



## "Africa and the International Criminal Court" | Africa and the ICC: Lessons Learned and Synergies Ahead

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H.E. Navanethem Pillay; immediate past United Nations High Commissioner for Human Rights (picture retrieved from <https://www.flickr.com/photos/us-mission/14203001348>)

Excellencies, Ladies and Gentlemen,

I would like to start by thanking Her Excellency, Ms Intellman, President of the Assembly of States Party of the International Criminal Court, as well as the Africa Legal Aid, and in particular Ms Evelyn Ankumah, for organising this meeting and for inviting me. I would also like to address a special tribute to Prosecutor Fatou Bensouda.

African States have been at the forefront of important international and regional endeavours to ensure respect for human rights. The African Charter on Human and People's Rights, in its preamble, stresses that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples". The Charter further underlines the indivisibility and interdependence of rights and that the human person has both rights and duties. Moreover, the importance of accountability is underscored under Article 4 of the AU's Constitutive Act, which firmly states that impunity should not be tolerated across the African continent, and that victims must have access to justice.

Under the auspices of the African Union, African Countries have also demonstrated their commitment to ensuring accountability by establishing the African Human People's Rights Commission and the African Court of Justice and Human Rights. These institutions oversee the implementation of the African Human and People's Rights Convention and other human rights instruments ratified by Member States.

In the 2012 United Nations Rule of Law Declaration, supported by all States — including African Heads of States and Governments — the African countries reiterated their commitment to fight impunity for international crimes and the most egregious violations of international human rights and humanitarian law, and recognized the role of the International Criminal Court in a multilateral system.

The struggle against impunity, and especially against impunity for grave human rights violations or international crimes, is vital for many reasons, but especially to bring justice to victims. Only justice and accountability can ensure that victims have access to redress and reparations, and this in turn is crucial to achieving reconciliation and sustainable peace. Failure to restore the rights and dignity of victims, and failure to secure accountability for human rights violations and other international crimes, does critical harm to individual victims, and also to society at large. Peace — true peace — can only be achieved if we work to end the eternal cycle of resentment and revenge by acknowledging the harm done to victims and recognizing their rights. In other words, accountability and reconciliation are not opposites. They are complementary in the pursuit of peace, stability, and freedom from fear and want.

The International Criminal Court, which is the world's first permanent international criminal court, is the culmination of determined international efforts to ensure accountability for the worst international crimes. The ICC has been able to further the work of its predecessors, notably the UN ad hoc tribunals established to pursue accountability in the former Yugoslavia and in Rwanda, which contributed greatly to advancing international criminal justice. I am very proud to have been directly involved in these endeavours.

Let us not forget that the ICC is a milestone achievement in our efforts to create a world where every individual is granted the protection afforded by international human rights and international humanitarian law. Let us also not forget that African countries were leaders in establishing the ICC: they played a key role in negotiating and adopting the Rome Statute in 1998. They were also actively involved in transforming the Court from an idea on paper to reality. Senegal was the first State to ratify the Rome Statute, and was followed by several other African countries, notably Ghana and Lesotho. When the Court was finally established in 2002, 17 of its initial State-Parties were African, and 5 out of 18 of its initial judges were from Africa. Today, in addition to the current African judges, the Court's Prosecutor is also an African.

Yet the relationship between the ICC and the African Union (AU) has been marked by controversies. At the Extraordinary Session of the AU General Assembly in October 2013, the AU highlighted its concern regarding "the politicization and misuse of indictments against African leaders by the ICC," and indicated that prosecutions against Heads of States "could undermine sovereignty, stability, and peace."

Until very recently, the ICC has worked mainly on situations of impunity on the African continent, although this focus has not been exclusive — I note in this regard that in late April this year, the ICC Prosecutor announced the opening of a preliminary examination in Ukraine, and I also believe that we may see developments in other parts of the World, in particular in the Middle-East. Nevertheless, let us admit that the focus so far on Africa has led to many concerns and criticisms being voiced. Yet, we should recall that five of the eight countries where the ICC is active have themselves referred the relevant allegations to the ICC: these are Uganda, Mali, Ivory Coast, the Central African Republic and the Democratic Republic of Congo. These referrals, often termed self-referrals, demonstrate the strong and praiseworthy commitment of these countries to accountability. They also show that the ICC — far from undermining the sovereignty of States — works with its State-Parties, to assist them in their efforts to render justice to victims and to comply with their international legal obligations. Thus they reflect a welcome development in international law and relations: a conception of sovereignty that is concerned with the protection and promotion of people's fundamental human rights.

One of the noteworthy features of the system established by the Rome Statute is its emphasis on the responsibility of States themselves to deliver justice. It is clear that justice should first be achieved through national processes. The primary responsibility to prosecute international crimes continues to rest with States, which should engage in constant and concerted efforts to foster accountability. The ICC is a complementary instrument. By incentivizing trials at national level, it can be a catalyst for greater accountability; and when the primary layer of responsibility at national level fails to function, it serves as an additional, and vitally important, layer of justice. The ICC strictly adheres to this principle. For example, the indictments and trial by the ICC of the two top Kenyan leaders only took place when it appeared that the Kenyan Authorities would not consider the matter domestically.

I am therefore concerned with some recent developments at the AU indicating that sitting Heads of State or Government, and other Senior States' officials, are immune from prosecutions during their tenure of office. It is evident that this idea arose because of the profile of the people indicted, and not because of the nature of the alleged crimes or the profile of the victims. The notion that political power can be a safe haven for impunity would create a dangerous double standard for accountability. It is also incompatible with international law. Notably, a 2002 judgment of the International Court of Justice emphasized that the immunity enjoyed by certain senior State officials does not mean impunity in respect

of crimes they may have committed, especially the gravest crimes. Moreover, the Statute of the International Criminal Court also provides that immunities which may attach to the official capacity of a person, under national or international law, shall not bar the Court from exercising its jurisdiction over such a person. Similar provisions were found in the statutes of other international tribunals, the UN Yugoslavia and Rwanda tribunals, but even before, in the Nuremberg and Tokyo tribunals.

Excellencies, it would be contrary to the commitment of African Countries to shun the accountability that is so strongly championed in the Constitutive Act of the African Union and the African Charter on Human and People's Rights.

Fighting impunity requires not only time and determination: it also requires political support and commitment. It is my belief that African States will continue to adhere to the fight against impunity so as to deliver justice and peace to their people, as they have solemnly affirmed. I hope and trust that those African States that are already party to the ICC Statute will continue to fully abide by their commitments; to systematically adopt implementing legislations; and adapt their domestic legal framework to comply with their international legal obligations. I also hope that those African States that are not yet party to the Rome Statute will, sooner rather than later, ratify it and henceforth directly participate in the fight impunity for the gravest crimes. So that those responsible for war crimes, crimes against humanity and genocide — whoever they are, and wherever they are — can be held accountable for crimes that gravely offend human dignity and human rights.

Thank you.

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