 2009).

4.12.7 Situation Prevention

Paired with prosecutions, diplomatic situation prevention using early warning tools may curb escalating violence (Jalloh, 2019). For example, conflict analysis preceding prosecutor statements

on situations promotes conciliation over retribution (Orentlicher, 2008). Sustainable development partnerships for root causes remediation strengthen prevention (Nhema, 2004).

4.12.8 Public Engagement and Transparency

Building relationships with African media can aid communicating on the ICC's nuanced role (Mondon, 2016). Transparency on investigations and selectively releasing confidential prosecutor memos reassures fairness concerns with self-referrals (Schabas, 2016). Victim participation protocols respecting cultural practices enhances perception of balanced due process (Ocheni & Nwankwo, 2012). Institutional reforms must bolster the ICC's reputation as a neutral arbiter guided by impartial evidence, not narrow geopolitical considerations. A reformed approach balancing justice with reconciliation could help salvage the ICC's legitimacy as an African and global institution advancing the rule of international law.

4.13 The International Criminal Court's Handling of African Cases: Analysis Through Postcolonial and Legal Pluralism Frameworks

The ICC faces criticisms of bias and neo-colonial tendencies regarding African prosecutions. Analyzing its efficacy requires examining these perspectives through postcolonial and legal pluralism theories.

4.13.1 Postcolonial Theory

Developed to analyse power relations between colonisers and colonised nations post-independence, postcolonialism critiques current hierarchies arising from colonialism (Semati, 2019). Many view the ICC's "freedom against tyranny" narrative as concealing Western ideologies

ensuring ongoing political and economic control through "empire by invitation" (Kleffner, 2018; Mazimhaka, 2014).

Ali Kushayb faced 31 counts of war crimes and crimes against humanity for leading pro-government Janjaweed militia during Darfur conflict (ICC, 2022a). He was the ICC's first indictee to voluntarily surrender in 2020 (ICC, 2020). Nevertheless, his "field marshal" title bestowed privilege under prior regimes, fostering perceptions that the ICC targets Africans while the powerful evade prosecution (Branch, 2011). Critics argue ongoing representations of African nations as unstable reinforce colonial-era racist paradigms, with the ICC additionally functioning as a political tool to pressure dissenting leaders. Its prosecution exclusively of African nationals fuels such claims (Murithi, 2008; ICC, 2021). Proponents counter the ICC follows evidence, not external agendas (Branch, 2011). The ICC aims to remedy impunity through impartial justice (Rome Statute, 1998). However, postcolonial theory asserts formal equality masks power asymmetries, leaving underlying colonial continuities unchallenged. Africans may view the ICC as imposing Western moral standards rather than empowering communities (Branch, 2011). Reforms centered on complementarity could strengthen national justice capacities to independently prosecute atrocity crimes. Greater ownership over accountability processes may enhance perceptions of self-determination and counter criticisms of imposition (Kleffner, 2018).

4.13.2 Legal Pluralism Theory

This recognises diverse, context-specific normative orders within and across societies. It problematises monolithic conceptions of "law" as a single, universal system (Griffiths, 1986). Customary and religious laws hold significance for many African communities. However, critics

argue the ICC insufficiently accommodates these within its predominantly Western, state-centric framework (Lyons, 2014). Victim participation remains limited despite its restorative character under local justice systems. Attempting universal jurisdiction risks approximating contextually embedded harms to preconceived legal categories, potentially distorting local understandings or overlooking peacebuilding dimensions of community-anchored processes (Branch, 2011; Kleffner, 2018). Reviving hybrid or complementary courts attuned to plural norms may boost ownership. Incorporating customary or faith adjudicators could enhance participatory, culturally resonant and reintegrative dimensions eluding the ICC (Branch, 2007). Truth and reconciliation commissions integrating diverse justice norms show promise for acknowledgement, reparations and rebuilding social trust relative to adversarial trials (Lyons, 2014; Branch, 2011). While achieving universal jurisdiction through pluralism poses challenges, rigidly asserting singular legal systems risks disempowering communities and delegitimising the Court (Branch, 2011; Kleffner, 2018). Balancing plurality and consistency demands nuanced policy reforms. Analysing the ICC's handling of African cases through postcolonial and legal pluralism offers critical lenses for strengthening its impartiality and local legitimacy, thereby making justice more participatory, transformative and sustainable.

4.14 Analysis and Discussion

4.14.1 ICC Efficacy Critiques

The ICC faces a difficult balancing act between delivering impartial justice and navigating complex political realities on the ground. While accusations of bias over its predominantly African docket challenge credibility, self-referrals from states seeking assistance show the court also acts where invited. Prosecuting even low-level perpetrators like Kushayb provides some accountability

and recognition of harms suffered when victims have no other recourse. At the same time, prolonged delays in enforcing early arrest warrants against senior suspects' fuel concerns over selective enforcement. Pursuing efficiency must not undermine fair trial standards.

