Preface

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I am honoured to write the preface to this, the first African Guide to International Criminal Justice. The Guide is published by the International Crime in Africa Programme at the Institute for Security Studies (ISS) and forms part of the ISS’s important and ongoing work on international criminal justice issues in Africa. The Guide is part of a series of practical publications and training tools developed by the programme that are aimed at enhancing the capacity of African countries to end impunity.

The Guide arises out of a need identified at the symposia arranged by the ISS in August 2006 and March 2008 in Cape Town at which officials and lawyers from the ICC, the African Union (AU) and several African countries came together to take stock of African progress in relation to the ICC and the prosecution of international crimes. At those symposia it was decided that the continent needs its own scholars and practitioners – working with the support of an African-based organisation such as the ISS – to prepare a textbook for judges, prosecutors, defence lawyers and government officials that presents an African-focused guide to international criminal justice.

The International Criminal Court (ICC) was established as a response of the human family to gross human rights violations of such magnitude and barbarity as to shock human conscience and to warrant the response of the international community as a whole (Mugwanya 2006). The ICC symbolises the principle of individual criminal liability for those responsible for the most serious human rights violations and was established as a permanent institution to ensure the punishment of such individuals. Besides the moral condemnation of these crimes at the international level, and the knock-on deterrent effect the Court may have on the ground, the ICC will serve a second, and vital, purpose. That purpose will be to uphold the rule of law, at national and international levels.

From the standpoint of the rule of law and justice, the ICC is one of the greatest achievements of the twentieth century. It is a court that deserves to be taken seriously by African states. On paper this appears to be the case. Currently, 30 African states have ratified the Rome Statute. This is a good first step. But the real challenge is converting this expression of high-level political commitment into awareness and practical implementation on the ground. It is only through increased awareness, enhanced capacity and broad-based political support from practitioners and policy makers that Africa will be able to gain a reputation for being a continent seriously committed to ending impunity and non-adherence to the rule of law. It is telling that the majority of the cases currently before the ICC arise from Africa, a continent that is home to many of the international human rights atrocities, both past and continuing, that haunt humanity in what appears to be repeating cycles (Du Plessis 2003: 15).

It is precisely for this reason that the AU has such a central and critical responsibility to remind African states of the AU Constitutive Act’s commitment to stamping out impunity. Indeed, the work of the ICC is entirely dependent on the support of international, regional and domestic institutions and actors. Only once there is synchronisation of the objectives and goals of the respective institutions and actors will substantive justice be realised. For it goes without saying that, without justice, there can be no lasting peace – and peace is the one thing so sorely lacking on the African continent.

Increasingly, images of war crimes, genocide and crimes against humanity, even in obscure corners of the world, are vividly transmitted to living rooms all around the world (Tan 2000). These images have contributed to a heightened international concern over such atrocities and given rise to expectations for states to comply with some generally accepted standards of conduct. It is encouraging to witness that the ICC has intervened with respect to four ‘situations’ in Africa, namely, in Democratic Republic of the Congo, Uganda, Sudan and Central African Republic.

The ICC’s proactive stance can be interpreted as a denunciation of impunity and a commitment to the idea that even the most senior government officials are liable to be prosecuted for war crimes, crimes against humanity and genocide. Aside from the ICC, there are other international criminal justice developments taking place in Africa, such as the cases currently involving Hisse Habbé, Colonel Mengistu, Haile Mariam and Charles Taylor. Africa is thus where international criminal justice is gaining stride, and all of us should welcome that development, not fear it.

The ICC represents the will of all nations of the world towards the establishment of a universal framework to try perpetrators of gross human rights abuses. Indeed, African countries helped lead the way towards the Court’s
creation. We therefore have a legitimate desire to see the ICC develop as a meaningful and useful institution. I can confidently state that it is once we see the independent prosecutors of the ICC putting tyrants and torturers in the dock before independent judges that we will finally realise the human rights aspiration of preventing and punishing egregious violations of human rights.

In addition – and possibly of as much importance – the Rome Statute is distinctive because of its provisions on the award of reparations for victims of crimes within its jurisdiction, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Such reparations are integral to achieving justice for the victims and assisting them to rebuild their lives.

The fulfilment of the aims and objectives of the ICC on the African continent is dependent on the support of African countries, the AU, regional organisations, the legal profession and, importantly, civil society. Meeting this need requires commitment to a collaborative relationship between these stakeholders and the ICC. It is also important to remember that questions of responsibility for the prosecution of core international crimes in Africa (and for raising awareness of these issues) are broader than the ICC alone.

Other structures such as the Commission on Human and Peoples’ Rights, the African Court of Justice and Human Rights, and other pan-African institutions can play a meaningful role in this regard, which should be encouraged. An example of this is the work of the African Commission on Human and Peoples’ Rights in its 2005 resolution on ending impunity in Africa and on the domestication and implementation of the Rome Statute of the ICC, in which the commission called on civil-society organisations in Africa to work collaboratively to develop partnerships to further respect for the rule of law internationally and strengthen the Rome Statute.

That these African structures and organisations should be at the forefront of awareness raising is important, not least of all because of the perception present in certain African countries that international criminal justice and the ICC is an ‘outside’ or Western priority and relatively less important than other political, social and developmental goals. This, to my mind, is both incorrect and unfortunate. After all, it is African states that drafted the aims of the AU, and that, in articles 4(m), 3(h) and 4(o) of its Constitutive Act, committed the AU to ensuring respect for the rule of law and human rights, and condemning and rejecting impunity.

The African Guide to International Criminal Justice is an attempt by the ISS – the leading human-security organisation in Africa – to ensure that the Court is better understood and that African states are better equipped domestically to comply with their obligations under the Rome Statute. I think these are exciting times, and I think that Africa is poised to make a difference. The Guide will, if it is read and considered seriously by African practitioners and government officials, contribute to that difference.

REFERENCES

