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The International Criminal Court in Africa

Jonathan Hobson

Introduction

Entering into force on 1 July 2002, the Rome Statue established the International Criminal Court (ICC) with jurisdiction over 'the most serious crimes of concern to the international community': genocide, crimes against humanity and war crimes (ICC, 2002: 3). It is not the purpose of this chapter to explore the differences between these crimes, for such there are many detailed accounts that explain the distinctive and the circumstances in which they occur. For instance, Lemkin's (1944) essay originating the concept of genocide is important for understanding the basis of the act, and works from Schabas (2008), Totten and Bartrop (2009), Jones (2011) and Stanton (2016) contribute important interpretations of the crime. In terms of the links between genocide, war crimes and crimes against humanity, Bauman (2009), Shaw (2003, 2015), and Geras (2015) offer useful insights into broader social concepts of modernity and racism.

This chapter is concerned with the way in which the ICC has been conducting its work in Africa, and it does this in four parts. The first part details key aspects of the legislation underpinning the ICC and outlines some of the criticisms of the ICC's conduct in Africa. The second part explores the difficult relationships the court has with the African Union, discussing the impacts of this for the effective working of the ICC on the continent. The third part examines debates around the ICC's wider impact, particularly on states transitioning from violence. The chapter concludes with a short discussion on the future for the ICC in Africa, outlining some potential solutions to the difficulties it faces.

The International Criminal Court and its conduct in Africa

Although international legislation regarding serious abuses of human rights is relatively recent, the acts that constitute those crimes are not. Human history is full of incidences of widespread violence, destruction and the inflicting of intentional suffering. The ICC was an international response to this: a statement that there are some crimes so significant that, in the words of the Rome Statute, they 'shock the conscience of humanity' (ICC, 2002: 1).

The Rome Statute is a detailed document, establishing the ICC as a global legislative body with an international reach. For the purposes of this chapter, there are four significant clauses that relate to the ICC's work and the criticisms the court faces in Africa. First, the ICC is a court of last resort that works on a principle of complementarity, in other words, that it is first and foremost 'the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes' (ICC, 2002: 1). The ICC will only intervene where 'the State is unwilling or unable genuinely to carry out the investigation or prosecution' (ICC, 2002: 12). Second, states that have ratified the Rome Statute have a requirement to extradite to the ICC those on trial for crimes under its jurisdiction. Importantly, this requirement applies regardless of a defendant's position, as stated in Article 27: 'Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person' (ICC, 2002: 18).

Third, although initially formed by the United Nations, the ICC is intended to be an independent and politically neutral body. It is managed by an Assembly of States Parties comprising representatives of the states that have ratified or acceded to the Rome Statute. It is funded by a contribution model similar to the UN in which contributions are based roughly on member states' GDP. There are 18 judges, elected by the Assembly of States Parties for nine-year terms, and currently those judges are from Argentina, the Dominican Republic, Trinidad and Tobago, Kenya, Botswana, the Democratic Republic of Congo (DRC), Nigeria, Belgium, Italy, the United Kingdom, the Czech Republic, France, Poland, Germany, Hungary, Japan and the Republic of Korea (ICC, 2016a). The ICC initiates investigations in three ways: on the basis of a referral from the UN Security Council; from a petition by a state party or by a state not part of the Rome Statute that accepts the ICC jurisdiction in the case; or through an investigation initiated by the ICC's Office of the Prosecutor (OTP) (ICC, 2016b: 17).

One hundred and twenty-four countries are parties to the Rome Statute, including 34 African states, many of whom were among the first to ratify the legislation. Table 48.1 shows African states that are members, along with their dates of ratification.

Table 48.1 African states party to the Rome Statute of the ICC

State	*Date of ratification*
Senegal, Ghana	1999
Mali, Lesotho, Botswana, Sierra Leone, Gabon, South Africa	2000
Nigeria, Central African Republic	2001
Benin, Mauritius, Democratic Republic of Congo, Niger, Uganda, Namibia, Gambia, United Republic of Tanzania, Malawi, Djibouti, Zambia	2002
Guinea	2003
Burkina Faso, Congo, Burundi, Liberia	2004
Kenya	2005
Comoros	2006
Chad	2007
Madagascar	2008
Seychelles	2010
Tunisia, Cape Verde	2011
Côte d'Ivoire	2013

Source: African Union (2015a).