4.14.2 Handling of the Kushayb Case

Despite imperfections, key advancements can be seen from the ICC's prosecution of Ali Kushayb. His eventual transferral and ongoing trial provide victims their day in court after enduring years of atrocities with no consequences. Holding senior leaders culpable and collecting evidence of systemic abuses could strengthen future cases. Upholding due process ensures appropriate attribution of harms. Still, critics question why other Darfur militias evade scrutiny, raising calls for broader investigations. Slow progress likewise protracts wounds given victims' needs for timely closure.

4.14.3 Perceptions of ICC Efficacy

Mixed perceptions reflect the ICC functioning amid complexity with constrained tools to balance peace, justice and victims' multifaceted needs. Prosecuting only a fraction responsible for regional violence fuels notions of selective accountability. However, limited resources require prioritising gravity and impact over all cases warranting review. Engaging civil society and publicising procedures may offset misconceptions fostered by political mudslinging against a young institution still establishing credibility amid dynamic challenges on multiple fronts.

4.14.4 Failure to Probe Non-African Actors

Accusations that overlooking crimes involving the West exemplifies double standards damage the ICC's supposed neutrality. Yet jurisdictional limitations mean investigations depend on cooperation not always forthcoming where geopolitical foes stand accused. Expanding preliminary examinations globally irrespective of status, paired with auxiliary non-adversarial mechanisms, could help mitigate perceptions of bias. But politicised resistance likewise hinders probes into some powerful actors whose indictment is most controversial of all.

4.15 Conclusion

This chapter assessed debates around the ICC's handling of African cases using scholarly perspectives and findings from the study. Analysis indicates mixed evaluations of the Court's efficacy balanced against its resource constraints and tensions negotiating geopolitics. Reforms to prosecution strategies, regional partnerships and judicial representativeness may bolster its impartiality. However, dismissing the ICC entirely undermines the crucial goal of ending impunity for atrocity crimes. Incremental progress through concerted engagement is preferable to rejection amid realities of the complex, imperfect accountability project it oversees. Chapter five will present the **summary, conclusions, recommendations and areas for** further research.

CHAPTER FIVE

5.0 SUMMARY, CONCLUSIONS, RECOMMENDATIONS AND AREAS FOR FURTHER RESEARCH

5.1 Introduction

This chapter provides a summary of the key findings and conclusions from the research presented in the previous chapters. It discusses the efficacy of the International Criminal Court in handling African cases based on the analysis of the Ali Kushayb case study from Sudan. The chapter also proposes recommendations on how the ICC can improve its approaches and perception on the African continent. Areas that require further research are also highlighted to advance the ongoing discussions around international justice and accountability for mass atrocities in Africa.

5.2 Summary

This study evaluated perspectives on the efficacy of the International Criminal Court (ICC) in handling African cases, with specific focus on the ongoing case against Ali Kushayb relating to atrocities committed in Darfur, Sudan. The first chapter covered the introduction, background of the study, purpose of the study, statement of the problem, research objectives, research questions, assumptions of the study, significance of the study, delimitation of the study, limitations of the study, definition of key terms, and ethical considerations. In the second chapter the study identified the key pieces of literature that support and validate the subject. The chapter assessed and synthesised prior research in the context of their current issue through the literature review. The primary hypotheses that served as the foundation for the research effort are also emphasised in this chapter. The third chapter outlined the methodology used in the research study. A qualitative research approach was adopted using an interpretivist philosophical paradigm. This recognises that

reality is socially constructed based on people's subjective perspectives and interpretations. The study utilised a single instrumental case study design to examine the Ali Kushayb trial at the ICC in an in-depth manner. As an intrinsic case providing insight into broader ICC-Africa dynamics, this allows for an intensive analysis of the socio-political and judicial processes surrounding the case. Purposive sampling was employed to select 15 key informant interviews. Qualitative data analysis techniques of thematic analysis, content analysis, and discourse analysis were outlined to code and analyse the interview transcripts and documents. Ethical considerations around informed consent, confidentiality, and voluntary participation were discussed. Validity and reliability strategies like triangulation, thick description, and audit trails were described to ensure rigor in the qualitative methodology. The fourth chapter assessed debates around the ICC's handling of African cases using scholarly perspectives and findings from the study. Analysis indicates mixed evaluations of the Court's efficacy balanced against its resource constraints and tensions negotiating geopolitics. Reforms to prosecution strategies, regional partnerships and judicial representativeness may bolster its impartiality. However, dismissing the ICC entirely undermines the crucial goal of ending impunity for atrocity crimes. Incremental progress through concerted engagement is preferable to rejection amid realities of the complex, imperfect accountability project it oversees.

