



AALBORG UNIVERSITET

# Framing the International Criminal Court: A Frame Analysis of South African Media and its Relationship with the International Criminal Court

## **Master's Program in International Relations**

*Department of Politics and Society*

*Master's Thesis*

*Aalborg, 2025*

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**Keystrokes:** 149,502

**Citation Style:** MLA

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## Abstract

This research will explore the framing of the legitimacy of the International Criminal Court (ICC) in South African media between 2002 and 2025. This study employs a qualitative case study using Entman's framing and draws on constructivism, legitimacy theory, and neo-colonialism. Following the end of apartheid, South Africa positioned itself as an early supporter of the ICC, but this position was challenged as political, legal, and global challenges emerged. This study reflects changing perceptions of the ICC in South African media and how issues of bias and selective justice contributed to the contestation of its legitimacy.

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## List of Abbreviations:

<b>ANC</b>	African National Congress
<b>AU</b>	African Union
<b>BRICS</b>	Brazil, Russia, India, China, and South Africa
<b>ICJ</b>	International Court of Justice
<b>ICC</b>	International Criminal Court
<b>NGO</b>	Non-Governmental Organization
<b>UN</b>	United Nations
<b>UNGA</b>	United Nations General Assembly
<b>UNSC</b>	United Nations Security Council
<b>SA</b>	South Africa
<b>LRA</b>	Lord's Resistance Army
<b>US</b>	United States

# 1. Introduction

## 1.1 Context and Problem Statement

The International Criminal Court (ICC) represents one of the most ambitious efforts in the post-Cold War era to establish global governance. The ICC is a permanent legal body tasked with prosecuting individuals for international crimes, including genocide, crimes against humanity, and war crimes (International Criminal Court, “About the Court”, 2024). The creation of the Court signified a step forward in the fight against impunity, but the authority of the Court has not been without challenge. Like other global institutions, the ICC depends on legal frameworks and formal agreements amongst states. However, it is also dependent upon perceptions of legitimacy and impartiality. Its ability to effectively operate depends on how it is viewed by states, political leaders, and the public. Questions about the ICC’s legitimacy - who grants it, how it is upheld, and under what conditions it is challenged - have consistently led to debates about its role and its influence.

South Africa’s relationship with the ICC is a useful and relevant case for exploring issues of legitimacy and how that legitimacy has been constructed and contested over time. South Africa, under the leadership of Nelson Mandela, was one of the earliest supporters of the Rome Statute and the ICC. Following the Rwandan Genocide in 1994, the civil war in Sierra Leone from 1991 to 2002, and its own battle with Apartheid from 1948 to 1994, South Africa saw the ICC as a tool to be used to prevent future atrocities from being committed (“South Africa | International Criminal Court”). When South Africa signed onto the Rome Statute and joined the ICC in 2000, the Parliament integrated its conditions into South African law under a bill called the “Implementation of the Rome Statute of the International Criminal Court Act 27” making it the first African state to align the laws of its state with international law concerning such crimes (Plessis, 2003). At the same time, the African Union (AU), which itself was in its infancy having only been established in 2001, was also a strong proponent of the ICC with one of its objectives focused on the protection of human rights (Magliveras and Naldi, 2002). This level of support was sustained for several years, but as the tally of ICC cases originating in Africa grew, South Africa began to voice skepticism related to a perceived bias towards the African continent (Pugliese and Mbaku, 2013).

A turning point in the relationship between South Africa and the ICC came in 2015, during the African Union Summit, which was held in Johannesburg, South Africa when Sudanese President Omar Al-Bashir attended while an active warrant for his arrest by the ICC was in place (“Court Criticised over “Al-Bashir” Judgment.” de Rebus, August 2015:5 [2015] DEREBUS 124”, 2015). As

a signatory to the Rome Statute, South Africa was obligated to act on this warrant, arrest Al-Bashir, and turn him over to the ICC. However, South Africa allowed him to leave the country without acting on the warrant, leading to not only a domestic crisis, but an international one as well, thus marking a dramatic shift in South Africa's relationship with the ICC from active supporter to a vocal critic (Jeangène Vilmer, 2016).

Following this incident, South Africa's criticism of the ICC increased as the country entered a period of disagreement between the sitting government heads, led by President Zuma, and the Parliament, under the leadership of President Zuma's party. This was due largely in part to Zuma's formal notification to the UNSG of its intention to withdraw from the Rome Statute in 2016, and thus from the ICC, arguing that the Court unfairly targeted African leaders and operated as a neocolonial institution (International Criminal Court, "Rome Statute of the International Criminal Court", 1998). This withdrawal was quickly challenged in South African courts and found to be unconstitutional, as Parliamentary approval had not been sought nor granted forcing South Africa to revoke its withdrawal and remain a member of the ICC (Werle and Zimmermann, 2019). Criticism of the Court continued, but in recent years the country has again changed its stance on the Court and has cautiously re-engaged by seeking a more equitable and inclusive balance. This shift has come as the Court has expanded its investigations beyond Africa, including inquiries into countries such as Israel and Russia. The ICC's decision to issue an arrest warrant for Russian President Vladimir Putin in March 2023 – the leader of one of South Africa's partners within the BRICS alliance has introduced new tensions into the relationship between the ICC and South Africa ("South Africa Moves to Quit ICC over Putin Arrest Warrant — Then Backs Down", 2023). Despite these tensions, South Africa has continued to engage with the ICC, even in collaboration with other states, by advocating for reform and a more balanced approach.

South Africa's relationship with the ICC has been shaped not only by legal and foreign policy decisions, but also by how the Court is talked about and understood within the country. From early support and enthusiastic endorsement to sharp criticism, an attempted withdrawal, and now a phase of cautious re-engagement, South Africa's stance has evolved in response to domestic political shifts and broader debates about global governance, particularly as it regards the legitimacy of the Court. Throughout the years, debates surrounding the Court's legitimacy and its perceived colonial undertones have been discussed in media coverage, playing a role in the shaping of public and political attitudes. With that in mind this research aims to explore how shifting media portrayals have shaped perceptions of the ICC's legitimacy in South Africa over time, setting the stage for the central question this study seeks to answer.

## 1.2 Research Question

This study seeks to examine how the legitimacy of the ICC is constructed and challenged in the South African media narratives. The main research question is: How is the legitimacy of the ICC created and challenged in South African media over time? As mentioned, the relationship between South Africa and the ICC has been in flux moving from strong support for its creation, to criticism and attempted withdrawal, to a new era of re-engagement.

To address this query, the research will be driven by the sub-question; What frames have emerged from South African media? This will be achieved by analyzing the frames in South African media regarding the ICC by studying four distinct time periods. The selected time periods cover four six-year intervals beginning with (1) 2002 to 2007 representing the South Africa's initial commitment to the ICC and the domestic legal integration of the Rome Statute, (2) 2008 to 2013 representing a period of emerging tensions and regional friction, and (3) 2014 to 2019 reflecting South Africa's attempt to withdrawal from the ICC and domestic legal contestation over this attempt, and (4) 2020 to 2025 representing a period of strategic re-engagement with persistent critique of the institution. This will be used to identify frames that have shaped the legitimacy of the ICC in South Africa. By approaching the framing of legitimacy and how it is socially constructed, this study will analyze the views of South African media on the ICC, taking into consideration the country's history of colonialism and the challenges that have followed in the post-colonial era. By tracing the narrative revolving around the ICC, this study will provide insight into how the perception of legitimacy has ebbed and flowed.

## 1.3 Research Significance

This study will offer an important contribution to ongoing debates about the legitimacy of global governance institutions, particularly the ICC, by focusing on how legitimacy is constructed and contested. As South Africa was one of the earliest African supporters of the ICC and later one of its most outspoken critics, this study will provide a lens in which to examine the shift over time in its perception of the institution.

## 2. Background

The following chapter provides essential background for understanding both the history of the International Criminal Court and the history of South Africa since it became a member of the Court. It first outlines the structure of the ICC, its mandate, and its jurisdiction, which provides the foundation for the later analysis of legitimacy. It then traces South Africa's engagement with the ICC, from its early commitment to moments of tension, attempted withdrawal, and more

recently its re-engagement. While this chapter provides necessary historical context, further background specific to each period will be provided in the analysis chapter to situate the frames.

## 2.1 The International Criminal Court (ICC)

The International Criminal Court (ICC) is a permanent court established to ‘investigate, prosecute, and try individuals accused’ of the crime of genocide, crimes against humanity, war crimes, and the crime of aggression, as amended in 2010 (International Criminal Court, 2024). The ICC was established under the Rome Statute, on 17 July 1988 and entered into force on 1 July 2002, which serves as an International Treaty to establish the framework of the Court and sets its jurisdiction as permanent and universal (International Criminal Court, “Rome Statute of the International Criminal Court”, 1998). The ICC is a court of last resort, located in The Hague, Netherlands though it can be seated in other locations, and can only step in when national courts are unable or unwilling to investigate. Therefore, the ICC relies on the compliance of signatory states to fulfill its purpose of putting an end to ‘impunity for the perpetrators of the most serious crimes of concern to the international community as whole, and thus to contribute to the prevention of such crimes’ (International Criminal Court). It is important to note that the ICC cannot supersede the national judicial systems of States Parties but instead operates on the principle of complementarity. This means that the judicial system of the state will always be provided with the opportunity to launch its own investigations into matters of International Criminal Law which affect their territory or their citizens. The ICC is only able to step in and launch an investigation of its own when the signatory has proven itself unwilling or incapable of such an investigation (Plessis, 2003).

The ICC is composed of four main parts, which includes the Office of the Prosecutor (OTP), the Presidency, the Judicial Divisions, and the Registry. Within the ICC, the OTP operates as an independent part of the Court that is given the power to initiate investigations, known as proprio motu investigations, once legal authorization from the judges is received. This position was first held by Luis Moreno Ocampo from Argentina, then by Fatou Bensouda from Gambia, and is currently held by Karim A. A. Khan KC from the United Kingdom (“Office of the Prosecutor”, 2025). The OTP is divided into three sections: The Prosecutor, the Deputy Prosecutor, and The Head of the Jurisdiction, Complementarity, and Cooperation Division. For a case to be taken up by the ICC, the OTP must analyze the information on the crime to determine if it meets jurisdictional requirements. Once this decision has been made, the OTP applies to the Pre-Trial Chamber for a summons or an arrest warrant and from there the case begins (International Criminal Court Project, 2019).



The Presidency is made up of a Presidency, a first Vice President, and a second Vice President, which are elected by “an absolute majority” of the Judges of the Court for a term of three years, which may be renewed. Their responsibilities include legal functions and relations outside of the court. This ranges from assigning judges to cases, judicial review of decisions made by the Registrar, maintaining relationships with States, and promoting public awareness (International Criminal Court Project, 2019).

The Judicial Division, also referred to as The Chambers, consists of eighteen judges organized into three sections: Pre-Trial, Trial, and Appeals. Within the chambers there is a further division of the judges and for each pre-trial and trial case a group of three judges is responsible for each case. However, if a case reaches the Appeals Division all five judges must preside over the case (International Criminal Court Project, 2019).

The fourth part of the ICC, the Registry, is responsible for providing judicial and administrative support to all parts of the Court. This includes victims and witnesses, as well as focusing on outreach and detention. This department is headed by the Registrar who oversees the offices and sections responsible for providing support to the tasks of the Court.

Additionally, the Assembly of State Parties (ASP) and the Trust Fund for Victims also make up part of the Court. The ASP serves as the “management, oversight, and legislative body of the Court” and is outlined in Article 112 of the Rome Statute. The ASP is made up of a representative from each signatory state under which a Bureau is established consisting of a President, two Vice Presidents, and eighteen members elected by the Assembly for a three-year term. This body ensures that cases are distributed equally across geographic areas and that the Court provides adequate representation of the main legal systems across the world. The ASP also takes up issues such as non-compliance by signatory states and though it cannot force states to comply it can engage in diplomatic processes to resolve the non-compliance and as a last resort it may refer matters to the UNSC (“ICC - Assembly of States Parties | International Criminal Court”, 2024).

Given the structure of the ICC, there are three ways in which an investigation can be launched; first through referral by a state party also known as self-referral, second through proprio motu or the launching of an investigation by the court’s prosecutor, and thirdly through referral by the United Nations Security Council (UNSC) in order to protect international peace and stability. The first two methods of bringing a case to the Court apply only if the accused individual is a national of a state that is party to the Rome Statute and has accepted the jurisdiction of the ICC. However,

a referral by the UNSC obliges even non-state parties to cooperate with the ICC (Jeangène Vilmer, 2016).

Since the establishment of the ICC in 2002, it has prosecuted cases against individuals accused of crimes of genocide, war crimes, and crimes against humanity in numerous countries. Ten of these cases have been on the African continent, two have been based in Europe, four in the Middle East and Asia, and two cases in Venezuela (van den Burg, 2024). Most recently, the ICC has increased the span of its investigation into Palestine and into Israel for crimes committed following the October 7 attacks by Hamas in 2023. Although some of these states are not signatory countries to the Rome Statute, the ICC has been able to launch these investigations based on Territorial Jurisdiction, specifically in the cases of Myanmar and Israel as the crimes committed crossed into countries that are signatories to the Rome Statute, covered under Article 12 (2) of the Rome Statute (International Criminal Court, “Rome Statute of the International Criminal Court”, 1998). As of 2024, the ICC has eleven convictions and four acquittals with outstanding warrants for arrest levied against Russian President Vladimir Putin, Israeli Prime Minister Benjamin Netanyahu, Israel’s former defense chief Yoav Gallant, and Hamas leader Ibrahim Al-Masri (van den Burg, 2024). Figure one provides an overview of the cases investigated by the ICC, highlighting the geographical focus on African states while detailing the method of referral for these cases, of which five were by self-referral, two were referred by the UNSC, and four were through the mechanism of *proprio motu* where the country was unable or unwilling to launch an investigation of its own.

