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Ingrid Roestenburg-Morgan. 2022. *The road to reconciliation? Optimizing the legitimacy and efficacy of the International Criminal Court within the African Union and Africa*. Louvain-la-Neuve: Larcier Intersentia, Human Rights Research Series 102. 411 p.

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Out of the 125 state parties to the Rome Statute, 33 of them are African states (60% of the member states of the African Union have ratified this instrument). Moreover, it is considered that the African contribution to the establishment of the International Criminal Court (ICC) was instrumental. Seventeen African states were among the first 60 that ratified the founding treaty setting the Court's jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression (the first one of all 125 being Senegal in 1999). However, strong criticisms and a series of attempted and effective withdrawals from the Rome Statute by several African countries have led to question the real support and legitimacy of this international court. The criticisms stem primarily from the Court's focus on African cases since its inception, out of the investigations by the ICC (12 ongoing, 5 concluded), 10 relate to the African continent. This caseload is widely perceived by the AU and several African nations as evidence of systemic bias and a neo-colonial agenda. Even though according to analysts, the self-referral of many of the cases demonstrates the legitimacy of the Court. The core accusation is that the ICC functions as an instrument of selective justice, targeting African leaders while affording institutionalized international impunity to crimes committed elsewhere, thereby challenging African sovereignty and peace efforts.

Against this background, Roestenburg-Morgan aims at determining to what extent the ICC is suffering from a legitimacy deficiency in Africa and if so, how to reduce it. A key strength of this comprehensive study lies in its empirical approach to determining the erosion of the ICC's legitimacy in the continent. Consequently, the author thoroughly explores three aspects that sustain the structure of this study, namely, the court's institutional, jurisdictional and cultural legitimacy.

In the first part of the book the author examines the determinants of institutional legitimacy from both the ICC's and the AU's

perspectives. Her analysis addresses the ICC's institutional legitimacy focusing on the strategic rationale of the Office of the Prosecutor (OTP) in its decisions to initiate investigations. She clarifies the ICC's prosecutorial strategy by identifying the key determinants of its legitimacy. Among these, the rule of law is established as the dominant foundation for both the ICC and the OTP's institutional standing, alongside the potent role of the law-politics dichotomy (framed as "good versus evil") in bolstering its legitimacy. Furthermore, the study delineates the main determinants of the AU's legitimacy as well, identifying its core reliance on Pan-African solidarity, unity, and a common cultural identity. This foundation is largely a consequence of the continent's colonial history. These central elements are directly linked to aspects such as the protection of sovereignty, agency, and self-reliance of African member states. A comparative analysis of the determinants of AU's own legitimacy and how it confers legitimacy to the ICC completes this section aimed at clarifying the elements that compromise the relationship between the two institutions. For the AU, the tension is exacerbated by what it perceives as the Court's failure to adequately address the principle of sovereign equality and the potential for international justice to conflict with regional goals of peace and stability.

The second major pillar of the analysis (part II of the book) focuses on jurisdictional legitimacy specifically through the lens of the principle of complementarity. This principle dictates that the ICC is a court of last resort, stepping in only when national jurisdictions are unwilling or unable to investigate or prosecute serious international crimes. Roestenburg-Morgan critically assesses how this principle operates in practice and examines it in light of two major debates, around the models of justice (restorative and retributive), and the peace versus justice debate ("the meaning of justice"). The author highlights that while the ICC offers a model of retributive justice focused on individual criminal accountability, many African contexts prioritize alternative, traditional, community-based forms of justice. This part of the book further explores the interaction of alternative justice mechanisms with the principle of complementarity. When African states invoke or prefer traditional justice or reconciliation-focused mechanisms, the ICC's strict interpretation of "willingness" and "genuineness" can clash with local needs for healing and social reconstruction. The author argues that the ICC must develop a more nuanced understanding of complementarity that acknowledges and, where appropriate, accommodates local and traditional justice processes, thereby enhancing its own jurisdictional legitimacy by respecting diverse pathways to accountability.

The most innovative aspect of Roestenburg-Morgan's research lies in her detailed exploration of the third legitimacy aspect, cultural legitimacy (part III). This section delves into the fundamental disconnect between the Western legal tradition underpinning the Rome Statute with regard to procedural and substantive aspects, and the diverse, contextual African cultural backgrounds and paradigms that shape local understandings of justice, accountability, and reconciliation. The author brings to the fore key cases to exemplify the challenges of a just balance in the application of the law in a way sensitive to cultural diversity, concluding that overlooking cultural factors ended up compromising both cultural and legal legitimacy of the courts analysed. A valuable contribution within this section is the inclusion of anthropological evidence that nuance certain concepts and principles, highlighting the importance of contextualising cultural related aspects.

