

Burundi's Withdrawal From The International Criminal Court (ICC) During The Era Of Pierre Nkurunziza's Government

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Abstract

Pierre Nkurunziza's candidacy for a third term as president of Burundi has triggered an increase in crimes against humanity in Burundi and prompted the International Criminal Court (ICC) to open an investigation. In 2016, under Nkurunziza's leadership, Burundi withdrew from the International Criminal Court (ICC). Using an explanatory qualitative research design, this research discusses the factors behind Burundi's decision to withdraw from the International Criminal Court (ICC) during the Nkurunziza administration. Data was collected through literature studies from various books, journals, and national and international official websites. The analysis used the rational actor model approach and classical realism theory to explain Nkurunziza's policy regarding Burundi's withdrawal from the International Criminal Court (ICC). The analysis shows that Nkurunziza's decision to withdraw Burundi from the International Criminal Court (ICC) is based on cost-benefit considerations. Costs obtained by Burundi include loss of attachment to the Rome Statute, a reduction in Burundi's international reputation, and an impact on Burundi's diplomatic relations. While the benefits received by Burundi; Pierre Nkurunziza / state officials are free from International Criminal Court (ICC) investigations into humanitarian violations, have domestic legal control, reduce internal political tensions, and allow the state to apply policy flexibility. This shows that the correlation between state leaders and a country's policies is interrelated.

I. INTRODUCTION

The African continent is known as a conflict-prone continent, and countries in the African region are still trapped in internal and external conflicts. The number of conflicts that occur in Africa is due to independence which is influenced by colonialism, causing Africa to be unable to manage or solve the problems that occur in its country.¹ After the colonial period ended, conditions in Africa did not end well. Gaining independence from colonial occupation did not enable Africa to manage its countries well; instead, it led to much destruction. Colonialism is believed to be the external factor of conflict in Africa. Lack of understanding and awareness of law and politics, corruption, and the underdevelopment of human rights (ethnic discrimination) are also believed to be internal factors of conflict in Africa. Conflicts with ethnicity issues are the most dominant in affecting African countries, one of which is Burundi.²

The numerous conflicts that occur in Burundi always put the community at risk. Tensions between the two tribes are said to be detrimental to the country, so Burundi made various efforts to resolve the conflicts that occurred. Some of Burundi's efforts in resolving conflicts are the establishment of the Arusha agreement (2000), the establishment of the United Nations Operation in Burundi (ONUB) by the United Nations (2004), and the ratification of the Rome Statute (September 21, 2004).³ In this research, the author discusses one of Burundi's efforts to reduce conflict: ratifying the Rome Statute and joining the ICC as an instrument of analysis. By ratifying the Rome Statute, Burundi has supported the movement to eliminate all forms of impunity for offenders of international law who commit crimes.⁴ The ICC has jurisdiction only to intervene in a case when the state cannot investigate and prosecute the criminal. In its role, the ICC does not only prosecute criminals to uphold justice. It also directly interacts with victims of crime and mobilizes the entire ICC community worldwide to open interactions and engage directly with victims of international crimes. The interaction carried out by the ICC aims to inform the process of the investigation journey to the victims because the victims are considered the most critical actors in upholding justice,

¹ Edo Pratama, 2020, Alasan Afrika Selatan Mundur dari International Criminal of Court (ICC) pada 27 Oktober 2016, Jurnal Ilmu Hubungan Internasional Vol.8 No.1.

² N.K. Astiningsih, N.W. Rainy Priadarsini, A.A. Bagus Surya Widya Nugraha, 2015, Peranan Operasi Perdamaian Perserikatan Bangsa-Bangsa di Burundi tahun 2004-2006, DIKSHI Vol.1 No.3.

³ Danar Kurnia., Op.,Cit., Hal.17

⁴ ICC, About the Court, Accessed on February 16, 2024. <https://www.icc-cpi.int/about/the-court>

and the ICC plays a role in realizing justice, which has been covered by legal immunity in countries.⁵

After a 10-year conflict between Hutu rebels and the Tutsi-dominated army, in November 2003 the FDD (Forces for the Defense of Democracy) joined the peace process to pave the way for Hutu entry into government.⁶ In 2005, a power sharing constitution was adopted, and Pierre Nkurunziza, a Hutu representative of the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD), was elected president.⁷ At the time of President Pierre Nkurunziza's election, he announced that, reflecting on previous human rights violations, under his government, Pierre would be committed to upholding the rule of law in Burundi and improving the development of human rights.⁸ Pierre Nkurunziza's rise to power in Burundi heralded a complex period in the country's political history. While notable progress has been made under his rule, the road to change has never been smooth. Instead, each step forward has been accompanied by challenging obstacles, reflecting the country's complicated and often contentious political dynamics.⁹

Tensions reached their highest, but Pierre Nkurunziza decided to withdraw Burundi from its membership of the ICC. In this particular context, the role of the ICC and the decision to withdraw from the international court highlighted Burundi's deep political struggles and human rights conflicts. By understanding this journey, the author aims to explore the background and implications of the political steps taken by Pierre Nkurunziza and his government. In this analysis, I will explore both the achievements and obstacles faced by Pierre Nkurunziza during his time in power in Burundi. From the explanation above, the author wants to know why Pierre Nkurunziza's policy influenced Burundi's withdrawal from the International Criminal Court (ICC) if analyzed through the theory of realism. The theory states that the nation-state is the leading actor in international relations, with power as its main priority in achieving national interests. Pierre Nkurunziza, as the head of state who is authorized to make policies and decisions, chose to withdraw Burundi's membership from the ICC during his third term in

⁵ ICC, Interacting with Communities Affected by Crimes, Accessed on February 17, 2024. <https://www.icc-cpi.int/about/interacting-with-communities>

⁶ Burundi's Born-again Ex-rebel Leader, BBC News, Accessed on February 16, 2024. <http://news.bbc.co.uk/1/hi/world/africa/4162504.stm>

⁷ Britannica, The Path Toward Peace, diakses pada 17 februari 2024 <https://www.britannica.com/place/Burundi/The-Third-Republic#ref1217153>

⁸ Pierre Nkurunziza/Ensiklopedia Dunia, Universitas STEKOM, diakses pada 28 Desember 2023 https://p2k.stekom.ac.id/ensiklopedia/Pierre_Nkurunziza

⁹ Ntagahoraho Z.B, Devon E.A. Curtis, 2021, International affair, Postwar State-Building in Burundi: Ruling Party Elites and Liberal Peace

government.¹⁰ Therefore, the author chose the concept of rational actors as one of Pierre's policy analysis instruments that influenced Burundi's withdrawal from the ICC. This research explores the political policies Pierre Nkurunziza's government in Burundi adopted during three different terms. The main focus of the study is on the political policies implemented in the first and second periods of his government, as well as how these policies evolved and influenced Burundi's final decision to withdraw from the International Criminal Court (ICC) in 2016, which occurred in the third term of Pierre Nkurunziza's government.

