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# The Advent of a Differentiated Accountability System

## *The African Court of Justice and Human Rights and the AU Transitional Justice Architecture*

TIM MURITHI

## 1. INTRODUCTION

This chapter will assess how the move towards enabling the African Court of Justice and Human Rights (ACJHR) to prosecute the most serious crimes of international concern, could impact on the African Union's evolving transitional justice architecture. The chapter will argue the emergence of alternative sources and ways of framing international criminal law, as evidenced in the Malabo Protocol, will broaden the spectrum of options available to African Union (AU) member states in their attempts to implement transitional justice processes. The chapter will further argue that what I call a *differentiated accountability system* is at the core of the African Union's evolving transitional justice architecture. The chapter will assess how the African continent is emerging as a theatre of innovation in terms of advancing our understanding the nexus between international criminal law, transitional justice and peacebuilding. This development will enable the continent to extricate itself from the puerile and interminable false debate as to whether one is 'for' or 'against' impunity depending if one advocate for the interventions of the international criminal tribunals in Africa. The chapter concludes by arguing that it is always vital to learn what African transitional justice, and specifically judicial, strategies or responses might be appropriate in different country contexts, which should be the foundation for a differentiated accountability system. As we shall see, understanding the operationalisation of the Malabo Protocol as a judicial instrument requires considering its application in relation to political commitments to African transitional justice.

## 2. TRANSITIONAL JUSTICE IN CONTEXT

Though the formation of the African Court for Justice and Human Rights presupposes judicial solutions to violence and inequality to Africa, it is



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important to understand how it is conceived as working in relation to larger structures of violence management, such as African transitional justice. What we see is that the processes that the field of transitional justice embodies have been implemented for as long as there have been conflicts and efforts to deal with the past. However, as a field of academic study and sphere of practical intervention, transitional justice began being systematically analysed during the transitions from authoritarian regimes in Latin America in the 1980s.[1] The genocide in Rwanda, in 1994, and in Srebenica, in 1995, further crystallised the quest and need to understand how societies that had endured mass atrocities could establish processes and mechanisms to deal with such a brutal past and enable a society to move forward. Concurrently, in 1994, South Africa's liberation from the yoke of a white supremacist apartheid regime to a system of democratic governance, also generated a broad range of insights and experiences that could be analysed and documented, on how to operationalise transitional justice. There are still perplexing challenges such as the issue of whether transitional justice processes can be implemented in the absence of a 'transition' or regime change. There is no definitive satisfactory response to this conundrum and often it is necessary to begin laying the foundations for transitional justice even in the absence of a transition or during a violent conflict.

## 3. A WORKING DEFINITION OF TRANSITIONAL JUSTICE

Alex Boraine notes that 'transitional justice seeks to address challenges that confront societies as they move from an authoritarian state to a form of democracy'.[2] More often than not such societies are emerging from a past of brutality, exploitation and victimisation. In this context, transitional justice does not seek to replace criminal justice; rather, it strives to promote 'a deeper, richer and broader vision of justice which seeks to confront perpetrators, address the needs of victims and start a process of reconciliation and transformation towards a more just and humane society'.[3]

[1] P. Arthur, 'How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice', *Human Rights Quarterly* 31(2009), at 321–67.

[2] A. Boraine, 'Transitional justice', in Charles Villa-Vicencio and Erik Doxtader, eds., *Pieces of the Ppuzzle: Keywords on Reconciliation and Transitional Justice* (Cape Town: Institute for Justice and Reconciliation, 2004), at 67.

[3] Ibid.

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The broadly accepted purpose of a process of transitional justice is to establish a quasi-judicial framework to undo the continuing effects of the past. It is also necessary not to lose sight of the fact that transitional justice is just that, a 'transitional process' and it should not be viewed as a permanent solution to addressing the atrocities of the past. It is a transient process that will have to give way to the rule of law and the restoration of a constitutional order that will manage and resolve the social, political and economic tensions within society. The institutional vehicles through which transitional justice is implemented, bodies such as truth and reconciliation commissions and special courts are temporary and time-bound institutions and should not be considered as a permanent solution.

