The International Criminal Court's African Bias and the African Court of Justice and Human and Peoples' Rights: a replacement, an extra layer or strengthening Africa's judicial system?

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Abstract

This thesis analyses how the International Criminal Court's (ICC) African bias has affected the judicial system in Africa at regional and international levels. First, the current literature on the ICC's African bias and the African judicial system will be reviewed. Next, it will be analysed why the African Union (AU) and its Member States see the ICC as biased against Africa. Then it will be analysed what the AU's judicial response is to the ICC's African bias and how this response seeks to interpret international criminal law. Based on these reviews and analyses, this research concludes that the ICC's African bias has affected the judicial system in Africa at regional and international levels by creating a continental human rights and criminal court that has jurisdiction over international criminal law. This research ends with the observation that the African Court on Justice and Human and Peoples' Rights (ACJHPR) is created to replace the ICC as both Courts have jurisdiction over crimes against humanity, war crimes, genocide and the crime of aggression. However, the replacement of the ICC could create an extra layer between Africa and the ICC, once the relationship and hierarchy between the two Courts are established.

Key words: International Criminal Court (ICC), African bias, African Union (AU), Malabo Protocol, African Court of Justice and Human and Peoples' Right (ACJHPR)

Abbreviations

ACHPR	African Court on Human and Peoples' Rights
ACJHPR	African Court of Justice and Human and Peoples' Rights
ACJHR	African Court of Justice and Human Rights
AEC	African Extraordinary Chambers
AU	African Union
EACJ	East African Court of Justice
ECOWAS ECCJ	Economic Community of West African States Community Court of Justice
EU	European Union
ICC	International Criminal Court
ICJ	International Court of Justice
OAU	Organisation of African Unity
TWAIL	Third World Approaches to International Law
UNSC	United Nations Security Council
UN	United Nations

Chapter 1 Introduction

1.1 Introduction

The International Criminal Court (ICC) is a milestone within the global criminal justice system because it is the first criminal court that has jurisdiction over individuals for the most serious crimes of international concern. Jeangène Vilmer (2016) argues that the ICC is the centrepiece of the international criminal justice system as the ICC is a permanent court with a mandate that can prosecute individuals for crimes against humanity, war crimes, genocide and the crime of aggression (Rome Statute of the International Criminal Court, 1998). The ICC came into being in July 2002 after 60 countries had either ratified or acceded to the Rome Statute (Schabas, 2011). African countries in particular played an important part in the realisation of the ICC, as they were among the first countries that ratified and acceded to the Statute (Schabas, 2011). Additionally, Cole (2013) points out that with its 33 State Parties to the Rome Statute, Africa has the biggest regional representation to the Statute.

Niang (2017, p. 616) holds that the African countries' enthusiasm to join the Rome Statute was accompanied by "an unprecedented hope for justice." However, over time, their enthusiasm, and especially the enthusiasm of the African Union (AU), towards the ICC diminished because African leaders became the prime suspect in most of the ICC's investigations (Iommi, 2020). Iommi (2020) points out that nine of the eleven formal investigations opened by the ICC concern Africans, which has attracted criticism from the AU and its Member States saying that the ICC has a bias against Africa. The AU's criticism became more vigorous when the ICC issued arrest warrants against several African leaders such as the former Sudanese President Omar Hassan Ahmad al-Bashir, the former Ivorian President Laurent Gbagbo, the late Libyan President Muammar Gaddafi and the current President of Kenya, Uhuru Kenyatta in the late 2000s and the early 2010s (Jeangène Vilmer, 2016). The AU's criticism soon turned into an official policy of non-cooperation with the ICC and the adoption of the Malabo Protocol. This Protocol envisions the setup of the yet to be operational African Court of Justice and Human and Peoples' Rights (ACJHPR). The AU has also continuously encouraged for its Member States to withdraw from the Rome Statute (Jeangène Vilmer, 2016; Ssensenyonjo, 2018; Iommi, 2020).

In addition to the serious international concerns about a possible mass withdrawal from African State Parties to the Rome Statute *from* the Rome Statute, the Malabo Protocol raises several other concerns. An Amnesty International report (2017) demonstrates that these concerns are mainly of a legal and institutional nature, highlighting that it is unclear whether the Malabo Protocol is to be made operational to replace the ICC, to create an extra judicial

layer between Africa and the ICC or to strengthen the African judicial system. Additionally, it is unclear if the ICC's African bias has had any effect on the creation of the Malabo Protocol. Hence, the question that this thesis raises is: "How has the ICC's African bias affected the judicial system in Africa at regional and international levels?"

This research is relevant because the AU acts as a representative for its 54 Member States which gives it a substantial amount of influence. Jeangène Vilmer (2016) notes that the AU's criticism on the ICC's preliminary focus on Africa has increased over the last ten years. Jeangène Vilmer (2016) continues to argue that the increase in the AU's criticism on the ICC's focus on African countries can have far-reaching consequences because as the continent's institutional voice, the AU has considerable influence in Africa which can lead to the AU's anti-ICC sentiments to become the dominant view throughout the continent. Furthermore, the AU's anti-ICC sentiments can weaken the ICC's position and influence in the international criminal justice system. This in turn can weaken the ICC's contribution in the fight against impunity in Africa and elsewhere (Jeangène Vilmer, 2016). Additionally, this research is relevant because the African judicial system is still developing, which might make it vulnerable to external influences. Fon (2019) points out that across Africa "[i]nternational courts and tribunals have emerged and flourished at both regional and international levels [but] there is still much to be done in terms of reconciling the existing regional and continental judicial institutions to form a hierarchical structure, clarifying the jurisdiction of each judicial body and ensuring the enforceability of decisions." (p. 494).