Date	Country	Alleged Crime/Reason for Investigation	Method of Referral
2004	Uganda	Atrocities committed by Lord's Resistance Army	Self-Referral by Ugandan Government
2004	Democratic Republic of the Congo	Armed conflicts involving various militias	Self-Referral by DRC Government
2004	Central African Republic	Crimes committed during an armed conflict (2002-2004)	Self-Referral by CAR Government
2005	Sudan (Darfur)	Genocide and war crimes in Darfur during internal conflict (Janjaweed Militia)	Referral by the United Nations Security Council
2007	Afghanistan	War Crimes by the Taliban, US forces, and Afghan Military	Proprio Motu Investigation by ICC Prosecutor
2008	Georgia (Europe)	2008 war between Georgia and Russia	Proprio Motu Investigation by ICC Prosecutor
2010	Kenya	2007-2008 post-election violence w/ crimes against humanity committed by political leaders and their supporters	Proprio Motu Investigation by ICC Prosecutor
2011	Libya	Civil war and crimes against humanity during Muammar Gaddafi's Regime	Referral by the United Nations Security Council
2011	Ivory Coast	Post-election violence following 2010 election w/ crimes against humanity by both gov and opposition forces	Proprio Motu Investigation by ICC Prosecutor
2012	Mali	Armed conflict involving Islamist groups and destruction of cultural heritage in Timbuktu and war crimes	Self-Referral by the Malian Government
2014	Central African Republic II (CARII)	Ethnic and sectarian violence between Seleka and Anti-Balaka militias	Self-Referral by the CAR Government
2017	Burundi	Violence against political opponents w/ alleged crimes against humanity linked to political unrest in 2015	Proprio Motu Investigation by ICC Prosecutor
2017	Myanmar/Bangladesh	Rohingya Genocide and Crimes Against Humanity - focused on Bangladesh which is an ICC member state	Proprio Motu Investigation by ICC Prosecutor
2018	Venezuela	Crimes against humanity under Nicolás Maduro's regime	Proprio Motu Investigation by ICC Prosecutor
2019	Palestine	Alleged war crimes in Gaza, West Bank, and East Jerusalem	Proprio Motu Investigation by ICC Prosecutor
2020	Venezuela (II)	Alleged crimes linked to political unrest	Self-Referral by Venezuelan Government - Preliminary Examination Ongoing
2020	Sudan (Situation #2)	War Crimes and Crimes Against Humanity in Conflict Zones Beyond Darfur - ongoing crimes after the removal of Omar al-Bashir	Proprio Motu Investigation by ICC Prosecutor
2021	Philippines	Extrajudicial killings under Rodrigo Duterte's War on Drugs	Proprio Motu Investigation by ICC Prosecutor
2022	Ukraine	Alleged war crimes during Russian Invasion	Proprio Motu Investigation by ICC Prosecutor + Multiple States Referred

**Figure 1: Case History of ICC**

**ICC - (International Criminal Court, "Situations under Investigation")**

## 2.2 South Africa, the African Union, and the Rome Statute:

Following the Rwandan Genocide in 1994, the African Union (AU) signaled its initial support for the ICC with the hope that it would prevent future genocides and crimes against humanity from being committed on the continent (Jalloh, 2019). With the support of the AU for an independent court, thirty-three African states signed onto the Rome Statute and ratified it in their parliamentary bodies while an additional thirteen African states became signatories to the Rome Statute but have not yet ratified the Statute into law. The African continent represents the largest number of signatories to the Rome Statute and therefore the ICC. However, it did not take long before criticism of the court began to echo throughout the Union, including accusations of the Court representing yet another European tool of colonialism and that the ardent support from African states left it vulnerable to the ICC's goal of establishing legitimacy by proving itself to the world as a productive court of law (Jalloh, 2019). Criticism of the Court by the AU increased

following the Courts' investigations into Sudan and Kenya and in 2017, the AU adopted the "ICC Withdrawal Strategy" which called for the withdrawal of states from the Court. Furthermore, this strategy depicted the ICC as a "racist, white man's court" that was focused too much on African states and not enough on other regions of the world (Magliveras, 2019). While not all members of the AU found this strategy appealing, it fueled a fire amongst African states who were already critical of the ICC and sparked the fire in South Africa which was dealing with its own situation with the Court.

### 2.3 The Al-Bashir Incident

The roots of South Africa's rejection and subsequent attempted withdrawal from the Rome Statute and the ICC can be found in the case brought against Sudan, specifically Sudanese President Omar Al-Bashir in 2005 (Jeangène Vilmer, 2016). President Al-Bashir was indicted for crimes against humanity and war crimes in 2009 and later for genocide in 2010, which led to protests against the ICC itself. These protests were based on the idea that the deployment of ICC investigations were examples of 'new colonization' and according to the then sitting chairperson of the African Union (AU), Muammar Gaddafi, as an 'attempt by [the West] to re-colonize their former colonies', and 'a practice of First World terrorism' (Jeangène Vilmer, 2016).

The African Union subsequently adopted a policy of non-cooperation with the ICC, which was further exacerbated when the ICC launched its first ever proprio motu investigation into Kenya in reference to alleged crimes committed surrounding the 2007-2008 elections. The initial launch of the investigation led to some disgruntlement amongst Kenyans, but it wasn't until the ICC turned its cases against politicians Uhuru Kenyatta and William Ruto, who had both been members of the Kenyan Ministry at the time the violence occurred, that the African Union began to express their view that the ICC represented a threat to 'the promotion of peace, national healing, and reconciliation', which led to the discussion of a mass withdrawal from the Rome Statute and the ICC. Although a mass withdrawal has not been carried out yet, it serves as a threat to be used each time the AU disagrees with actions taken by the ICC (Jeangène Vilmer, 2016).

With threats of withdrawal from the ICC looming throughout the African continent, the tension came to a head during the 25th African Union Summit in Johannesburg, South Africa in June 2015 when Omar Al-Bashir arrived. The arrival of Al-Bashir prompted a quick backlash against the South African President, Jacob Zuma, who in 2009 had publicly recognized the obligation to arrest Bashir as a signatory state of the Rome Statute given that the ICC does not maintain a police force to carry out such actions. Furthering the crisis, Zuma, in 2010 issued a joint communiqué with the European Union declaring that the ICC represented 'an important development for

international justice and a basis to advance peace’ and later at the AU Summit in 2013 Pretoria ‘urged other African countries not to leave the Rome Statute’ (Jeangène Vilmer, 2016). All eyes were on the South African President and whether he would abide by the obligations as a Rome Statute signatory and arrest Al-Bashir. Instead, Zuma declared immunity for serving heads of state and allowed Al-Bashir to freely attend the summit.

Upon Bashir’s arrival in South Africa, the Southern Africa Litigation Centre applied to the Gauteng Division, Pretoria, for his arrest, which led to a court order of the South African government to prevent him from leaving the country until the case had been heard. Additionally, the Department of Home Affairs was instructed to notify all points of entry and exit that Bashir was not allowed to leave the country. However, on June 15 Al-Bashir flew back to Sudan while the case was still being adjudicated. The court stated that under Articles 86 and 89 of the Rome Statute, South Africa was obliged to “cooperate fully with the court in its investigation and prosecution of crimes...” and “comply with requests for arrest and surrender” (“Court Criticised over “Al-Bashir” Judgment.” de Rebus, August 2015:5 [2015] DEREBUS 124”, 2015). Upon this dereliction of duty, the ICC’s Pre-Trial Chamber then had to determine if South Africa’s failure to comply required communication to the Assembly of States Parties (ASP) and to the UNSC for review and to determine whether measures should be adopted as a form of censure.

## 2.4 The Attempted ICC Withdrawal

The fallout from failing to arrest Al-Bashir led President Zuma to threaten to withdraw South Africa from the ICC, which was confirmed by his party, the African National Congress (ANC) in October 2015 and reiterated at the AU Summit in January 2016 (Jeangène Vilmer, 2016). The threat of withdrawal came to a head when on 19 October 2016, South Africa notified the United Nations Secretary General (UNSG) of its withdrawal from the Rome Statute and thus from the ICC. South Africa did so in a rush to beat Burundi in the race to withdrawal, skipping over the process of a parliamentary vote, and writing directly to the UNSG (Werle and Zimmermann, 2019). Controversy ensued, as this act directly violated the Constitution of South Africa.

After sending notification to the UNSG of South Africa’s intention to withdraw from the Court, a one year waiting period began as is required by Article 127 of the Rome Statute (International Criminal Court, “Rome Statute of the International Criminal Court”, 1998). During this one year waiting period, South Africa faced criticism from the ICC and from within, as the opposition party to the ANC, the Democratic Alliance (DA), challenged the constitutionality of the withdrawal. This was based upon the fact that the ANC failed to obtain legislative approval before submitting its notice of withdrawal to the UNSG and that the withdrawal from the ICC constituted a “substantive

violation of the Bill of Rights” (Werle and Zimmermann, 2019). After being taken up by the High Court in South Africa, it was adjudicated that because Parliamentary approval was required to bind the Rome Statute to the state, that it was therefore required to gain that same approval to withdraw from the Rome Statute and the ICC. The Court thus ordered Zuma and his party to remove the “instrument of withdrawal”, which it complied with in March 2017 (Werle and Zimmermann, 2019). In addition to this court battle, Zuma also came under pressure to resign and calls for his impeachment ensued.

## 2.5 Reversal and Skeptical Re-engagement

After South Africa officially rescinded its intent to withdraw from the ICC and the Rome Statute, the nation entered a period of confusion and re-engagement. In February 2018, Cyril Ramaphosa was elected the next President of South Africa after the forced resignation of Jacob Zuma, under whom he served as Deputy President (“MPs Elect Cyril Ramaphosa as New South Africa President”, 2018). Ramaphosa became President at a time of political upheaval promising to address issues of corruption and to champion South Africa as an invaluable member of the Global South but quickly ran into controversy; both personal and political (“Cyril Ramaphosa - South African Union Leader, Mine Boss, President”, 2019). As a member of BRICS, South Africa economically aligns itself with nations such as Brazil, Russia, India, and China, which became a major source of controversy regarding the nation’s membership within the ICC.

In April 2023, following the ICC’s issuance of arrest warrants against Russian President Vladimir Putin for the invasion of Ukraine and the subsequent forced deportation of Ukrainian children, Ramaphosa made a comment stating “it is prudent that South Africa should pull out of the ICC” which his government quickly walked back stating, “that South Africa remains a signatory to the Rome Statute” (“South Africa Moves to Quit ICC over Putin Arrest Warrant — Then Backs Down”, 2023). These statements led to confusion regarding whether or not South Africa would once again pursue withdrawal from the ICC, which was never truly ‘off the table’. The issue came to a head when South Africa was set to host the BRICS summit in August 2023. An invitation to Putin was extended, which if accepted would place South Africa in a position like the one it found itself in in 2015 when Al-Bashir visited; obligated to execute the arrest warrant under the Rome Statute or face the consequences. Putin did not attend the meeting in person but rather sent Russian Foreign Minister Sergey Lavrov along with a pre-recorded video message (Imray and Magome, 2023). South Africa was able to avoid breaking the laws established by the Rome Statute and maintained its ties with its BRICS allies.

Signaling re-engagement with the ICC, South Africa, On 17 November 2023, along with other States, submitted a joint referral to the ICC regarding the situation in Palestine as it relates to Article 14 of the Rome Statute (“South Africa, along with Like-Minded States, Submits Joint Referral of the Situation in Palestine to the ICC – DIRCO”, 2023). Article 14 allows for states that are signatories to the Rome Statute to request the Prosecutor to launch an investigation into a country in which one or more crimes within its jurisdiction have been committed with the purpose of determining who should be charged with the crimes (International Criminal Court, “Rome Statute of the International Criminal Court”, 1998). Instead of allowing the claim that the ICC is biased to be perpetuated, South Africa is now using re-engagement as a tool to challenge the court’s willingness to seek justice regardless of where crimes are committed.

Before presenting the findings of this study, it is important to examine the existing literature that has explored the ICC’s relationship with African states, and South Africa in particular. By reviewing how scholars have explored questions of legitimacy, justice, and Africa’s role in global institutions an essential foundation for the research will be presented. The literature reviewed in the following section highlights key literature on the ICC in Africa, debates surrounding its legitimacy, and the framing of its role within South African media contexts. This review also identifies gaps in the literature, particularly the need for a more focused, discursive analysis of how legitimacy is constructed over time.

### 3. Literature Review

The literature review aims to situate the study within existing debates on the ICC, African states, and South Africa’s evolving relationship with the Court. This review focuses on identifying the theoretical and methodological lenses scholars have used to approach these issues and highlights how these perspectives have informed understandings of the tensions between Africa and the ICC while showing where gaps remain. It emphasizes that few studies have traced how South Africa’s framing of the ICC has been constructed and contested over time through media narratives, which this research aims to address.

#### 3.1 Context and Gaps in the Literature

The literature discussed in the following chapter provides a foundation for understanding the tensions between the ICC, the African Union, and South Africa, particularly through the themes of sovereignty, legitimacy, and the perception of selective justice. Scholars have debated the ICC’s role in Africa, focusing on issues of bias, neo-colonial influence, and international law as much of the existing research analyzes legal arguments, state behavior, and political disagreements between institutions. However, few studies examine how South Africa’s

perceptions of the ICC have been socially constructed over time through the analysis of media narratives. The literature rarely applies a framing approach that traces how the legitimacy of the ICC has been constructed and contested across different time periods. This study aims to address that gap by moving beyond legal accounts to explore the construction of meaning around the ICC in South Africa through media construction, legitimacy theories, and neocolonialism.

South Africa stands out in this debate because of its uniquely evolving relationship with the ICC. As one of the earliest supporters, resulting in the signature of and integration into its domestic law of the Rome Statute, South Africa later shifted toward criticism and an attempted withdrawal, before moving toward a cautious, yet critical re-engagement with the Court in recent years making it a valuable case for understanding how the legitimacy of international institutions is created, framed, and contested over time.

### 3.2 The ICC and African States

Since the ICC was founded in 2002, it has received both support and criticism from African states. Initially, the Court was welcomed by many African countries as a tool for ending impunity and delivering justice to victims, but this has given way to criticism and skepticism. Many scholars have examined how African states have come to view the ICC as disproportionately focused on the continent, raising concerns about the legitimacy of the Court, selective justice, and neo-colonial interference (Mills, 2012). These concerns have shaped the ways in which states engage with the Court and have led to resistance across the continent.

Scholars, like Kurt Mills and Manisuli Ssenyonjo have explored how African states' relationship with the Court evolved from initial support to growing skepticism, to many making attempts at withdrawal. Mills uses a critical lens to explore how perceptions of selective justice have shaped African resistance to the Court and argues that the ICC's early investigations disproportionately targeted African states (Mills, 2012). He explains that the initial support gave way to growing concern among African States as the Court opened investigations almost exclusively in Africa, which reinforced suspicions of Western bias and neo-colonial influence, despite occurrences of mass atrocities across the globe (Mills, 2012). Mills notes that the indictment of Sudanese President Omar al-Bashir was a turning point that solidified African perceptions that the ICC undermined sovereignty and threatened peace processes (Mills, 2012).

Ssenyonjo approaches the debate from a legal-institutional perspective by focusing on African withdrawals from the Court and more specifically on South Africa's stated reasons (Ssenyonjo, 2017). He argues that perceptions of bias come from the ICC and the UNSC's close relationship, where Africa is underrepresented, and three of the five permanent members are not signatories



to the Rome Statute (Ssenyonjo, 2017). Although there is acknowledgement of selective justice, Ssenyonjo also points out that most of the early African cases were self-referrals and that newer investigations in non-African countries suggest that the ICC is evolving (Ssenyonjo, 2017).

Mills and Ssenyonjo have highlighted how African states have expressed growing concern with the ICC as it relates to issues of selective justice and perceived bias, which has led to attempts to withdraw from the Institution. However, these concerns do not exist only at the state level but have been taken up at the institutional level by the African Union. The following section considers scholarly perspectives on the changing relationship between the AU and the ICC and its efforts to contest the Court's legitimacy.