Boraine argues that there are at least five components of a transitional justice process including:

- ensuring accountability in the fair administration of justice and restoring the rule of law;
- the use of non-judicial mechanisms to recover the truth, such as truth and reconciliation commissions;
- reconciliation in which a commonly agreed memory of the past atrocities is acknowledged by those who created and implemented the unjust system as a prerequisite to promoting forgiveness and healing;
- the reform of institutions including the executive, judiciary and legislative branches of government as well as the security sector to ensure that a degree of trust is restored and bridges between members of society can be re-built;
- the issuing of reparations to victims who had suffered human rights violations, as a way to remedy the harm suffered in the past.

Transitional justice is complicated by a number of dilemmas including how to balance the 'competing legitimate interests in redressing the harms of victims and ensuring the democratic stability of the state'.[4] It requires the balancing of two imperatives 'on the one hand, there is the need to return to the rule of law and the prosecution of offenders: on the other, there is a need for rebuilding societies and embarking on the process of reconciliation'.[5]

4 Ibid., at 71.
5 Ibid., at 72.

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### A. *The Relationship between Transitional Justice and Reconciliation*

Reconciliation is understood as the cumulative outcome of the broad-based application of transitional justice processes. Concretely, reconciliation processes require that the affected parties:

(i) recognise their *interdependence* as a prerequisite for consolidating peace;
(ii) engage in genuine *dialogue* about questions that have caused deep divisions in the past;
(iii) embrace a *democratic attitude* to creating spaces where they can disagree; and
(iv) work jointly to implement processes to address the legacies of *socio-economic exploitation and injustices*.[6]

At the heart of reconciliation is the achievement of the principles of justice and equity.[7] Consequently, transitional justice is viewed as an intermediary set of process within a differentiated accountability system that gradually and over-time lead towards the promotion of reconciliation.

### B. *The Evolution of Transitional Justice*

Transitional justice ideas initially originated from the legal tradition, with a biased focus on the judicial processes to address civil and political violations, during transitions to and lay the foundations for the post-transition rule of law. Africa's experiences demonstrated that traditional notions of transitional justice needed to be re-thought and re-framed. Specifically, to effectively address the real concerns of victims of past violations, transitional justice norms had expanded beyond their narrow civil and political focus, to include socio-economic and psycho-social issues. Consequently, transitional justice is now understood as involving a broad spectrum of interventions that are embedded in peacebuilding and developmental processes. The differentiated accountability system is informed by the understanding that uniform approaches to addressing the violations of the past are misconceived, and that in practice a broad spectrum of processes, mechanisms and institutions can be deployed at different points in time to advance the interests of pursuing redress for historical injustice.

[6] T. Murithi and L. McClain Opiyo, 'Policy Brief No. 14: Regional Reconciliation in Africa: Policy Recommendations for Cross-border Transitional Justice', Institute for Justice and Reconciliation, Cape Town, (March 2014), www.ijr.org.za.

[7] T. Murithi, *The Ethics of Peacebuilding*, (Edinburgh: Edinburgh University Press, 2009), at 136–59.

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## 4. INTERNATIONAL CRIMINAL LAW WITHIN THE TRANSITIONAL JUSTICE FRAMEWORK

International criminal justice falls within the rubric of retributive justice. Consequently, international criminal law (ICL) is only one element of a broad range of transitional justice processes. The dominant view among legal practitioners, scholars, jurists and lawyers is to view transitional justice as a 'spin-off' of ICL. This view also perpetuates a myth that transitional justice is a soft version of 'justice' that seeks out avenues to punish perpetrators and consequently it denies the 'duty to punish' and it undermines the 'morally superior' pursuit of the rule of law based on legal criteria. Regrettably, such views are the result of a myopic approach to the 'law' which begins in the law schools, where through a process of indoctrination legal scholars are erroneously taught that their sphere of activity is immune from the contamination of political, social and economic forces. This is a counter-intuitive position when one considers that all law is created through political negotiation, or more precisely through political manipulation. Consequently, the idea that 'law' somehow operates above politics is derisory and self-deluding which can lead to disastrous outcomes, particularly in post-conflict contexts which evade easy categorisations, and which due to their extremely volatile nature can lead to the loss of life by the actions of over-zealous prosecutorial fundamentalists.

