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THE ROME STATUTE REVIEW CONFERENCE
June 2010, Kampala

THEMATIC CASE STUDY

# Stocktaking: Complementarity

*"As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success."*

—**LUIS MORENO-OCAMPO** AT THE CEREMONY FOR THE SOLEMN UNDERTAKING OF THE CHIEF PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, JUNE 16, 2003

Marieke Wierda

May 2010

TABLE OF CONTENTS



## Executive Summary

*According to the Rome Statute, the International Criminal Court (ICC) will investigate and prosecute where States are "unwilling or unable genuinely" to do so.[1] Even in the best-case scenario, the Court by itself cannot fill the impunity gap generated by crimes committed on a massive scale; nor can it satisfy the demands of victims in this regard. As a result, the vast majority of international crimes remain unpunished unless and until domestic systems or other mechanisms are able to deal with them. It is at the domestic level that permanent solutions to impunity must be found.*

*This paper outlines the challenge of complementarity, including the potential for positive complementarity and the role of the Court. It concludes that all supporters of the Rome Statute and the ICC should focus on strengthening the practical infrastructure of complementarity—particularly positive complementarity—in years to come. The Court has defined a limited role for itself and should be supported in its efforts.*

*This paper highlights the need for legislative assistance, which links to Rome Statute implementation, and the challenges of technical assistance and capacity-building at the domestic level as well as the challenge of information-sharing. The experience of other tribunals may be instructive in this regard. Regional courts should not usurp the role of national courts for the purposes of complementarity, neither do other justice measures form an alternative, although they may be needed to fill the impunity gap. National measures should be encouraged if they are in good faith, even if the ICC was the first to investigate. But ultimately the Court is still the last resort and may need to act, particularly where states are unwilling to do so.*

## The Challenge of Complementarity

Since July 2002, both the Rome Statute system and the ICC have profoundly impacted responses to international crimes. The Court's first trials are under way, serving as important examples that international justice can be delivered even to conflicts in remote, devastated parts of the world. The Statute has inspired changes to more than 55 domestic legal systems (with legislation pending in 40 more),[2] and the Court's actions have to some extent served as a catalyst for domestic trials or the development of new institutions. The Rome Statute and the ICC have the potential to bring lasting, fundamental change to the international legal order and the fight against impunity.

Recent years have seen domestic investigations and prosecutions either being conducted or aspired to in Colombia, Democratic Republic of Congo, Kenya, and Uganda. But the full potential of complementarity has not yet come to fruition. To maximize the Statute's impact, its supporters should focus on strengthening the practical infrastructure of complementarity in the years to come.

The Statute provides that domestic jurisdictions bear primary responsibility to further accountability for the most serious international crimes. Its Preamble recalls that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes." This duty to dispense criminal justice is part of the intrinsic sovereign powers of states. The obligation to prosecute therefore rests firmly with states, particularly with those on whose territory the crimes were committed, or whose nationals are either accused of perpetrating the crimes or are victims of crimes. Efforts to promote complementarity should reaffirm this obligation and should aim to assist states to fulfill it.

It is true that many domestic criminal justice systems face challenges, ranging from legal barriers (including amnesties, immunities, non-retroactivity, statutes of limitations) to lack of independent judiciaries, lack of capacity, and security problems. Historical and current examples of successful, cohesive strategies for domestic prosecutions of those bearing the greatest responsibility for Rome Statute crimes remain rare.[3]

Nonetheless, trials at the domestic level conducted to international standards potentially can promote principles that the ICC represents in more long-lasting ways. It can also be assumed that states on whose territory the crimes occurred usually are better able to access witnesses, collect evidence, and take context into account than tribunals that operate remotely. The transformative impact or demonstration effect of local courts trying political or military leaders can be seen in the 2009 conviction in Peru of former president Alberto Fujimori. Where possible, *in situ* trials—that is, trials taking place in the territory where the crimes were committed—should be considered for their demonstration effect.