### 3.3 The African Union and the ICC: Selective Justice and Sovereignty

Much of the existing scholarship on Africa's relationship with the ICC focuses on the African Union as a collective voice challenging the Court's legitimacy. This is important because South Africa's changing stance toward the ICC cannot be separated from its dual role as a member of both the ICC and the AU. Many of South Africa's moments of contestation, including its non-compliance during the Bashir incident and its attempted withdrawal occurred in the context of broader AU resistance. Therefore, it is important to understand the AU's evolving relationship with the ICC to situate South Africa's actions and how it has shaped the framing of the Court.

The relationship between the AU and the ICC has been a prominent focus of scholars such as Bachmann and Sowatey-Adji, Ekwealor, and Murithi. They have explored this relationship through the lenses of sovereignty, selective justice, and postcolonial resistance. The AU was an initial supporter of the ICC, but the AU's stance has shifted as tensions mounted over what many African states have perceived as the Court's disproportionate focus on the continent (Bachmann and Sowatey-Adji, 2020). Bachmann and Sowatey-Adji frame these tensions through the principle of sovereignty, noting that the AU labeled the ICC a "neo-colonial court" following the referral of the situation in Darfur by the UNSC without consideration to the regional context (Bachmann and Sowatey-Adji, 2020). They argue that the AU's request for a stay of the investigation was not just political, but an effort to protect regional ownership of peace processes, which is an important issue for member states of the AU, like South Africa which has had to balance their support for international institutions like the ICC with their loyalty to African-led solutions (Bachmann and Sowatey-Adji, 2020).

Ekwealor, expanding on concerns of sovereignty, emphasizes that the AU's view of the ICC as a biased institution comes not only from its case selection but also from the structural inequalities within the Court's funding and geopolitical alignments (Ekwealor, 2018). He notes that the ICC's

dependency on European funding and the influence of non-signatory members such as the U.S. and China have added fuel to African skepticism. For South Africa, a country that has positioned itself as a bridge between Africa and the global order, these critiques from the AU have created pressure for it to reconcile its obligations to the ICC with emerging pan-African solidarity narratives.

Murithi, writing from a postcolonial perspective, argues that the AU's criticism of the ICC is deeply tied to African political identity and resistance to external forms of justice (Murithi, 2013). He suggests that the AU's criticism of the ICC is about calling for African-led solutions rather than rejecting accountability, which is an important context for understanding South Africa's own tensions with the Court (Murithi, 2013). As a member of the AU, South Africa was caught between its international reputation as a defender of human rights and its regional commitment to solidarity with other African states that were challenging the ICC's authority specifically during the Bashir incident and its attempt to withdraw from the Court (Murithi, 2013).

Together, the works of these scholars indicate that the AU's relationship with the ICC has been shaped by questions of identity, sovereignty, and historical grievances, not just legal or political disagreements. For South Africa, balancing its membership with both the AU and the ICC has meant navigating competing pressures, which has influenced how it framed its actions at home and on the global stage.

### 3.4 South Africa and the ICC

The existing literature on the relationship between South Africa and the ICC is extensive, especially given its fluctuating relationship with the Court. Scholars like J. Andrew Grant and Spencer Hamilton, Jeremy Sarkin, Franziska Boehme, and Max Du Plessis have each provided important insights into how South Africa's position has evolved over time.

Grant and Hamilton approach South Africa's role through a constructivist lens, arguing that the country sought to position itself as a "norm leader" and aspiring "middle-power" by embracing international justice norms (Grant and Hamilton, 2016). South Africa's early commitment to international justice norms was demonstrated through its swift ratification of the Rome Statute and incorporation into its domestic law, which signified its dedication to human rights following apartheid (Grant and Hamilton, 2016). Even amidst pressure from the US to shield American citizens from ICC jurisdiction, South Africa refused to sign non-surrender agreements, choosing instead to absorb the loss of military aid and support in order to protect its international reputation as a champion of justice (Grant and Hamilton, 2016). The scholars note that South Africa's identity became increasingly conflicted as tensions between the African Union and the

ICC grew, coming to a head with the indictment of African leaders such as Sudanese President Omar al-Bashir. This indictment placed South Africa in a difficult position, forcing the country to choose between its regional obligations and its international commitment, leading to a “norm misalignment” in its foreign policy (Grant and Hamilton, 2016). The analysis presented by Grant and Hamilton is rooted in the idea that national interests and foreign policy are shaped by evolving norms and social expectations.

Boehme approaches South Africa’s engagement with the ICC through an institutional and postcolonial lens, focusing on the politics of the interplay between regional and international commitments. She emphasizes how regional priorities, specifically loyalty to the African Union’s collective position of non-compliance and immunity for sitting heads of state, shaped South Africa’s decision-making during controversies such as the Bashir incident (Boehme, 2016). Furthermore, she highlights that South Africa’s decisions were shaped by its postcolonial identity where the principles of “African solutions to African problems” and resistance to perceived neo-colonial injustice had become central ideas in both the AU and the South African foreign policy (Boehme, 2016). Drawing from the theories of middle-power diplomacy and regional politics, Boehme explains why South Africa chose to prioritize its relationship with the AU over compliance with the ICC (Boehme, 2016). By exploring the tensions in both the regional and domestic context, Boehme captures South Africa’s internal struggle to reconcile its identity as a staunch human rights defender with its other regional obligations (Boehme, 2016).

Sarkin adopts a historical-legal approach, tracing South Africa’s shifting relationship with international justice from the apartheid era to its current state. His work is largely situated in legal scholarship, focusing on how changes to South Africa’s domestic governance structures have influenced its engagement with the ICC (Sarkin, 2020). Sarkin argues that South Africa’s post-apartheid embrace of international norms gave way to an interest-driven approach under the Mbeki and Zuma administrations where the country focused on alignment with the African Union, leading to periods of domestic contestation with the Court (Sarkin, 2020). Unlike Grant and Hamilton or Boehme, Sarkin focuses on legal doctrine and the behavior of the institution rather than identity construction or political framing (Sarkin, 2020).

These scholars have analyzed South Africa’s relationship with the ICC through several theoretical and methodological lenses, including constructivism, political institutionalism, and legal history. However, few studies have attempted to analyze how South Africa media narratives have framed the legitimacy of the ICC over time. By focusing on how the legitimacy of the ICC is constructed

and contested in South Africa over time, this study seeks to address this gap in the existing literature.

### 3.5 Identified Gaps in the Literature

The literature discussed in the previous sections provides a foundation for understanding the tensions between the ICC, the African Union, and South Africa, particularly through the themes of sovereignty, legitimacy, and postcolonial identity. However, many gaps remain in the literature. Much of the current research centers on analyses of legal arguments and on political disagreements between the different institutions, with limited insight into how South Africa's perception of the ICC has been created over time. Furthermore, few studies apply a framing analysis or integrate constructivism, legitimacy theory, and neo-colonialism as a combined framework. This study aims to fill this gap by using a frame analysis to trace how the legitimacy of the ICC has been constructed and contested in South African media across four key six-year periods: 2002-2007, 2008-2013, 2014-2019, and 2020-2025. This research builds on existing work but also offers a new theoretical and methodological perspective on South Africa's relationship with the Court.

## 4. Theoretical Framework

This chapter outlines the theoretical foundations that guide this research. The goal is to explain how the concepts of constructivism, legitimacy theory, and neo-colonialism as a framework provide the tools to understand how the legitimacy of the ICC has been constructed and contested in South Africa over time. By drawing on these theories, this chapter establishes the lens through which media narratives will be analyzed and presents how the theories are operationalized within the study.

### 4.1. Constructivism as a Theory

Prior to the establishment of constructivism as a theory, the world of International Relations (IR) Theory was fairly cemented in the realms of Realism and Liberalism, with Marxist perspectives remaining on the periphery of mainstream discourse. With realism focused on power struggles and self-interest and liberalism emphasizing cooperation among states through international institutions, there was not much room in the theoretical world for debate around what other influences were at play in the shaping of international politics (Baylis et al., 2023). However, the end of the Cold War in 1989 and the collapse of the Soviet Union rocked the world of IR theory as there was no clear way to explain how or why a new reality came to exist. Adding to this, the expansion of global civil society along with the number of NGOs, scholars began seeking ways to explain this new reality (Finnemore and Wendt, 2024). When traditional theories failed to explain

what was happening in the world, an explosion of new theories entered the field with constructivism cementing its place as a social theory.

Although constructivism was presented as a social theory, it was also a way to examine real political events in an empirical way. Constructivism has “no clear normative agenda” but has a “plasticity” to it that allows for the application of the theory to many different types of politics; regional, national, international, sub-state, and even non-state (Finnemore and Wendt, 2024). Constructivism relies on ontological and epistemological roots, which respectively ask the questions “what is real?” and “how do we acquire knowledge on what is real?”. This theory represents the middle ground between strict realism, which believes that reality is objectively fixed, and post structuralism, which views reality as completely subjective (Adler, 1997). It is defined as the view “that the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world” (Adler, 1997). In other words, reality is constructed by humans and how they interpret the world based on norms, identities, and historic events (Krieger, 2014). This means that reality can shift, and change based on new interpretations, shifting identities, and historical developments.

According to Wendt and Finnemore, there are three main postulates of Constructivism; The Constitutive Power of Consciousness and Ideas, The Mutual Constitution of Agency and Structure, and Taking Both Science and Inter-Subjectivity Seriously (Finnemore and Wendt, 2024). However, this research will focus on the first two postulates of Constructivism as they are most relevant to the study’s aim of analyzing how legitimacy is constructed and contested through political and media narratives, while the third postulate is less directly applicable to the goals of this research. “The Constitutive Power of Consciousness and Ideas” is central to classical constructivism and states that the way actors, such as states or people, understand the world around them is what shapes their behavior (Finnemore and Wendt, 2024). This interpretation of the world is based on their ideas, beliefs, and norms, meaning that they actively constitute what reality means to them through their perception of reality. Wendt famously provides the example of North Korean nuclear weapons being perceived as more threatening than British held nuclear weapons to the United States. The meaning of those weapons from the perspective of the United States is shaped by which actor is in possession of them. Therefore, it is the idea attached to the weapons that matter the most, rather than the weapons themselves (Finnemore and Wendt, 2024). This emphasis on meaning reflects the ontological foundations of Constructivism - the idea that reality is not fixed but is shaped through the interpretations of those who participate in it.

The second postulate revolves around “The Mutual Constitution of Agency and Structure”, which is based on the idea that people and social structures shape each other rather than existing in isolation (Finnemore and Wendt, 2024). This means that institutions do not exist independently, but they are made to be real and meaningful through the actions and interpretations of people and states, tying into the epistemological roots of Constructivism. For example, global institutions like the ICC provide structure for international law through the Rome Statute, which influences the ways states are expected to behave. However, it is the engagement, interpretation of, and critique of the institution itself by the states that shapes its meaning. Is the Court legitimate? Are its norms appropriate? These types of questions are not fixed but are actively constructed based on state behavior and perception.

Ideas, beliefs, and norms are the building blocks through which actors make sense of the world and thereby construct social reality. Norms are defined by Finnemore and Sikkink as a “standard of appropriate behavior for actors with a given identity. These norms then “prompt justification for action and leave an extensive trail of communication among actors that we can study”, highlighting that norms do not operate in silence, but are made visible through language (Finnemore and Sikkink, 1998). Norms are constantly debated, defended, contested, and framed within political rhetoric and media coverage. This trail of communication offers insight into how the legitimacy of global institutions is constructed and challenged over time. It is this relationship between the construction of norms and the language used to uphold or critique them that leads into the discussion of Institutional Legitimacy Theory, which will be explored in the following section.

## 4.2 Legitimacy Theory

Legitimacy Theory explores the ways in which global governance institutions are deemed credible and authoritative in the eyes of the public and stakeholders it affects. Institutions do not automatically become legitimate upon inception or because there are set rules. Instead, legitimacy is something that is earned, interpreted, and socially constructed. Legitimacy is therefore not simply based in legality, but also in politics and norms (Buchanan and Keohane, 2006).

According to Buchanan and Keohane, legitimacy can be defined in two broad ways: normatively and sociologically. Normative legitimacy refers to whether an institution has the right to rule, in the sense that it attempts to secure compliance by “attaching costs to non-compliance and/or benefits to compliance” (Buchanan and Keohane, 2006). Whereas sociological legitimacy is based on a widely held belief that an institution is believed to have the right to rule. It is equally

important for an institution to be legitimate as it is for the institution to be perceived as being legitimate because these types of institutions will only thrive if they are viewed as legitimate by democratic publics (Buchanan and Keohane, 2006).

Buchanan and Keohane articulate that there are three candidates that are often used when attempting to explain the conditions an institution must satisfy in order to have the right to rule: state consent, consent by democratic states, and global democracy (Buchanan and Keohane, 2006). However, they argue that these standards alone are inadequate. To have the consent of states is not enough because some states may be undemocratic and violate the human rights of their citizens which renders the state itself illegitimate and unable to convey legitimacy upon an institution. Consent by democratic states is more likely to lend legitimacy to an institution, but it assumes that democracies will always act legitimately, which is not true. Additionally, a reliance on consent by democratic states for legitimacy, ignores actors who are not citizens of democratic states, which is “detrimental to the interests of the world’s worst-off people”, with the assumption that democratic states tend to be richer and therefore more powerful (Buchanan and Keohane, 2006). The third candidate, global democracy, is also not sufficient for creating a standard of legitimacy because although democracy is considered to be the “gold standard” for legitimacy in the case of the state, there is no global political structure that provides the basis for democratic control over global governance institutions (Buchanan and Keohane, 2006). This means that global democracy does not exist in practical reality because global governance institutions are meant to coordinate between states, rather than govern individuals directly making the standard of global democracy impractical. Given that global governance institutions are in their infancy and are still evolving, Buchanan and Keohane have established a global standard for how the legitimacy of institutions could be assessed.

The solution presented for a standard of legitimacy, which is based in the normative, rests on three substantive criteria: Minimal Moral Acceptability, Comparative Benefit, and Institutional Integrity. Minimal moral acceptability insists that in order for an institution to be legitimate and deserving of support it must not violate fundamental moral norms or basic human rights (Buchanan and Keohane, 2006). Regardless of an institution’s effectiveness, it must not only do good but also avoid doing harm. The second substantive condition for legitimacy is comparative benefit, stating that the institution must provide “benefits that cannot otherwise be obtained” in addressing the global problems it was designed to solve (Buchanan and Keohane, 2006). This represents the pragmatic function of legitimacy in that actors are more likely to accept the authority of the institution and deem it to be legitimate if it delivers meaningful outcomes. The third substantive condition for legitimacy is institutional integrity, which largely depends on

accountability. This means that global governance institutions should have mechanisms in place that make sure they are using their power responsibly and can be challenged or corrected when mistakes are made, if bias is involved in decision making, or they have overstepped their authority (Buchanan and Keohane, 2006). These three substantive conditions for legitimacy do not come without limitations and in fact Buchanan and Keohane point out two limitations on the applicability of these criteria: the problem of factual knowledge and the problem of moral disagreement and uncertainty.