## 5. THE EUROCENTRIC ORIGINS OF INTERNATIONAL LAW

International law emerged from the domestic political, cultural and legal norms of European societies. Subsequently, international law and ICL has been projected onto the world stage as a universally applicable system of norms and rules, which should frame and guide the way societies should live. If Eurocentric domestic norms can inform international law, the question arises as to whether other non-European societies can also extract, distil and proffer certain norms which can inform the reconstruction and redefinition of international law (IL) and ICL? The response is self-evidently in the affirmative the modern regime of international law is to a large extent a work-in-progress as a normative framework. The current corpus of IL and ICL does not foreclose the possibility that other sources of influence can be drawn upon to reorient this IL and ICL normative framework. The way forward will not be to continue to pretend that its origins were culturally inclusive and to embrace the possibility of new ways of conceptualising and framing international law and international criminal law, by drawing from other cultures around the world.

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## 6. THE AFRICAN UNION'S EVOLVING TRANSITIONAL JUSTICE ARCHITECTURE

The Constitutive Act of the African Union, of 2000, empowers the body 'to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity . . . upon the recommendation of the Peace and Security Council'.[8] In contradiction of some of the dominant narratives about the continental body, the African Union was two-years ahead of the operationalisation of the Rome Statute in formally adopting a legal position on the importance of confronting mass atrocities through rejecting impunity for international crimes. Consequently, from the outset the AU's policy documents sought to internalise the organisation's commitment to confront impunity. Along these lines the AU Constitutive Act identified the need to create an AU Court of Justice and recognised the continued functioning of the African Court on Human and Peoples' Rights.

The cyclical nature of conflict in Africa, points to the critical need to move beyond temporary stalemates and ceasefires, peacekeeping deployments and military operations, that are so common in this era, towards a regional policy informed by intentionally confronting the underlying grievances that have fuelled decades of animosity and violence on the continent. This means that the continent's peace and security institutions need to interface more effectively with the African Union's evolving post-conflict reconstruction and transitional justice mechanisms.

### A. *Truth Seeking*

The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are the key institutions which are primarily engaged in an establishment of the 'truth' in the context of the specific cases that they engage with.

### B. *Retributive Justice*

In addition, the African Court on Human and Peoples' Rights has historically been the primary instrument through which victims could pursue redress for past violations. On 30 May 2016, the African Union-mandated Extraordinary

[8] African Union, *Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights*, (Addis Ababa: African Union, 2014), at Preamble.

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Chambers in Senegal, issued a conviction against the former dictator of Chad, former President Hissène Habré for his individual culpability in the commission of mass atrocities including killings, rape and torture of more than 40,000 victims. Consequently, through these Extraordinary Chambers, the African Union ushered in an alternative model for pursuing retributive justice, which can be replicated in the future if there are sufficient grounds and the political incentive to do so.

Once it is operational the ACJHR will address the retributive justice component of the AU's transitional justice architecture.

### C. *Restorative Justice*

The African Union does not have a dedicated framework for operationalising restorative justice, though it does engage with national restorative justice processes and institutions such as the truth and reconciliation commissions that have been convened in Liberia, Sierra Leone, Ghana, South Africa, Kenya, Mauritius, Tunisia, Côte d'Ivoire and Burundi. It continues to engage ongoing processes in South Sudan and Central African Republic.

### D. *Reparation*

The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are currently the two institutions which can provide redress for past violations, within which reparation could be included as part of a restitution ruling. This aspect of the AU's transitional justice architecture needs to be further developed.

### E. *Institutional Reform*

The Principles of the Protocol establishing the Peace and Security Council (PSC) of the AU, of 2002, stipulate a commitment towards promoting the 'peaceful settlement of disputes and conflicts' as well as ensuring the 'respect for the rule of law, fundamental human rights and freedoms'. Subsequently, the AU PSC was established in 2004, through the *Protocol Relating to the Peace and Security Council of the African Union*, of 2002 (African Union, 2002). The PSC Protocol provides a normative framing of activities that fall under the rubric of the core business of transitional justice interventions. Specifically, the Council's role is to coordinate the peacemaking, peacekeeping, peacebuilding and by extension transitional justice efforts on the continent. There is a natural overlap between peacebuilding and transitional justice processes on the ground.