## The Potential for Positive Complementarity and the Role of the Court

The Bureau of the Assembly of States Parties (ASP) Hague Working Group defines positive complementarity as "all activities/actions whereby national jurisdictions are strengthened and enabled to conduct genuine national investigations and trials of crimes included in the Rome Statute, without involving the Court in capacity building, financial support and technical assistance, but instead leaving these actions and activities for States, to assist each other on a voluntary basis."[4] While putting the emphasis on other actors, the Bureau acknowledges that the Court should have a limited role.[5]

State Parties are concerned about the financial implications of involving the Court. Yet it would be shortsighted not to envision a key role for the Court, which is itself a repository of knowledge on the investigation and prosecution of Rome Statute crimes as well as a symbolic centerpiece in the global fight against impunity.

The Court has already defined a role for itself and should be supported in its efforts. In the Office of the Prosecutor's (OTP) strategic planning, while the emphasis remains on investigations and trials, the OTP intends to maximize its own contribution to the fight against impunity and the prevention of future crimes through several measures, including its development of a network of law enforcement agencies (LEN) from situation countries.[6] The plan highlights a role for the OTP at its preliminary examination phase to act as a catalyst for domestic prosecutions. It also puts emphasis on sharing public information, relationships with NGOs, the media, foundations, and other supporters, as well as educational projects.

The Court's Registry has also framed its strategic plan in terms of contributing to complementarity and building an effective Rome Statute system.[7] It envisages contributing to developing witness protection programs (including in particular regional solutions supported by a voluntary trust fund); transferring knowledge in court management; making the public archives of the Court available in situation countries; developing regional detention options; encouraging demands for justice through its outreach; collaborating with rule-of-law actors through its field offices; and maintaining a database of implementing legislation.[8] The Court is well placed to pursue these valuable, cost-effective initiatives.

**About the Author**

**Marieke Wierda** is director of ICTJ's Criminal Justice Program. She has worked on issues pertaining to the ICC since 2001, including in particular the Trust Fund for Victims, victim surveys, and issues of peace and justice. She has extensive country experience including in Uganda, Sierra Leone, Lebanon and Afghanistan, and has published widely on international criminal justice, including a co-authored book on International Criminal Evidence. Prior to joining ICTJ, she was an Associate Legal Officer at the International Criminal Tribunal for the former Yugoslavia (ICTY).

As can be learned from the experiences of the International Criminal Tribunal for the former Yugoslavia (ICTY), to cast the role of the ICC and its relation to domestic jurisdictions too narrowly now will not be efficient in the long term. For the ICTY, establishing the Bosnian War Crimes Chamber (BWCC) enabled it to implement a completion strategy, refer cases back to the national system, and build lasting capacity on the domestic level. The tools that assisted the ICTY build its system of division of labor included the "Rules of the Road,"[9] Rule 11 *bis*, which laid the legal framework to transfer cases back to national jurisdictions, a "transition team" to work specifically on these issues, and sharing of information and capacity-building. The BWCC (and other national prosecution efforts) benefited from additional skills and impartiality through the involvement of internationals. But all of these steps were implemented late in the ICTY's mandate, in response to its Completion Strategy.

The ICC has the advantage of taking a more measured, deliberate approach to playing its role in strengthening domestic institutions. While the Court lacks the equivalent of a Rules of the Road or a Rule 11 *bis* procedure to transfer cases, the division of labor between it and national jurisdictions can be constructed through positive complementarity.[10] In the course of its work, the ICC will gather a wealth of information on crimes it will not pursue. A mechanism similar to the ICTY's "transition team" should be considered to assess whether and what information can be shared with national systems.[11] Additionally, the Court can and should help develop domestic capacity by engaging people from national jurisdictions in its work, particularly from situation countries.[12]

Coordination is one of the main challenges to bringing legal reform and promoting the rule of law in post-conflict societies. If the promotion of complementarity is left mainly to other actors, the risk then is that any steps made to promote complementarity will remain piecemeal, rather than as part of a concerted, deliberate approach. As suggested by the ASP's Bureau, in addition to the Court, the ASP has a valuable role in terms of lending its political support to coordinating complementarity initiatives and facilitating contacts and initiatives to this effect.