II. METHODOLOGY

This research uses an explanatory method with a qualitative approach to examine a problem in more depth and understand phenomena that have never been studied before. It uses literature taken from books, journals, newspapers, official websites, and theses.

III. RESULT AND DISCUSSION

Burundi adheres to the presidential representative democratic republic political system. This system is based on the principles of representative democracy and allows for political pluralism through different parties.³⁴ Within this system, supreme power is held by the president of Burundi, who acts as both head of state and head of government. The president has broad responsibility for all public and political administration areas, including Burundi's foreign policy.¹¹ Burundi's political history since the end of the 20th century has been marked by ethnic violence and political conflict that claimed thousands of lives and displaced tens of thousands. Although facing enormous challenges, Burundi has shown its determination to fight for peace and justice. On September 21, 2004, Burundi took the courageous step of ratifying the Rome Statute, which marked its membership in the International Criminal Court (ICC). This move was the starting point of Burundi's relations with the ICC and reflected hopes for positive change in the country.¹²

On September 21, 2004, Burundi officially became the 95th member state to ratify the Rome Statute and join the International Criminal Court (ICC). While 139 countries signed the Rome Statute at the time, only 95 ratified it. This ratification

¹⁰ Danar Kurnia D, 2017, Alasan Intervensi Kemanusiaan Uni Afrika terhadap Negara Anggota (Studi Kasus: Konflik Burundi 2015-2016), skripsi Universitas Muhammadiyah Yogyakarta

¹¹ Stef Vandeginste, 2009, Power Sharing, Conflicts and Transition in Burundi: Twenty Years of Trial and Error, *Journal of Africa Spectrum* Vol.44 No.3

¹² International Criminal Court, Burundi Ratified the Rome Statute, Accessed on February 28, 2024, <https://www.icc-cpi.int/news/burundi-ratified-rome-statute>

significantly impacted the jurisdiction of the International Criminal Court (ICC) over the country.¹³ By ratifying the Rome Statute, Burundi officially recognizes the jurisdiction of the International Criminal Court (ICC) in the event of crimes against humanity, war crimes, and genocide in its territory. This step demonstrates Burundi's commitment to upholding justice and ensuring accountability for human rights violations in the country.¹⁴

In 2005, the leading rebel group, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD), entered the Burundian government with the support of the ethnic Hutu community.¹⁵ This move represents a significant step in the reconciliation process in Burundi and one of the most important factors shaping political and security decisions in Burundi. Given the improved political stability and commitment shown by the Burundian government, the move to join the International Criminal Court (ICC) represents a positive change for Burundi's future.¹⁶

In the context of Burundian politics, the role and structure of the presidency take center stage. A country can only have one individual leading the institution. In Burundi's constitution, policymakers decided that the president should be represented by two vice presidents, with one drawn from the official opposition party. This resolution is considered key in helping those who lost the election feel closer to the presidency and ensuring more inclusive representation in government. This can create different political dynamics and affect political stability and responses to power. Thus, the structure of the presidency and the composition of the government play an important role in the political dynamics and stability of the country and can shape political actors' perceptions and attitudes toward the government.¹⁷

The election of President Pierre Nkurunziza by parliament marked a pivotal point in Burundian politics. Nkurunziza, who leads the Forces for the Defense of Democracy (FDD), the largest rebel group that has now won elections to the Senate and National Assembly, was a crucial figure in the peace process after ten years of conflict

¹³ International Criminal Court, Burundi Ratified the Rome Statute.

¹⁴ Ishmail Pamsm-Conteh, 2020, Can the State of Burundi Justify its Reasons for Leaving the Jurisdiction of the International Criminal Court?, Journal of Criminal Science Section 7

¹⁵ Library of Congress, Burundi: Constitutional Referendum Planned, Accessed on February 28, 2024. <https://www.loc.gov/item/global-legal-monitor/2017-12-20/burundi-constitutional-referendum-planned/>

¹⁶ United Nations Peacemaker, Arusha Peace and Reconciliation Agreement for Burundi, Accessed on February 28, 2024. <https://peacemaker.un.org/node/1207>

¹⁷ Gillian Kerubo Orenge, The Impact of Institutional Arrangements on Political Settlements in Burundi: 1993-2020, United State International University, 2021



between ethnic Hutu rebels and the Tutsi-dominated army. The FDD's joining the peace process in 2003 paved the way for Nkurunziza and his group to enter the government. Nkurunziza, who was 41 years old at the time, was originally a politically unknown teacher but was provoked to join the rebels by the ethnic violence he witnessed in 1995. Despite keeping a low profile, Nkurunziza managed to take over the leadership of the FDD and is now the country's elected president.¹⁸ On May 1, 2006, the National Assembly elected Pierre Nkurunziza, president of Burundi.¹⁹

Pierre Nkurunziza, born in December 1963 in the northern province of Ngozi, is the son of a former governor of Burundi. Raised in a multi-religious environment with a Catholic father and an Anglican mother, Nkurunziza became a born-again Protestant. Nonetheless, those close to him describe him as a religious but not fundamentalist. According to them, Nkurunziza opposed ethnicism and strived for peace, justice, and security. However, the rebel group he led was involved in attacks that killed many Tutsi along the main roads, even though Nkurunziza taught peace and unity himself.²⁰ Pierre Nkurunziza was active in peace efforts with the Forces National de la Libération (FNL), the last Hutu rebel group still outside the peace process. In September 2005, Nkurunziza attempted to restart peace talks with the FNL but was rejected. In 2006, Nkurunziza mediated a tentative ceasefire with the FNL in talks held in Tanzania, although the truce was short-lived, and sporadic violence continued. No substantial progress was made until May 2008, when Nkurunziza met with FNL leader Agathon Rwasa in Bujumbura and signed a definitive peace agreement.²¹