This thesis hypothesises that the ICC's African bias has affected the judicial system in Africa at regional and international levels in terms of overreach, given that the African judicial system is not yet properly integrated, the goal of establishing the ACJHPR and its relationship with the ICC are unclear and the fact that Africa does not yet have a court with a mandate to prosecute international crimes and therefore lacks the experience and the know-how (Ssenyonjo, 2018), In other words, the ICC's African bias has prompted the AU to create a court in which Africans are tried by Africans for violations of serious crimes of international concern while Africa's judicial system at regional and international levels are not yet up for the task.

In this thesis, the term African bias refers to the assumed negative image that the ICC has of some African countries, and to a larger extent, of Africa as a whole. More importantly, the term refers to the assumption that in the ICC's eyes, the AU and several of its Member States prolong the war against impunity instead of contributing to its end. Furthermore in this

thesis, the term African judicial system refers to the judicial system that is currently in place in Africa on regional and international levels.

In the following sections, I review the literature on the ICC's African bias and the African judicial system and discuss the theories and the methodology that are used in this thesis.

1.2 Literature review

This section reviews the relevant academic literature on the ICC's bias towards Africa and the relevant literature on the African judicial system.

The ICC's African bias

The notion of an autonomous international court without political ties was met with great support from many countries across Africa and from the AU (Sibiya & Nel, 2017). However, Sibiya & Nel (2017) argue that in spite of this great support, it has become clear in the past decade that the AU and several African states have become hostile towards the ICC.

Imoedemhe (2015) and Jeangène Vilmer (2016) argue that the AU and several African countries became more opposed towards the ICC after the United Nations Security Council (UNSC) referred the situation in Darfur, Sudan to the ICC. Nonetheless, Imoedemhe (2015) suggests that it is not the UNSC's referral but the decision of the ICC's Prosecutor to open an investigation into the situation in Sudan, and in addition to that, the issuance of the two arrest warrants against former Sudanese President Omar al-Bashir that actually caused the change in behaviour. At that point, in the Court's short history, no former or current head of state of a State Party to the Rome Statute had been indicted, let alone a sitting head of state from a Non-State Party. The indictments of Omar al-Bashir changed that and therefore caused the change in behaviour of the AU and several African states towards the ICC.

The AU's and the several African countries' change in behaviour is reflected in their current relationship with the ICC. Imoedemhe (2015) stresses that the relationship between the ICC and the AU was cordial but that this all changed when the ICC's Prosecutor issued the arrest warrants for Omar al-Bashir. Imoedemhe (2015) highlights that the arrest warrants caused tensions in the relationship between the ICC and the AU. Jeangène Vilmer (2016) adds that after the two arrest warrants "a post-colonial, pan-African anti-ICC rhetoric emerged" (p. 1321). This rhetoric stipulates, among other things, that the ICC is an institution that only prosecutes Africans and can be viewed as an endeavour of the West to bring their former colonies under their control again. This rhetoric spread and became stronger after the ICC's

Prosecutor issued arrest warrants for the late Libyan President Muammar Gaddafi and for the current President and the Vice-President of Kenya.

The relationship between the AU and the ICC suffered another setback when the AU issued an official call of non-cooperation with the ICC. The AU hopes that this strategy will deter its Member States from cooperating with the ICC in the capture of Omar al-Bashir. The AU's call for non-cooperation put the 33 AU Member States that are also State Parties to the Rome Statute in a difficult position. The issuance of the non-cooperation strategy forces them to make a decision between adhering to the AU and their obligations under the Rome Statute. Imoedemhe (2015) argues that some of these State Parties seem to be more committed to their AU membership than to their obligations under the Rome Statute as Omar al-Bashir was able to travel freely on the territories of several African State Parties without being captured and transferred to the premises of the ICC. According to Cole (2013), the decision to adhere to the AU's call of non-cooperation jeopardises the position of the ICC as the ICC is reliant on the assistance of its State Parties for the investigation, capture and prosecution of suspects.

The relationship between the AU and the ICC suffered another setback when the AU encouraged its Member States to withdraw from the Rome Statute and adopted the official Withdrawal Strategy in 2017 (Assembly of the Union, 2017). This Strategy can be seen as an attempt to weaken the position of the ICC, much like the non-cooperation strategy. The AU appeared to be successful as three African State Parties to the Rome Statute issued notifications of withdrawal from the Statute to the Secretary-General of the United Nations (UN) according to Article 127 of the Statute in 2016 (Ssenyonjo, 2018). However, Ssenyonjo (2018) remarks that apart from these three official notifications of withdrawal and the numerous threats of AU Member States to withdraw from the Rome Statute, Burundi is the first and thus far only AU Member State and State Party to the Rome Statute that withdrew itself from the Statute. Although the AU's Withdrawal Strategy does have a certain effect on its Member States, this effect does not result in the anticipated withdrawal from the Rome Statute.

The African judicial system

Even though a mass withdrawal from African State Parties to the Rome Statute has not yet taken place, it does pose the question of what happens next in the African judicial system and if it has an alternative for the ICC (Fon, 2019).

The Malabo Protocol, adopted in 2014, seems to provide one answer to the question if the African judicial system has an alternative for the ICC. The Protocol widens the mandate of the African Court of Justice and Human Rights (ACJHR) to include criminal jurisdiction over

the most serious international crimes committed in the whole of Africa (Nimigan, 2019; Murungu, 2011). After the successful ratification of the Malabo Protocol, the ACJHR will transform into the African Court of Justice and Human and Peoples' Rights (ACJHPR).