## Legislative Assistance and the Link to Rome Statute Implementation

An adequate legal framework is a prerequisite for successful domestic prosecutions. It should reflect the definitions of the crimes, modes of liability, and procedural issues such as fair trial rights for the accused. Ideally, a domestic framework reflects the need for witness protection and victims' rights to reparations and, in some legal systems, to participation. Historically, few countries have such a framework in place. If domesticated in full, the Rome Statute provides the opportunity to revise domestic law and its potential to effectively address international crimes in accordance with international standards.[13] Bilateral assistance through the provision of experts can be helpful, as implementation constitutes a complex, specialized exercise.[14]

Implementing legislation to incorporate Rome Statute definitions for crimes was recently introduced in both Uganda (International Criminal Court Act 2010) and Kenya (International Crimes Act 2008). However, both situations raised complex questions as to whether these definitions would violate constitutional prohibitions on retroactivity. The Ugandan Act applies only from 2002, thus most of the Lord's Resistance Army (LRA) conflict will fall outside its scope. As time passes, the overlap between the definitions of crimes in the Rome Statute and domestic jurisdictions should become more complete.

The problems that arise in the absence of a satisfactory framework are reflected in the experience of the Democratic Republic of Congo, where international crimes have been tried in military courts. More than a dozen trials were held from 2005 to 2008.[15] Although a recent assessment shows that while victims expressed a degree of satisfaction with their access to justice in the trials, fair trial rights were not always respected, and many of the people convicted later escaped from prisons.[16] Essential to the future of justice in DRC is the implementation of the Rome Statute Implementation Bill, introduced by two Congolese members of Parliament in March 2008.[17]

Simply ratifying the Statute can also open the door to legislative change and political commitment to accountability, beyond the specifics of implementation.[18] Efforts toward ratification and advice on implementing legislation should be considered urgent and need additional assistance, including pressure and support from other State Parties and nongovernmental actors.

## Technical Assistance and Capacity Building

Some domestic legal systems may be willing to try Rome Statute crimes but may simply lack experience in trying such complex crimes. Conducting investigations and prosecutions of these crimes differ from those in other types of crimes. Such crimes require analysis-based, multidisciplinary investigations and often result in lengthy trials with multiple defendants. They also raise special considerations in respect of victims and witnesses.

Rebuilding domestic legal systems is ordinarily considered the province of "rule-of-law" actors and raises broader challenges. Conducting national trials for Rome Statute crimes is a more limited task, but one requiring specialized expertise in building the relevant skills of judges, prosecutors, investigators, and others.

In Uganda, Kenya, and the AU High-Level Panel on Darfur, the suggested approach to trying Rome Statute crimes has been to establish a separate chamber or court, in part in order to insulate this approach from the problems of the wider justice sector, including lack of judicial independence.[19] If specialized capacities are developed, they should not exacerbate problems of "two-tier justice," but should be created with the intention of leaving a legacy within the domestic legal system. Key lessons on legacy should be drawn from the hybrid tribunals, such as the Special Court for Sierra Leone and the War Crimes Chamber of the Court of Bosnia and Herzegovina.[20]

The Rome Statute and ICC form part of a broader movement on international justice that has made its expertise available in recent years. A repertoire of knowledge now exists for states to use when trying these crimes. Nonetheless, building capacity at the domestic level poses particular challenges. Valuable lessons can be learned from the hybrid tribunals. For instance, legal capacity-building takes years whereas training in areas such as investigation, court or prison management could be done in the shorter term.[21] As with other tribunals, the ICC primarily has a judicial mandate and its ability to contribute to this area will remain limited. Other actors from the international justice community must also assume their role in contributing to capacity-building at the national level.

The ASP may have an important role in this regard. More coordination is needed between the international justice and rule-of-law actors at the country level, both national and international, in order to determine synergies and how international justice efforts can better contribute to rebuilding the rule of law. The ICC field offices can play a role in country-level discussions. The ICC should also allow its staff to disseminate their in-house knowledge in domestic contexts.