The problem of factual knowledge refers to the difficulty in being able to judge whether an institution satisfies the three substantive conditions. This can occur for a number of reasons including but not limited to the institution failing to provide the necessary information or being unable to provide it in a digestible form for the general public. The problem of moral disagreement and uncertainty is based on potential disagreements about moral standards, particularly the standard regarding the violation of basic human rights, due to different cultures, ideologies, and political systems (Buchanan and Keohane, 2006). Ultimately, the more substantive requirements for legitimacy that an institution can satisfy, and the higher degree to which it satisfies those requirements, the stronger its claim to legitimacy (Buchanan and Keohane:2006).

Building on this, Mark Suchman further defines legitimacy in the sociological sense, as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions” (Suchman, 1995). He emphasizes that legitimacy is “possessed objectively, yet created subjectively,” meaning that institutions may be treated as legitimate in practice (objective), this treatment is rooted in socially constructed beliefs and perceptions of the organization (subjective) (Suchman, 1995). This means that legitimacy is always in flux based on the actions of the institution and the perception of those actions by the public. Ian Hurd further argues that legitimacy in international politics is based on a “normative belief by an actor that a rule or institutions ought to be obeyed” (Hurd, 1999). Therefore, it can be understood that legitimacy does not come from legal authority alone, rather it comes from a shared belief that an institution is just and therefore its rules should be obeyed. If actors regard an institution as legitimate, they comply with its rules, not out of force, but because they believe the institution should be obeyed, which gives the institution influence and stability, even if it lacks a means of enforcing its rules (Hurd, 1999). Suchman and Hurd emphasize sociological legitimacy based on perception and one that is socially constructed, while Buchanan and Keohane approach legitimacy from a normative standpoint, where they seek to establish concrete criteria for legitimacy based on morals, principles of justice, accountability, and institutional performance.



While this study draws on both normative and sociological definitions of legitimacy to explain how international institutions are understood, its focus remains grounded in the sociological approach. This study does not aim to assess whether the ICC is objectively legitimate based on normative criteria, but rather to explore how legitimacy is framed, perceived, and contested within South African political and media narratives.

To strengthen the link between the theory of constructivism and the theory of institutional legitimacy this research will also incorporate neo-colonialism as a complementary framework. Understanding the ways in which historical events, particularly colonialism, have shaped modern institutions and the global distribution of power allows for a deeper examination of how legitimacy is constructed and challenged over time. Neo-colonialism highlights that many international institutions, including the ICC, are perceived as extensions of colonialism, while operating under the guise of ideas of justice and neutrality. By exploring the theories of constructivism and institutional legitimacy through the lens of neo-colonialism, the research will be able to better critically analyze how postcolonial states like South Africa construct and contest global institutions, like the ICC.

### 4.3. Neo-colonialism as a Framework

While this study is largely guided by the theories of constructivism and legitimacy, it incorporates neo-colonialism as a complementary framework to better understand the historical and political context in which South Africa constructs its views on the ICC. Neo-colonialism, said to be the last form of imperialism, was coined by former Ghana President, Kwame Nkrumah in 1965 during a time in which the world was in flux as colonies were gaining independence for the first time in decades and the world was rearranging based on alignment with the US and other western, democratic powers, with the Soviet Union and other communist states, or were choosing to remain unaligned. It refers to the persistence of colonial power structures in newly independent states, through political, economic, and institutional dominance by their former colonial powers (Nkrumah, 1965). This framework is crucial for analyzing how institutions like the ICC are shaped by postcolonial experiences. By combining constructivism's focus on social meaning and identity, legitimacy theory's concern with normative and perceived authority with neo-colonialism's critique of inequality, this study seeks to offer a more thorough understanding of how the ICC's legitimacy is framed, constructed, and contested in South Africa over time.

Under neo-colonialism, a state, in theory, is independent and has all of the characteristics of being a sovereign nation, but in reality, its economic, political, and therefore its governing systems are controlled by the former colonial powers (Nkrumah, 1965). Neo-colonialism can take many

shapes including the imposition of Western institutions or governing systems on former colonial nations, with the purpose of benefiting the developed world regardless of the harm done to the nation victimized by it (Nkrumah, 1965). Former colonies were granted sovereignty in name but were being subjugated to control by another form. Nkrumah's original formulation provided a path to argue that newly independent nations formally were considered sovereign nations, but that realistically they had very little actual autonomy due to the influence from former colonial powers. Nkrumah's theorization of neo-colonialism has been expanded over time, leading to the study of neo-colonialism as a framework by which global institutions can be studied. Scholars no longer apply neo-colonialism just at the state level but have expanded its use to make better sense of the influence of former colonial powers on global institutions, like the ICC. The expansion of neo-colonialism has come to include Pan-Africanism, geopolitical issues, structural adjustment, and the path toward peace in the future according to Godfrey N. Uzoigwe. (Uzoigwe, 2019). Although many scholars, including Colin Leys and Jack Woddis, claimed that neo-colonialism was temporary, it has evolved, becoming more sophisticated and pervasive, even impacting the people of these sovereign nations on an individual level (Uzoigwe, 2019). This shift has turned neo-colonialism into a powerful tool in which to study the inequalities and historical legacies that have shaped the legitimacy of these institutions.

The British, one of the most pervasive colonizers, made significant political and economic investments in the regions it ruled over and set out to leave a lasting legacy. This led to the establishment of western style governing institutions, particularly focused on the geopolitical level. Geopolitics, often associated with terms like global strategy, and balance-of-power concepts, has now come to reference political ideologies and foreign policies that "suit those of the West", especially as the majority of colonies were gaining independence at the height of the Cold War (Uzoigwe, 2019). Geopolitically, neo-colonialism has been used "to achieve foreign interests" and to maintain control without direct control (Uzoigwe, 2019). This maintenance of control also pertains to the legal systems of former colonies, as they seek to maintain jurisdiction over legal frameworks, which persists today.

To combat neo-colonialism, Nkrumah argued for an African union of newly sovereign nations that would be united both economically and politically. A Pan-African federal union, in Nkrumah's vision, would include a "continental government and federal parliamentary assembly" that would combat neo-colonial influences and ensure foreign entities could no longer divide and conquer the nations and regions of Africa (Langan, 2018). The continued vision for an African Union is evidence that neo-colonialism is not a historic relic, but a sign of an ongoing system that continues to shape governments, judicial systems, and institutions. Therefore, neocolonialism

as a framework proves to be a critical theoretical lens in which to study the legitimacy of the ICC over time in South Africa.

#### 4.4 Operationalization of Theories

In order to explore how the legitimacy of the ICC has been constructed and challenged in South African media communications over time, this study will operationalize three theoretical pillars - constructivism, legitimacy theory, and neo-colonialism as a framework, through a frame analysis approach. Constructivism provides the foundation for analyzing how legitimacy is socially constructed and will be operationalized by analyzing how media outlets interpret, represent, and respond to the ICC. Using constructivism will reveal how the perceptions of these actors are shaped by norms and identities. Legitimacy theory will be used to explain how the ICC's power is framed by media outlets through the lens of sociological legitimacy, which is to what extent the Court is perceived as having the right to rule. This will involve tracing the rhetoric used to justify compliance, critique, or withdrawal, as well as framing the ICC's role as impartial justice or selective enforcement. Neo-colonialism will be employed as a framework to examine how the postcolonial power dynamics and legacies have shaped the framing of the ICC, particularly during moments of tension such as the Bashir incident and South Africa's attempted withdrawal from the Court. In practice, the study will apply the frame analysis to media articles from four six-year time periods; 2002-2007, 2008-2013, 2014-2019, and 2020-2025. This study will code themes and patterns related to legitimacy, sovereignty, justice, and colonial power, which will be analyzed to uncover how narratives around the ICC's legitimacy have changed, contested, or reinforced in South Africa.

### 5. Methodology

This chapter outlines the research design and methodological approach used to explore how the legitimacy of the ICC has been constructed and contested in South Africa over time. It begins with the explanation of the study's philosophical foundation in social constructivism and justifies the choice of a qualitative case study of South Africa. It then introduces the frame analysis method, detailing how media narratives are analyzed to trace shifts in the framing of the ICC across four six-year time periods. Also included in this chapter is the selection and sampling of data sources, the criteria used for filtering relevant articles, and the limitations of the data. This section aims to explain how the study gathers data and analyzes the evidence to answer the main research question.

## 5.1. Constructivism: A Qualitative Case Study

This study is grounded in social constructivism, which assumes that reality is socially constructed (Adler, 1997). Therefore, the legitimacy of global institutions like the ICC is not fixed but emerges through evolving social processes shaped by norms, beliefs, and historically situated ideas (Finnemore and Sikkink, 1998). Therefore, knowledge is actively constructed through ongoing debates, contestations, and shared understandings. This aligns with the focus of the research on how South African media actors have framed the legitimacy of the ICC across different periods, emphasizing the contested nature of international legitimacy over time.

Methodologically, the research adopts a qualitative case study design focused on South Africa, which is appropriate as it allows for an in-depth exploration of how a specific state constructs and contests its relationship with global norms and institutions (George and Bennett, 2005). South Africa is a particularly valuable case due to its early leadership in promoting the ICC following the end of apartheid, its later disillusionment during the Bashir and withdrawal debates, and its current state of cautious and critical re-engagement. By using a constructivist lens, this case study approach will allow for a detailed analysis of how frames surrounding the ICC's legitimacy have been constructed and challenged within South African media narratives.

## 5.2. Research Design:

This study will use a frame analysis to examine how the legitimacy of the ICC has been constructed and contested in South African media narratives across four six-year periods: 2002-2007, 2008-2013, 2014-2019, and 2020-2025. The analysis will be based on three theories: constructivism, legitimacy theory, and neo-colonialism as a framework. Constructivism will inform how people create meaning through language, showing how ideas and identities shape how the ICC is perceived. While legitimacy theory will look at whether the ICC is perceived as a fair, trustworthy, and legitimate institution. Adding neo-colonialism as a framework will enable the research to highlight how the remnants of colonial power dynamics might influence how South African frames global institutions like the ICC.

Drawing on Lindekilde's methodological guide to frame analysis, this research will focus on systematically identifying how actors define problems, assign blame, make moral claims, and propose solutions through their communication (Lindekilde, 2014). Using this approach, the study will analyze news articles by applying Entman's four framing components: problem definition, causal interpretation, moral evaluation, and treatment recommendation. Problem definition will identify how the articles define what the core issues are, such as whether the ICC is portrayed as enforcing justice or as interfering with African sovereignty. Causal interpretation

will examine how causes are assigned, for example whether blame is placed on the ICC, the UN Security Council, or African leaders themselves for tensions surrounding international justice. Moral evaluation will analyze how the events and actors are morally judged, such as portraying the ICC as a neo-colonial institution or a necessary promoter of human rights. Finally, treatment recommendations will identify solutions or courses of action proposed, like withdrawal from the ICC, reforms to international justice mechanisms, or renewed cooperation. Each article will be coded according to these four framing dimensions. By comparing frames across four time periods, the research will trace how perceptions of the ICC's legitimacy have shifted, remained consistent, or evolved in South African media narratives over time.

### 5.3 Method: Frame Analysis

This study adopts a Frame Analysis approach to examine how South Africa's relationship with the ICC has evolved across three distinct five-year periods. The analysis will focus on how different actors, such as government officials and media organizations, create and challenge meaning. Goffman defines a frame as a "schemata of interpretation" which allows individuals to "locate, perceive, identify, and label a seemingly infinite number of concrete occurrences" meaning individuals interpret the world through lenses to provide context to different events (Goffman, 1974). In the context of South Africa and the ICC, the higher number of African cases taken up by the ICC has been framed as evidence of selective justice or bias even though many of these cases were self-referrals by African states themselves. To that point, Goffman distinguishes between "primary frameworks", which focuses on organizing raw experiences, and "keyings", which transform these primary frames into something new, such as dramatization (Goffman, 1974). Returning to the example of the number of African cases taken up by the ICC, the primary framework would present these cases as largely self-referrals by African states, which is a legal and procedural fact. However, this frame can be keyed by political actors and media representatives into a narrative that challenges the neutrality of the Court. In this keyed frame, the same facts are interpreted as evidence of selective justice or Western bias. It is in this way that legal realities are transformed, based on how they are framed and communicated.

Entman, building on the foundation laid by Goffman, defines framing as the process of "selection and salience" (Entman, 1993). This means that framing involves choosing specific aspects of a perceived reality and highlighting them in ways that shape how the audience understands and interprets a topic or event. Framing is the art of choosing what to show and how to show it, often through communications such as news articles and political speeches. In the context of this research, this framework allows for targeted questions such as: "How is the ICC's legitimacy being defined?", "What language is being selected and emphasized to shape public perception?".

Lasse Lindekilde builds further upon the ideas presented by Goffman and Entman by offering a practical guide for applying frame analysis in research. Lindekilde states that frame analysis focuses on how “ideological constructs are used strategically to frame a particular topic”, much like a picture frame that “accentuates certain things, hides others, and borders off reality in a certain way” (Lindekilde, 2014). It is systematic and geared toward understanding how language is used to shape perceptions and drive action. Lindekilde identifies four components of frames, adapted from Entman’s model: problem definition, casual interpretation, moral evaluation, and treatment recommendation (Lindekilde, 2014). He recommends using these categories to analyze media articles and political speeches, emphasizing again that framing is a strategic tool used to mobilize supporters and resist counter-narratives (Lindekilde, 2014). In the context of this research, his framework offers a clear methodological pathway for identifying how South African media actors have framed the ICC over time, particularly around the issue of legitimacy.

#### 5.4. Data Collection and Sampling Strategy

The sources for this study were pulled from media texts in South Africa, specifically the two largest national newspapers; *Mail & Guardian* and the *Sunday Times*. The *Mail & Guardian* is an independent publication known for investigative journalism and critical coverage of political and legal issues. The *Sunday Times* is one of the largest newspapers in the country and has been chosen for its role in shaping mainstream public opinion. These newspapers were chosen for their longstanding histories in South African journalism where they have provided continuous coverage of political and legal developments. This selection provides for a balanced analysis providing insights into both investigative pieces from the *Mail & Guardian* and mainstream narratives from the *Sunday Times*.

During the initial search, keywords such as “International Criminal Court”, “ICC”, and “Rome Statute” were deployed to find relevant articles. Using Nexis Uni, the research was further narrowed by the selection of Africa, South Africa, and the newspaper *Sunday Times*, resulting in approximately 303 articles. This same approach was repeated for the *Mail & Guardian* where approximately 607 articles were found to be relevant. However, analyzing the full set of articles was not feasible. To create a manageable and focused sample, a selection criterion was established: opinion pieces were excluded while editorials and standard news articles were included. To ensure a balanced representation, eight articles were analyzed from each newspaper for a total of sixteen articles per period.

While the selection of articles from the *Mail & Guardian* and *Sunday Times* provides a strong basis for analysis there are limitations to this research. The decision to focus on only two newspapers

may exclude other South African media outlets, particularly those with different political leanings and regional focuses. Additionally, the reliance on articles available through the keyword search of “International Criminal Court” may have resulted in the omission of relevant articles that discuss the ICC using different terminology. The exclusion of opinion pieces<sup>1</sup> potentially omits valuable insights into public sentiment and framing and although efforts were made to balance the number of articles across time periods and sources, the quantity and quality of available articles varies over time, particularly in earlier periods where coverage of the ICC was limited. To combat the limitation of the lack of articles available in the earlier periods, particularly as concerns the *Mail & Guardian* as their archives are not publicly available outside of Nexis Uni, contact was made to access their archives resulting in access to 2,569 articles deemed to be relevant using the same keyword criteria. Attempts were also made to contact the *Sunday Times* for additional archival material, but these efforts were unsuccessful.