Under Pierre Nkurunziza and the governing National Council for the Defense of Democracy/Force for the Defense of Democracy (CNDD/FDD), an informal and multi-layered power structure has been established within the state. This structure is centered around critical figures such as the Head of State, the Minister of State Security, the Director General of National Intelligence, the Secretary General of the CNDD/FDD, and the Chiefs of Staff of the Presidential Civil, Police, and Military Cabinets. A critical figure within this structure is the Chief of Military Affairs, who oversees the party militia known as Imbonerakure. This militia was often involved in intimidating and committing

¹⁸ BBC News, Burundi's born-again ex-rebel leader, Accessed on February 28, 2024. <http://news.bbc.co.uk/2/hi/africa/4162504.stm>

¹⁹ University of Central Arkansas, Burundi 1962-Present, Accessed on February 26, 2024. <https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-africa/region/burundi-1962-present/>

²⁰ BBC News, Burundi's born-again ex-rebel leader.

²¹ Britannica, History & Society Pierre Nkurunziza, Accessed on February 23, 2024. <https://www.britannica.com/biography/Pierre-Nkurunziza#ref1077319>



violence against civilians during Nkurunziza's term. Under this system, the command is exercised through a network of loyalties stemming from the period of ethnically-driven civil war in Burundi between 1993 and 2005.²² In assuming his leadership duties, Nkurunziza faced the enormous challenge of maintaining peace and stability in a conflict-ridden country. To ease the fears of the Tutsi government, which was predominantly made up of ethnic Hutu, strategic steps were taken to recruit Tutsi members into the CNDD-FDD actively.²³ The changing dynamics within the Forces for the Defense of Democracy (FDD) Party reflected the national views of Pierre Nkurunziza, the President of Burundi. During Pierre Nkurunziza's leadership, the FDD had many Tutsi officers. The policy was seen as evidence of Nkurunziza's national approach. However, some argue that the new constitution requires political parties to have members from both significant communities, namely Hutu and Tutsi. The constitution also divides government positions by ethnicity. Therefore, parties such as the pro-Hutu FDD will have to find Tutsi members who can take up positions reserved for them by the peace agreement that ended the ethnic conflict in Burundi.²⁴

A proactive step taken was the formation of a new cabinet at short notice, less than a week after its term began. The cabinet's composition of 11 Hutu and 9 Tutsi, all first-time government office holders, reflects efforts to strengthen inclusivity and representation of all communities. In addition, seven female ministers in the cabinet demonstrate a commitment to women's empowerment and participation in decision-making processes. These steps are a starting point in maintaining peace and building a solid foundation for stability in the country.²⁵ Based on the political policies of the Nkurunziza government, it can be assessed that Nkurunziza showed significant efforts to achieve peace in Burundi. However, international human rights groups have reported that corpses continue to be found in various parts of Burundi, especially in Cibitoke province, which borders the Democratic Republic of Congo (DRC). One Ligue Iteka journalist reported that 113 dead people were found between January and August in Cibitoke. In addition, human rights organizations reported that there were many cases of disappearances, and it was difficult to determine the exact number of abductions or killings committed on behalf of the government. After being missing for several days,

²² Africa Center for Strategic Studies, Shifting Power Dynamic, Accessed on February 23, 2024. <https://africacenter.org/spotlight/post-nkurunziza-burundi-the-rise-of-the-generals/>

²³ Africa News, All About Burundi-Politics, Accessed on February 26, 2024. <https://www.africa.com/heres-what-you-need-to-know-about-burundi/>

²⁴ BBC News, Burundi's born-again ex-rebel leader.

²⁵ Britannica, Pierre Nkurunziza Presidency, Accessed on February 26, 2024. <https://www.britannica.com/biography/Pierre-Nkurunziza>



victims were found with injuries that signaled an act of execution. The Human Rights Watch report noted that SNR, Police, and Imbonerakure agents were involved in cases of murder, arbitrary detention, torture, and harassment of people associated with opposition parties or linked to armed rebel groups.²⁶ On July 6, 2006, Burundian government forces killed 13 Palipehutu-FNL rebels near Bujumbura. On July 31, 2006, three people were killed in a grenade attack in Gihosha. On September 3, 2006, four people were killed in a grenade attack in the Nyakabiga district of Bujumbura.²⁷

President Pierre Nkurunziza played an essential role in the peace effort by meeting with Palipehutu-FNL leader Agathon Rwasia in Dar es Salaam, Tanzania, on June 27, 2007.²⁸ The peace process suffered a setback when the Palipehutu-FNL withdrew from the JMM on July 27, 2007, demonstrating the complexities and challenges in reaching a peace agreement.²⁸ The violent clashes that took place near Bujumbura on September 4, 2007, involving rival factions of the FNL, including the Palipehutu-FNL, became a tragic event that led to the death of more than 20 people. The incident highlighted the escalation of violence and residual tensions that still exist in the country and added complexity to the peace process.²⁹

In its efforts towards progress, the Nkurunziza administration faced serious challenges, particularly with allegations from human rights groups of denying dissent and suppressing journalists critical of government policies. These concerns were reinforced when Pierre Nkurunziza was re-elected president of Burundi in June 2010 with a very high vote percentage. Nkurunziza's electoral process and campaign were characterized by violence that resulted in low voter turnout.³⁰ On September 19, 2011, there was an attack near Bujumbura that claimed the lives of 40 people. On November 21, 2011, there were clashes between government forces and armed groups in Cankuzo, Eastern Burundi, which killed 18 people. The second term of Nkurunziza's government saw a troubling escalation of violence. Over the following years, Burundi was plagued by tension and internal conflict. On September 3, 2012, the National Liberation Army

²⁶ US Department of State, Country Reports on Human Rights Practices : Burundi, Accessed on February 26, 2024. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/burundi>

²⁷ University of Central Arkansas, Burundi 1962-Present.

