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Can the ICC Combat the Illegal Exploitation of Resources and 'Land-Grabbing'?

 Posted by [Nadia Bernaz](#) on 17th Aug, 2017 in [Human Rights](#) | [0 comments](#)


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It is a pleasure to welcome back [Dr Evelyne Schmid](#) as a guest poster on 'Rights as Usual'. Dr Schmid is Associate Professor of International Law at the University of Lausanne. This post is hers and looks at the ICC Office of the Prosecutor's Policy Paper on Case Selection and Prioritization, which I discussed [here](#) and [here](#), from a different angle.

In September 2016, the Chief Prosecutor of the International Criminal Court (ICC) in The Hague [announced](#) that her Office intends to pay particular attention to prosecuting 'crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land'. A few days ago, Nadia convincingly [argued](#) that the statement in this [Policy Paper on Case Selection and Prioritization](#) holds considerable potential from a business and human rights perspective. Indeed, it is probable that the Policy Paper increases the chances that corporate actors and business activities will make it on the radar screen of the Office of the Prosecutor.

In addition, the Policy Paper is interesting from the point of view of economic, social and cultural rights and, in particular, the [debate](#) on whether abuses of economic, social and cultural rights could and/or should be part

of transitional justice endeavours, including international criminal proceedings or other mechanisms that employ this body of law. In an article published earlier this summer, I add my two cents on the Policy Paper. [The article](#) was published in German in a journal issued by the [German Association of Peace and Conflict Studies](#). I assess the reactions to the policy statement, ranging from [enthusiasm](#) to [criticism](#) that the Chief Prosecutor would give the ICC a new pretext for exclusively dealing with the Global South. What should we make of this controversy and what implications might the announcement of the Prosecutor have for the role of international law in transitional justice more broadly? Based on some of my previous research on the [area of overlap between international crimes and violations of economic, social and cultural rights](#), I outline the limitations and potentials of international criminal law as an instrument against the illegal exploitation of resources and the illegal dispossession of land ('land-grabbing'). Overall, my conclusions can be summarised as follows:

1. The statement in the Policy Paper is **not** about an expansion of international criminal law. Obvious as it seems, this conclusion is important. The Policy Paper and the Chief Prosecutor are intending to [shed particular light](#) on crimes (or aspects of crimes) that may have been overlooked in the past but there is no question of expanding or otherwise changing the scope of existing international crimes contained in the ICC Statute. [We should not assume](#) that everything related to economic, social or environmental aspects of international crimes is about an expansion of the law as it stands today.
2. Given that the universe of abuses is unfortunately vast and the possibility is real that there are accepted Rome Statute crimes 'that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land', the Office of the Prosecutor is not abandoning the '[core mandate](#)' of the ICC by paying attention to those alleged crimes.
3. The idea of prosecuting such abuses is also not inherently more '[symbolic](#)' than other prosecutions of alleged international crimes. The international crimes mentioned by Fatou Bensouda deserve to be taken seriously, for much the same reasons as other international crimes.
4. At the same time, an increased focus of the Office of the Prosecutor on such abuses, of course, is not, will not and cannot be a silver bullet to solve all (or even many) problems related to allegations of abuses of economic, social or rights. Rather, international criminal law has serious, unavoidable and largely justified [limitations](#). International criminal proceedings or other processes based on international criminal law are [only a small part](#) of the tools and mechanisms that can be employed in attempts to deal with the legacies of an abusive past.

In any event, I believe it is a very positive development that the Office of the Prosecutor is explicitly engaging with some of the very thorny questions of [selectivity](#) and case-selection at the ICC. Quick assumptions and a priori considerations that 'typical crimes' have certain characteristic and not others are not only legally inaccurate but risk failing victims and preclude us from making the most of international criminal law. Moreover, the statement of the Chief Prosecutor in the Policy Paper sends an important signal to national criminal authorities by flagging the relevance of environmental, economic, social and land-related aspects of international crimes.

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About Me



My name is Nadia Bernaz and I am Associate Professor of Law and Governance at Wageningen University in the Netherlands. My main area of research is business and human rights. I look at how corporations and businesspeople can be held accountable for their human rights impact through international, domestic and transnational processes.

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