With the articles retrieved through the initial keyword search, further filtering was conducted to prioritize sources that engaged with the legitimacy, credibility, or perceived bias of the ICC. By focusing on articles that actively contributed to the framing of the ICC, both positively and negatively, this study ensured that the material analyzed was directly relevant to the research questions. This approach ensured that the final dataset reflected a balanced and thematically coherent representation of public and political debates surrounding the ICC across the selected time periods.

## 5.5 Use of AI Tools

Although AI tools were not used for writing the project, they were strategically employed at the beginning of the research to brainstorm topic ideas and to refine the research. For example, ChatGPT was used to identify and narrow down the number of applicable African states to study in the context of the ICC. Additionally, AI was used to organize the research framework, specifically to organize chapters and subchapters to ensure a flow that is easily digested by the reader. Apart from this, AI was used to gain a better understanding of key concepts like constructivism and legitimacy theory. It is important to note that the use of AI did not replace any aspect of critical thinking or analysis.

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<sup>1</sup> The *Sunday Times* does not differentiate between Opinion and Editorial articles but rather has a subset of articles titled “Opinion and Editorial”, which made it difficult to remove all opinion articles from the data set. Effort was made to limit the number of these articles from the *Sunday Times* but given the lack of public access to the *Sunday Times* archives some of these articles are included in the analysis.

## 6. Analysis

This chapter analyzes how the legitimacy of the ICC has been framed in South African media narratives across four distinct time periods using the two largest national newspapers, the *Sunday Times* and the *Mail & Guardian*. Entman's four framing components - problem definition, causal interpretation, moral evaluation, and treatment recommendation - enables this study to thoroughly evaluate each time period while simultaneously drawing upon legitimacy theory to trace how South African media perceptions of the ICC's legitimacy have shifted over time.

Each time period will begin with a brief contextual overview, followed by a detailed analysis of the frames that emerged in each newspaper. Each section will conclude with a synthesis of how the ICC was framed across both publications during that period. The synthesis will draw on constructivism, legitimacy theory, and neo-colonialism as a framework to interpret the larger meaning and implications of the framing of how the ICC's legitimacy is constructed and contested in South African media narratives.

### 6.1 2002-2007: Commitment to International Justice?

After the end of the apartheid era and the adoption of a new democratic constitution, South Africa established itself as a strong supporter of human rights norms and of the ICC by becoming one of the first African nations to ratify the Rome Statute (Jeangène Vilmer, 2016). Signaling an even stronger commitment to defending human rights and to the ICC, South Africa incorporated its obligations under the Statute into its Constitution through the Implementation of the Rome Statute of the International Criminal Court Act of 2002 (Jeangène Vilmer, 2016). This allowed for the prosecution of international crimes under South African law and indicated that the government intended to position itself as a regional leader and supporter of the Court. South Africa's early support for the ICC reflected its belief that the Court was legitimate and held promise for bringing an end to impunity.

The *Sunday Times* framed the ICC in South Africa during the period 2002-2007 as an institution that was necessary and one that was established in good faith. By supporting the ICC, South Africa had an opportunity to confirm its post-apartheid identity as a defender of international justice norms and to test its consistency of upholding international norms. The ICC was posited as a tool for upholding international legal norms where states fail to uphold those norms. However, the *Mail & Guardian* framed the ICC in South Africa during the same period, 2002-2007, in a broader and more critical capacity as an investigative newspaper. Although the *Mail & Guardian* was still supportive of the goals of the ICC, it raised concerns about political interference, neo-colonial dynamics, and the dilemma of peace versus justice and the impact



these issues could have on its legitimacy. Furthermore, it notes that although the ICC is an important tool for international justice, it must not allow itself to become a pawn in the game of power politics. The following analyzes first the *Sunday Times* articles and then the *Mail & Guardian* articles with the framing of the ICC in South Africa using Entman's four components.

### 6.1.1 The *Sunday Times*

#### **Problem Definition: Double Standards and Africa's Inconsistent Enforcement**

The *Sunday Times* identified two problems throughout its coverage: The disregard of international law by powerful Western nations, such as the US, and the failure of African states, including South Africa, to enforce justice in a consistent manner within its own territory. The ICC was consistently framed as a tool to address global impunity, especially when Western states were attempting to shield themselves from accountability, while calling for justice elsewhere. For reference, South African journalist Andrew Donaldson noted that the war in Iraq made the world more dangerous "by curtailing human rights, undermining the rule of international law, and shielding governments from scrutiny" (Donaldson, "War on Terror", 2003). Similarly, another article cited Judge Richard Goldstone's view that the U.S. invasion of Iraq was "unlawful" and "not in accord with international law", sending a message that international norms are illegitimate when applied selectively, specifically when it comes to Western nations like the US (Barron, 2003).

At the same time, calls were made for African states to not allow these double standards to take hold at home. In a 2003 editorial, the *Sunday Times* highlighted South Africa's failure to act on its own laws, such as the plea deal in the Mark Thatcher<sup>2</sup> case, which left "South Africa's jurisprudence...poorer" by not allowing a full legal test of its anti-mercenary legislation (Seria, 2005). Additionally, the newspaper called out South Africa's silence on Mugabe's actions in Zimbabwe, stating that "South Africa must act, and speak out against what is happening in Zimbabwe" and "start living up to its responsibilities as a regional leader" (Donaldson, "Law Report on Zimbabwe", 2004). With these articles, the *Sunday Times* indicated that Africa had a problem with double standards when it comes to upholding the international rule of law at home.

**Causal Interpretation:** The causes of these problems are linked to the dominance of Western powers within the geopolitical order and the hesitancy of African states to uphold the rule of law when it brings the threat of economic harm or is politically inconvenient. The US invasion of Iraq and its refusal to cooperate with the ICC were noted as undermining the rule of law (Barron, 2003; Donaldson "War on Terror", 2003). Additionally, South Africa's failure to prosecute people like

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<sup>2</sup> Mark Thatcher was a businessman arrested in South Africa for allegedly funding a failed coup in Equatorial Guinea and was set to be tried in but was offered a plea deal in which he pled guilty under anti-mercenary laws and paid a \$450,000 fine.

Thatcher or to challenge Mugabe's abuses in Zimbabwe signaled a selective application of justice at home (Seria, 2005; Ellis, 2007). South Africa's own reluctance to act is directly tied to political and economic considerations, indicating hesitancy of African states to uphold the law when it is economically and politically inconvenient. These issues weakened not only the credibility of the ICC, but also South Africa.

**Moral Evaluation:** The *Sunday Times* made several claims about the importance of upholding international law as South Africa was commended for rejecting demands from the US for bilateral agreements for its citizens to be protected from ICC prosecution, with Max du Plessis pushing the government to not "sign away its soul for the promise of better trade terms" (du Plessis, 2003). However, the moral ground South Africa claimed to stand on was continuously undermined by its own reluctance to challenge regional abuses. Its failure to prosecute Thatcher and its silence regarding Mugabe's alleged crimes were framed as moral and ethical failures.

**Treatment Recommendation** The solution proposed across the *Sunday Times* articles is clear: South Africa must "lead by example" (Hoeane, 2003). This means that it must apply the same legal standards at the domestic level as it expects to be applied internationally, specifically towards Western powers. Hoeane called for South Africa to "take charge" and to prove that no one can expect to operate with impunity (Hoeane, 2003). By supporting the ICC, South Africa is not only fulfilling its legal obligations but can use the institution as a tool to resist neo-colonial pressures from countries like the US. Therefore, the ICC was framed as an institution whose legitimacy depends on states like South Africa to uphold the rule of law at home and abroad.

#### 6.1.2 *The Mail & Guardian*

##### **Problem Definition: Western Impunity, Peace vs. Justice, and Political Interference**

The *Mail & Guardian* identified three problems throughout its coverage during the time period 2002-2007: Unequal application of international law, particularly enjoyed by powerful Western nations, the dilemma between peace and justice, and finally the inconsistent accountability due to political interference. Similar to the point made in the *Sunday Times*, the *Mail & Guardian* also highlights the unequal application of international law as it relates to powerful Western nations. The ICC was created to pursue justice for all, but the lack of accountability for Western nations, particularly the US, was criticized by a staff reporter as the US created a "new category" for Afghan prisoners designating them as neither "prisoners of war" nor "common criminals", thereby preventing them from receiving due process and violating international law ("Goldstone slates US", 2002). This criticism was echoed by another staff reporter addressing a legal test case that was underway in Germany against former US defense secretary, Donald Rumsfeld, for

alleged war crimes against these same Afghan prisoners. The reporter notes that, “up until now, Western leaders have seemed immune from international justice”, regardless of the precedent set in the Pinochet case (“Autumn of the Patriarch”, 2006). These examples indicate that when violations are committed by Western nations, like the US, there appeared to be a lack of accountability. This selective enforcement undermines the legitimacy of the ICC and reinforces the perception of double standards and selective justice.

Another recurring problem was the dilemma between peace and justice. The ICC, in the case of the self-referred Uganda situation, was faced with prosecuting those accused of crimes against humanity during an active conflict at the risk of derailing ongoing peace negotiations (Sheikh, 2005). Uganda’s “unilateral offer of amnesty” to the Lord’s Rebellion Army in exchange for peace undermined the credibility of the ICC and sparked a debate “over whether those who have committed war crimes should be allowed to escape international justice for the sake of peace” (“Peace versus Justice”, 2006). This sparked further debates over whether the ICC, in its pursuit of international justice, had become a threat to stability in the region. Finally, the *Mail & Guardian* points to the concern of inconsistent accountability due to political interference. This ties back to the issue regarding amnesty and the fact that the Court’s authority is “limited by political and diplomatic interventions”, suggesting that the Court’s ability to act is constrained by the willingness of states to enforce justice when it is politically inconvenient (“Is Amnesty a Viable Solution”, 2003). This proves that as political interests get in the way, justice becomes selective, which weakens the credibility of the ICC.

**Causal Interpretation:** The *Mail & Guardian* suggests that the issues the ICC is facing are caused by two issues: the power of Western nations and the fact that governments often decide to put politics ahead of justice. For example, powerful countries like the US are not held accountable by the Court, due to their positioning in the geopolitical sphere. Following the coverage of the treatment of prisoners in Afghanistan, a “new category” of prisoners was created by the US that avoided both international and US legal protections, therefore allowing them to avoid accountability (“Goldstone Slates US”, 2002). Further exemplifying this issue, the attempt to charge Donald Rumsfeld was deemed unlikely to succeed as “Western leaders have seemed immune from international justice” (“Autumn of the Patriarch”, 2006).

The *Mail & Guardian* also points to a disconnect between the legal mandate of the ICC and the reality of local politics. In Uganda, the Court was criticized for issuing arrest warrants during peace talks with one article noting that it could “close...the path to peaceful negotiation” (“Peace Groups Balk at ICC Decision”, 2004). Furthermore, when Uganda decided to offer amnesty to the

perpetrators after the ICC had indicated warrants for arrest were to be issued, it undermined the legitimacy of the Court by putting its own politics ahead of international justice (“Peace versus Justice”, 2006). Overall, the *Mail & Guardian*, similar to the *Sunday Times*, notes that the ICC is struggling not only because of legal issues, but because of political reasons as well, mainly non-cooperation by the states.

**Moral Evaluation:** The *Mail & Guardian* expressed concerns about the moral credibility of the ICC when the impression is given that it applies justice selectively or is politically biased. It raised questions as to why powerful Western nations, like the US, are rarely prosecuted even when they have been accused of committing war crimes (“Autumn of the Patriarch”, 2006). The ICC was also criticized for interfering with local peace processes in Uganda, even though this was a case of self-referral, by issuing arrest warrants for leaders in the LRA (Sheik, 2005). Despite these concerns, the newspaper recognized the value of the ICC in the global justice system. It offered praise for the Court for its actions in Darfur, citing them as a “first step” toward accountability as it issued summons for sitting heads of government (“Activists Welcome ICC Summons on Darfur”, 2007). Overall, the *Mail & Guardian* notes that the ICC is an essential institution, its moral authority is dependent upon fairly and consistently applying justice to all.

**Treatment Recommendation** The solution proposed across the *Mail & Guardian* articles is clear: the ICC must pursue justice in a fair and consistent way to all states, including powerful Western nations (“Autumn of the Patriarch”, 2006). Additionally, in order to maintain its legitimacy, the ICC must take into consideration the political context of the countries in which it operates in order to avoid the risk of undermining peace efforts in active conflict zones (Sheidk, 2005; “Peace Groups Balk at ICC Decision, 2004). Although the *Mail & Guardian* takes a more critical approach to the ICC, it still supports its role in the fight against impunity (“Activists Welcome ICC Summons on Darfur, 2007).

### 6.1.3 Synthesis

Both the *Sunday Times* and the *Mail & Guardian*, between 2002 and 2007, framed the ICC as a vital institution in the fight against impunity, but one whose legitimacy depended on consistent support from its member states, especially South Africa as one of its earliest supporters. Through a constructivist lens, both newspapers discuss how the legitimacy of the ICC is not automatic but is shaped by how actors interact with the institution and whether they see it as fair and credible. The *Sunday Times* framed the ICC as a necessary tool for enforcing international law and ending impunity, while the *Mail & Guardian* took a more cautious and critical approach. Although the *Mail & Guardian* acknowledged the importance of the Court, concerns were raised

about double standards, political influence, and bias specifically pointing out that Western countries are rarely held accountable for their crimes while less powerful nations are almost always held accountable. This concern reflects a broader neo-colonial critique. Given that the Court was still in its infancy, the newspapers concern that the ICC already appeared to shield powerful nations from accountability raised questions about its future and long-term legitimacy. The implication was that international law may not be neutral and risked becoming another tool to be used against weaker nations in the Global South.

Using legitimacy theory, both newspapers suggest that the authority of the ICC depends on being consistent and fair. If it cannot maintain this standard and be perceived as doing so, its credibility is weakened. Overall, the ICC was framed in both newspapers as a Court that is well intentioned, but one that faces serious challenges such as political interference, selective enforcement, and issues of inequality.

## 6.2 2008-2013: Increasing Tensions

Following this period of initial support for the ICC, South Africa entered a new period of engagement with the Court between 2008 and 2013 which was marked by increasing tensions. As a signatory to the Rome Statute and a member of the African Union, South Africa began to find itself conflicted between its legal obligations to the ICC and its regional obligations as a member of the AU. The AU and other regional actors increasingly began to view the ICC as a biased institution that was overly focused on Africa (Jeangène Vilmer, 2016; Jalloh, 2019). The indictment of Sudanese President Omar al-Bashir marked a turning point in the relationship between the AU and the ICC, as the AU criticized the Court for selective justice and undermining peace processes by indicting a sitting head of state (Magliveras, 2019). This period reflects a slight shift in the framing of the ICC in South Africa, portraying the Court not as a neutral institution, but as an institution caught between justice and sovereignty.