Drawing on anthropological insights, the author illustrates how African cultural values often place greater emphasis on restoration, harmony, and reconciliation within the community, rather than purely individual-focused retribution. This contrasts sharply with the ICC's mandated framework, which is primarily focused on criminal trials and punitive sanctions. The book highlights the current problems that this clash presents, arguing that the ICC's failure to fully account for these cultural differences contributes significantly to the perception of the Court as an alien, imposing institution. The quest for cultural legitimacy, as outlined in this part, requires the ICC to develop a culturally attuned approach to international justice enforcement. This includes a better understanding of how African societies view concepts such as guilt, responsibility, forgiveness, and the role of traditional justice leaders. By advocating for a more practical and balanced approach, the author suggests ways in which the ICC can adapt its outreach, witness management, and conceptualization of post-conflict resolution to resonate more effectively with local communities, ensuring that its work is not just legally compliant but also culturally meaningful and legitimate.

In its final conclusions the author synthesizes the findings across the three legitimacy deficits, affirming that the ICC is indeed suffering from a significant crisis of legitimacy within the AU and Africa. However, the author maintains that this crisis is not insurmountable and enumerates key recommendations directed towards consolidating trust and shifting towards more equal relationships between the ICC and the AU. The author suggests addressing the political perceptions of bias by ensuring a more geographically balanced caseload and strengthening diplomatic engagement with the AU which would

translate in an institutional reform. This observation aligns with the AU's attempts to foster a constructive dialogue with the UNSC. Furthermore, she endorses adopting a flexible interpretation of complementarity that recognizes the value of credible alternative justice mechanisms and supports the development of robust domestic judicial systems in Africa. Another key element relates to the integration of genuine cultural awareness and anthropological insights into the Court's operations, to ensure justice is delivered in a way that aligns with African cultural paradigms of accountability and reconciliation.

By addressing these three deficient areas, Roestenburg-Morgan argues that the ICC can rebuild its fractured relationship with the AU, creating a path for reconciliation. To move towards reconciliation, the ICC must demonstrate that its mandate is universal and equally applied, and that it genuinely respects the agency and processes of its African member states without perpetuating unequal power relations that resonate with the colonial past. This reconciliation is deemed crucial not only for the development and protection of human rights and the fight against impunity in Africa but also for ensuring the ICC's long-term sustainability and universal legitimacy as a global institution of criminal justice. At this point, the analysis would have benefited from assessing the aptness of alternatives to the reconciliation path. Including a critical exploration around the capacity of existing African mechanisms and the support they receive by African states would have provided a more balanced and robust scope to the analysis. The low ratification rates of the merger Protocol and the limited number of states that have made the declaration of article 34.6 raise concerns regarding the genuine political willingness to back the implementation of an intra-continental criminal jurisdiction. This, in turn, suggests a lack of robust commitment to the overarching goal of justice. Exploring the contradictions that these situations evince would have supplied essential context and analytical depth to this research.

Notwithstanding, Roestenburg-Morgan's book and thorough analysis contribute to unveil some of the reasons behind these tensions and contradictions, showing the importance and urgency of dealing with the distrust and obstacles to ensure effective accountability, a commitment with justice and the elimination of impunity. The research ultimately serves as an essential resource for law students, scholars, policymakers, and international institutions seeking to understand the complex interplay between international law, sovereign politics, and diverse cultural values. Furthermore, this comprehensive exploration is a valuable and timely study considering the present scenario for justice

and human rights in the continent. Currently, the African Court on Human and Peoples' Rights is in the process of developing its Strategic Plan and priorities for the 2026-2028 period, with the aim of embodying the principle of "African solutions to African problems." Concurrently, the AU is making repeated calls to encourage member states to sign and ratify the Malabo Protocol for the establishment of an African Court with criminal jurisdiction. The establishment of this homegrown mechanism for regional accountability of international and transnational crimes has been considered as "the strongest panacea to mitigating the involvement of the ICC on the continent based on the principle of subsidiarity" (AU Executive Council EX.CL/1006(XXX) Rev.1), despite the low ratification rates (only Angola has so far ratified the merger protocol).

In addition, on 22 September 2025 further withdrawals from the Rome Statute were announced in a joint communique of the confederation of Sahel States (AES) signed by Burkina Faso, the Republic of Mali (under current ICC investigation) and the Republic of Niger. The announcement presents similar arguments to the ones that led to their withdrawal from the west African ECOWAS, namely: lack of capacity to handle and prosecute those crimes, and in the case of the ICC, a compelling bias towards the perpetrators of such crimes. These countries intend to resort to endogenous mechanisms for peace building and justice, having announced the creation of a Sahel Criminal and Human Rights Court (CPS-DH) in March the same year. Even though the withdrawal will only become effective one year after the official notification is made to the UN Secretary General, it sets an uncertain scenario. Roestenburg-Morgan's analysis offers critical insights to apprehend these new developments and to interpret the complex dynamics of this critical subject.

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