²⁸ Human Rights Watch, Pursuit of Power political Violence and Repression in Burundi, 2009, Accessed on February 26, 2024. https://www.observatori.org/paises/pais_57/documentos/burundi0509webwcover.pdf

²⁹ Human Rights Watch, Pursuit of Power political Violence and Repression in Burundi, 2009.

³⁰ The Guardian, Burundi Opposition Spokesman Shot Dead as Violence Escalates, Accessed on February 26, 2024. <https://www.theguardian.com/world/2015/sep/08/burundi-opposition-spokesman-patrice-gahungu-shot-dead-as-violence-escalates>

(FNL) called on President Pierre Nkurunziza to resign, which marked a significant political shift.³¹

Since the end of 2010, many people have been brutally murdered in a series of politically motivated attacks. State security forces, intelligence agencies, ruling party members, and opposition groups have all been implicated in the deliberate use of violence to target real or perceived political opposition.³² One of the standard policies seen throughout these crimes is the impunity that protects criminals in cases where the criminals are allegedly connected to the security forces or the ruling party, such as the CNDD-FDD.³³ Since 2009, Pierre Nkurunziza has taken a significant step in his security policy by approving the Security Sector Development Program (SSD). This decision was one of the critical policy decisions taken by Pierre Nkurunziza to achieve transformative change in Burundi's security sector. The SSD program affirms a commitment to more democratic development and accountable governance of the country's security sector.³⁴ Through the SSD policy, Pierre Nkurunziza demonstrates his commitment to creating a more stable, democratic, and secure environment for the Burundian people. This program's presence is not only a form of cooperation between Burundi and the Netherlands but also a concrete step to improve and increase the country's security sector. As such, it is an important milestone in Burundi's journey towards a better transformation in the security sector.³⁵

During Pierre Nkurunziza's second term, there were new policies designed to protect himself and his government from international sanctions. One example is the adoption of a new media law by Burundi's National Assembly on April 3, 2013.³⁶ In article 18, journalists are prohibited from publishing news considered detrimental to the state, with criteria such as national unity, morality, public safety, honor, and dignity. Article 19, authorizes the state to delay or stop the publication of information in the public interest that is accessible to the public, and this information relates to national

³¹ Human right Watch, Burundi Escalation of Political Violence in 2011, Accessed on February 26, 2024. <https://www.hrw.org/news/2012/05/02/burundi-escalation-political-violence-2011>

³² Human Right Watch, You Will Have Not Peace When You are Living, Accessed on February 26, 2024. <https://www.hrw.org/report/2012/05/02/you-will-not-have-peace-while-you-are-living/escalation-political-violence>

³³ Nicole Ball, Africa Center for Strategic Studies, Africa Security Brief, 2014, Accessed on February 26, 2024. <https://africacenter.org/wp-content/uploads/2016/06/ASB29EN-Lessons-from-Burundi%E2%80%99s-Security-Sector-Reform-Process.pdf>

³⁴ Nicole Ball, Africa Center for Strategic Studies, Africa Security Brief.

³⁵ Nicole Ball, Africa Center for Strategic Studies, Africa Security Brief.

³⁶ UNHCR, Attacks on the Press 2013-Burundi, Accessed on February 26, 2024. <https://www.refworld.org/reference/annualreport/cpj/2014/en/99207>

security and the national economy, insulting the head of state and the public. Article 20 requires journalists to disclose the source of information to the authorities if the report is considered a threat to public order or a person's moral and physical integrity.³⁷

This policy is an attempt to limit freedom of expression and independent journalism in the country. The provisions of the version of the law adopted by the National Assembly can severely restrict journalists' ability to report on the happenings in Burundi. Among the restrictions include the weakening of source protection, restrictions on the subjects journalists can report on, the imposition of new fines for media that violate the law, and the requirement for journalists to have a minimum level of education and professional experience. According to Daniel Bekele, director of Human Rights Watch in Africa, the draft new media law is an attempt to suppress journalists. According to him, the continuous harassment and intimidation of journalists has not succeeded in silencing them, so the government is trying to use the law to achieve this goal. Bekele emphasized that the senate must act decisively to eliminate the policies contained in the law because the policies contained in the draft new media law are at the center of attention and can undermine press freedom and hinder access to information and freedom of speech in Burundi.³⁸

In his second term, Pierre Nkurunziza faced increasing criticism of his government's treatment of the media and response to public dissent. Such criticism has taken center stage in Burundi's political narrative, with many highlighting restrictions on freedom of speech and expression that further limit the space for freedom of press and expression. It also generated a lot of controversy and protests, especially as many perceived it as a violation of the agreed peace agreement. This led to political tensions that led to the crisis in Burundi and deepened the polarization between the opposing parties. Ultimately, Nkurunziza's second term was characterized by political struggles and internal conflicts that impacted Burundian society. This highlights the political complexities and challenges Burundi faces in building peace, stability, and progress for the future.³⁹

In 2015, Burundi faced a deep political crisis with Pierre Nkurunziza's decision to run for a third term as president. This was one of a string of attacks on Burundi's political and civic space that had been taking place for years. Nkurunziza's candidacy

³⁷ UNHCR, Attacks on the Press 2013-Burundi.

³⁸ Human Right Watch, Burundi: New Law Would Muzzle Journalists, Accessed on February 26, 2024. <https://www.hrw.org/news/2013/04/12/burundi-new-law-would-muzzle-journalists>

³⁹ Akhmad Hani Nadif, Perkembangan Industri PSMC di Tengah Kebijakan Regulasi Pembatasan Pemerintahan di Afrika Selatan, Jurnal Analisis Hubungan Internasional Vol.6 No.2, 2017

for a third term as president violates Burundi's constitution and the Arusha agreement, a landmark effort in Burundi's history. When the CNDD-FDD signed the Arusha agreement, they were still an active rebel group and helped end Burundi's protracted ethnic conflict.⁴⁰ Nkurunziza's re-election as president triggered public mass protests. Burundians demanded that Pierre Nkurunziza respect the term limits established by the state. However, people's attempts to peacefully express their discontent were hindered by repressive actions from security forces using military force and violence against the people. Political violence continues to escalate in Burundi, especially in the wake of the disputed and controversial election. Patrice Gahungu, an official from the opposition Union for Peace and Democracy (UPD) party, was shot dead.⁴¹ So Clemence Nsabiymbona asserted that her husband's death was a political assassination amidst the political tensions in Burundi, where opposition parties are often the target of violence. This case is not isolated but part of a string of killings targeting critics of the regime.⁴²

