



## Understanding Complementarity

### Statement by Evelyn A. Ankumah at the Hague Working Group

In the last decades we have developed the notion that certain crimes are so serious that they are considered crimes against the world community. I get it.

Growing up in Ghana, the first country in sub-Saharan Africa to gain independence, we learned about Apartheid, in far away South Africa. My Ghanaian passport said 'valid for all countries except South Africa....' There were no plans for me to visit South Africa, yet I felt that Apartheid was a crime against me. So when I became a student of international criminal law, it was very easy for me to appreciate that certain crimes are universal crimes.

Many people associate international criminal justice with the International Criminal Court. This is as such not strange. The ICC is after all the first permanent international criminal court, and it is entrusted with the task of prosecuting perpetrators of crimes that are an affront to the entire international community. The ICC is indeed the symbol of international criminal justice.

Yet, international criminal justice entails much more than the ICC. In fact, the ICC is just one of multiple courts pursuing such, and it is not even the most important one.

Complementarity, in essence, means the ICC is last in line to all those tribunals with responsibility and jurisdiction for criminal justice. The ICC is a default court that is only needed when other courts are unwilling or unable to take responsibility. The ICC is like a generator that only needs to be used when the primary power sources fail to deliver.

When it comes to Complementarity, the Rome Statute only seems to have an eye on the ICC itself and national courts. No reference is made to the numerous hybrid or special tribunals that have been or are planned to be set in place at national or regional levels for crimes committed in countries like South Sudan, Habré's Chad, Cambodia or the Central African Republic.

the ICC?

In my modest view, there is added value for such special courts. As the Habré trial demonstrates, ad hoc courts may be cheaper, and more importantly, they may have greater legitimacy. Habré was the former President of Chad convicted by the Extraordinary African Chambers within the courts of Senegal. There has been no criticism on his trial and sentence. Not even by those leaders who may have something to fear, that one day, they too, may face a similar fate.

Complementarity reflects the notion that justice, preferably, should be done at home, and or as close to home as possible.

Ideally, the Habré trial should have taken place in Chad itself. This appeared not possible, or at least not desirable. The choice for Senegal is far to be preferred above a trial on the basis of universal jurisdiction in Belgium. But mind you Belgium's request for Habré's extradition served an important purpose. I believe it forced the African Union to sit up.



AFLA's Executive Director Evelyn A. Ankumah with former Judge Baltasar Garzón, often described as the godfather of universal jurisdiction, leaving the courtroom in Dakar after the Habré judgment.

Habré's crimes were committed before the entry into force of the Rome Statute, so The Hague was not an option, but even if it were, Senegal would still have been preferable. Justice should be done as close as possible to home.

long run, the ICC is of the utmost importance for Africa and its people. Yet, we also have to be realistic: there is much critique on the ICC in Africa, and not just from the African Union.

We may not always agree with the very harsh criticisms, but we should also not turn a blind eye to them. The critics are not just calling for impunity for certain high-level politicians and public officials. It goes deeper than that.

I believe it has to do with the fact that Africans wish to take criminal justice into their own hands. External support is more than welcome, and much appreciated, but an African trial in Africa, for crimes committed in Africa, will undoubtedly have greater legitimacy, than a trial here in The Hague.

So, as much as I see the need for the ICC, I also support initiatives like the Habré trial, and the campaign to have former Gambian leader, Yahya Jammeh tried in Ghana. Of course it would be ideal if Jammeh could be prosecuted in Gambia itself where the crimes were committed. But Gambia does not have the capacity. Gambia's Attorney General has said so himself. Other senior Gambian officials said so during Africa Legal Aid's consultations with West African stakeholders on 'Emerging Trends on Complementarity', held in Banjul, the Gambia, in April this year.

AFLA is lending support to the powerful campaign that was launched in Accra, Ghana, last May. We're supporting the call made to Ghana, to seek extradition of Yahya Jammeh from Equatorial Guinea, to face the law in Ghana, because Ghana, has a special stake in Jammeh's accountability. In 2005, 54 West African migrants including 44 Ghanaians, were allegedly massacred by Jammeh and his forces. So if justice cannot yet be delivered against Jammeh at home in the Gambia, it should be done close to home in Ghana, where the families of many of the Ghanaian victims reside.

AFLA will convene a Side Event at the 17th Session of the Assembly of States Parties to the ICC, entitled ***Complementarity in Action: Bringing Yahya Jammeh to Justice in Ghana***. I encourage each ICC member state to support AFLA's side event, by signing up, either as a non-paying co-sponsor, or as a paying co-sponsor. Martin Kyere, the lone survivor of the massacres will participate in the Side Event to share his vivid account of what happened.



Martin Kyere at Accra Cemetery in Ghana, where some of the victims were laid to rest. Photo credit: TheGuardian

I think for Africans it is not just relevant that perpetrators of international crimes are held accountable, but also where, and by whom. Unfortunately, far too many serious crimes that are committed on African soil go unpunished, and for that reason Africa needs the ICC as that back-up generator. Yet, African alternatives for criminal justice should be promoted. Equivalents for other regions, such as Asia, where serious crimes of international concern have been committed in countries like Myanmar, in Bangladesh, and in the Philippines, should also be explored.

The notion that perpetrators of international crimes should not escape the wings of justice, no matter who they are, is such an important development that we should all embrace. But that does not mean that all countries or people are equally affected. Some are more affected than others. And so proximity is a very relevant factor here.

In my modest view, those most affected should have some kind of ownership, in order to ensure the highest level of legitimacy possible.

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