24 SEP 2024

Dictators and the ICC: The Enemy's Enemy

By Professor Leslie Johns and Dr Francesca Parente

ANALYSIS

The International Criminal Court aspires to hold all leaders accountable for serious international crimes. But thus far, the Court has only been successful in helping dictators punish their political opponents, leading many to ask, what is international justice really for?

International justice activists have spent months pleading with the Prosecutor of the International Criminal Court (ICC) to get involved in high-profile international disputes in Gaza and Ukraine. In previous decades, similar efforts led the Prosecutor to pursue cases involving Côte d'Ivoire and Kenya, and caused the UN Security Council to order the Prosecutor to take action against leaders in Libya and Sudan.

Yet an overlooked fact is that dictators self-refer cases to the ICC, meaning that they welcome the ICC into their state to conduct investigations and prosecute their political opponents. In theory, such self-referrals can result in arrest warrants and trials against anyone within the borders of the state. However, as we argue in a recent publication, dictators have tremendous power to shape investigations and prosecutions.

Successful ICC investigations require that investigators identify and locate witnesses. Dictators can limit the information available to the ICC, the free movement of ICC staff, and access to local security, translators, and transportation. ICC investigations and trials also often use digital and documentary evidence to establish that high-ranking individuals, like military commanders, are responsible for acts committed by subordinates. For example, in the recent trial of Uganda rebel leader Dominic Ongwen, this evidence was provided to the ICC by the Ugandan government. And perhaps most importantly, the ICC relies on its member states to enforce arrest warrants. Dictators often have the power to track and arrest their political opponents, sending them to The Hague for trial. However, rebel groups usually cannot arrest and surrender a sitting dictator to the ICC. These powers are apparent in the ICC's investigations and prosecutions in the Central African Republic, the Democratic Republic of the Congo, Mali, and Uganda.

A simple glance at the raw data suggests that dictators are using the ICC to punish their opponents. Between 2002 and 2021, dictator self-referrals resulted in seventeen total ICC arrest warrants. Of these, 94 percent were for opponents of the sitting government. These are the arrest warrants that have resulted in successful trials for the ICC. In contrast, over the same period, only 25 percent of the ICC's other twenty arrest warrants were for government opponents. To date, the ICC has not successfully prosecuted a single sitting head of government. These patterns mean that the only people who are in jail after being found guilty by the ICC of committing a serious international crime are individuals who challenged a dictator.

So, a dictator knows that if he commits atrocities against rebel forces, there is little chance that the ICC will hold him accountable. However, that same dictator can use the ICC to punish rebel forces when they commit similar atrocities. This asymmetry in punishment suggests that ICC membership can give a dictator a strategic advantage in a civil conflict. A credible threat of ICC referral makes it extremely costly for a rebel group to commit atrocities, while the dictator faces relatively trivial costs for using the same tactics, knowing that they will be shielded from ICC accountability.

However, not all dictators choose to use violence. Higher levels of political competition make it more difficult for a dictator to deploy violence to remain in power. For example, multiple political parties allow opponents to publicise and shame a dictator for atrocities more easily. Similarly, a free press, opposition political parties, active civil society, and/or independent bureaucracies increase transparency about actions and policies. Finally, legislatures and domestic courts can have limited powers to sanction a dictator for violence.

We believe that domestic political competition helps to explain why dictators choose to join the ICC. Joining the ICC (and using it through self-referral) has complex direct and indirect effects on how both a government and rebel group will behave during a civil conflict. Overall, when political competition is low, violence is cheap for a dictator, and there is little added benefit from joining and using the ICC. However, as domestic political competition increases, violence becomes more costly. In this scenario, there is more strategic advantage to joining the ICC and then trying to control its processes.

This indicates that there are key patterns in how dictators behave. For one, dictators who face more political competition are likely to join the ICC than dictators who do not face credible threats to their power. Statistical results show that dictators who face factional competition—that is, competition based on parochial or ethnic-based political factions—are nearly twice as likely to join the ICC compared to dictators who can suppress the opposition from participating in politics.

Second, the overall level of violence committed in the state is likely to decrease after a dictator joins the ICC because both the dictator and rebel groups will face higher costs from committing atrocities. This is also supported statistical analyses. We estimate that joining the ICC increases the chance of having a year with zero total violence by twelve percentage points (from 71 percent for dictators before joining the ICC to 83 percent after joining).

Finally, if there is a benefit to the dictators for joining the ICC. That is, those dictators who join the ICC will be less likely to be removed from office. In other words, joining the ICC should increase their chances of survival. Again, this is supported by our data. The dictators who join the ICC are half as likely to lose office after joining as compared to before joining.

International criminal lawyers have lauded the ICC's successes. They rejoice in the development of new case law. They propose new crimes for the Court to pursue like gender apartheid and ecocide. They write thoughtful guidelines about the admissibility of digital evidence. But is it not troubling that the ICC's success has also come at the price of helping dictators prosecute political opponents and remain in power? As students of politics, we have to wonder: is this what international justice is for?

Leslie Johns is a Professor of Political Science and Law at UCLA. Her newest book, Politics and International Law*: Making, Breaking, and Upholding Global Rules, is available from Cambridge University Press. Twitter: @PoliticsIntlLaw*

Francesca Parente is an Assistant Professor of Political Science and Director of the Reiff Center for Human Rights and Conflict Resolution at Christopher Newport University. Twitter: @CNUReiffCenter

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