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### F. *African Governance Architecture*

The African Union Commission *Strategic Plan 2009–2012*, which was approved by the Heads of State and Government, provided the AU Commission with a mandate 'to achieve good governance, democracy, [and] human rights'.[9] In February 2010, at the 14th Ordinary Session of the AU Assembly of Heads of State and Government committed the Union towards establishing a Pan-African Architecture on Governance. The intention was not to create a new institution but to enhance coordination among AU organs and institutions with the formal mandate for governance, democracy and human rights. However, the emphasis in creating this architecture was that Member States would continue to 'have the primary responsibility of building and consolidating governance' based on the recognition that 'a strong and effective AGA requires solid, functioning and accountable national structures'.[10]

The African Governance Architecture and Platform's *Implementation Strategy and Action Plan: 2013–2017* stipulates that the main institutions that comprise the AGA include the:

- AU Commission;
- African Court on Human and Peoples' Rights;
- African Commission on Human and People's Rights;
- Pan-African Parliament;
- African Peer Review Mechanism;
- The Economic, Social and Cultural Council;
- The AU Advisory Board on Corruption;
- NEPAD Planning and Coordinating Agency;
- Regional Economic Communities.[11]

In June 2012, the African Governance Architecture Platform was launched in Lusaka, Zambia. The Platform 'is the coordinating arm of the African Governance Architecture'.[12] The AGA Platform was envisaged 'as an interactive and non-decision-making mechanism'.[13] The Secretariat of the AGA Platform is situated within the AU Department of Political Affairs and its

[9] African Union, *The African Governance Platform – Draft Implementation Strategy and Action Plan: 2013–2017*, (Addis Ababa: African Union, 2013), at 2.

[10] African Union, AGA *Draft Implementation Strategy and Action Plan: 2013–2017*, at 7.

[11] Ibid., at 5.

[12] African Union, Department of Political Affairs, *Retreat to Fine Tune the 2013–2017 Strategy and Action Plan of the African Governance Architecture and Platform*, Kuriftu Resort, Debre Zeit, Ethiopia, (26–28 March 2013), at 1.

[13] Ibid.

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function is 'to facilitate information flow, exchanges, dialogue, synergies and joint action between the various African governance actors'.[14]

### G. *Constitutionalism and Governance Reform*

In effect, the AGA Platform 'is the central coordinating mechanism for monitoring compliance and implementation of agreed governance standards as embodied in the African Charter on Democracy, Elections and Governance'.[15] This is also the Platform through which the issue of constitutionalism will be monitored and engaged with across the continent. As indicated above this will also implicate the ongoing work of the Regional Economic Communities (RECs), some of which have developed their own governance standards and infrastructure.

### H. *Judicial Reform*

The AU's Office of Legal Counsel has oversight for legal issues and in collaboration with the Department for Political Affairs, the different courts within the AU system and national judicial institutions and ministers of justice, it engages with issues of judicial reform across the continent. However, the focus on judicial reform can also be developed further.

### I. *Security sector reform*

The AU Peace and Security Department working closely with national ministries of defence and Chiefs of Defence Staff have elaborated a Security Sector Reform Policy Framework, which can guide the national processes, particularly in the aftermath of conflict or authoritarian rule.

### J. *Reconciliation*

The AU *Post-Conflict Reconstruction and Development Policy Framework (PCRD)*, of 2006, outlined the pillars of a post-conflict reconstruction and reconciliation system. Specifically, the AU PCRD Policy Framework comprises six constitutive elements, namely:

(i) Security;
(ii) political governance and transition;

[14] Ibid.
[15] *Draft Implementation Strategy and Action Plan*, *supra* note 11, at 5.

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(iii) *human rights, justice and reconciliation*;
(iv) humanitarian assistance;
(v) reconstruction and socio-economic development;
(vi) gender.[16]

Through the enumeration of these six constitutive elements the AU was one of the first inter-governmental organisations to recognise the importance of a multi-dimensional response to complex emergencies, to social and political transition following conflict and to long-term development. Through its AU PCRD Policy Framework, the AU articulated the nexus between transitional justice norms and the normative promotion of security, governance and development.

Between 2011 and 2016, the African Union became the first regional organisation to actively work on developing a specific policy relating to transitional justice. In 2016, the prospective African Union Transitional Justice Framework (AUTJF), which is still in draft form, was further elaborated set up with the objective of encouraging 'member states to broaden their understanding of justice beyond retributive justice to encompass restorative and transformative measures found in traditional African systems'.[17] The prospective AUTJF further recommends that 'states enacting transitional justice measures incorporate economic and social rights'[18]and encourages 'states to design reparations programmes that would address the structural nature of economic and social rights violations' and that 'non-state actors and beneficiaries should be encouraged to participate in such programmes'.[19] The prospective AUTJF recommends the promotion of 'reconciliation as a profound process which entails finding a way to live that permits a vision of the future, the rebuilding of relationships, coming to terms with the past acts and enemies, and involves societies in a long-term process of deep change'.[20]