Although the Malabo Protocol appears to be an appealing alternative to the ICC, there are some concerns regarding this Protocol. One concern is its scope. Nimigan (2019) points out that the scope of the Protocol is tremendous and far greater than any other international criminal justice mechanism on earth. An Amnesty International report on the Malabo Protocol (2017) underlines that with a jurisdiction covering three areas of international law, it is not certain if the ACJHPR is able to live up to the expectations set out in the Protocol. Additionally, the Report (2017) expresses worries about whether the ACJHPR's tremendous jurisdiction provides the Court with the capacity to effectively and efficiently deliver on its mandate. Ssenyonjo (2018) explains that these worries are justified because Africa has not yet had a court with a mandate that covers international crimes and therefore lacks the experience and the required knowledge.

Another concern is the impossibility of lifting the immunity of heads of state or government. Whereas the Rome Statute allows for the lifting of this kind of immunity based on Article 27 of the Statute, the Malabo Protocol does not. Article 46A*bis* of the Protocol reads that "no charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure in office" (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014, p. 38). In essence, Article 46A*bis* perpetuates the culture of impunity for African leaders who commit the most serious crimes of international law without any legal consequences (Nimigan, 2019), depriving the victims of these crimes of any kind of justice. Given the fact that courts of justice and criminal courts are established to fight crime and the war against impunity, questions have been raised about whether the Malabo Protocol is an appealing alternative. Moreover, it is important to question how the ACJHPR, which is based on the Malabo Protocol, fits into the African judicial system.

How the ACJHPR fits into the African judicial system might be ambiguous because the African judicial system is still an uncompleted system. Fon (2019) states that "while the patchwork of judicial institutions does not necessarily make for the existence of a judicial system, it can also not be argued that the infrastructure for an African judicial system is non-existent" (p. 494). Indeed, international courts and tribunals have arisen and thrived in Africa at both regional and continental levels, laying the groundwork for an African judicial system

(Fon, 2019). However, Fon (2019) points out that these regional and international courts have emerged and thrived without a clear understanding of the hierarchy between courts, which courts have jurisdiction over what crime(s) and whether court decisions are enforceable. This suggests that the will for an integrated, functioning and hierarchical judicial system is there, but that it is in a need for improvement and further development of this system.

1.3 Research design

International law and the international justice system

The ICC is the centrepiece of the international criminal justice system because it is the only court that has permanent jurisdiction over the core crimes of international criminal law (Jeangène Vilmer, 2016). However, the ICC's jurisdiction appears not to be completely universal as the majority of the cases before the Court's Chambers involve either African nationals or African states. The ICC's primary focus on Africa has led to frustrations and concerns among African states and within the AU as violations of the "most serious crimes of international concern" also happen in other parts of the world, such as Iraq (Rome Statute of the International Criminal Court, 1998). Yet, the ICC does not investigate these cases nor does it receive such case referrals from the UNSC (Imoedemhe, 2015; Ba, 2017). Regardless of the fact that influential and populated countries such the United States and Russia are not State Parties to the Rome Statute (Jeangène Vilmer, 2016), Ba (2017) argues that the ICC does not investigate cases wherein these countries are the alleged perpetrators because the international criminal justice system, in which the ICC is operative, sanctifies that the West is incapable of committing criminal acts.

There is a long colonial genealogy to international law that has been discussed in several works, to which the ICC is not an exception (Anghie, 2006; Grovogui, 1998; Koksennemmi, 2002; Chimni, 2007; Ba, 2017; Lingaas, 2019). The idea that the West is invincible is present since the international justice system's inception, as international law has a very strong European influence (Anghie, 2006). Verzijl (1968) states that "now there is one truth that is not open to denial or even to doubt, namely that the actual body of international law, as it stands today, not only is the product of the conscious activity of the European mind, but also has drawn its vital essence from a common source of beliefs, and in both these aspects it is mainly of Western European origin" (p. 435-436). From Verzijl's point of view, international law harbours a series of principles and doctrines that originated from Europe, stemming from European history and experience that overtime stretched out to non-European countries outside of the borders of European international law (Anghie, 2006).

Besides the strong European influence, international law developed along the concept that different stages of its history are formed by distinctive styles of jurisprudence (Anghie, 2006). The first distinctive style of jurisprudence is naturalism, which states that universal international law originates from human reason and applies to all races. The second distinctive style is positivism which holds that a state can only be held accountable to rules to which it has agreed to (Anghie, 2006; Ba, 2017). Both styles remain present in today's international justice system but, according to Anghie (2006), view society, the concept of law and the international system very differently. Positivism, for example, divides the world in civilised and uncivilised states with which its maintains a gap between the West and the non-West. Anghie (2006) identifies this as the dynamic of difference in which "international law posits a gap, a difference between the European and non-European cultures and peoples, the former being characterised, broadly, as civilised and the latter as uncivilised" (Anghie, 2006, p. 742).

The dynamic of difference arises when international law tries to create a universal system of order among institutions seen as being part of different cultural systems (Anghie, 2006). Anghie (1999) argues that international law is in principle universal as it applies to all countries irrespective of their distinctive cultures, political organisations and belief systems. In other words, international law can be viewed as a manner that involved countries use to maintain their relations with each other (Anghie, 1999). However, as several scholars including Anghie (1999) point out, the universality of international law, which implies that it is omnipresent and involves everyone, is a relatively new phenomenon. Although international law exists everywhere and involves everyone, it does not regard everyone as alike or equal. Indeed, the West had colonised the majority of the Pacific, Asia and Africa before the start of the Second World War or had put them under European supervision (Ba, 2017). This not only meant that the colonised countries became part of a law system that was distinctively European but it also meant that they were regarded as inferior. The colonised countries and the territories under European supervision were not in a position to make alterations to the established international law nor were they in a position to have international law acknowledge their point of view. This left them vulnerable to their colonisers and their strong influence on international law. This pattern, according to Ba (2017), resembles the positivist point of view of international law which is still present in today's international justice system.