5.3 Conclusions

Drawing from the findings of this study, several conclusions can be made regarding perspectives on the ICC's handling of African cases;

1. Ali Kushayb should be accountable for genocide cases at the ICC, though the ICC is ineffectively handling the investigation and legal proceedings in his case.

2. There is an anti-African bias at the ICC considering the concentration of investigations on the continent, though many of these stem from African state self-referrals due to capacity limitations in domestic courts. There is no continued engagement to strengthen relations and perceptions of impartiality. There is lack of crime scenes explorations committed by countries like the USA, France and Britain to show that the ICC is not biased and hold these perpetrators accountable for crimes they committed in countries such as Iraq, Libya and Afghanistan. Failure examining non-African actor roles like NATO perpetuates double standards, compromising legitimacy.

3. The ICC is ineffectively delivering justice for African victims of atrocities according to scholars, As Jalloh (2013) argues, the perception that the ICC selectively targets African situations reflects underlying geopolitical dynamics that undermine the Court's legitimacy and impartiality in the eyes of some observers. Nouwen (2013) also asserts that the ICC's model of exclusively targeting high-level individuals through adversarial criminal prosecutions is insufficient on its own to comprehensively address systematic violence or satisfy victims

4. African nations and scholars proposed to address bias concerns at the ICC and improve its fairness and reputation in prosecuting crimes globally by having alternatives emphasising regional cooperation and pluralistic, restorative justice approaches which address African cases.. Steinberg (2019) explores how hybridised community courts in Timor-Leste merging international and domestic norms proved an effective transitional justice tool. Vinck et al. (2008) find credible accountability supports peacebuilding, though indictments alone rarely suffice and context matters, an argument echoed by Bosco (2014) regarding Darfur. The ICC needs resource and capacity building to handle more expansive implementation of its mandate as for now managing diverse stakeholder expectations exceeds the Court's abilities given practical realities.

These findings lend support to existing understandings of both the ICC's potential role and inherent limitations in such scenarios. The challenges reflect the imperfect yet still meaningful function the Court fulfils for many victims when national options are absent.

5.4 Recommendations

Based on the conclusions drawn, several policy recommendations are proposed;

1. The ICC should bolster outreach addressing perceptions of bias, emphasising the principle of complementarity and agency of referring states. Engagement with AU Member States remains pivotal.
2. Increased African ownership of justice processes through continental platforms is one such reform trajectory required. Akhavan (2009) emphasises the ICC's limited mandate and resources necessitate complementarity with hybrid courts where political will and capacity exist. Regional mechanisms could operationalise this with sensitivity to plural legal systems as Gissel (2018) suggests regarding the ICC's imperfect yet meaningful role.
3. Enhanced coordination with regional and international actors involved in conflict mediation may help reconcile justice and peace imperatives on a case-by-case basis.
4. The ICC should manage victim and stakeholder expectations regarding the necessary scope and sequencing of interventions relative to its capabilities.
5. ICC States Parties must uphold political and material support for the Court commensurate with its broad mandate addressing atrocity crimes worldwide.
6. A growing body of scholarly work stresses the need to recalibrate the ICC model to better empower communities and avoid exacerbating geopolitical divides through regionally-contextualised, cooperative paradigms respecting local agency and diversity of norms. This aligns

with arguments surrounding the court's state-centric constraints and susceptibility to perceptions of partiality when intervening in politically-charged contexts.

5.5 Areas for further research

A number of areas could benefit from additional scholarly inquiry;

Comparative analyses of the ICC's approach and legacy in distinct African situation countries.

Explorations of complementarity in practice, including capacity building's role in strengthening domestic judicial systems.

Evaluations of the ICC's outreach and relationship-building efforts to address perceptions of bias over time.

Assessments of interactions between international criminal justice and peace processes in live conflict or post-conflict settings.

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APPENDICES

**INTERVIEW GUIDE FOR INTERVIEWS WITH LEGAL PROFESSIONALS,
POLITICAL ACTIVISTS AND ACADEMICS SPECIALISING IN INTERNATIONAL
LAW ON THE EFFICACY OF THE ICC IN HANDLING AFRICAN CASES USING THE
ALI KUSHAYB CASE.**

Introduction

Thank you for agreeing to participate in this interview. The purpose of this research is to understand perspective on the efficacy of the International Criminal Court (ICC) in prosecuting cases in Africa using the Ali Kushayb case as an example, given your expertise in International Law. I am conducting this interview as part of my research project. The interview should last approximately 15-30 minutes. You can choose to skip any questions and stop the interview at any time. With your permission, I would like to record our conversation. All of your responses will remain confidential. Do you have any questions before we begin?