## Sharing Information

The Court focuses on "those bearing the greatest responsibility," which is only likely to be a handful in any given context. This will still leave an impunity gap for lower-level offenders even in those situations where the Court intervenes. In certain situations, it may be appropriate for the ICC to share information with national jurisdictions in cases that it will probably not pursue itself. Here the ICC can take inspiration from ICTY's relationship with the BWCC and other national judicial authorities in the region and put in place mechanisms for sharing such information, if national counterparts are willing and able. In Bosnia, the BWCC was rendered able in part through the incorporation of national prosecutors and judges. In this regard, it is interesting to note that similar arrangements for involving internationals have been suggested in Uganda, Kenya, and Sudan.[22]

In 2008 the ICC Prosecutor announced that he would open a third investigation into crimes committed in the ongoing conflict in the eastern DRC provinces of North and South Kivu;[23]

additionally he said his office would explore sharing information about its investigations with Congolese judicial authorities. The extent to which this has taken place is not clear, but it may form an instructive first example and may result in setting up information-sharing systems. The ICC should develop its policy on positive complementarity in national contexts in coordination with other justice-sector reform initiatives. It should ensure measures to protect the confidentiality and safety of victims and witnesses prior to handing over any information to national courts.

## Regional or Hybrid Courts as Alternatives?

On July 3, 2009 the AU Assembly of Heads of States and Government summit in Sirte, Libya adopted a decision at its 13th Ordinary Session calling for AU member states not to cooperate with the ICC in the arrest and surrender of Sudanese President Omar al-Bashir. The AU mandated the African Commission on Human and Peoples' Rights "in consultation with the African Court on Human and People's Rights to examine the implications of the Court being empowered to try serious crimes of international concern... which would be complementary to national jurisdiction and processes for fighting impunity."[24]

Regional human rights courts play an important role in highlighting the responsibilities of states in the fight against impunity, including overruling blanket amnesties and spelling out state obligations to investigate, prosecute, and punish serious crimes.[25] However, the Statute did not anticipate a role for regional courts to exercise criminal jurisdiction over crimes that would otherwise be tried by the ICC or at the domestic level; that responsibility is given to domestic systems.

Moreover, there are doubts as to whether the African Court on Human and People's Rights currently has the capacity to carry out this additional role. In fact, if regional systems like the African Court are mandated to hold criminal trials instead of domestic courts, this may further undermine the long-term role of domestic courts. Conversely, hybrid courts such as those suggested in the AU High Level Panel on Darfur's report may be able to contribute to complementarity, insofar as they contribute to strengthening domestic capacity.[26]

## The Impunity Gap

The fact that the Rome Statute is by definition dealing with widespread violations, involving a multitude of victims and perpetrators, means there will always be an impunity gap. International and domestic prosecutions alone are not sufficient to fill it. A full range of justice measures should be implemented in the aftermath of mass atrocities, including investigation and prosecution at the national and international levels, but also truth-seeking, reparations, and institutional reform.[27] ICTJ observes that this is now widely reflected in international experiences around the world.

However, recent experience indicates that such measures are increasingly deemed to be complementary to prosecutions, rather than as part of complementarity. Since the Rome Statute came into force there is increasing evidence that truth commissions or traditional justice are no longer viewed as alternatives to criminal justice; instead they are seen as complements to it. This view is reflected in the Juba Peace Agreement, the Kenyan National Dialogue and Reconciliation initiative, the Colombian Justice and Peace Law, and the report of the AU High Level Panel on Darfur. In each of these, comprehensive approaches on transitional justice were proposed, including criminal prosecutions, reparations, and truth-seeking. In Uganda, the debate on whether traditional justice forms an alternative to prosecutions was abandoned at Juba. Likewise, there is broad recognition in Kenya that the Truth, Justice and Reconciliation Commission does not replace the need for criminal justice.[28] The Rome Statute has given criminal justice a more prominent role in the aftermath of mass atrocity.