Although, as Boehme (2017: 56) puts it, 'African countries were deeply involved in creating the Court and all its provisions', it is fair to say that the ICC has a fractious relationship with many of these states. One of the most significant and persistent critiques is that the court 'has preoccupied itself with Africa and failed to investigate equally severe conflicts elsewhere' (Bassiouni and Hansen, 2014). At its most extreme, proponents of this position argue that the ICC is one element of a neocolonial project focused on Africa.

Abdul Tejan-Cole, Executive Director of the Open Society Initiative for West Africa (OSIWA), explains how conflict over the role and perceptions of the ICC in Africa has led some to go so far as 'to accuse the Court of being a neo-colonialist institution peddling a Western agenda that seeks to control African politics through ICC investigations and prosecutions' (Tejan-Cole, 2014). Similarly, in a 2012 opinion piece, Courtenay Griffiths, the lead defense attorney for former Liberian President Charles Taylor, argued that:

> The requirement of international justice is not the *raison d'être* of the International Criminal Court at all. Instead, the court acts as a vehicle for its primarily European funders, of which the UK is one of the largest, to exert their power and influence, particularly in Africa.
>
> *(Griffiths, 2012)*

Associated with arguments of a neocolonialist agenda, although less critical in interpretation, are claims of selectivism when the ICC decides on which cases to prosecute. Knoops (2014: 325), for instance, describes how the 'Achilles heel of the ICC system revolves around the fairness of its selection process of its cases'. There are a number of factors influencing whether or not the ICC pursues a particular case, and the referral processes are clearly established in the Rome Statute. However, it is certainly true that, as with most criminal justice systems, the ICC do not have the resources to prosecute every individual involved in a particular case. In their own words:

> The Court will not be able to bring to justice every person suspected of committing crimes of concern to the international community. The prosecutorial policy of the Office of the Prosecutor is to focus its investigations and prosecutions on those who, having regard to the evidence gathered, bear the greatest responsibility for such crimes.
>
> *(ICC, 2016b: 17)*

The criticism is that selectivism extends beyond decisions *within* cases to decisions about *which* cases the ICC should prosecute. As a consequence, the concern is that geopolitical pressures mean that cases in Africa are more likely to be pursued. For Imoedemhe (2015: 80), it effectively means that 'international crimes are ignored when it is considered politically expedient to do so'.

At the other end of the debate are those such as Keppler (2012: 8), who claims that the 'characterization of the ICC as unfairly targeting Africans is not supported by the facts'. deGuzman (2014) makes a similar case, arguing that 'all of the Court's actions to date have been based on plausible interpretations of the relevant law'. The foundation of this position is the central importance of complementarity in the Rome Statue: in other words, that the ICC is only able to open cases when national governments are failing to investigate crimes in a comprehensive manner. As a consequence of this, any claims that there is an undue focus on one region 'are based on misunderstandings about the extent of the ICC's jurisdiction' (deGuzman, 2014). It is not that those taking this position ignore the distribution of ICC prosecutions in Africa, but they contend that this clustering is a consequence of 'the current situation of the African continent, with its wars and poverty, have as their root cause the impunity that thrives in a lack of accountability and the rule of law' (Wilson, 2008: 114).

Whether driven by neocolonialism, politically motivated selectivism or by the demands of procedural justice, as Table 48.2 shows it is clear that the ICC has undertaken the largest portion of its work in situations relating to African states.

Table 48.2 ICC legal action up to April 2017

	Africa	*Asia*	*Europe*	*North America*	*South America*
Investigations not taken to preliminary examination	0	1	0	1	1
Situations currently under investigation	9	0	1	0	0
Investigations taken to preliminary examination	4	2	3 (*) (**)	0	1
In trial or appeal	5	0	0	0	0
Cases closed or defendant found not guilty	5	0	0	0	0
Successful prosecutions (***)	4	0	0	0	0

Source: ICC (2017a).

Notes:

(*) Refers to investigation into alleged war crimes committed by United Kingdom nationals in the context of the Iraq conflict and occupation from 2003 to 2008.
(**) Refers to case opened by Comoros in respect to the 31 May 2010 Israeli raid on the humanitarian aid flotilla bound for the Gaza Strip.
(***) Includes convictions in appeal.

The ICC and the African Union

The African Union have been one of the most consistent critics of the ICC's work in Africa. This came to a head in 2009, when the ICC issued a second arrest warrant for Sudanese President Omar al-Bashir, adding genocide to the existing charges of war crimes and crimes against humanity. The African Union responded at its July 2010 summit, calling on its members not to cooperate with the ICC arrest warrant. Later that year, al-Bashir visited Chad and Kenya, both of which are signatories to the Rome Statute of the ICC, and both refused to arrest and extradite al-Bashir.