Third World Approaches to International Law (TWAIL)

Another point of view that is present in today's international justice system is that of TWAIL. TWAIL was founded in the 1990s when a few law students from Harvard Law School

grouped together to debate whether it was possible to create a third world approach to international law and what the key characteristics of such an approach could be (Eslava, 2019). A key characteristic of TWAIL is that the third world is inadequately represented in international law and the international justice system. Gathii (2019) underlines that it has long been argued by third world leaders and TWAIL scholars that international law in itself is not international as it does not include the sensibilities, voices and concerns of particularly non-European people. TWAIL therefore rejects, modifies and challenges "some of the existing treaties, customs and general principles of international law developed by the former world community which was dominated by the stronger 'civilised' nations of the world" (Gathii, 2019, p. 7).

In essence, TWAIL scholars attempt to write and re-write international law from a third world perspective (Gathii, 2019). With this attempt, TWAIL scholars criticise the universality of international law and simultaneously hope to create a balance between the first and the third world within the international justice system (Gathii, 2019). Furthermore, Gathii (2019) argues that TWAIL scholars discard the European-based ideas of international law that do not take responsibility for the history of inferior groups within it and its lasting consequences such as poverty. Hence, TWAIL resembles a transformative and adversarial set of ideas and promises that reshape the international justice system (Gathii, 2019).

The ICC, international law and the international justice system

The ICC has the opportunity to change the narrative of international law and to include the perspectives of third world countries because it is the centrepiece of the international criminal justice system and because the majority of the State Parties to the Rome Statute are third world countries (Jeangène Vilmer, 2016; International Criminal Court, n.d.). Based on the ICC's cases, however, it can be argued that the ICC has not yet taken this opportunity and therefore remains within the Eurocentric view of international criminal law. Hence, this thesis is approached from an international law and TWAIL perspective.

1.4 Methodology

Research method and sources

This thesis employs a qualitative research method. The main focus of this thesis is to conduct legal research. The Bodleian Libraries (n.d.), that are associated with the University of Oxford, state that there is no universal path for conducting legal research. However, the Bodleian Librarians (n.d.) do argue that there are eight steps that need to be taken into account

when conducting legal research. These steps are to identify the scope of the legal question, to start the research by consulting a secondary source, to identify the relevant statutes, to identify the cases that are up to date for specific facts, to use databases and digests to find more cases, to know that the used authority is still valid, to search other online sources to close any gaps in the research and lastly, to document the taken research trail.

In line with conducting legal research, this thesis uses legal texts as primary sources. This thesis also uses political texts as primary sources. It relies on academic articles for secondary sources.

When doing research, Fischer and Julsing (2007) stress that it is necessary that the conducted research is reliable and that it has a decent score on validity. This thesis is considered reliable because it is very likely that other researches will come to the same conclusion(s) when the same or similar sources are used. The findings of this thesis cannot be generalised to other judicial systems, particularly those in Europe, for two reasons. The first reason is that the ICC, for instance, is not accused of being biased against Europe or the European Union (EU) by individual European states, the EU or its Member States. On the contrast, the ICC enjoys considerable support from the EU Member States as well as from non-EU Member States (European Union, 2006; Eneström, 2019). The second reason is that the African judicial system cannot be compared to other judicial systems. This is because the African judicial system is in its developing stage whereas other judicial systems, such as the EU's judicial system, are fully developed (Fon, 2019).

1.5 Chapter scheme

This chapter introduced the topic of this thesis, reviewed the relevant academic literature on the ICC's African bias and Africa's judicial system at the regional and international level and discussed the theories and the methodology that are used in this thesis. Chapter two will analyse in depth why the AU and its Member States see the ICC as being biased against Africa. Chapter three will analyse what the AU's judicial response is to the ICC's African bias and how this response seeks to interpret international criminal law. Chapter four will answer the research question and will provide the reader with recommendations for further research.

Chapter 2 The ICC's African Bias

2.1 Introduction

The Rome Statute to the International Criminal Court was adopted in 1998 after talks about a permanent criminal court emerged a few years earlier (Schabas, 2011). Cole (2013) highlights that Africa's call for the creation of a permanent criminal court came from the highest levels of the continent's leadership. These calls led to the adoption of the Dakar Declaration for the Establishment of the International Criminal Court (Cole, 2013). The Declaration, *inter alia,* states that the African national legal systems have generally failed to meet the conditions to hold perpetrators accountable for gross violations of international law, which amplifies the need to ratify and accede to the Rome Statute (Cole, 2013). In the months following the adoption of the Declaration, many African states ratified and acceded to the Rome Statute. Next to the commitment of individual African states to fight the war against impunity by adhering to the Rome Statute, the Organisation of African Unity (OAU), the predecessor of the AU, pledged that it would cooperate with the relevant institutions set to prosecute perpetrators as it condemns the perpetration of genocide, crimes against humanity and war crimes on African soil (Cole, 2013). Roughly ten years after the adoption of the Declaration, the then President of the ICC, Sang-Hyun, acknowledged the vital role that African states played in the establishment of the ICC and stated that without their support the Rome Statute "would have never been adopted" (Ssenyonjo, 2013, p. 386). Indeed, the African states led the way in signing up to the Rome Statute (Cole, 2013).

Despite the vital role that African states have played in the creation of the Rome Statute and the AU's pledge to cooperate with the relevant institutions to fight the war against impunity, both the AU and their Member States have in recent years reconsidered their commitments to the ICC due to its strong presence in Africa. The AU has criticised the ICC for its strong presence in Africa. Hence, the aim of this chapter is to analyse the reasons for the AU's criticism that the ICC is biased against Africa.