May 1, 2015, witnessed the escalating situation in Burundi when UNHCR stated that hundreds of protesters had been arbitrarily detained since the start of anti-government demonstrations; this tension was further heightened when the government accused the opposition of having ties to terrorist groups following an attack that killed two government police officers on May 2, 2015.⁴³ Then, on May 4, 2015, the ICRC reported that three protesters were killed, marking an escalation of violence in the growing political crisis.⁴⁴

United Nations (U.N.) Secretary-General Ban Ki-Moon will announce the option of deploying U.N. elements in response to the deteriorating situation in Burundi. As part of the response to the escalation of the crisis, the International Federation for Human Rights (FIDH) has called the international community, including the U.N. Security Council, to immediately deploy an international police task force with a minimum strength of 500 police officers. The purpose of this deployment is to protect vulnerable civilians, stop the ongoing deadly violence, and prevent further armed clashes

⁴⁰ Amnesty International, 2020, Burundi: Pierre Nkurunziza Death Marks the End of an Era, Accessed on February 6, 2024. <https://www.amnesty.org/en/latest/news/2020/06/burundi-pierre-nkurunziza-death-marks-the-end-of-an-era/>

⁴¹ The Guardian, 2015, Burundi Opposition Spokesman Shot Dead as Violence Escalates, Accessed on February 6, 2024. <https://www.theguardian.com/world/2015/sep/08/burundi-opposition-spokesman-patrice-gahungu-shot-dead-as-violence-escalates>

⁴² BBC, 2015, Burundi Opposition Spokesman Patrice Gahungu Killed, Accessed on February 6, 2024. <https://www.bbc.com/news/world-africa-34186040>

⁴³ UNHCR, 2015, Burundi Situation: Regional RefugeeResponse Plan, page-12

⁴⁴ Refworld, 2016, Document International Committee of the Red Cross (ICRC), Accessed on February 7, 2024. <https://www.refworld.org/reference/annualreport/icrc/2016/en/112817>

from occurring.⁴⁵ According to Burundi's constitution, the president can only serve two terms. However, it has been argued that his first term should not count, as he was appointed by parliament rather than directly elected by the people. Nkurunziza's candidacy for a third term was debated among Burundian politicians and the public, which was closely linked to the interpretation of the constitution.⁴⁶

In early May 2015, the socio-political situation in Burundi reached a tipping point that triggered a wave of widespread demonstrations and tensions. May 1 saw the arbitrary detention of hundreds of protesters by the government, initiating an escalation of the conflict. Tensions escalated further after a series of violent incidents, including government accusations against the opposition. On May 5, 2015, a ruling by Burundi's constitutional court announcing that Pierre Nkurunziza could run for a third term as Burundi's president triggered increased protests.⁴⁷ Burundi's situation was further complicated when it became apparent that tens of thousands of Burundians were fleeing to neighboring countries to seek refuge from violence and political uncertainty. The road to stability was further hampered when, on April 25, 2016, the International Criminal Court (ICC) announced to open an investigation into acts of murder, imprisonment, torture, rape, and sexual violence that occurred in Burundi. The International Criminal Court (ICC) investigation is considered to have the potential to lead President Pierre Nkurunziza to be responsible for alleged crimes against humanity that occurred in Burundi.⁴⁸

From 2005, when the International Criminal Court (ICC) jurisdiction was declared effective in Burundi, until 2015, Burundi progressively implemented the principles of the International Criminal Court (ICC) in its national law. This step is Burundi's commitment to respect international standards in addressing human rights violations and to follow the International Criminal Court (ICC) legal principles.⁴⁹ As in

⁴⁵ FIDH (International Federation for Human Rights), 2016, Burundi: Repression of Genocidal Character, the UN's Response must be Strong, Accessed on February 7, 2024. <https://www.fidh.org/en/region/Africa/burundi/burundi-repression-of-a-genocidal-character-the-un-s-response-must-be>

⁴⁶ BBC, 2015, Burundi Court Backs President Pierre Nkurunziza on Third-Term, Accessed on February 7, 2024. <https://www.bbc.com/news/world-africa-32588658>

⁴⁷ Aljazeera, 2015, Top Burundi Leader Defects and Urges President to Quit, Accessed on February 7, 2024. <https://www.aljazeera.com/news/2015/6/25/top-burundi-leader-defects-and-urges-president-to-quit>

⁴⁸ UNHCR, 2017, ICC: New Burundi Investigation, Accessed on February 8, 2024. <https://www.hrw.org/news/2017/11/09/icc-new-burundi-investigation>

⁴⁹ ICC, 2017, The Situation in the Republic of Burundi, Accessed on May 4, 2024. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2017_06720.PDF

Pierre Nkurunziza's efforts to deal with humanitarian issues during his first to second term as president of Burundi. Rational actors have become an important underpinning of foreign policy analysis, describing decision-makers as individuals or entities that act rationally to achieve specific goals.⁵⁰ Within this concept, decisions are made with specific goals in mind. Actors in foreign policy, including heads of state such as Pierre Nkurunziza, have full rights to make decisions regarding Burundi's foreign policy. In the context of the head of state, rational choice can be applied to analyze how the head of state makes decisions that are considered rational based on the interests of the country. In this case, the head of state is regarded as a rational actor who conducts a cost-benefit analysis to choose the most beneficial action for the country.⁵¹

Whether diplomatic, financial, or judicial, international sanctions have the potential for significant impact, as evidenced in Burundi's history. Following the coup that brought Pierre Buyoya back to power in July 1996, Burundi's neighbors imposed an embargo on Burundi, the impact of which was felt by the Burundian people. Meanwhile, the sanctions were instrumental in the government's success in passing its strategic budget. This shows how the government skillfully incorporated international sanctions into its domestic legitimization strategy.⁵²