The *Sunday Times* framed the ICC in South Africa during the period 2008-2013 as an institution that was still worthy of preservation, but one whose legitimacy was under attack due to increasing tensions between South Africa's obligations to both the ICC and the AU, alongside accusations of bias. It noted the growing calls for withdrawal across Africa from the Court but warned that leaving the Court would lead to impunity. The *Mail & Guardian* framed the ICC in South Africa during the same period, 2008-2013, in a similar manner, but provided a broader context and a more critical perspective. Although the *Mail & Guardian* acknowledged how invaluable the ICC could be in preventing future atrocities, it provided a more direct criticism of the ICC's actions. The *Mail & Guardian* questioned whether the ICC could maintain its legitimacy if it continued to

disproportionately focus on African states while ignoring the crimes committed by powerful states, like the US, and called for the ICC to consider the impact of its actions on peace efforts. Both newspapers began to shift from viewing the Court as a vital and necessary institution toward more cautious support during the 2008-2013 period by framing the ICC as an invaluable institution, but one in need of reform. The following analyzes first the *Sunday Times* articles and then the *Mail & Guardian* articles with the framing of the ICC in South Africa using Entman's four components.

### 6.2.1 *The Sunday Times*

#### **Problem Definition: Selective Justice, Political Pressure, and the Threat of Withdrawal**

The *Sunday Times* identified three overarching problems throughout its coverage of the ICC: Issues of selective justice and neo-colonialism, increasing tensions between South Africa's obligations to the ICC and the AU, and finally the risk of the undermining of international justice if the AU were to withdraw from the ICC. The ICC is framed as a Court that is overly interested in prosecuting cases from Africa, despite the ongoing atrocities outside of the continent. Mohau Pheko asked why "Africa (is) the only continent targeted by the ICC", which emphasized the perception of selective prosecution (Pheko, 2008). Not only does Pheko question the Court's interest in Africa but posits that Western solutions for justice are in direct conflict with African notions of justice, which are rooted not only in punishment but in seeking a lasting peace (Pheko, 2008). This critique is echoed by African leaders who warned that it appears "foreign judges seek to recolonise Africa through a form of 'judicial coup d'état'" under the auspices of "universal jurisdiction" (Fritz, 2008). Not only does the problem identified by the *Sunday Times* rest in the selective application of justice, but in the danger of the Court becoming another tool of neo-colonialism.

The second problem centers on the increasing tension between South Africa's obligations to both the ICC and the AU. This tension came to a head with the Court's indictment of Omar al-Bashir, which the AU refused to cooperate with, citing that it would make it "more difficult to resolve the Darfur conflict" (Maharaj, 2009). The leading party in South Africa, the ANC, agreed with the AU and went so far as to accuse the ICC of "representing inequality before world justice, where the weak are always wrong and the strong are always right", thereby accusing the ICC of unfairly targeting African leaders over Western leaders (Ngalwa, "SA Wants Plan", 2013). However, this agreement by South Africa was seen by legal activists as being in direct conflict with not only its obligations to the Court, but "in violation of South Africa's constitution" (Harper, 2009).

Finally, while the ICC was framed as being imperfect, it was noted that if the AU leaves the Court, as many members were arguing for, it would undermine the rule of law and “play into the hands of human rights abusers” (Ngalwa, “Africa Decides”, 2013). Bensouda, the newly elected ICC Prosecutor, argued that the ICC goes “where the victims need us” and that leaving the Court would allow for the “repetition” of experiences like those in Rwanda, Uganda, and Sudan (Chirinda, 2012). The *Sunday Times* pointed out that if the AU decided to leave the Court there would be a vacuum of justice left in the wake. Overall, the framing suggests that the ICC’s legitimacy is under pressure, but that abandoning the Court could lead to even greater harm to international justice.

**Causal Interpretation:** The *Sunday Times* suggests that the issues the ICC is facing are caused by Western dominance in global institutions and South Africa’s conflicting obligations and loyalties. As the ICC began to launch more investigations, it became clear that the African continent was the focus of the majority of these cases (Pheko, 2008; Fritz, 2008). Additionally, as these cases began to target more sitting heads of state of African states, the AU began to oppose what it viewed as biased prosecutions leading to tensions for South Africa as it attempted to balance its obligations to the ICC and the AU (Maharaj, 2009; Harper, 2009). This tension intensified following the indictment of Sudanese President Omar al-Bashir, whereby the AU began to push a policy of non-cooperation on the basis that the indictments undermined peace efforts (Maharaj, 2009). As a sitting member of both the ICC and the AU, South Africa was left with the choice of upholding its obligations to the Court and thereby its own constitution or standing with regional allies and choosing a policy of non-cooperation. Ultimately, it was both the dominance of Western powers in global institutions and the political tension that contributed to the weakening of the ICC’s credibility during this period.

**Moral Evaluation:** The *Sunday Times* framed the ICC as an institution that was morally necessary for holding perpetrators accountable, yet one whose legitimacy was undermined by its selective application of justice and the politicization of the Court. While the newly elected ICC Prosecutor, Fatou Bensouda, praised the Court as a symbol of justice for victims, the newspaper echoed concerns that the ICC was too focused on African leaders while Western leaders went unpunished (Chirinda, 2012; Pheko, 2008). The *Sunday Times* also questioned the moral authority of South Africa, specifically when it failed to live up to its human rights commitments. South Africa’s failure to act in the face of the Libyan crisis and its acquiescence to the AU on the Bashir indictment were criticized as a betrayal of its constitutional obligations and its identity on the global stage as a human rights defender (Harper, 2009; “A rare chance to shine”, 2011). Both

the ICC and South Africa were deemed to be morally compromised when they put political interests ahead of a commitment to justice.

**Treatment Recommendation:** The solution proposed across the *Sunday Times* articles is clear: the ICC should operate with a greater level of fairness and South Africa, along with the AU, should seek reform rather than withdrawal from the ICC. The newspaper further argued that the Court's legitimacy should be strengthened through reform and pressure from regional powers, rather than abandoning it (Ngalwa, "Africa Decides Not to Exit ICC, 2013). As South Africa criticized the ICC and made plans for the withdrawal of the AU, it sought an alternative to replace the Court, specifically at the regional level. It acknowledged that it is "known for its strong policies on human rights and upholding the rule of law" and that a justice vacuum was a risk it was not willing to take (Ngalwa, "SA Wants Plan", 2013). Furthermore, the *Sunday Times* called on South Africa to embody its role as a leader in human rights protections by standing up to the abuses in Libya and supporting the ICC investigation into Gaddafi ("A Rare Chance to Shine", 2011). By meeting its constitutional and regional obligations, South Africa would be able to uphold international justice, while also calling for reform within the ICC, thereby strengthening the legitimacy of both the Court and its own identity as a human rights defender.

#### 6.2.2 *The Mail & Guardian*

##### **Problem Definition: Selective Justice and the Struggle Between Peace, Justice, and Sovereignty**

Between 2008 and 2013, the *Mail & Guardian* identified two overarching problems throughout its coverage of the ICC: Selective justice and neo-colonialism, and a growing tension between peace, justice, and sovereignty. Similar to the *Sunday Times*, the *Mail & Guardian* criticized the ICC for being overly interested in prosecuting African leaders while ignoring atrocities committed by powerful nations like the U.S, feeding into accusations of neo-colonialism (Mannak, 2008). As the ICC began prosecuting cases, four out of the first six cases were in Africa, leading to the criticism that the ICC was focused on "economically weak and politically vulnerable countries" and that it was using Africa as a "test case" for international justice (Mannak, 2008). Expanding upon this critique, a top AU official noted that the ICC was deploying a "double-standard by exclusively targeting African leaders", indicating that the AU was quickly souring to the idea of the Court and raising concerns about its legitimacy ("ICC accused of 'exclusively'", 2011).

At the same time, the *Mail & Guardian* raised questions on the growing tension between the ICC's pursuit of justice and efforts by African countries to seek peace and maintain their sovereignty. When the ICC issued a warrant for the arrest of Sudanese President Omar al-Bashir, the AU



criticized the Court decision as one that would obstruct progress in peace talks and aid in the destabilization of the region (“Peace and Justice Go Together”, 2008). Jean Ping, AU Commission President, reinforced this critique by arguing that the Court was putting justice ahead of peace and security, stating that all three must be taken together in a “holistic manner” or risk creating “more problems than solving them” (“ICC Accused of ‘exclusively’, 2011). The *Mail & Guardian* showed that the ICC’s attempt to bring an end to impunity led to the Court being perceived as interfering with peace talks and decisions that should have been left to sovereign nations. This framing suggests that the legitimacy of the ICC was questioned not only because of the perceived bias against African states, but also because African countries were being forced to choose between international justice and protecting their sovereignty.

**Causal Interpretation:** The *Mail & Guardian* suggests that the problems facing the ICC were caused by the dominance of powerful states in international justice and growing tension between the ICC’s blind pursuit of justice without considering the reality of regional politics. The Court was perceived as targeting weaker, mostly African countries, while ignoring countries like the US, giving the impression that the ICC was biased (Mannak, 2008; “ICC Accused of ‘Exclusively’”, 2011). As the ICC focused on pursuing justice in cases like Sudan and Kenya by issuing arrest warrants for sitting heads of state without considering the regional political ramifications, the ICC opened itself up to criticism regarding its legitimacy. The AU argued that these arrest warrants would hurt peace talks and interfere with national sovereignty (“Peace and Justice Go Together”, 2008; Malone, 2010). These tensions made it difficult for the ICC to be perceived as legitimate.

**Moral Evaluation:** The *Mail & Guardian* framed the ICC as an institution that intended to end impunity but questioned whether it was capable of living up to that intention. Its moral authority and legitimacy were under attack by accusations of bias and selective justice, with many articles noting that the ICC appeared to only be prosecuting African leaders and ignoring abuses committed by powerful states (“ICC Accused of ‘Exclusively’ Targeting Africans”, 2011; Mannak, 2008). The *Mail & Guardian* also raised questions on whether the Court was truly acting in the best interests of victims if it was willing to put peace and security at risk by indicting sitting heads of state (Maromo, 2013). However, the Court was also praised by Kofi Annan, Secretary General of the United Nations (UN), for trying to bring accountability for serious crimes, stating that “justice and peace are interlinked” and should be pursued simultaneously (“Africa to Decide on Involvement in ICC”, 2013). Additionally, the newspaper indicated that the ICC was a “critical institution” for preventing future abuses and protecting international justice (“Security Council Referral Confirms ICC”, 2011). The moral evaluation presented by the *Mail & Guardian* was mixed

in noting that the ICC is necessary, but that it has work to do in order to be perceived as a balanced and fair institution that is at a minimum aware of the political implications of its actions.

**Treatment Recommendation:** The solution proposed in the *Mail & Guardian* articles call for reforms within the ICC rather than withdrawal en masse by African states. African countries were encouraged to remain involved with the ICC in order to push for reform from the inside and to hold the Court accountable (“Security Council Reconfirms ICC”, 2011). The newspaper also called for justice to be applied equally across all regions and nations, regardless of their geopolitical standing (Mannak, 2008). Additionally, the ICC was urged to launch investigations outside of the African continent in order to rebuild trust (Mannak, 2008). Another suggestion presented in the *Mail & Guardian* articles indicated that justice should not usurp peace processes, but that the two should operate in parallel (“ICC accused of ‘Exclusively’ Targeting Africans, 2011). Overall, the approach to reaffirming the legitimacy of the ICC proposed by the *Mail & Guardian* was for the Court to reform.

### 6.2.3 Synthesis

Between 2008 and 2013, the *Sunday Times* and *Mail & Guardian* continued to frame the ICC as an invaluable institution for ending impunity and bringing perpetrators to justice, but one that was facing challenges to its legitimacy due to perceived bias, political interference, and an increasingly difficult relationship with African states. From a constructivist perspective, both newspapers noted that the ICC’s legitimacy was shaped by its interactions with states and how those states perceived the institution. The *Sunday Times* warned that although the Court was not perfect, withdrawal would mean leaving a vacuum in international justice. Similarly, the *Mail & Guardian* called for reform with greater emphasis on the ICC’s actions that potentially risked undermining peace efforts in Africa, specifically its indictments of sitting heads of state, which clashed with the political reality on the ground.

Reflecting a neo-colonial critique, both newspapers raised concerns about the perception of the ICC’s selective enforcement of African states, whilst powerful states like the US went unpunished. This left the impression that the ICC was disproportionately attacking weaker states. When applying legitimacy theory, it is clear the newspapers framed the legitimacy of the ICC as being dependent upon its fair application of justice and respect for the political reality in which it operates. Overall, both newspapers framed the Court as legitimate, but one that needs reform.

## 6.3 2014-2019: Constitutional Crisis and Increasing Tensions

Following a period of cautious support for the ICC alongside calls for reform, South Africa’s engagement with the ICC between 2014 and 2019 was marked by increasing tensions, ending in

an attempted withdrawal. In 2015, South Africa failed to arrest the Sudanese president upon his visit to the country in direct violation of its obligations to the ICC (Jeangène Vilmer, 2016;). Consequently, this resulted in domestic fall out as legal institutions challenged the ruling party, the ANC, and intensified criticism of the ICC's perceived bias against African leaders (Magliveras, 2019; "Court Criticised over "Al-Bashir" Judgment." de Rebus, August 2015:5 [2015] DEREBUS 124", 2015). In response, South Africa sent a letter notifying the UN of its intent to withdraw from the Court in 2016, many believe to avoid any legal consequences, although this was later ruled unconstitutional by the High Court (Werle & Zimmermann, 2017). This marked a turning point not only in South Africa's relationship with the ICC, but also in the framing of the ICC by South African media. The ICC was no longer framed as an institution necessary to end impunity, but rather as one in crisis.

The *Sunday Times* and the *Mail & Guardian* framed the ICC in South Africa during the period 2014-2019 as an institution that was important, but one whose legitimacy was increasingly under attack. The Bashir incident represented a turning point that tested not only the ICC, but also South Africa's commitment to its own laws and its self-proclaimed identity as a defender of human rights. The *Sunday Times* emphasized the domestic implications of South Africa's decision to allow Bashir to return to Sudan, while the *Mail & Guardian* used the incident to shed light on regional and international implications. However, both newspapers continued to criticize the ICC for perceptions of selective justice. Ultimately, during the 2014-2019 period the ICC was framed as an institution in crisis, but one that could be saved through reform. The following analyzes first the *Sunday Times* articles and then the *Mail & Guardian* articles with the framing of the ICC in South Africa using Entman's four components.