The 2010 summit of the African Union was also significant as the African Union rejected a request by the ICC to open a liaison office in Addis Ababa, Ethiopia. This was accompanied by a series of inflammatory comments directed to Luis Moreno-Ocampo, the first ICC Chief Prosecutor, whom they accused of 'making

egregiously unacceptable, rude and condescending statement[s]' (Keppler, 2012: 3). These comments reflect a long-standing animosity from the African Union towards Moreno-Ocampo, whom they felt was guilty of 'failing to communicate with his African interlocutors, particularly by failing to partake in discussions with the AU' (du Plessis et al, 2016: 2). Indeed, this relationship was so bad that in 2011, Jean Ping, then chairman of the African Union, said, 'frankly speaking, we are not against the ICC. What we are against is Ocampo's justice' (BBC, 2011).

Regardless of the drivers for the animosity between the African Union and Moreno-Ocampo, it is clear that from the outset, there were significant tensions between the ICC and the African Union. In order to try to overcome these difficulties, between 2012 and 2014, a series of African Union-International Criminal Court (AU-ICC) Joint Seminars were held, the purpose of which was to bring together:

> ICC experts, AU Commission staff, as well as Ambassadors and legal advisors of the Permanent Missions of the African Union Member States in Addis Ababa [in order to] facilitate dialogue and provide an opportunity for frank and open discussions between the ICC and the AU, with a view to fostering understanding of the respective mandates of the two institutions, discussing issues of mutual interest and strengthening the relationship between the two institutions.
>
> *(African Union, 2015b)*

While this series of seminars was taking place, on 12 October 2013 at an extraordinary session in Addis Ababa, Ethiopia, the African Union produced a 'Decisions and Declarations' document on their relationship with the ICC, reiterating the:

> AU's concern on the politicization and misuse of indictments against African leaders by ICC as well as at the unprecedented indictments of and proceedings against the sitting President and Deputy President of Kenya in light of the recent developments in that country.
>
> *(African Union, 2013: 1)*

In particular, the African Union expressed concern over the two ongoing cases regarding President al-Bashir in Sudan, and President Uhuru Kenyatta and Deputy President William Samoei Ruto in Kenya. In both countries, the African Union contested ICC prosecutions on the grounds that they were a misuse of international jurisdiction and that, particularly in the case of Kenya, were a threat to 'the process of addressing the challenges leading to the post-election violence' (African Union, 2013: 1).

As part of the 2013 extraordinary session, the African Union also reaffirmed its support of national and internal law that grants immunity to heads of state and senior officials while in office, stating that 'no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government' (African Union, 2013: 2). Furthermore, a request was made at the extraordinary session that 'any AU Member State that wishes to refer a case to the ICC may inform and seek the advice of the African Union' (African Union, 2013: 3). This move echoed an earlier draft protocol from the African Union that called for the expansion of the African courts to cover human rights abuses, including those crimes currently associated with the ICC (African Union, 2012: 17). For Abbas (2013: 934), such a prospect 'portends some troubling times for the International Criminal Court (ICC), but more so for international criminal justice in Africa'.

The African Union is not the only group to question the mandate of the ICC. The requirement to extradite and the removal of political immunity remains one of the most controversial aspects of the ICC's work. For instance, the United States of America also expresses serious concerns over the potential for politicised decision-making in the ICC: 'The Rome Statute creates a self-initiating prosecutor, answerable to no state or institution other than the Court itself. Without such an external check on the prosecutor, there is insufficient protection against politicized prosecutions or other abuses' (US State Department, 2003). Unlike many members of the African Union, however, the United States has not ratified the Rome Statute: it was the ratification and subsequent refusal to extradite that has had the most significant impact on the authority of the ICC.

In 2015, the African Union's Committee of African Ministers on International Criminal Court reiterated their commitment to suspending or deferring the proceedings against al-Bashir, with a mind to ultimately withdrawing the case. This was accompanied by a request to 'terminate or suspend the proceedings against Deputy President William Samoei Ruto of Kenya until the African concerns and proposals for amendments of the Rome Statute of the ICC are considered' (African Union, 2015c). These continued calls have had a significant impact, as since the initial arrest warrant in 2009, al-Bashir has visited eight African states that are signatories to the Rome Statute of the ICC: Chad, Kenya, Djibouti, Malawi, Nigeria, the DRC, South Africa and Uganda (Boehme, 2017: 51).