Burundi has decided to withdraw from the jurisdiction of the International Criminal Court (ICC). This decision is based on the allegation that the International Criminal Court (ICC) tends to target African countries in its efforts to enforce international law. This accusation seems to have some basis, as out of the 11 situations handled by the International Criminal Court (ICC), 10 of them originated from Africa, which means that 90.91% of the International Criminal Court (ICC) cases involved countries on the African continent.⁵³ The establishment of the International Criminal Court (ICC) based on the agreement of states in an international treaty requires states that ratified the 1998 Rome Statute to comply with the treaty's principles and binding rules. This principle is based on the *Pacta Sunt Servanda* Principle, which states that agreements bind the parties that make them and must be carried out in good faith. Establishing national law from the ratification of international treaties is a process of

⁵⁰ Edo Pratama, Op.cit., page-3

⁵¹ Yosimichi Sato, 2020, Rational Choice Theory, Document of Tohoku University, Sociopedia.Isa, Accessed on May 4, 2024. https://www.researchgate.net/publication/323953966_Rational_choice_theory

⁵² Coalition Pour La Cour Penale Internationale, 2017, Reaction: Burundi Leaves ICC, Accessed on May 4, 2024. <https://www.coalitionfortheicc.org/fr/node/2140>

⁵³ Syaeful Bahri, Juwade Hafidz, 2017, Penerapan *Pacta Sunt Servanda* pada Testament yang Dibuat Dihadapan Notaris dalam Perspektif Keadilan, Jurnal Akta Vol.4 No.2

transforming international law into national law so that it can be applied effectively. For example, Burundi implemented the 1998 Rome Statute in The Constitution of Burundi 2005.⁵⁴

Tabel 1. Cost-Benefit of Pierre Nkurunziza's policy

According to the data mentioned, Pierre Nkurunziza's policy regarding Burundi's withdrawal from the International Criminal Court (ICC) certainly has a cost-benefit. The author will summarize some of the cost-benefits listed in the table.

Nkurunziza's Policy	Cost	Benefit
Withdraw from the Rome Statute and ICC	Loss of Attachment to the Rome Statute 1998	Pierre Nkurunziza/State Officer Cleared of ICC Investigation
	Damaging Burundi's International Reputation	Having Domestic Legal Control
	Affecting Burundi's Diplomatic Relations	Reduce Domestic Political Tensions
		Enables Countries to Apply Policy Flexibility

Source: Table compiled by the author

The table above shows that Burundi's decision to withdraw from the International Criminal Court (ICC) has cost-benefits that affect various aspects of government and international relations. From an international law perspective, with the cessation of attachment to the 1998 Rome Statute, Burundi does not have to comply with the rules and regulations set by the International Criminal Court (ICC). This provides significant benefits to Pierre Nkurunziza/the Burundian government, who is now free from

⁵⁴ Syaeful Bahri, Juwade Hafidz, 2017, Penerapan Pacta Sunt Servanda pada Testament yang Dibuat Dihadapan Notaris dalam Perspektif Keadilan, Jurnal Akta Vol.4 No.2



investigation and prosecution by the International Criminal Court (ICC) for human rights violations. It removes international pressure that could have constrained the Burundian government's actions, giving it space to govern according to national interests. However, Burundi's international reputation has been affected by this decision. In return, Burundi now has full control over its legal system. Burundi's decision to withdraw from the International Criminal Court (ICC) may also cause tensions with countries that support the ICC and international organizations that uphold global justice and human rights, and these tensions may affect Burundi's diplomatic relations.

However, it should be noted that in the case of Burundi's withdrawal from the Rome Statute, 1998 did not remove the legal provision from their Constitution, as the Constitution is the basic law of the state, which cannot easily be changed in its entirety just because of withdrawal from an international treaty. The Burundian government may be able to speculate on the possibility of the International Criminal Court (ICC) prosecutor not obtaining timely authorization after the commencement of the investigation. However, if the investigation is not authorized before the end of the one-year term following Burundi's withdrawal, the impact of the withdrawal could lead to a legal battle that is likely to about the interpretation of article 127, that withdrawal does not relieve the state of obligations arising during the state's membership of the Rome Statute and the International Criminal Court (ICC).

The consequences for Burundi of joining the International Criminal Court (ICC) could include several significant aspects. First, membership in the International Criminal Court (ICC) demonstrates the country's commitment to the rule of law and international justice. By joining, Burundi can maintain access to international law enforcement mechanisms that can be used to address crimes that violate international law, such as genocide, war crimes, and crimes against humanity.⁵⁵ Second, amidst the challenges and criticisms directed at the Burundian government for human rights violations allegedly committed during Pierre Nkurunziza's leadership, the decision to remain with the International Criminal Court (ICC) after the announcement of the preliminary examination could have significant political and legal consequences for Burundi. The preliminary examination conducted by the International Criminal Court (ICC) is the first step in assessing whether the situation in a country meets the criteria for further investigation into alleged serious violations of international law.⁵⁶

⁵⁵ ICC, About the Court, Accessed on May 5, 2024. <https://www.icc-cpi.int/about/the-court>

⁵⁶ ICC, Preliminary Examination, Accessed on May 5, 2024. <https://www.icc-cpi.int/situations/preliminary-examinations>



Consideration of the surrender of International Criminal Court (ICC) defendants, many of whom are African, can be a sensitive issue in South Africa's foreign policy.⁵⁷ South Africa probably perceived that the surrender of the accused could damage its diplomatic relations with other African countries, including Burundi. African countries often have complex and interrelated political relationships. As such, actions or decisions taken by one country will affect its relations with other countries, even Burundi.⁵⁸

One of the main alternatives is to strengthen the national legal system. Burundi can increase the capacity of its domestic courts to handle cases of crimes that violate international law, such as genocide, war crimes, and crimes against humanity. The Burundian government has promoted institutional change through constitutional revision to strengthen the national legal system, which could help demonstrate a commitment to the rule of law and international justice.⁵⁹ The Arusha Agreement was considered an alternative following Burundi's decision to withdraw from the Rome Statute and the International Criminal Court (ICC), but this approach has been controversial. Some Burundians wanted the Constitution to override the treaty, and the validity of this view was questioned due to the need for more transparency in the methodology and details supporting the constitutional revision.⁶⁰

President Pierre Nkurunziza's involvement as a potential target in an International Criminal Court (ICC) investigation puts him in a vulnerable position. If the investigation proceeds, Nkurunziza risks facing serious legal consequences, including the possibility of losing his power as president of Burundi. Within this context, the rejection of the International Criminal Court (ICC) investigation is not only related to a desire to retain political power but also as an attempt to protect himself against prosecution for alleged human rights violations.

