



Making
Human Rights
a Reality

23 April, 2012

THE PROPOSED CRIMINAL LAW REGIME FOR AFRICA

From 7-15 May 2012, the Ministers of Justice of the member states of the African Union (AU) will meet to discuss *inter alia* a Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, which confers upon the Court international criminal jurisdiction . Please [click here](#) for the Draft Protocol.

The AU envisages the creation of a Prosecutor and a new Chamber of the African Court, which will hold jurisdiction over the classic international crimes of genocide, war crimes, and crimes against humanity. In addition, the draft provides jurisdiction over other crimes, including the unconstitutional change of government, piracy, terrorism, mercenary, corruption, money laundering, trafficking in persons, drugs and hazardous wastes, illicit exploitation of natural resources, aggression and inchoate offences.



While the draft text nowhere states so, it is plain that the proposed criminal law regime finds its roots in the severe critique that the AU has expressed on the International Criminal Court (ICC). The critique is well known. All cases currently before the ICC are African cases and this has created the perception that The Hague based ICC is targeting Africans rather than contributing to justice in and for Africa. Over and over again, the AU, and its Assembly in particular, have expressed dissatisfaction with the ICC as well as the ‘abuse’ of universal jurisdiction by national courts, especially in Europe. Africa, so ICC critics assert, should take matters in its own hands and develop an African response to Africa’s justice problems.

By devising a proposed criminal law regime for Africa, the AU now seems to act upon its own words. The draft text provides for an independent African Prosecutor, a court that has jurisdiction over crimes that are of particular significance for Africa and does not recognize immunities, even for Heads of State. Leaving aside technical issues for the moment, the text of the draft protocol may be judged positively as it seems to reflect the will to actually work towards criminal justice on the African continent.

Yet there is also cause for concern. Firstly, the process and discussion leading to the draft text were done in secrecy. NGOs and Civil Society have not played a role. They have not debated the pros and cons of such a regime. Why, one may ask, is this the case? It is of significance to note that NGOs played an important

role in development of both the African human rights system, and the ICC. Secondly, the proposed criminal law section of the Draft Protocol is said to be complementary to the jurisdiction of national courts and courts of Africa's regional communities. Yet, the text seems to deliberately omit any reference to the ICC, although some 33 of the 54 AU member states are parties to the ICC Statute. How will the proposed African criminal law section of the Court relate to the ICC when no mention is made of the ICC at all? But perhaps most importantly, how does the AU intend to fund a criminal law regime within the African Court. A beautiful text is one thing, effective criminal justice quite another.

Africa has a history of adopting impressive legal texts for supranational institutions, but practice demonstrates that words on paper do not always translate into success in practice. Civil society has a duty to critically follow the debates on the proposed criminal law regime for the African Court. Civil society has a right to be actively involved in these debates. The creation of an African criminal court is as such not a bad idea. Justice done closer to home has better guarantee for legitimacy. But does the AU have the political will and the resources to ensure the efficacy and legitimacy of the proposed criminal law regime or is this a smokescreen as many suggest? Is Africa ready to ensure justice for its own?

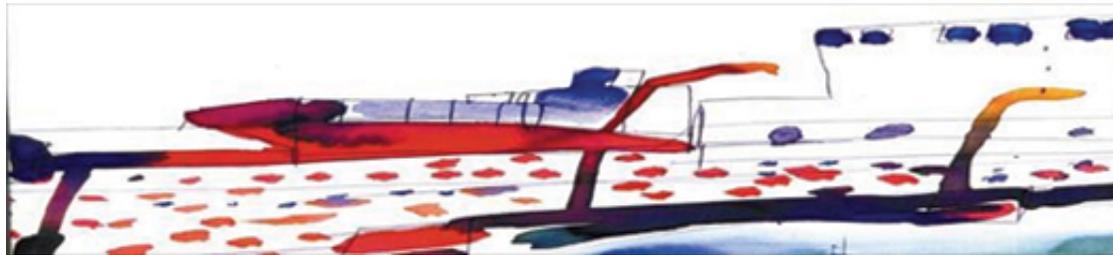


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