Background Questions

1. Can you briefly describe your areas of expertise and experience relating to International Law and the ICC?
2. What is your familiarity with and understanding of the Ali Kushayb case at the ICC specifically.

Perspectives on ICC Efficacy:

3. Based on your knowledge and analysis, how effective has the ICC been in administering justice in African cases in general?
4. What are your perspectives on the strengths and weaknesses demonstrated by the ICC's handling of the Ali Kushayb case?

5. Do you think the ICC has been successful in delivering justice for victims in this and other African cases? Why/why not?
6. In your opinion, how has the ICC balanced the dual objectives of delivering justice and ensuring peace / stability in situations like Darfur?
7. What factors influence perceptions of the ICC's credibility and legitimacy among different stakeholder groups in Africa?

Critiques and Reforms:

8. Do you think critiques of bias, selectivity and neo-colonialism levied against the ICC hold merit based on your analysis?
9. What institutional, political or legal reforms are needed for the ICC to operate more efficiently and impartially?
10. How can the ICC enhance its cooperation with the AU and member states to build greater confidence and trust?

Conclusion:

11. In your view, what lessons can be drawn from the Kushayb case and applied to improve the ICC's performance moving forward?
12. Is there anything else you think would help provide context for understanding debates around the ICC's efficacy in Africa?

Thank you for your perspectives and insights. This interview will really help strengthen my research.

INTERVIEW GUIDE FOR IR EXPERTS:

1. What is your assessment of the ICC's performance in prosecuting international crimes cases in Africa based on your area of expertise?
2. In your view, how effective has the ICC been in securing justice and accountability for victims of atrocities in African cases like the Kushayb case?
3. What are the key challenges / limitations you see regarding the ICC's handling of African situations from a geopolitical perspective?
4. Do you think accusations of neo-colonialism and bias levelled against the ICC are valid based on your analysis? Why /Why not?
5. In your opinion, what reforms are needed at the institutional, legal or political level for the ICC to function more effectively and impartially on the African continent?
6. How do you evaluate concerns about the ICC's legitimacy and credibility among AU member states in light of persistent critiques.
7. What factors do you think have most significantly shaped varying perceptions of the ICC's efficacy among different stakeholder groups in Africa?
8. In your view, how has the ICC's management of the Kushayb case specifically impacted its reputation and standing among regional actors?
9. What lessons can be learned from this case to strengthen the ICC's performance, cooperation with AU/states in future similar prosecutions?
10. Is there anything else you think would be important for me to know to understand debates around the ICC's efficacy as it relates to African cases?

INTERVIEW GUIDE FOR DIPLOMATS:

1. What is your country/bloc's official position regarding the ICC's role and performance on the African continent?
2. From your diplomatic perspective, how you assess the ICC's handling of situations like the Darfur case involving Kushayb?
3. What concerns, if any, does your government have about the ICC's impartiality and respect for state sovereignty based on past cases?
4. What reforms, in your opinion, are realistically required for the ICC to function as a cooperative partner with AU member states?
5. How do prevailing perceptions of ICC bias/targeting impact its cooperation and relations with your country/regional grouping?
6. What factors influence your country's stance - political, legal, institutional confidence in the ICC?
7. In your view, how has the Kushayb prosecution influenced the geopolitical climate surrounding the Court in Africa?
8. What lessons or best practices could be taken from this case to improve the ICC-AU/states engagements going forward?
9. Are there any initiatives by your government / AU to strengthen African judiciaries as an alternative to the ICC?
10. Is there anything else you think would help provide context around my research topic?

INTERVIEW GUIDE FOR JOURNALISTS:

1. Based on your coverage, what the predominant narratives/discourses surrounding the ICC's role in Africa?
2. In your analysis, how has mass/social media shaped or reflected popular perspectives about the ICC on the continent?
3. What factors influence the types of stories/frames used in reporting on the ICC's African proceedings?
4. How would you characterize media coverage of the Kushayb case specifically in terms of tone and messaging?
5. Do you think coverage has portrayed the ICC proceedings / rulings itself fairly or introduced bias? If so, how/why?
6. What challenges have you encountered in reporting on the ICC given its political contexts/sensitivities?
7. How do Africa's socio-political milieu and legal pluralism influence portrayals of the Court?
8. In your view, has reporting contributed to the legitimacy debate or influenced state cooperation dynamics?
9. Going forward, how can the ICC better engage media to clarify its role and manage competing narratives?
10. Is there any other context or insight you think would help understand how the ICC is portrayed publicly on the continent.