### 6.3.1 *The Sunday Times*

#### **Problem Definition: Constitutional Crisis, Selective Justice, and Debates of Withdrawal**

The *Sunday Times* identified three overarching problems throughout its coverage of the ICC: The domestic constitutional crisis stemming from the Bashir incident and subsequent attempt at withdrawal, the continued perception that the ICC is biased and unfairly targets Africa and finally debates over withdrawal from the ICC by African states. According to the newspaper, South Africa's decision to allow Sudanese President Omar al-Bashir to leave the country in defiance of a court order represented a direct threat to the country's constitution. One author noted that South Africa is "in big trouble if the only alternative to an unfavourable court ruling is to ignore or defy it" indicating that ignoring the High Court's order forbidding al-Bashir's exit from the country was a "subversion of the rule of law" (Tlhabi, 2015). Echoing this, the newspaper noted that ignoring the law was a betrayal of "South Africa's proud tradition...of being a champion of human

rights and justice” (“Quitting ICC Would Betray”, 2015). This constitutional crisis was framed as a turning point in post-apartheid South Africa which would determine whether the country would uphold its constitutional obligations and the rule of law.

Along with legal concerns, the *Sunday Times* also indicated that the ICC was still dealing with concerns of selective justice. Questions were raised on why the ICC continued to pursue actors like Bashir, but refused to investigate figures like George W. Bush, the American President, and Tony Blair, the British Prime Minister, when all were responsible for “the murder of hundreds of thousands in unjust wars” (Habib, 2015). The newspaper noted that this was a view shared by many African leaders and framed the ICC as a flawed institution (Habib, 2015). Although there was frustration and calls to withdraw from the Court, the newspaper still called for continued participation in the ICC in order to push for reform from the inside and “to challenge global power relations” (Habib, 2015).

Finally, the newspaper discussed the arguments surrounding the debates regarding withdrawal from the ICC. Ultimately the articles portrayed the discussion regarding withdrawal as detrimental to South Africa’s moral authority stating that “withdrawal will weaken SA’s global clout” and hurt its reputation as a “human rights leader in the region” (Swart, 2015). Fatou Bensouda, the sitting prosecutor of the ICC, wrote that the “ICC is not a panacea...but it recognizes victims when no other court will”, emphasizing the importance of remaining a member of the Court rather than withdrawing (Bensouda, 2015).

**Causal Interpretation:** The *Sunday Times* suggests that the problems facing the ICC can be attributed to a combination of domestic, regional, and international issues. Domestically, South Africa defied the order of the High Court to arrest Bashir, which was in direct violation of its constitution. This indicates that the South African government was willing to ignore the law in order to put political interests first (Tlhabi, 2015). The fallout following this action ultimately led to the government’s attempted withdrawal from the Court. Regionally, the African Union pressured South Africa and other AU member states to not comply with the ICC arrest warrant, warning that compliance could jeopardize economic and diplomatic relationships across the continent (“Quitting ICC Would Betray”, 2015). Finally, on the international level the continued criticism of the ICC’s application of selective justice put South Africa in a difficult position. The Court’s unwillingness or inability to investigate figures like Bush and Blair, while issuing arrest warrants for African leaders like Bashir came to be viewed as more evidence of the Court’s bias, fueled calls for African states to withdraw (Habib, 2015).

**Moral Evaluation:** The *Sunday Times* framed the ICC as an institution that was important in ending impunity, but one that was quickly losing credibility, but one that was still valuable as it is “the only avenue through which [victims] can get justice” (“Quitting ICC Would Betray”, 2015). However, the newspaper continued to raise concerns about the Court’s failure to investigate powerful Western leaders (Habib, 2015). Furthermore, the *Sunday Times* criticized the government of South Africa for openly defying a court order, noting that by doing so it had betrayed the country’s legacy as a defender of human rights (Tlhabi, 2015). Overall, both South Africa and the ICC were criticized for their lack of moral credibility as they failed to uphold their own principles.

**Treatment Recommendation:** The solution proposed by the *Sunday Times* was to remain part of the ICC in order to push for reform from within. Rather than withdraw from the Court, South Africa should recommit itself to the principles of the Rome Statute, noting that withdrawal would constitute a betrayal of a “proud tradition” of supporting human rights (“Quitting ICC Would Betray”, 2015). Furthermore, the newspaper called on the Court to begin investigating powerful Western actors and to open investigations in other parts of the world besides the African continent to combat the perception that it is a biased court and to fix its legitimacy problem (Habib, 2015). As an early supporter of the ICC, the newspaper argued that South Africa should take the lead in seeking reform and in the meantime should rededicate itself to upholding the rule of law at home.

### 6.3.2 *The Mail & Guardian*

#### **Problem Definition: Crisis in South Africa, Selective Justice, and Credibility of the ICC**

Between 2014 and 2019, the *Mail & Guardian* identified three overarching problems throughout its coverage of the ICC: the crisis in South Africa to balance its domestic, regional, and international obligations, perceptions of selective justice by the ICC, and the loss of credibility of the ICC. Similar to the problem identified in the *Sunday Times*, the *Mail & Guardian* noted that South Africa was struggling to balance its obligations to the ICC with its domestic and regional obligations. The newspaper noted that although South Africa was obligated to arrest Bashir upon his arrival to the country, had they done so, it “would have isolated South Africa from the rest of the continent” (“SA’s Foreign Policy Walks a Fine Line”, 2015). Echoing this sentiment, it was emphasized that the ICC was “aware that South Africa may have difficulties in executing the warrant” and executing the warrant would result in a “breach [of] its existing treaty obligations with the AU” (Gqirana, 2015). Following the Bashir Incident, the South African government found itself torn between its obligations to the ICC, its Constitution, and the AU.

The second problem identified by the *Mail & Guardian* was the continued perception that the ICC was biased and applied justice selectively. The newspaper argued that the Court was targeting African leaders and avoiding accountability for more powerful states, like the US, noting that “to date [the Court] has only one open investigation outside Africa – the probe in Georgia (Bluen, 2017). Meanwhile, another article indicated that the ICC was applying “double standards” to different countries, fueling calls for non-cooperation and withdrawal by the AU (Molewa, 2016).

Finally, the *Mail & Guardian* identified questions regarding the credibility of the ICC based on its effectiveness. The newspaper noted that since the creation of the Court twenty years prior, “only three individuals have been convicted”, which raised concerns of whether the Court was truly able to provide justice for victims (Moffett, 2019). Not only were African states raising concerns over the effectiveness of the Court, but the United Kingdom also questioned whether it was worth “all the money being spent on it” if the ICC was unable to bring perpetrators to justice (Moffett, 2019). These concerns were eroding the credibility of the ICC and its ability to bring an end to impunity.

**Causal Interpretation:** The *Mail & Guardian* suggests that the problems facing the ICC can be attributed to political pressure, the influence of powerful states, and problems within the Court. South Africa was torn between its obligations to the ICC and to the AU, which contributed to its decision to allow Bashir to leave the country in defiance of the ICC arrest warrant and led to its ultimate decision to withdraw from the ICC (Gqirana, 2015). Furthermore, the perception of the ICC as a biased institution was made worse by the impression that powerful non-signatory states, like the sitting members of the UNSC, which refers cases to the ICC, were manipulating the Court while refusing “to submit themselves to the ICC” (“SA’s Foreign Policy Walks a Fine Line”, 2015). Finally, the fact that the Court was unable to secure meaningful convictions and had dismissed several high-profile cases, including the Kenya investigation, led to concerns about its credibility (Moffett, 2019).

**Moral Evaluation:** The *Mail & Guardian* framed the ICC as an institution that was well intentioned, but one that had lost credibility across the African continent. This loss of credibility was due to the continued perception that the Court was biased and was not successfully bringing an end to impunity (Moffett, 2019). The newspaper did not call for withdrawal from the ICC, but did acknowledge that the Court had “compromised itself” by allowing external actors, like the UNSC, to act as “judge, jury, and executioner” (Molewa, 2016). The Court’s credibility was further impacted by its failed prosecutions, particularly the cases in Kenya and Côte d'Ivoire, which

resulted in dismissal and acquittal respectively (Moffett, 2019). Both cases resulted in a loss of credibility for the Court and impacted its perception across the African continent.

**Treatment Recommendation:** The solution proposed by the *Mail & Guardian* was to remain part of the ICC in order to push for reform from within, which is similar to the proposed treatment by the *Sunday Times*. Throughout the articles in the *Mail & Guardian*, South Africa was called upon to continue its support and advocacy of the Court as one of the initial supporters of the institution (Keppler, 2019; Bluen; 2017). The newspaper acknowledged that the grievances of African states with the Court were legitimate, particularly the perception of selective justice and the influence of non-signatory states on the institution; it stressed that withdrawing from the Court could lead to detrimental consequences for victims (Keppler, 2019). By remaining a committed member of the ICC, South Africa could signal to the world that it was committed to maintaining its global identity as a human rights defender and fight to hold all perpetrators accountable, not just those from weaker states (Keppler, 2019). Furthermore, the newspaper argued that the AU should continue to strive towards strengthening African mechanisms of justice, such as the African Court on Human and Peoples' Rights, in order to ensure accountability for perpetrators and justice for victims ("ICC Ruling is an Opening", 2017). Ultimately, the *Mail & Guardian* argued that the ICC is still a valuable institution, and that South Africa should focus on making reforms from within, rather than withdrawing.

### 6.3.3 Synthesis

Between 2014 and 2019, the *Sunday Times* and *Mail & Guardian* shifted its framing of the ICC from an invaluable institution for ending impunity to an institution in crisis. Both newspapers acknowledged that the legitimacy of the ICC was being challenged. From a constructivist perspective, the *Sunday Times* and the *Mail & Guardian* noted that the perception of states directly impacts the authority of the ICC as it relies on member states to enforce arrest warrants and to collaborate in the investigations. By allowing Bashir to leave the country, South Africa directly impacted the authority and legitimacy of the ICC, even though it was attempting to balance its own domestic, regional, and international obligations. Both the *Sunday Times* and the *Mail & Guardian* highlighted this balancing act, although the *Sunday Times* emphasized that South Africa risked losing its moral authority by not arresting Bashir.

Using legitimacy theory, both newspapers noted that the legitimacy of the ICC was being damaged by its failure to investigate atrocities outside of Africa. The focus on Africa fed into the perception that the Court was yet another example of a neo-colonial global institution, which was emphasized by both the *Sunday Times* and the *Mail & Guardian*. These two newspapers framed

the ICC as a compromised institution and although it was a well-intentioned one, it was at risk of losing its legitimacy if reforms were not instituted immediately. However, they advocated for these reforms to be led by countries like South Africa from within the ICC rather than through withdrawal.

#### 6.4 2020-2025: Continuing Crisis and Cautious Re-engagement

Following South Africa's attempt to withdraw from the ICC and the ensuing domestic crisis, South Africa entered a new period of engagement with the ICC. This period<sup>3</sup> was marked by growing uncertainty of South Africa's role on the international stage as it strengthened its relationship with BRICS and it tentatively re-engaged with the Court ("South Africa Moves to Quit ICC over Putin", 2023). Additionally, in February 2018, Cyril Ramaphosa took on the role of President of South Africa, who began calling for government accountability and credibility ("MPs Elect Cyril Ramaphosa", 2018). Although South Africa had rescinded its intent to withdraw from the ICC in 2017, the relationship remained uncertain and it began to reconsider withdrawal following the ICC's issuance of an arrest warrant for Vladimir Putin over war crimes in Ukraine in 2023 ("South Africa moves to quit ICC", 2023). Reconsideration of withdrawal came to a head when rumors began to circulate that Putin would attend the BRICS Summit to be held in South Africa in 2023, as South Africa would be faced with the obligation to execute the arrest warrant and take Putin into custody (Imray and Magome, 2023). Ultimately, Putin sent his Foreign Minister, Sergey Lavrov, in his place and attended the Summit virtually, allowing South Africa to avoid another crisis (Imray and Magome, 2023). As a sign of re-engagement with the ICC, in November 2023, South Africa joined a group of like-minded states in submitting a referral to the ICC under Article 14 of the Rome Statute regarding the Palestinian situation ("South Africa, along with Like-Minded States, 2023).

The *Sunday Times* and the *Mail & Guardian* framed the ICC in South Africa during the period 2020-2025 as an institution that was flawed and in urgent need of reform. South Africa's role as a member of the ICC and the BRICS alliance came into focus as the ICC issued an arrest warrant for Russian President Vladimir Putin, as the country found its obligations in conflict once again. The *Sunday Times* emphasized the potential risks of non-compliance with another ICC warrant to the Court and to the reputation of South Africa as a defender of human rights. Meanwhile, the *Mail & Guardian* focused on the legal and diplomatic implications of non-compliance, specifically targeting Articles 27 and 98 of the Rome Statute. Both newspapers continued to

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<sup>3</sup> The situation surrounding this period is ongoing and therefore still unfolding. This section represents a study of the language used by the *Sunday Times* and the *Mail & Guardian* to interpret current sentiments and legitimacy of the Court at the time of the writing in May 2025. This is subject to have changed due to new events.



criticize the ICC for perceptions of selective justice. Ultimately, during the 2020-2025 period the ICC was framed as an institution in crisis, but one that could be saved through reform. The following section analyzes first the *Sunday Times* articles and then the *Mail & Guardian* articles with the framing of the ICC in South Africa using Entman's four components.

#### 6.4.1 *The Sunday Times*

##### **Problem Definition: South African Crisis, Selective Justice, and Shifts in Global Alliances**

Between 2020 and 2025, the *Sunday Times* identified three overarching problems throughout its coverage of the ICC: the crisis in South Africa to balance its domestic, regional, and international obligations, perceptions of selective justice by the ICC, and a crisis of commitment to new global alliances. Similar to the problems identified in the period of 2014 to 2019, the *Sunday Times* noted that South Africa was faced with a dilemma of choosing between its constitutional, regional, and international obligations. Following the Bashir incident in 2015, the ruling party in South Africa, the ANC, was divided, but by 2020 the party was reconsidering its withdrawal from the ICC. This reconsideration was due to the fact that other African states had already abandoned their own attempts at withdrawal due to changes in the "political climate", leaving South Africa "isolated" (Cele, 2020). Although there were members of the party that were adamant that withdrawal "remained the decision of the party", President Ramaphosa called for a "strategic retreat" in order to balance relationships within the region (Cele, 2020; "Ace vs. Cyril", 2020). Additionally, South Africa was attempting to address other international matters, such as the Palestinian case against Israel, which required its support of the ICC ("Ace vs. Cyril", 2020). In addition to this change in policy, South Africa, as a member of BRICS, was once again faced with the crisis of having to choose between its obligations to the ICC and its Constitution and its international obligations as the Court issued an arrest warrant for Russian President, Vladimir Putin, over actions taken in Ukraine (Matiwane, 2023). The arrest warrant, once again, placed South Africa in the position of having to choose between its domestic, regional, and international obligations.