The efforts by the African Union to push the boundaries of the way in which transitional justice has been conceived to include social and economic rights, rectifies an oversight which was internalised by the dominant ICL legal framework which defined the field. The economic and social dimension of transitional justice processes is now emerging as a key driver of

[16] African Union, *Post-Conflict Reconstruction and Development Policy Framework*, (Addis Ababa: African Union, 2006).
[17] African Union, *Draft African Union Transitional Justice Framework*, (Addis Ababa: African Union, 2015), at 19.
[18] Ibid., at 20.
[19] Ibid., at 21.
[20] Ibid., at 40.

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sustainable transformation for societies that have experienced violations. This innovation by the AU is further laying the foundation for a differentiated accountability system.

## 7. THE IMPLICATIONS OF THE MALABO PROTOCOL ON THE AU TRANSITIONAL JUSTICE ARCHITECTURE

The emergence of alternative sources and ways of framing international criminal law, as evidenced in the Malabo Protocol, will broaden the spectrum of options available to AU member states in their attempts to implement transitional justice processes. This will enhance the differentiated accountability system which is at the core of the African Union's evolving transitional justice architecture.

On 1 July 2008, member states of the AU adopted the *Protocol on the Statute of the African Court of Justice and Human Rights*, which in effect 'merged the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single Court'.[21] Subsequently, the AU adopted the *Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights* (hereafter Malabo Protocol). The Malabo Protocol will enter into force upon the ratification of the Protocol by 15 member states of the African Union, with instruments of ratification being deposited with the Chairperson of the AU Commission. The AU also intends to register the entry into force of the Court with the secretariat of the United Nations.

The organs of the African Court include the: (i) Presidency; (ii) Office of the Prosecutor; (iii) Registry; (iv) Defence Office. This is indicative of the intentions to create an institution to adjudicate international crimes. Article 3(1) of the Protocol stipulates that 'the Court is vested with an original and appellate jurisdiction, including *international criminal jurisdiction*'.[22]

The African Court has the 'jurisdiction to hear matters or appeals as may be referred to it in any other agreements that the member states or the regional economic communities or other international organisation *recognized* by the African Union'.[23] The word 'recognition' is significant in this instance since it gives the AU the means not to engage with international organisations that it is not prepared to recognise.

[21] African Union, *Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights*, 23rd Ordinary Session of the Assembly, Malabo, Equatorial Guinea, (27 June 2014), at Preamble.

[22] Ibid., at Art. 3(1).

[23] Ibid., at Art. 3(2).

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## 8. AFRICA AS A THEATRE OF INNOVATION IN INTERNATIONAL CRIMINAL LAW

The AU has subsequently embarked on the elaboration of its own international criminal law through the prospective operationalisation of the Malabo Protocol.

### A. *The Statute of the African Court of Justice and Human Rights*

According to the merged Statute of the ACJHR the structures of the institution will include three sections, namely: (i) a General Affairs Section; (ii) a Human and Peoples' Rights Section; and (iii) an ICL Section.[24] Furthermore, the ICL Section will have three Chambers, including: a Pre-Trial Chamber; a Trial Chamber and an Appellate Chamber, highlighting again the parallel structures when contrasted to the Rome Statute. According to Article 7, the ICL Section is 'competent to hear all cases relating to the crimes specified in the Statute'. These include the international crimes stipulated in the Constitutive Act of the AU. They are further elaborated in Article 28A, which states that 'the International Criminal Law Section of the Court shall have the power to try persons for the crimes' of: genocide; crimes against humanity; war crimes; the crime of unconstitutional change of government; piracy; terrorism; mercenarism; corruption; money laundering; trafficking of persons; trafficking of drugs; trafficking of hazardous wastes; illicit exploitation of natural resources; and the crime of aggression.[25] These crimes will not be subject to any statute of limitations.

This panoply of crimes introduces some interesting departures from the crimes framed in the Rome Statute, and are reflective of the current challenges that the African continent is confronting. Interestingly, some crimes will apply directly to external non-African actors who engage in these crimes either as planners or willing executioners, notably of the crimes relating to mercenarism, money laundering, trafficking of persons, drugs and hazardous wastes, as well as illicit extraction and aggression. These commission of these crimes by non-African actors intervening across the continent, could theoretically lead to a situation in which western operatives end up on the docket of the African Court in Arusha, in what would be a reciprocal outcome when contrasted to the ICC's current prosecutorial case load which includes only Africans. This is particularly relevant when it relates to the crime of aggression, given the proclivity of western powers notably the US and France to intervene

[24] African Union, *Statute of the African Court of Justice and Human and Peoples Rights*, (Addis Ababa: African Union, 2014).