Regarding Pierre Nkurunziza's role as a rational actor, the rejection of the International Criminal Court (ICC) investigation and his decision to withdraw Burundi from the International Criminal Court (ICC) are strategies chosen rationally by Nkurunziza to protect his political and security interests. As Commander in Chief of the Armed Forces, Nkurunziza has great power and authority in determining the direction of state policy.¹²¹ Being a rational actor, Pierre Nkurunziza must have considered the consequences of every step he took, including the rejection of the International Criminal

⁵⁷ Edo pratama, *Op.Cit.*, Hal-241

⁵⁸ The World Factbook, 2022, Burundi, Accessed on February 10, 2024. <https://www.cia.gov/the-world-factbook/about/archives/2022/countries/burundi/>

⁵⁹ Elise Feron, Keith Krause, 2022, *Power/Resistance: External Actors, Local Agency, and the Burundian Peacebuilding Project*, EJIS

⁶⁰ *Ibid*, *Power/Resistance*, Hal-519

Court (ICC) investigation, because Nkurunziza saw the international legal process as a threat to his power stability and state security. Pierre Nkurunziza's decision to withdraw Burundi from the International Criminal Court (ICC) has negative long-term consequences. However, as a rational actor, Nkurunziza has considered the risks and losses he will face for his decision to withdraw Burundi from the International Criminal Court (ICC).

IV. CONCLUSION

May 2015 saw Burundi experience a tumultuous political journey towards stability. On May 1, 2015, the arbitrary detention of hundreds of protesters marked an escalation of the conflict, which was then exacerbated by violent incidents and terrorist accusations against the opposition, as well as the deaths of demonstrators on May 4, 2015. Additionally, a constitutional court ruling that President Pierre Nkurunziza could run for a third term sparked more protests, causing tens of thousands of citizens to flee to neighboring countries for safety. Nkurunziza's third term policy triggered a significant political crisis with his decision to run considered a violation of Burundi's constitution and the Arusha agreement, resulting in mass protests and political violence in various regions.

In 2016, the government of Burundi decided to withdraw from the International Criminal Court (ICC) following its preliminary examination into allegations of crimes against humanity in Burundi. Burundi's decision to withdraw from the International Criminal Court (ICC) has significant cost-benefit impacts on governance and international relations. From an international law perspective, Burundi is no longer bound by the Rome Statute 1998, which means that state officials, including Pierre Nkurunziza, are free from International Criminal Court (ICC) investigations and prosecutions for human rights violations. This benefits the Burundian government, allowing it to pursue policies aligned with national interests without international pressure limiting its actions. However, the decision to withdraw also hurt Burundi's international reputation. The decision to withdraw from the International Criminal Court (ICC) triggered tensions with supportive countries and international organizations that promote global justice and human rights. These tensions could affect diplomatic relations and reduce the international support and aid Burundi receives. The political crisis of 2015 revealed the fragility of regime stability in Burundi, and the decision to withdraw from the International Criminal Court (ICC) highlighted shifting internal power dynamics.

One alternative to facing the consequences of this withdrawal is to strengthen the national legal system by enhancing the capacity of domestic courts to deal with cases of international crimes, such as genocide, war crimes, and crimes against humanity. The government of Burundi has promoted institutional change through constitutional revision to strengthen the national legal system, which could help demonstrate a commitment to the rule of law and international justice. Burundi's decision to withdraw from the International Criminal Court (ICC) led to a controversial Arusha Agreement, which became an alternative after withdrawing from the 1998 Rome Statute. Some people wanted the constitution to override the treaty, but the lack of transparency in the constitutional revision process raised questions about its legal validity in Burundi. Burundi's decision to withdraw from the International Criminal Court (ICC) triggered international attention to Burundi's political and human rights situation. A cost-benefit analysis shows that this decision could affect diplomatic relations and internal power dynamics amid continuing political tensions and could undermine justice and accountability efforts, as well as increase the risk of human rights violations and abuse of power, ultimately creating a climate of fear and intimidation among the population, especially for those targeted by political repression.

V. REFERENCES

1. *Africa Center for Strategic Studies*. (2024). Retrieved from Shifting Power Dinamic: <https://africacenter.org/spotlight/post-nkurunziza-burundi-the-rise-of-the-generals/>
2. *Allison's Three Models of Government Action*. (2023, 30 Desember Sabtu). Retrieved from Atlas Public Management: <https://www.atlas101.ca/pm/concepts/allisons-three-models-of-government-action/>
3. Arry Bainus, J. B. (2018). Kepentingan Nasional Dalam Hubungan Internasional. *Intermestic Vol.2 No.2*.
4. *Arusha Peace and Reconciliation Agreement for Burundi*. (2024, 28 February). Retrieved from United Nations Peacemaker: <https://peacemaker.un.org/node/1207>
5. *AS : Masa Jabatan ke-3 Presiden Burundi tak Konstatonal*. (2023, 28 Desember Kamis). Retrieved from VOA Indonesia: <https://www.voaindonesia.com/a/as-desak-presiden-burundi-tak-calonkan-lagi-/2804709.html>
6. Asrudin, A. (2014). Thomas Kuhn dan Teori Hubungan Internasional : Realisme sebagai Paradigma. *IJIS Vol.1 No.2*.
7. BBC. (2017). *Burundi Leaves International Criminal Court*. Retrieved from BBC: <https://www.bbc.com/news/world-africa-41775951>