2.2 The ICC's bias against Africa

The primary reason that the AU sees the ICC as biased against Africa seems to be the notion that the ICC only prosecutes Africans while it does not prosecute other individuals who have committed atrocities in other parts of the world (Imoedemhe, 2015; Jeangène Vilmer, 2016; Niang, 2017; Sibiya & Nel, 2017). The fact that the ICC's Prosecutor opened three new investigations in Africa within a time period of six years without opening investigations in other parts of the world where atrocities have happened seems to confirm the AU's beliefs. With

three new cases in Africa, Darfur in 2005 and Libya and Kenya in 2011, on top of the cases that the ICC was already investigating in Africa, criticism about the ICC's modus operandi and allegations that the ICC is biased against Africa started to emerge in the official discourse of the AU and its Member States (Jeangène Vilmer, 2016). Furthermore, the then President of the AU's Commission, Jean Ping, commented in 2009 that "international justice seems to be applying its fight against impunity only to Africa as if nothing were happening elsewhere – in Iraq, Gaza, Colombia or in the Caucasus" (Jeangène Vilmer, 2016, p. 1321). Hence, the ICC has been critiqued for its Eurocentrism in application of international law. Indeed, until January 2016 all the cases pending before the ICC concerned African states (Jeangène Vilmer, 2016). In total, ten out of the thirteen ICC's current cases concern African countries with two more African cases under the Court's preliminary examinations. These ten cases are Uganda, the Democratic Republic of the Congo (DRC), Sudan, Central African Republic, the Republic of Kenya, Libya, Côte d'Ivoire, Mali, Central African Republic II and Burundi. Nigeria and Guinea are the two African countries that are under the Court's preliminary examinations (International Criminal Court, n.d.).

While the majority of cases that are currently under the ICC's investigation concern African states, it is important to have a closer look at these ten cases. Upon further investigation, it becomes clear that five of the ten cases were referred to the ICC's Prosecutor by their African states' respective governments. Jeangène Vilmer (2016) explains that these cases were referred to the ICC's Prosecutor, because the governments of Uganda, the DRC, the Central African Republic and Mali lacked the political will or ability to prosecute these individuals themselves. The Central African Republic self-referred twice. With the self-referrals, the Ugandan, Congolese, Central African Republican and Malian governments followed the ICC's principle of complementarity. This principle states that the ICC can only exercise its jurisdiction where the national legal systems fail to do so, which includes situations where it appears that the government in question acts upon the crimes committed but in reality lacks the ability or the willingness to prosecute (ICC-OTP, 2003). Imoedemhe (2015) argues that the self-referrals demonstrate the support and trust that the governments of Uganda, the DRC, the Central African Republic and Mali have in the ICC, contradicting the notion that the ICC is biased against Africa. Furthermore, on closer inspection of the ten African cases referred to the Prosecutor of the ICC, it becomes clear that the UNSC referred two African cases (International Criminal Court, n.d.). The UNSC, based on Article 13 of the Rome Statute, is able to refer cases to the Prosecutor of the ICC. The fact that this Article enables the UNSC to refer cases to the ICC's Prosecutor is a point of contention, given that three of the five permanent members of the UNSC

are not State Parties to the Rome Statute and have the power to veto certain case referrals, such as Syria (Jeangène Vilmer, 2016; Imoedemhe, 2015). The UNSC's veto power limits the ICC's abilities to fight the war against impunity.

Thus, there are only three cases concerning Africa that the ICC's Prosecutor opened on their own: Kenya in 2010, Côte d'Ivoire in 2011 and Burundi in 2017. Based on this, Imoedemhe (2015) underlines that even though the ICC is perceived to have an inappropriate fixation on Africa, it does not necessarily mean that the ICC is biased against Africa. Sibiya and Nel (2017) add that with the investigation in Georgia and the situations in Colombia, Iraq/United Kingdom, Palestine and Ukraine under the Court's preliminary examinations, the ICC shows its preparedness to investigate cases outside Africa. Further, the Prosecutor of the ICC opened investigations in Bangladesh/Myanmar in November 2019 and in Afghanistan in March 2020. Two situations in Venezuela from 2017 and 2020 respectively have been added to the cases under the Court's preliminary investigations (International Criminal Court, n.d.) Hence, the accusations of the ICC's bias against Africa cannot be fully justified. If the ICC is indeed investigating cases outside Africa and brings non-African cases under its preliminary examinations, why does the AU insist that the ICC exclusively targets Africans?

One reason is that in the first 14 years of the ICC's existence, the Court has only investigated cases that concern African nationals or African states. Jeangène Vilmer (2016) and Sibiya and Nel (2017) confirm that up to January 2016 all the cases under the ICC's investigation were African. Another reason is that since the Court's establishment, all suspected individuals of whom the ICC has issued arrest warrants against have been Africans (Sibiya & Nel, 2017). The AU's reasons show that the international justice system acts disproportionate to the African continent as alleged crimes of western nations or upcoming nations, such as Russia's annexation of the Crimea, are not investigated. Griffiths (2012) underscores that international criminal law as executed today is disproportionate, because it holds an untold truth that certain individuals, from certain countries of origin will never find themselves summoned before an international court or tribunal facing justice for the crimes committed. Additionally, the AU's reasons show that the ICC's jurisdiction is indeed not entirely universal as the Court is largely focused on the crimes committed in Africa. As a result of this, Imoedemhe (2015) argues that Africans or African states are depicted as primarily responsible for all of humanity's inhumanity.