[25] Ibid., at Art. 28A.

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military across Africa, as though the colonial era was still a going concern. Article 28A of Statute stipulates that the 'crime of aggression means the planning preparation, initiation or execution, by a person . . . state or organisation [sic] . . . of a manifest violation of the Charter of the United Nations or the Constitutive Act of the African Union'.[26] More specifically, Article 28M notes that 'regardless of a declaration of war by a state, group of states, organisations of states or non-state actors or by a foreign entity', the crime of aggression shall include, 'the use of armed forces against the sovereignty, territorial integrity and political independence of any state'. These will include invasions, bombardment, blockades, air, land or sea attacks, harbouring armed militia. The AU Assembly of Heads of State and Government can also incorporate additional crimes to keep up with the developments of IL.

Through the prospective operationalisation of the Malabo Protocol, African countries have politically 'birthed' their own version of a regional court to adjudicate international crimes. Consequently, the African continent is now a theatre of innovation in terms of advancing a differentiated accountability system and providing vital insights into the nexus between international criminal law, transitional justice and peacebuilding.

## 9. BEYOND THE PUERILE FALSE DEBATE ON IMPUNITY AND THE SUPPORT FOR THE ICC IN AFRICA

The articulation and operationalisation of a differentiated accountability system will enable the continent to extricate itself from the puerile, facile and interminable false debate as to whether you are 'for' or 'against' impunity depending if you advocate for the interventions of the International Criminal Court (ICC) in Africa. Rather than viewing the emergence of alternative sources and framings of international criminal law as a threat to the ICC or as an attempt by regional actors to evade justice, they should be viewed for their potential to create differentiated jurisdictions to address the violations in situations of conflict. It is necessary to make judicial processes more responsive to the victims, by drawing them into the processes of pursuing redress for the violations that they have endured. Consequently, ICC interventions will not necessary be the most appropriate framework to deploy in every situation in which there has been mass atrocities. The fact remains the Rome Statute stipulates a relationship between the ICC and nation-states, but it does not elaborate on the prospects for a relationship between the ICC and regional or

[26] Ibid., at Art. 28M.

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continental courts. This is a lacuna in ICL which needs to be urgently addressed given the prospective operationalisation of the African Court of Justice and Human Rights. Ultimately, the existence of a differentiated accountability system provides the African continent a broad range of options, through which to address impunity, and complements the AU's objection to the abuse of the principle of universal jurisdiction, particular in instances in which African statesmen and women are disproportionately subject to IL, when compared to other regions of the world.

## 10. CONCLUSION

Given the historical and imperial origins of European international law, non-African governments and societies as well as international organisations will need to reflect on how they can collaborate more closely with traditional justice and reconciliation processes to promote genuine ownership of the processes of post-conflict justice and peacebuilding. External actors must be willing to learn and not blindly or patronizingly transpose or impose systems that are not immediately translatable or understandable to their host populations. We should question attempts to impose a universal conception of justice or assume that so-called 'international law' is devoid of any imperial pretentions as far as disciplining and controlling target countries is concerned. Instead, we should draw lessons from African thinking relating to ICL, evidenced in the Malabo Protocol, which is a riposte to the tendency to privilege euro-centric notions of justice, particular its over-emphasis on individual culpability. It is always vital to learn what African transitional justice, and specifically judicial, strategies or responses might be appropriate in different country contexts, which should be the foundation for a differentiated accountability system. Africa in this sense has challenged the artificial normative strictures of the global discourse of ICL and is advancing its own home-grown norms to dealing with the violations of the past. On this basis, Africa has become an innovator in the development of ICL and transitional justice norms. The fact that a number of countries on the continent will be emerging from conflict in the next decade and beyond, Africa will continue to be a thought-leader, norm-setter and norm entrepreneur in terms of ICL and transitional justice processes and institutions and the perplexing challenge of addressing the violations of the past. The question that faces us today in the context of our globalised world is whether we are prepared to draw from the lessons of African models of justice and reconciliation.

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