8. *Burundi and the International Criminal Court*. (2024, 28 February). Retrieved from Coalition for the International Court Factsheet: https://www.coalitionfortheicc.org/sites/default/files/cicc_documents/ciccfactsheet_burundi_icc.pdf
9. *Burundi Country Profile*. (2018). Retrieved from Document United Nations Green Lake: https://ungreatlakes.unmissions.org/sites/default/files/310808_burundi_profile.pdf
10. *Burundi Court Backs President Pierre Nkurunziza on Third-term*. (2015). Retrieved from BBC: <https://www.bbc.com/news/world-africa-32588658>
11. *Burundi Crisis: The Legacy of 2015 Brings Fear for 2020*. (2019). Retrieved from Amnesty International: <https://www.amnesty.org/en/latest/campaigns/2019/05/burundi-crisis-the-legacy-of-2015-brings-fear-for-2020/>
12. *Burundi Culture*. (2024). Retrieved from Website Embassy of the Republic of Burundi to Germany: https://www.burundiembassy-germany.de/index.php?en_culture
13. *Burundi Opposition Spokesman Patrice Gahungu Killed*. (2015). Retrieved from BBC: <https://www.bbc.com/news/world-africa-34186040>
14. *Burundi Opposition Spokesman Shot Dead as Violence Escalates*. (2015). Retrieved from The Guardian: <https://www.theguardian.com/world/2015/sep/08/burundi-opposition-spokesman-patrice-gahungu-shot-dead-as-violence-escalates>
15. *Burundi Ratified Rome Statue*. (2004). Retrieved from International Criminal Court: <https://www.icc-cpi.int/news/burundi-ratified-rome-statute>
16. *Burundi: Pierre Nkurunziza Death Marks the End of an Era*. (2020). Retrieved from Amnesty International: <https://www.amnesty.org/en/latest/news/2020/06/burundi-pierre-nkurunziza-death-marks-the-end-of-an-era/>
17. *Burundi: Repression of Genocidal Character, the UN's Response must be Strong*. (2016). Retrieved from FIDH International Federation for Human Rights: <https://www.fidh.org/en/region/Africa/burundi/burundi-repression-of-a-genocidal-character-the-un-s-response-must-be>
18. *Burundi's Born-Again Ex-Rebel Leader*. (2024). Retrieved from BBC News: <http://news.bbc.co.uk/2/hi/africa/4162504.stm>
19. Butty, J. (2016). *Burundi Officially Informs UN of Intent to Leave ICC*. Retrieved from VOA: <https://www.voanews.com/a/burundi-icc-withdrawal/3568311.html>
20. Chang-Ho Chung, A. K. (2017). *Situations In The Republic Of Burundi*. International Criminal Court-ICC.
21. *Document International Committee of the Red Cross (ICRC)*. (2016). Retrieved from Refworld UNHCR: <https://www.refworld.org/reference/annualreport/icrc/2016/en/112817>



22. Elise Feron, K. K. (2022). Power/Resistance: External Actors, Local Agency, and the Burundian Peacebuilding Project . *European Journal of International Security (EJIS)*.
23. Fikri Irianto Kayupa, S. M. (2018). Kebijakan Gambia Keluar dari Mahkamah Internasional pada Era Pemerintahan Yahya Jameh. *JSDK Vol.10 No.1*.
24. Hadiwinata, B. S. (2017). *Studi dan Teori Hubungan Internasional : Arus Utama, Alternatif, dan Reflektifis*. Jakarta: Yayasan Pustaka Obor Indonesia.
25. ICC: *New Burundi Investigation 2 Year Crackdown on Political Opposition*. (2017). Retrieved from UNHCR: <https://www.hrw.org/news/2017/11/09/icc-new-burundi-investigation>
26. Nadif, A. H. (Agustus 2017). Perkembangan Industri PSMC di Tengah Kebijakan Regulasi Pembatasan Pemerintahan di Afrika Selatan. *Jurnal Analisis Hubungan Internasional Vol.6 No.2*.
27. Pamsm-Conteh, I. (2020). Can the State of Burundi Justify it's Reasons for Leaving the Jurisdiction of the International Criminal Court? *Section 7. Criminal Science*, <https://doi.org/10.29013/EJLPS-20-1-31-46>.
28. Pratama, E. (2020). Alasan Afrika Selatan Mundur dari International Criminal Court (ICC) Pada 27 Oktober 2016. *eJournal Ilmu Hubungan Internasional Vol.8 No.1* .
29. Rendi Prayuda, S. H. (n.d.). Politik Institusi Rezim Internasional (Konsep dan Pendekatan Analisis). *Journal Diplomacy and International Studies*.
30. Sandy Kurnia Christmas, K. R. (2021). Status Hukum Implementation Legislation Negara Pihak Terhadap Penarikan Diri Statuta Roma 1998. *Jurnal Pembangunan Hukum Indonesia Vol.3 No.2*.
31. Sato, Y. (2020). Rational Choice Theory. *Sociopedia.Isa*.
32. Sukatin, A. A. (2022). Kepemimpinan Dalam Islam. *Jornal of Education Leadership Vol.2. No.1*.
33. Syaeful Bahri, J. H. (2017). Penerapan Pacta Sunt Servanda pada Testament yang Dibuat Dihadapan Notaris dalam Perspektif Keadilan. *Jurnal Akta Vol.4 No.2*.
34. *The ICC: A response to African concern-Fatou Bensouda*. (2024). Retrieved from Document of ICC: <https://www.politicsweb.co.za/documents/the-icc-a-response-to-african-concerns--fatou-bens>
35. Theresa Whitely, D. I. (April 30, 2020). The International Criminal Court, Elite Theory, and African States Withdrawal Notifications: South Africa, The Gambia, and Burundi. *POL5000 Independent Research Thesis*.
36. Toby Sterling, K. H. (2017, November). *Burundi Rejects International Criminal Court War Crimes Investigation*. Retrieved from Reuters: <https://www.reuters.com/article/us-warcrimes-burundi/burundi-rejects-international-criminal-court-war-crimes-investigation-idUSKBN1DA1IH/>
37. UNHCR. (2015). *Burundi Situation: Regional Refugee Response Plan*. The UN Agency Refugee.



38. Vandeginste, S. (2009). Power Sharing, Conflicts and Transition in Burundi: Twenty Years of Trial and Error . *Journal of Africa Spectrum Vol.44 No.3*, <https://journals.sagepub.com/doi/pdf/10.1177/000203970904400304>.