Although the anti-ICC rhetoric from the African Union has been persistent, there has not been a universal acquiescence to the African Union's positions. Many states find themselves torn between the two bodies. For instance, Boehme (2017: 52) describes how the African Union's demand for non-compliance in the arrest of Omar al-Bashir 'catapulted the South African executive into a loyalty conflict between its obligation to the African Union and its obligation to the ICC'. This conflict was played out in South Africa's Supreme Court of Appeals, which ruled that the government were in breach of their ICC obligations for failing to extradite al-Bashir during his 2015 visit. As a response to this ruling, in October 2016 the South African government issued an instrument of withdrawal from the ICC, citing that it had 'found its obligations, with respect to the peaceful resolution of conflicts, at times incompatible with the interpretation given by the ICC' (South African Government News Agency, 2016). This decision was again challenged in South Africa's High Court, which in 2017 ruled that without first seeking parliamentary approval, the move was 'unconstitutional and invalid' (BBC, 2017). In March 2017, the South African government formally revoked their withdrawal from the ICC (Mail & Guardian, 2017).

There is an argument to be made around the degree to which the African Union offers a unified voice for African states. For instance, Keppler (2012: 5) claims that the African Union 'does not reflect the range of positions that African governments have regarding the ICC'. For Keppler (2012: 7), a significant part of the pushback to the ICC in Africa comes from a targeted effort by a group of African Union members that have not ratified the Rome Statute and have 'actively sought to exploit unevenness in the application of international justice to present the ICC as a new form of imperialism that should be opposed'. du Plessis et al. (2016: 11) take a similar position, claiming that:

> the tendency by some on the AU side to paint the ICC as a tool of Western imperialism and as a neo-colonial project out to get Africa is misplaced and undermines the genuine support and commitment that almost two-thirds of the AU member states have demonstrated by ratifying the Rome Statute.

There is considerable evidence to suggest that the ICC has had, and continues to have, a good level of support across Africa. For instance, the critical messages delivered by the July 2010 African Union summit were by no means universally supported. Several members had 'actively sought a far more favourable text that excluded the call for non-cooperation and criticism of the prosecutor's conduct' (Keppler, 2012: 5). Although this declaration was ultimately included, a clause which called for sanctions on states that continued to cooperate with the ICC was not. Following the release of the declaration, several member states publicly distanced themselves from the censure of the ICC, including Botswana and South Africa (although as the above shows, that support was relatively short-lived from the South African government).

Further support for the ICC was voiced in the aftermath of South Africa's 2016 proposed withdrawal, when a number of African Union members publicly backed the court and its work in Africa. This included Nigeria, the DRC, Côte d'Ivoire, Botswana, Tunisia, Ghana, Mali, Burkina Faso, Tanzania, Lesotho and Uganda (Human Rights Watch, 2016a).

The ICC also enjoys significant support from civil society groups and organisations, many of which have 'repeatedly collaborated on letters, analyses and meetings with officials of African ICC states parties to convey the need for strong African government support for the ICC' (Keppler, 2012: 19). In a 2016 open letter to members of the African Union, 200 civil society groups from across Africa wrote to states that are both African Union and ICC members. The open letter urged these states to publicly affirm their support for the court, and to increase their involvement with ICC activities in Africa and beyond (Human Rights Watch, 2016b).

The ICC and transitional states

Another area of the ICC's involvement in Africa that has come under scrutiny is its work in states that are transitioning from periods of significant conflict. These transitional states often face difficult challenges as they seek to rebuild political and social structures while overcoming the psychological and cultural impacts of violence.

For authors such as Okafor and Ngwaba (2015), there has been an overemphasis on the ICC as the route for achieving justice in the face of grave abuses of human rights. This overemphasis is, at least in part, due to an orthodoxy in international approaches that are 'ICC-centric', and which 'consciously or unconsciously advocates the use of the ICC far more robustly in Africa than has ever been done on any other continent' (Okafor and Ngwaba, 2015: 92). Such an approach to managing grave and historic abuses, they argue, fails to take into account the needs of societies transitioning from violence. They have four main criticisms.