This depiction strengthens the dynamic of difference, which is present in the positivist view on international criminal law and which characterises Europeans as civilised and non-Europeans as uncivilised (Anghie, 2006). Moreover, this depiction, just as the international

justice system's disproportionateness, sends the message that when a person is black or of African descent and has committed a crime, it is likely that this person will face justice whereas a white person or a person of European descent that has committed a crime is less likely to do so. Grovogui (1996) argues that this is due to the belief, that in the international justice system, western nations are not able to commit crimes that are of serious international concern. Overall, while it seems that the ICC has lately taken the criticism of being biased against Africans seriously, there are still no western leaders under the ICC's legal scan.

2.3 The AU and the ICC's African bias

The previous section has set out the reasons why the AU regards the ICC as biased against Africa and how far that criticism is justified. This section examines how the AU and its Member States respond to the ICC's African bias.

In response to the ICC's focus on Africa, African leaders and commentators have termed the institution as neo-colonial. This characterisation of the ICC had become particularly salient in the aftermath of the issued arrest warrants for the former Sudanese President Omar al-Bashir and subsequently the late Libyan President Muammar Gaddafi, the former Ivorian President Laurent Gbagbo and the current President and Vice-President of Kenya (Jeangène Vilmer, 2016; Iommi, 2020). The ICC is accused of practising 'white justice' and acting as an African Criminal Court (Jeangène Vilmer, 2016). The Gambian Information Minister Sheriff Bojang accused the ICC of being "an International Caucasian Court for the persecution and humiliation of people of colour and especially Africans" (O'Grady, 2016, p. 1). Similarly, the Rwandan President Paul Kagame argued that "with [the] ICC all the injustices of the past including colonialism, imperialism, keep coming back in different forms. They control you. As long as you are poor, weak there is always some rope to hang you. [The] ICC is made for Africans and poor countries" (Imoedemhe, 2015, p. 82).

The anti-ICC rhetoric underlines that Africa and other third world countries remain vulnerable to powerful western nations because these nations keep dominating the international justice system. Additionally, western nations' mode of thinking, which can be regarded as positivist, maintains to prevail in international criminal law. In this point of view, western nations are viewed as civilised whereas non-western nations are seen as uncivilised (Anghie, 2016; Ba, 2017). Niang (2017) points out that the latter is reflected in the UNSC's modus operandi, as its members dismiss the notion that their citizens can be summoned before the ICC. Additionally, Sibiya and Nel (2017) add that the African nations are singled out because the

ICC cannot afford to lose its largest financial supports from non-African nations and African nations do not have the same economic and diplomatic powers than western nations.

This critique became vociferous after the ICC's Prosecutor issued two arrest warrants against Omar al-Bashir. Interestingly, at the time of the issuance of the arrest warrants against al-Bashir, the ICC already had captured a number of suspects, among them Germain Katanga, Jean-Pierre Bemba, Thomas Lubanga Dyilo and Mathieu Ngudjolo Chui. The ICC had also issued arrest warrants against others, all of whom were Africans. However, neither the AU nor its Member States protested against these arrest warrants or accused the ICC of being biased against Africa (Jeangène Vilmer, 2016). Jeangène Vilmer (2016) argues that the AU's protests and its anti-ICC rhetoric were caused exclusively by the arrest warrants for al-Bashir, which demonstrates that the AU and its Member States have no issues with the ICC indicting Africans. Jeangène Vilmer (2016) stresses that the AU and its Member States have issues with the ICC indicting powerful Africans, and in particular, heads of state and seniors state officials. This leads to a line of reasoning where the ICC is not only biased against Africa, but to a certain extent the AU too.

The withdrawal strategy is another way the AU and its Member States responded to the ICC being biased against Africa. The AU altered its Open-Ended Committee on the ICC to create a comprehensive strategy in early 2016, which included the possibility to withdraw from the Rome Statute. With this alteration, the AU signalled to the ICC that it no longer supported the Court. More importantly, the AU's alteration to the Open-Ended Committee also signalled to its Member States that they could withdraw from the Rome Statute if they so desired. A possible mass withdrawal would not only undermine the legitimacy of the ICC but also threaten the Court's existence.

According to Jeangène Vilmer (2016), there are few reasons why a mass withdrawal has not yet taken place. The first reason is that the AU cannot force its Members to withdraw as that decision needs to be taken by their respective governments. As Nigeria's Ministry of Foreign Affairs spokesperson, Dr Clement Aduku, stated, "[The] AU, which was not a party to the Rome Statute that established the court, should not be developing a strategy for a collective withdrawal for something that each country entered into individually" (Omorogbe, 2019, p. 296). Besides, AU Member States do not speak with one voice in the withdrawal debate. Omorogbe (2019) points out that 16 AU Member States immediately expressed their concerns about the strategy. Other AU Member States have threatened to withdraw from the Rome Statute, some have issued official notifications of withdrawal and others have joined the ICC by ratifying and acceding to the Rome Statute (Jeangène Vilmer, 2016). The Seychelles,

Tunisia, Cape Verde and Côte d'Ivoire respectively ratified the Rome Statute in 2010, 2011 and in 2013 (Assembly of State Parties to the Rome Statute, n.d.). The second reason why a mass withdrawal has not yet taken place is that although many AU Member States remain hostile towards to the ICC, this does not necessarily mean that they want to withdraw from the Rome Statute. Jeangène Vilmer (2016) highlights that the majority of the AU Member States clearly separate their criticism of the ICC from a possible withdrawal of the Rome Statute.