## Complementarity in Practice

According to the Rome Statute, complementarity may take place at different stages of the proceedings. The main question should be how to obtain the optimum level of justice for Rome Statute crimes: through the ICC, domestic institutions, or a combination of both. A long-term

view should be taken to the importance of complementarity and how (1) the Court may act as a catalyst for future prosecutions, or indeed may be the only long-term prospect for prosecutions; (2) incentives can be used to encourage domestic institutions to build their own capacities. This should be the case even where the ICC has already opened an investigation.

Current ICC jurisprudence holds that if there are no national proceedings in the case at hand, it remains admissible. The test laid out in the Thomas Lubanga Dyilo case requires that national proceedings "must encompass both the person and the conduct which is the subject of the case before the Court."[29] Moreover, in the Germain Katanga and Mathieu Ngudjolo Chui case, the Appeals Chamber gave credence to the DRC government position that its legal system was not capable of investigating and prosecuting charges related to the Bogoro massacre.[30] But ultimately the Court's decisions on admissibility should not be used to constrain the broader question of how the concept of complementarity can be used to assist domestic institutions to build their capacity to fairly and effectively try Rome Statute crimes.

Kenya's Commission of Inquiry into Post-Election Violence, which issued its report on October 15, 2008, recommended the establishment of a Special Tribunal within a particular timeframe.[31] While this initiative did not succeed, the rationale behind it was partly to bring much-needed reform to increase public confidence in the country's justice sector. Domestic prosecutions should continue to be pursued in Kenya and other contexts where the ICC is active for these reasons and to fill the impunity gap.

Even when the Court is already investigating crimes under its jurisdiction, its intervention is still capable of acting as a catalyst for both legislative change and the building of capacity on the domestic level.[32] Uganda set up its own War Crimes Division in July 2008. In March 2010, the country passed into law the International Criminal Court Act that had been pending since 2006. While the establishment of the War Crimes Division stems from the Ugandan government's attempt to assert jurisdiction over Rome Statute crimes through the Juba Peace Agreement, it was also an attempt to build national capacity. Some commentators view Uganda's efforts to be in competition with the ICC. Whether Uganda's efforts qualify to pose a challenge is currently a premature question and is ultimately for the Court to decide, applying the criteria of willingness or ability. But developing a domestic capacity and putting in place legislation will contribute to ending impunity in the long term in Uganda. Credible domestic efforts to prosecute should be encouraged even in situations where investigations have already been opened.

## Determining Unwillingness

The presence of willingness is essential to assessing admissibility and to positive complementarity. Determining whether domestic efforts are credible or whether State Parties are willing remains very difficult. Trials for Rome Statute crimes are always complex and may give rise to many obstacles.

Yet certain indicators are emerging from current practice. For instance, the range of domestic measures set up in Sudan in the aftermath of the arrest warrant against President al-Bashir, including the Special Criminal Court for Events in Darfur and the appointment of a prosecutor general, were clearly not genuine.[33]

Many cases will not be clear-cut. The question of whether Colombia is genuinely conducting investigations and prosecutions is difficult to decide.[34] On one hand, it is making significant efforts to bring leaders of the paramilitary movements to justice instead of granting them amnesty. On the other hand, the Justice and Peace Law has yet to result in a single conviction, nearly five years after its passage. This lack of concrete outcomes from pending investigations or trials points to "unjustified delay."[35] Further analysis may lead to the conclusion that the process is not necessarily targeting those bearing the greatest responsibility for Rome Statute crimes. Political interference in the proceedings has raised questions of independence and impartiality. All these can be seen as indicators of unwillingness.[36] A complete lack of public confidence in the domestic justice system, as seems to be the case in Kenya and Sudan, may serve to highlight unwillingness or inability.[37]

If a state remains truly unwilling to prosecute Rome Statute crimes, the Court's role is clear. The Court is the last resort. If there are sufficient indicators of unwillingness, the Court should act or else non-genuine initiatives in other situations may be emboldened.