First, Okafor and Ngwaba (2015) question the long-term impact of an international jurisdictional approach that bypasses a state's domestic justice system. They highlight the:

> possible negative consequences of the significant displacement or circumvention of local criminal justice institutions that occurs with the utilization of international criminal justice in situations where past crimes fall within the categories of genocide, crimes against humanity and war crimes.
>
> *(Okafor and Ngwaba, 2015: 96)*

Similar criticisms have been levelled at the precursors to the ICC. For instance, Barria and Roper (2005) discuss the efficacy of the international criminal tribunals for the former Yugoslavia and Rwanda, particularly their ability to maintain peace, provide justice and move towards national reconciliation. Indeed, they argue that it was some of these failings in the latter two tribunals that drove the creation of the ICC.

Chief Charles Achaleke Taku, a Lead Counsel for the International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, and for the ICC, echoes criticisms of the ICC's ability to provide longer-term positive impacts in Africa. He argues that there is a risk that the court's approach towards Africa could be 'destabilizing and insensitive to other avenues put in place by the AU to provide African solutions to African problems' (Taku, 2014). To be effective in providing longer-term benefits to transitional states and to develop wider support with bodies such as the African Union, Taku (2014) argues that the 'ICC must be sensitive to the presence of other conflict management and conflict resolution actors in the field in Africa'. In making his case, Taku points to the truth and reconciliation processes that have formed significant parts of transitional contexts in Africa for a number of years. These were arguably most effective in Sierra Leone, but also played significant roles in post-apartheid South Africa and the Gacaca community court system used after the genocide in Rwanda.

Second, Okafor and Ngwaba (2015) identify the potential dangers of politicised justice delivered by international institutions. They argue that the international community is not consistent in its approach to achieving justice, particularly in states transitioning from conflict. To some extent, this should be expected, as the context in which conflicts occur and end are very different, although Okafor and Ngwaba (2015: 97) question whether 'a version of transitional justice tends to be despatched to weaker or less favoured states (many of which are in Africa), as opposed to their stronger or more favoured counterparts (most of which are not African)?' Claims of a politicised and inconsistent approach reflects many of the criticisms levied at the ICC from parts of the African Union. Boehme (2017: 52) argues that, in line with many member states such as South Africa, the African Union has 'a preference for regional solutions to regional conflicts, for quiet over antagonistic diplomacy toward autocratic regimes and for an anti-imperialist world order in which the global south enjoys equal status to the global north'.

Third, Okafor and Ngwaba (2015) problematise an approach sometimes taken by the international community whereby guarantees of impunity are given to certain combatants or groups in order for them to cease fighting. The example they give is of the DRC, in which approximately 330,000 fighters were given guarantees of impunity in order to expedite the end of the conflict (Okafor and Ngwaba, 2015). While this might be a realist approach that takes into account the problems of managing a transition from conflict to

peace, it is unlikely, Okafor and Ngwaba (2015: 98) argue, to 'have a deterrent effect against such crimes in the future'.

Although it is true that the international community might negotiate peace deals that involve an element of immunity, it is also important to note that the first case the ICC opened was in the DRC, investigating 'alleged war crimes and crimes against humanity committed mainly in eastern DRC, in the Ituri region and the North and South Kivu Provinces, [committed] since 1 July 2002' (ICC, 2017b). The ICC's first two convictions were also from the DRC: Lubanga Dyilo, found guilty for the war crime of enlisting and using child soldiers and sentenced to 14 years in 2012; and Germain Katanga, found guilty for one count of a crime against humanity (murder) and four counts of war crimes (murder, attacking a civilian population, destruction of property and pillaging) and sentenced to 20 years in 2013 (ICC, 2017b). Other cases in the DRC include the ongoing trial of Bosco Ntaganda, alleged deputy chief of the FPLC, charged with five counts of crimes against humanity and 13 counts of war crimes; the acquittal of Ngudjolo Chui of charges of war crimes and crimes against humanity; and the outstanding arrest warrant for Sylvestre Mudacumura on nine counts of war crimes (ICC, 2017b).