The clear differentiation between criticising the ICC and withdrawing from the Rome Statute seems to explain why many AU Member States have continuously threatened to withdraw but have not issued official notifications of withdrawal to the Secretary-General of the UN. In contrast, Burundi, South Africa and The Gambia did issue official notifications of withdrawal. However, the Gambian and South African notifications were revoked due to a change in the Gambian government and a decision of the Constitutional Court of South Africa respectively. Burundi did not revoke its official notification of withdrawal and therefore is the first AU Member State and African State Party to the Rome Statute to withdraw from the Rome Statute (Ssenyonjo, 2018). According to Iommi (2020), Burundi based its decision to leave the Rome Statute on the grounds that the ICC was displaying unfair behaviour towards its African State Parties. Burundi was of the opinion that the ICC, especially focused on African countries in its investigations and that it has not been successful in understanding regional issues (Iommi, 2020). Although the AU welcomed Burundi's decision to leave the Rome Statute, Jeangène Vilmer (2016), in counter to Iommi (2020), argues that Burundi did not withdraw from the Rome Statute because of the AU's Withdrawal Strategy but because its late President wanted to avoid being investigated by the ICC's Prosecutor. Burundi was set under the ICC's preliminary investigations in April 2016 almost a year after late Burundian President Pierre Nkurunziza announced that he would run for an unconstitutional third term, putting Burundi in a political and humanitarian crisis (International Criminal Court, n.d.). The ICC's Prosecutor opened an investigation two days before the withdrawal became effective, maintaining the legal possibility to uphold justice within and outside Burundi (International Criminal Court, n.d.). In short, the reservations of a large number of AU Member States about the AU's Withdrawal Strategy, the continuous division among the AU Member States about this issue and the fact that ultimately only one AU Member State has withdrawn from the Rome Statute displays that the AU's Withdrawal Strategy is ineffective and has little support among its Member States

2.4 Conclusion

The aim of this chapter was to analyse why the AU sees the ICC as biased against Africa. The AU's primary reason for seeing the ICC as biased against Africa is because the ICC only targets Africans. As all the cases before the ICC's Chambers are African, one may conclude that the AU is correct. However, when looking at the cases more closely, one sees that five African cases were self-referrals by their respective governments, two African cases were UNSC referrals and the ICC's Prosecutor only opened three African cases on their own initiative. Additionally, the Prosecutor of the ICC has also opened investigations in three non-African states. These facts weaken the AU's argument that the ICC only targets Africans. Nevertheless, the fact remains that in the first 14 years of the Court's existence, it has solely dealt with African cases, which support the conclusion that the ICC has an inappropriate fixation on Africa. This chapter also supports the conclusion that the ICC maintains a Eurocentric view on international criminal law as it does not investigate cases that concern western or first world states. The ICC's Eurocentric view on international criminal law is partly upheld by the system it operates in, partly by the ICC's largest non-African financial supporters and partly by the influence of the UNSC.

Chapter 3 The Malabo Protocol

3.1 Introduction

Although Africa gained its independence from Europe in the 20th century, Europe's influence in and over Africa remains present today. An area where Europe's influence remains present is in Africa's criminal legal system and in the way that suspected African individuals, especially if these individuals are heads of state or government and senior state officials are held accountable for purportedly committed crimes (Murungu, 2011). Murungu (2011) argues that Europe instituted many proceedings against African senior state officials or African incumbents on European soil, frustrating the AU and the Member States involved.

France has frequently indicted and prosecuted African heads of state or government and senior state officials in its domestic courts. In 2005, France indicted the former President of Mauritania, Maaouya Ould Sid'Ahmed Taya. In 2007, a French judge indicted Rwandan military as well as state officials for their suspected participation in the 1994 Rwandan genocide. Rwanda's President Paul Kagame was exempted from these arrest warrants as he enjoys immunity from prosecution as head of state. Two years later, France issued arrest warrants against the current Presidents of Equatorial Guinea and the Republic of Congo (Congo-Brazzaville), the former Presidents of Angola and Burkina Faso and the now late Gabonese President Omar Bongo, accusing them of corruption (Murungu, 2011).

Like France, Belgium has also frequently indicted African heads of state or government and senior state officials. Belgium has issued arrest warrants against the former President of Côte d'Ivoire Laurent Gbagbo and the current President of Rwanda. Additionally, Belgium issued an international arrest warrant against the then serving Minister of Foreign Affairs of the DRC, Abdulaye Yerodia Ndombasi. This case did not only cause diplomatic tensions between the DRC and Belgium but also led to a case before the International Court of Justice (ICJ), the *Arrest Warrant* case (Murungu, 2011). The ICJ ruled in favour of the DRC (Arrest Warrant of 11 April 2000 [Democratic Republic of the Congo v. Belgium], n.d.). Murungu (2011) notes that some ICJ-judges on the *Arrest Warrant* case doubted the actual reason for the prosecution of African heads of state or government and senior state officials. Murungu (2011) continues to note that the separate opinions of judges Bula-Bula and Rezek, if observed carefully, could have had influenced a revolutionary idea in Africa against the prosecution of African heads of state or government and senior state officials in European jurisdictions. This idea would have been to provide the African Court on Human and Peoples' Rights (ACHPR) with an international criminal law section, but it was rejected by the AU (Omorogbe, 2019). Omorogbe (2019) points out that this idea resurfaced when the AU issued an official call of non-

cooperation with the ICC in 2009. Furthermore, Omorogbe (2011) points out that after the ICC's Prosecutor issued an arrest warrant for Muammar Gaddafi in 2011, the AU wondered how "Africa's interest can be fully defended and protected in the international judicial system" (p. 292). Therefore, the first aim of this chapter is to analyse what the AU's judicial response is to the ICC's African bias. The second aim is to analyse how the AU's judicial response seeks to interpret international criminal law. Before I analyse the aims of this chapter, I will first highlight Africa's current judicial system at regional and international level.