## Conclusion

The Rome Statute and the ICC give rise to an extraordinary opportunity: a wide recognition of the obligation to investigate and try the most serious crimes at the domestic level. Yet this opportunity must be seized by all those who claim to support the Rome Statute. Complementarity is taking shape. For instance, it is increasingly accepted that trials at the domestic level, rather than other mechanisms, are needed to meet the complementarity threshold. Legal reform and technical assistance initiatives are already taking place but should be increased and better coordinated. Rather than being fearful of what this may imply, all supporters of the Rome Statute and the Court should seek to increase such initiatives in years to come, or else a valuable opportunity may be missed.

## Endnotes

1. Art. 17 of the Rome Statute.
2. Coalition of the ICC Three Year Strategy and Plan, as of July 7, 2009, prepared for the Consultative Conference on International Criminal Justice, Sept. 9-11, 2009, United Nations, New York.
3. A rare positive example is Argentina's trials of crimes perpetrated during the Dirty War. "Criminal Prosecutions for Human Rights Violations in Argentina," ICTJ Briefing, November 2009, available at www.ictj.org.
4. Bureau of the Assembly of States Parties, Report of the Hague Working Group on Complementarity, March 5, 2010, para. 16.
5. Ibid., paras. 42-45. The Bureau previously acknowledged, however, that both states and the Court would benefit from positive complementarity and that this was therefore a matter of priority to be discussed with the Court's representatives in the context of the strategic planning process to maximize the impact of the Office of the Prosecutor's activities. Assembly of States Parties, *Report of the Bureau on the Strategic Planning Process of the International Criminal Court*, 5th Session, The Hague, ICC-ASP/5/30 (Nov. 20, 2006), para. 21, available at www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-5-30_English.pdf.
6. Office of the Prosecutor, Prosecutorial Strategy, 2009-12.
7. Arbia, Silvana, "The Three Year Plans & Strategies for the Registry in respect of complementarity for an effective Rome Statute System of International Criminal Justice," prepared for the Consultative Conference on International Criminal Justice, Sept. 9-11, 2009, UN, New York.
8. The Special Court for Sierra Leone has pursued similar programs as part of its legacy initiatives.
9. The Rules of the Road allowed ICTY prosecutors to review orders, warrants, or indictments issued at the domestic level in the former Yugoslavia for their compatibility with standards of evidence under international criminal law. This ensured that no unsubstantiated cases could go forward at the domestic level. This was important because in the conflict's aftermath, cases were sometimes pursued for political or discriminatory reasons.
10. David Tolbert and Aleksander Kontic, "The International Criminal Tribunal for the former Yugoslavia: Transitional Justice, the Transfer of Cases to National Courts, and Lessons for the ICC," in *The Emerging Practice of the International Criminal Court*, ed. Carsten Stahn and Goran Sluiter (The Netherlands: Brill N.V., 2009).
11. The Jurisdiction, Cooperation and Complementarity Division (JCCD) may also play this role.
12. Ibid.
13. This requires states to implement the Statute's substantive provisions as well as the cooperation provisions. In some cases states have only implemented the former.
14. The Coalition for the International Criminal Court (CICC) remains an important global force in promoting ratification and implementation of the Statute.
15. Avocats sans Frontières identified 13 cases in the report *Etude de Jurisprudence: l'application du Statut de Rome de la Cour Pénale Internationale par les juridictions de la République Démocratique du Congo* (March 2009).
16. ICTJ's DRC program held a workshop evaluating five international crimes trials before Congolese military jurisdictions in June 2009. For each case, a judge, prosecutor, defense counsel, victims' legal representative, and human rights and trial monitoring NGO participated. To see an executive summary of the conclusions on how those trials were conducted and recommendations for reforming the military justice system that ensued, go to www.ictj.org/static/Africa/DRC/ICTJ_DRC_Atelier_Reccomandations_R2009_fr.pdf.