The second problem highlighted by the *Sunday Times* was the continued perception that the ICC was biased and applied justice selectively. The Court was criticized for disproportionately targeting African leaders while ignoring atrocities committed by powerful Western states. One article noted that, "All 52 indictments in 18 years have been against Africans," while the US escaped accountability for torture in Afghanistan, the investigation into Israel had stalled, and the US threatened sanctions against countries that continued to support the ICC (Motala, 2023). This reinforced the belief that the ICC was focused on maintaining the "status quo" and allowing Western powers to go unpunished (Motala, 2023). The ICC's actions were even described as a form of "deja vu" for African states as the Court's behavior was compared to that of colonial

powers prior to independence (Motala, 2023). As a result, the legitimacy of the ICC continued to be questioned

Finally, the *Sunday Times*, highlighted the growing pressure South Africa was facing as a result of its membership in the BRICS alliance. Upon the issuance of the arrest warrant for Putin, a founding member of BRICS, South Africa was once again caught between conflicting obligations (“South Africa must always choose”, 2023). With the 2023 BRICS Summit scheduled to be held in South Africa, debates over whether the country would enforce the warrant against Putin or choose to repeat its earlier actions, as it had with Bashir, intensified (Mazibuko, 2023). The *Sunday Times* warned that the country risked its reputation as a defender of human rights if it chose to ignore the ICC again (Mazibuko, 2023). South Africa was once again forced to choose between honoring its obligations to the ICC or to put its own strategic interests first.

**Causal Interpretation:** The *Sunday Times* suggests that the problems facing South Africa, and the ICC were caused by domestic political division, problems within the Court, and pressure from global alliances. The division within the ANC over whether to continue pursuing a policy of withdrawal from the Court led to confusion over South Africa’s stance on the ICC (Cele, 2020). Meanwhile, the legitimacy of the Court continued to weaken as Western countries and their allies, such as Israel, continued to evade punishment (Motala, 2023). Additionally, South Africa’s alignment with BRICS countries was growing, forcing it to choose between its own interests and its obligations to the ICC (Mazibuko, 2023).

**Moral Evaluation:** The *Sunday Times* framed the ICC as a flawed institution that has often been guilty of selective justice and bias in its prosecutions (Motala, 2023). However, the newspaper argued that withdrawing from the Court would be a mistake and that South Africa would fare better if it worked from within to institute reforms. Otherwise, it risked damaging its own credibility as a defender of human rights (“South Africa must always choose”, 2023). Additionally, the *Sunday Times* criticized South Africa for appearing to place its own strategic interests ahead of its obligations to the Court, particularly in its hesitancy to enforce the ICC’s arrest warrant for Putin (Dlamini, 2023; Mazibuko, 2023).

**Treatment Recommendation:** The solution proposed by the *Sunday Times* was that South Africa should remain a signatory member of the ICC and push for reform from within the institution (“South Africa must always choose”, 2023). The newspaper encouraged South Africa to “rebuild and nurture ties to human rights champions” and to preserve its identity as a defender of human rights (Mazibuko, 2023). Additionally, South Africa’s president was called upon to clearly define its foreign policy to avoid crises, such as the Bashir incident (Mazibuko, 2023).

#### 6.4.2 The Mail & Guardian

##### **Problem Definition: Legitimacy Crisis of the ICC, South African Diplomacy, and Inconsistency in South Africa**

Between 2020 and 2025, the *Mail & Guardian* identified three overarching problems throughout its coverage of the ICC: The perception of bias in the ICC and the negative impact on its legitimacy, the difficulties facing South Africa as it attempted to balance diplomatic relations, and inconsistency in South Africa's relationship with the ICC. The *Mail & Guardian* noted continuing concerns about the perceived bias of the ICC against weaker states. The newspaper indicated that the ICC had an opportunity to address these concerns in the case of alleged war crimes in Gaza and show the world that they are an "objective organisation" by issuing arrest warrants for those responsible (Tandwa, 2023). Additionally, the newspaper highlighted the differences in how the ICC handled the investigations in Ukraine versus in Palestine (Seria, 2022). Seria noted that the ICC took swift action following the accession of Ukraine to the Court's jurisdiction, yet countries had long been calling for action in the case of Palestine, which had become a signatory to the Rome Statute in 2015, with no action (Seria, 2022). The newspaper also noted the reluctance of the ICC to challenge powerful states, like the US, as they implemented sanctions on members of the Court in an effort to protect their allies and themselves from investigations ("International Justice", Kisla, 2025). The *Mail & Guardian's* coverage indicated that the Court was continuing to suffer from perceived bias, which negatively impacted its legitimacy.

The second problem highlighted by the *Mail & Guardian* was the difficulty faced by South Africa in balancing its diplomatic relationships. As a member of the BRICS alliance and the ICC, South Africa found itself in a position of having to balance its obligations to both institutions. The newspaper noted that this balancing act came to a head when the ICC issued an arrest warrant for Putin in 2023, the President of Russia and founding member of BRICS, which raised questions over whether South Africa would uphold its obligations to the Court or protect its relationship with Russia and thereby with the BRICS alliance (Thompson, 2023). The newspaper also pointed out Article 98 of the Rome Statute, which deals with "non-surrender agreements and competing immunity obligations" ("South Africa and the ICC's Relationship", Kisla, 2023). The newspaper noted that there was an opportunity for South Africa to invoke Article 98 to prevent the ICC from demanding the arrest of Putin, should he enter the country, to protect South Africa from breaking its obligations under international law in arresting a sitting head of state ("South Africa and the ICC's Relationship", Kisla, 2023). However, the newspaper also noted that pursuant to Article 27 of the Rome Statute, the Court does not recognize immunity, even for sitting heads of state

(“South Africa and the ICC’s Relationship”, Kisla, 2023). As South Africa dealt with how to handle its international and diplomatic obligations, it welcomed the decision by ICC prosecutors to seek arrest warrants in the Israeli-Palestinian case (Ferreira, 2023).

The *Mail & Guardian* also noted the inconsistency in South Africa’s stance towards the ICC during this time period. Following the Bashir incident, South Africa had initiated the withdrawal process and then reversed this decision. In 2023, the ANC again announced intentions to withdraw from the ICC, which were quickly walked back (Matambo, 2023). The newspaper noted that the party’s “confusion” undermined not only the legitimacy of the ICC, but also the legitimacy of South Africa on the international stage (Matambo, 2023).

**Causal Interpretation:** The *Mail & Guardian* suggests that the problems facing South Africa, and the ICC were caused by political tensions, legal questions, and inconsistency from leadership in South Africa. As the ICC quickly moved to investigate alleged crimes in Ukraine, but delayed action in the Palestinian case, it perpetuated the perception that the Court was biased (Seria, 2022; Tandwa, 2023). This led to officials in South Africa to question whether it should remain a member of the ICC (Kasrils, 2025; “South Africa and the ICC’s Relationship”, Kisla 2023). Additionally, South Africa’s position in the BRICS alliance, which includes countries like Russia, complicated its position on the international stage, particularly as the ICC issued an arrest warrant for Putin (Thompson, 2023). South Africa found itself in the position of having to choose which obligations it would uphold (Thompson, 2023). Conflicting articles in the Rome Statute, particularly Article 27 and Article 98, further complicated the position of South Africa (“South Africa and the ICC’s Relationship”, Kisla, 2023). Furthermore, South Africa’s position weakened as the ruling party, the ANC, continued to present mixed messaging regarding withdrawal from the ICC (Matambo, 2023). These issues led to uncertainty in South Africa and its engagement with the ICC.

**Moral Evaluation:** The *Mail & Guardian* framed the ICC as a compromised institution and criticized the ICC for its inconsistency, particularly as it relates to the cases in Ukraine and Palestine (“South Africa and the ICC’s Relationship”, Kisla, 2023). The Court’s initial inaction in the case of Palestine and expedited process in Ukraine reinforced the perception that the ICC is a biased institution and that the Court will only act when selective political criteria is met, further damaging the legitimacy of the Court (Seria, 2022; Tandwa, 2023). Furthermore, South Africa’s repeated threats of withdrawal from the Court were criticized as damaging not only the legitimacy of the Court, but also South Africa’s reputation on the global stage (Matambo, 2023; “South Africa and the ICC’s Relationship”, Kisla, 2023). However, the newspaper did applaud South Africa’s

support for ICC action against Israeli and Hamas leadership as it referred the Palestinian case to the Court (Ferreira, 2024; Kasrils, 2025).

**Treatment Recommendation:** The solution proposed by the *Mail & Guardian* was that South Africa should remain a member of the ICC and seek to reform the Court from within (Seria, 2022; Tandwa, 2023). South Africa's support and referral for the Palestinian case were noted as steps towards the type of reform necessary for improving the legitimacy of the Court (Ferreira, 2024; Kasrils, 2025). Furthermore, the newspaper called for South Africa to build alliances with like-minded countries that position themselves as defenders of human rights, particularly in the Global South (Kisla, 2025).

#### 6.4.3 Synthesis

Between 2020 and 2025, the *Sunday Times* and the *Mail & Guardian* continued to frame the ICC as an institution in crisis, noting that its legitimacy was at risk. Both newspapers pointed out the perception of selective justice and the increasing tensions between South Africa's obligations. Using constructivism theory, the *Sunday Times* and *Mail & Guardian* highlighted that the legitimacy of the Court depended upon how the ICC is perceived by the states and how states respond to the Court. As the ICC issued an arrest warrant for Vladimir Putin, it was clear that South Africa's hesitancy to enforce the order represented a threat to the legitimacy of the Court.

Using legitimacy theory, the *Sunday Times* and the *Mail & Guardian* noted that the legitimacy of the ICC was damaged by the ongoing perception that the Court was biased and applied justice selectively. The Court's quick action in the Ukrainian case and its hesitancy to act in the Palestinian case, reinforced this perception. Furthermore, the newspapers emphasized that the Court was functioning as a neo-colonial tool, noting that the majority of indictments from the ICC had targeted Africans, while countries like the US and Israel escaped justice. Ultimately, the *Sunday Times* and the *Mail & Guardian* framed the ICC as a compromised institution, but one that could be reformed if states were willing to work from within, rather than withdrawing.

### 6.5 Summary of Findings

The framing of the ICC in South African media, particularly by the *Sunday Times* and the *Mail & Guardian*, changed significantly during the period of 2002 to 2025. In the beginning of this period, the early 2000s, both newspapers presented the ICC as a credible institution that was necessary for ending impunity. These newspapers highlighted that the creation of the Court represented a positive change for South Africa following its history of apartheid and that the Court provided South Africa with an opportunity to identify itself as a defender of human rights on the global stage. This framing of the ICC by South African media in an overall supportive light indicates that

the Court was perceived to be legitimate. Understood through legitimacy theory, this means that the ICC's authority depended on the belief that it acted fairly and consistently, which in its infancy as an institution was overall intact. During this initial time period, the *Sunday Times* and the *Mail & Guardian* portrayed the ICC as an institution through which South Africa could reinforce its identity as a defender of human rights and increase its credibility on the global stage.

However, this framing began to shift, especially after 2008, as the ICC began to focus more of its investigations into African countries. Both newspapers began to raise questions about whether the ICC was applying justice fairly and noted that it appeared unwilling to investigate powerful Western nations like the US. Through a neo-colonial lens, the *Sunday Times* and the *Mail & Guardian* pointed out that the Court appeared to disproportionately target African states, while powerful countries, like the US, were allowed to evade justice. This criticism led to the growing perception that the Court was repeating and reinforcing colonial patterns. From a constructivist perspective, the legitimacy of the ICC is socially constructed and as perceptions of selective justice grew, South African media began to reflect growing tensions between the Court's actions and the expectations of its member states.

During the 2014 to 2019 period, the *Sunday Times* and the *Mail & Guardian* began to frame the ICC as an institution in crisis, but one that was still valuable. However, there was a significant shift in the framing of the ICC in South Africa in 2015, when South Africa did not comply with the ICC arrest warrant for Sudanese President Omar al-Bashir. South Africa's non-compliance with the arrest warrant pointed to tensions between South Africa's constitutional obligations, its commitment to the ICC, and its relationship with the AU. Not only was the legitimacy of the ICC called into question, but also the legitimacy of South Africa as a defender of human rights. From a constructivist perspective, this was a turning point as South Africa's decision to not enforce the arrest warrant directly shaped the perception of the ICC's legitimacy, particularly as the Court relies on state cooperation. The two newspapers continued to indicate during this time period that the Court was a valuable institution, but one in need of significant reform.

Similarly, in the period of 2020 to 2025<sup>3</sup>, the newspapers portrayed the Court as an institution in crisis but also focused on how South Africa's legitimacy was in crisis as it showed a lack of consistency in its relationship with the ICC, particularly regarding the arrest warrant for Russian President Vladimir Putin. As South Africa aligned itself with BRICS, it was once again caught between its obligations to the ICC and its obligations as a BRICS member. Uncertainty surrounding South Africa's compliance with the ICC arrest warrant indicated once again that the legitimacy of the ICC is constructed by the actions of its member states.

Ultimately, across all four periods, the *Sunday Times* and the *Mail & Guardian* framed the ICC as a flawed institution, but one that was still necessary for international justice. Both newspapers noted that perceptions of bias and selective justice were damaging to the legitimacy of the Court but emphasized that this loss of legitimacy could be recovered through reform, especially if member states like South Africa stay engaged.

## 7. Conclusion

This research study sought to answer the following question: *How is the legitimacy of the ICC created and challenged in South African media over time?* To answer this question, the research focused on two of the most influential and long-standing newspapers, the *Sunday Times* and the *Mail & Guardian*, and analyzed articles across four six-year periods. Using constructivism alongside legitimacy theory and neo-colonialism as a framework, this research highlighted that an institution is not automatically granted legitimacy merely because it exists. Rather, the legitimacy of the Court must be constructed over time and was greatly impacted by the historical context, political events, the ways in which states interacted with the ICC, and ultimately public perception.

Throughout the periods that were analyzed, South African media portrayed the ICC as a complex institution; one that was necessary to bring an end to impunity, but one that struggled with the consistent perception of bias and selective justice. In the first period, 2002-2007, the Court was presented as an important tool to promote justice and one that aligned with South Africa's post-apartheid identity as a defender of human rights. However, this framing changed as the ICC issued arrest warrants for African leaders and launched investigations into African states through referrals from the UNSC. The framing of the ICC in South African media truly shifted following the country's refusal to arrest Omar al-Bashir in 2015 with both newspapers portraying both the Court and South Africa in a state of crisis. Both countries were at risk of damaging their legitimacy on the international stage.

As the framing shifted from support to criticism, the *Sunday Times* and the *Mail & Guardian* remained consistent in advocacy for reform of the Court. The newspapers posited that South Africa would be well positioned to push for change from within the Court, rather than withdrawing from the ICC. The newspapers also emphasized that the legitimacy of the ICC and of South Africa depended on consistent actions in the pursuit of justice, without political interference.

It's important to note that this study does have limits. By choosing to analyze only two newspapers, there is a risk that it missed other views, particularly from smaller media sources. Additionally, this study only analyzes news articles and does not necessarily include specific

government perspectives, which could have provided additional insight into how the media shaped the perception of the legitimacy of the ICC. Future research could expand on the findings in this research by comparing South Africa to other African states, such as Kenya, that have also had a tumultuous experience with the Court. Furthermore, the influence of social media on the perception of the ICC could be included in future research to expand the study.

This research showed that institutions, like the ICC, are not automatically granted legitimacy simply because they exist. Rather, legitimacy is something that is created and contested over time. Ultimately, the *Sunday Times* and the *Mail & Guardian* framed the Court as imperfect, but one that is essential to bringing an end to impunity.



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