As a counterpoint, Abbas (2013: 946) argues that it is precisely because of the instability in transitional states or states in conflict that the ICC should play a role in offering a path to justice. It is often unrealistic to suppose that those who are 'shielded by the deployment of raw political force' are able to be held to account by national political institutions:

> If there is any serious lesson to be learned from the cat-and-mouse game of the Ugandan regime and the LRA before the referral of the case to the ICC, it is precisely that domestic justice may not be suitable where potential culprits have as much or even more fire power than the state, or where the government is itself morally compromised.
>
> *(Abbas, 2013: 946)*

Finally, Okafor and Ngwaba (2015) argue that it is difficult to apply effective justice in situations where conflict is ongoing, where a fragile post-conflict state remains influenced by an incumbent or outgoing regime, or where a recently militarised group still holds some level of influence and control. In these circumstances, what they describe as the 'international criminal justice-laden and ICC-heavy approaches generally adopted in recent years on the African continent' (Okafor and Ngwaba, 2015: 99) may serve to entrench rather than challenge support for those accused of grave human rights abuses. This might, at least in part, be a driver for some of the anti-ICC sentiment that Keppler (2012) identifies as being present in parts of the African Union.

Although there are some criticisms of the role of the ICC in transitional states, that does not mean there are no benefits to this type of international criminal justice approach. There is a growing body of evidence suggesting that the impact of the ICC goes beyond formal prosecutions. For instance, Bassiouni and Hansen (2014) argue that the 'ICC is an institution with the capacity to change habits and outcomes'. Equally, Hyeran and Simmons (2016: 444) present the work of the ICC as more nuanced than its record of prosecutions, identifying 'multiple mechanisms – legal and social, international and domestic – associated with the ICC's authority that can potentially deter law violation in countries prone to civil violence'. In particular, they identify two potential forms of mutually reinforcing deterrents to which the ICC contributes: prosecution deterrent, both from its own Investigatory powers and its wider impact on domestic laws, and social deterrence from the mobilisation of the international community and domestic civil society (Hyeran and Simmons, 2016: 469).

Broache (2016) supports the idea that interpretations of the ICC's impact should be more circumspect, arguing that the impact of intervention can vary depending on a range of factors, including the nature of conflict at the time of intervention. Through a statistical analysis of ICC action during the conflict in the DRC, he demonstrates 'variation in the effects of prosecutions across stages of the legal process and other relevant categories such as belligerent groups, conflict situations and time' (Broache, 2016: 408). Although careful to point out that this is based on one case study area, the study does demonstrate that the ICC's involvement in Africa is neither wholly positive nor wholly negative.

The future of the ICC in Africa

There are those such as Abbas (2013: 946) who argue that the relationship between the ICC and the African Union 'was a disaster waiting to happen'. This is particularly evident in the case of al-Bashir, around which Boehme (2017: 69) argues that the African Union succeeded in creating a 'non-cooperation norm' in exercising an ICC warrant. Nevertheless, this does not mean that the relationship is irretrievable or that the ICC cannot continue to work in a productive manner across Africa. There are plenty of commentators, such as Imoedemhe (2015: 74), who believe 'the relationship is still salvageable and could be enhanced for the mutual benefit of both institutions with a view to achieving the goal of peace and security'.

One way in which the ICC and African Union might be able to develop a more positive relationship is, somewhat counterintuitively, through the empowerment of the African court to try those crimes associated with the ICC. In support of this, du Plessis *et al*. (2016: 12) argue that 'there could be a valid role for the African Court, given the right political and financial support', particularly if the court were to work closely with the ICC. One route for negotiating this could be through greater dialogue around what constitutes the principle of complementarity and the application of this in practice. For du Plessis *et al*. (2016: 7), properly and clearly articulated complementarity can be a principle through which the ICC and the African Union come to a shared understanding, and thus:

> Rather than perceiving the ICC as an instrument of global or universal (in)justice disrespectful of particularly African states' sovereignty, the very premise of complementarity allows African states to demand that the ICC defers to their competence and right to investigate international crimes.

The ICC faces a difficult role, dealing not only with cases in the aftermath of violence, but often cases occurring as part of ongoing conflict. These conflicts are complicated sociopolitical events, involving competing domestic, regional and at times international parties. It is not the job of the ICC to prevent or interrupt such conflict. While there is some truth in accusations of an overbalance from the ICC to countries in Africa, this does not mean that 'the ICC needs to stop investigating and prosecuting crimes in Africa, but that it needs to also investigate and prosecute crimes elsewhere' (Bassiouni and Hansen, 2014). An undue focus on African cases, perceived or real, does not de facto diminish the impact of the ICC's work. The mandate of the ICC, however, remains tainted in the African context. In part, this is because of a difficult relationship between the ICC and the African Union, in part because of ongoing perceptions of a tendentious focus towards Africa, and in part because of criticisms around the suitability of applying an international justice approach in transitional contexts. For as long as these issues remain unresolved, the ICC will continue to face significant challenges when pursuing its work in Africa.

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