## THE ROME STATUTE REVIEW CONFERENCE

**June 2010, Kampala**

The Review Conference of the Rome Statute provides a unique opportunity to evaluate the progress of the International Criminal Court and the challenges that it faces. ICTJ brings a wealth of expertise in situation countries to the discussions of complementarity, peace and justice, and the impact of the ICC on the status of victims. ICTJ has developed a briefing paper series for the conference available at **www.ictj.org.**


## Acknowledgement

ICTJ gratefully acknowledges the support of its funders, the Foundation to Promote Open Society and the John D. and Catherine T. MacArthur Foundation, whose support made this briefing paper series possible.


17. Nyabirungu Mwene Songa and Crispin Mutumbe Mbuya introduced the bill before the Assemblée Nationale in March 2008.
18. A clear link can be seen between the Awami League's rise to power in Bangladesh in December 2008 on a platform of justice for crimes committed in 1971 and its ratification of the Statute on March 23, 2010. Outreach on behalf of the Court and Statute can also help address misconceptions that are barriers to ratification. Observers in Nepal tie the failure to ratify to misperceptions by the government and Maoists that the Statute's provisions would have retroactive application. ICTJ Briefing by ICTJ Nepal, March 2010.
19. In Uganda, a War Crimes Division was established in July 2008. Attempts to establish a Special Tribunal for Kenya have failed. The Mbeki Panel suggested a hybrid tribunal for Darfur.
20. OHCHR Rule of Law Tools, "Maximizing the Legacy Potential of Hybrid Tribunals," April 2007. A recent evaluation of the Special Court for Sierra Leone shows that in spite of stated intentions, the impact of the Special Court on the domestic legal system, including the local judiciary, has remained limited for a wide variety of reasons. See Cruvellier, Thierry, *From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test*, ICTJ and Sierra Leone Court Monitoring Project, 2009. See also Ivanisevic, Bogdan, *The War Crimes Chamber in Bosnia and Herzegovina: from Hybrid to Domestic Court*, ICTJ, October 2008.
21. "Maximizing the Legacy Potential of Hybrid Tribunals," OHCHR Rule of Law Tools, 2007.
22. See AUPD Report, para. 252.
23. See *Report of the Activities of the Court to the Assembly of States Parties, Eighth Session*, para. 37, ICC-ASP/8/40 (Oct. 21, 2009).
24. Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Court, Doc. Assembly/AU/13(XIII), para. 5- 6. In the same decision, the ASP encouraged "Member States to initiate programmes of cooperation and capacity building to enhance the capacity of legal personnel in their respective countries regarding the drafting and security of model legislation dealing with serious crime of international concern, training of members of police and the judiciary, and the strengthening of cooperation amongst judicial and investigative agencies."
25. Juan Mendez, "Regional Court and Commissions," discussion paper for the Consultative Conference on International Criminal Justice, Sept. 9-11, 2009, UN, New York.
26. AUPD Report, para. 246.
27. UN Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies, Aug. 3, 2004, UN Doc. S/2004/616. See also the United Nations Updated Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1, principle 1).
28. This does not mean that certain truth commissions could not qualify as a form of investigation under Art. 17.
29. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Decision of Pre-Trial Chamber I on the Prosecutor's Application for a Warrant of Arrest, Article 58, Feb. 10, 2006, para. 31.
30. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Case No. ICC-01/04-01/07, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, Sept. 25, 2009, para. 80.
31. Mue, Njonjo, and Christine Alai, "Kenya: Impact of the Rome Statute and the International Criminal Court," ICTJ, May 2010.
32. Otim, Michael, and Marieke Wierda, "Uganda: Impact of the Rome Statute and the International Criminal Court," ICTJ, May 2010.
33. Baldo, Suliman, "Sudan: Impact of the Rome Statute and the International Criminal Court," ICTJ, May 2010.
34. Reed, Michael, and Amanda Lyons, "Colombia: Impact of the Rome Statute and the International Criminal Court," ICTJ, May 2010.
35. Art.17 (2) (b) of the Rome Statute.
36. "Colombia: Impact of the Rome Statute and the International Criminal Court."
37. See for instance AUPD Report, paras. 206 and 248.


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ICTJ New York

5 Hanover Square. Floor 24

New York, NY USA 10004