

Foreword

Judge Sanji Mmasenono Monageng

The entry into force of the Rome Statute of the International Criminal Court in 2002 is likely the most significant event in the coming-of-age of international criminal justice. Many have thought this because it established the first ever permanent court tasked with adjudicating international crimes. Certainly this is an enormous development. But the greater significance of the Rome Statute may be its recognition that the primary location in which international criminal justice is to be secured is the state most directly affected. Only if that state is unwilling or unable genuinely to carry out investigations and prosecutions is the ICC authorised to intervene. It is this – called the principle of complementarity – that is the real hallmark of international criminal justice today.

That complementarity is meaningfully realised requires not only that states ratify the Rome Statute, but that they implement domestic legislation, and that they appoint and apportion sufficient resources to persons and bodies, who have the requisite expertise, tasked with the specialised functions of conducting domestic investigations and prosecutions. That these steps happen, and once put in place, that they aren't merely for show but are properly used, requires political will. Civil society's efforts are absolutely crucial to securing that political will.

This report is to be welcomed for demonstrating how civil society actors across the African continent have, through different initiatives, successfully intervened to secure domestic realisation of international criminal justice. The objective of the report is to inspire other civil society actors to more forcefully enter this field, by showing how they might induce their governments – through engagement and advocacy, and sometimes through litigation – to meet the obligations of complementarity.

The report's focus is on Africa and African civil society – not because there is any belief that the focus of international criminal justice should exclusively be Africa. Of course, it shouldn't and can't be. But too much of the debate on international criminal justice and Africa has been presented in negative terms. The fact is that Africa has made a substantial intellectual investment in the international criminal justice project: vocal during the Rome Statute negotiations, the Africa bloc was critical in fending off interventions that would have resulted in a less independent court. Africa also represents the largest regional bloc of states parties to the ICC. Its citizens are represented at all levels of the staff comprising the ICC. In the landscape of global governance, the ICC represents an unprecedented advance – it is a development in which Africa has had a chance to play a critical role and it has seized that chance.

It would be a tragedy were Africa to pull back on its substantial investment now. Not only for the global ramifications. Decades of underdevelopment have left African states with rule of law challenges, to greater and lesser degrees. Domestication of international criminal justice can serve not only to secure accountability for the most heinous crimes, but can also spur systematic legal reform, helping strengthen domestic legal systems and shore up the credibility of local institutions.

My hope is that this report helps make those gains apparent and emboldens state actors and civil society across the African continent to make international criminal justice a domestic reality.

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