3.2 Africa's regional and international legal system

The Law of Lagos signals the birth of a human rights protection mechanism in Africa. The Law of Lagos was set up by African jurists in 1961, with which these jurists asked their governments to consider adopting an African Convention on Human Rights and the establishment of a court with suitable jurisdiction (Ssenyonjo & Nakitto, 2016). It was not until 1981 that the Assembly of Heads of State and Government of the then OAU adopted the African Charter on Human and Peoples' Rights (the African Human Rights Charter) (Nmehielle, 2014). The African Human Rights Charter entered into force in 1986 and on the basis of Article 30, the African Commission on Human and Peoples' Rights was established. The Commission is charged with the promotion and protection of human and peoples' rights and freedoms in Africa (African (Banjul) Charter on Human and Peoples' Rights, 1986). Ssenyonjo and Nakitto (2016) point out that a Commission was created rather than a human rights court because then OAU's Assembly of Heads of State and Government considered the creation of such a court 'premature'. However, the Assembly did acknowledge that the introduction of a human rights court in the future would be beneficial and should be introduced via an added protocol to the African Charter of Human Rights (Ssenyonjo & Nakitto, 2016). The introduction of a human rights court came in 1998 when the OAU adopted the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998). The ACHPR entered into force in 2004 and became operational two years later (Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998). Up to 2015, the only functioning continental human rights court present in Africa was the ACHPR (Ssenyonjo & Nakitto, 2016). Ssenyonjo and Nakitto (2016) stress that this court only deals with human rights matters and not with criminal matters. Regional human rights courts in Africa are the Economic

Community of West Africa States (ECOWAS) Community Court of Justice (ECCJ) and the East African Court of Justice (EACJ) (Fon, 2019).

The AU and its Member States have little experience with criminal courts and international criminal law because the AU nor its Member States have functioning criminal courts (Ssenyonjo, 2018). According to Nmehielle (2014), Africa's closest experience with criminal courts and international criminal law are the two *ad hoc* tribunals that have been operating on African soil. The Criminal Tribunal for Rwanda was established by the UN to deal with the aftershock of the 1994 Rwandan genocide. The Special Court for Sierra Leone was created to deal with the severe crimes that were committed during Sierra Leone's civil war (Nmehielle, 2014). Although, the *ad hoc* tribunals were operative in Africa, the AU or the AU Member States involved did not own the tribunals, nor were they responsible for their functioning (Nmehielle, 2014). Nmehielle (2014) argues that this changed when the AU established the African Extraordinary Chambers (AEC) for the trial of Hissène Habré in 2013. The Chambers were established in Senegal where former Chadian Pressident Hissène Habré was convicted for gross human rights violations (Nmehielle, 2014). Fon (2019) argues that next to the ACHPR, the AEC is a milestone in Africa's judicial landscape because it marked the first time that a former African head of state was convicted for crimes against humanity and war crimes by an African judicial institution on African soil. With the AEC, the AU and its Member States demonstrate that Africa can be entrusted with a task of such importance. However, it should be noted that the creation, ratification and operationalisation of both human rights and criminal courts in Africa takes a considerable amount of time. Additionally, it should be noted that the political will to establish a human rights and criminal court and to submit to its jurisdiction is often lacking and that both are a reoccurring theme in Africa's regional and international legal system.

3.3 The Malabo Protocol

The previous section highlighted Africa's regional and international legal system. This section analyses what the AU's judicial response is to the ICC's African bias.

The AU's judicial response to the ICC's African bias is to provide the ACHPR with a criminal chamber that deals with international criminal law. The AU, as pointed out earlier, had rejected this idea in 2004 but it returned to the AU's agenda in 2009 and 2011 (Omorogbe, 2019). According to Ssenyonjo and Nakitto (2016), the idea to provide the ACHPR with a criminal chamber originates from the AU's Assembly's suggestion to merge the ACHPR with

the Court of Justice of the African Union. The Court of Justice of the African Union was supposed to be a separate AU court, but to reduce the costs that the maintenance of the two courts would bring, the AU's Assembly decided to merge the two courts into one, leaving the Court of Justice of the African Union to exist only on paper. The merger of the two courts became official when the AU adopted the Protocol on the Statute of the African Court of Justice and Human Rights (the Merger Protocol) in 2008, creating the African Court of Justice and Human Rights (ACJHR) (Protocol on the Statute of the African Court of Justice and Human Rights, 2008). Africa's newest human rights and criminal court would enter into force after 15 AU Member States had ratified the Merger Protocol. The ACJHR would thereby replace the ACHPR and the Court of Justice of the African Union (Protocol on the Statute of the African Court of Justice and Human Rights, 2008). However, Zschirnt (2018) notes that thus far only Libya, Benin, Mali, Congo, Burkina Faso and Liberia have ratified the Merger Protocol. The six ratifications of the Merger Protocol demonstrate that the majority of the AU Member States lack the political will to establish the new Court and to make it operational (Ssenyonjo & Nakitto, 2016).

To complicate matters even more, Ssenyonjo and Nakitto (2016) point out that the AU's Assembly altered the Merger Protocol in 2014 by adopting a new protocol called the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Protocol on Amendments). The Protocol on Amendments also known as the Malabo Protocol allowed for the establishment of the African Court of Justice and Human and Peoples' Rights (ACJHPR). The ACJHPR is the AU's fourth judicial institution and is set to replace the ACHPR, the Court of Justice of the African Union and the ACJHR.

Ssenyonjo (2013) explains that the AU amended the Merger Protocol due to the ICC's indictments of Omar al-Bashir and Muammar Gaddafi. At the time of the indictments, both were the sitting Presidents of their countries and neither Sudan nor Libya were State Parties to the Rome Statute. Therefore, the AU argued that both Presidents were protected by their immunity of heads of state. However, the ICC's Pre-Trail Chamber I (2011) held that "customary international law creates an exception to Head of State immunity when international courts seek a Head of State's arrest for the commission of international crimes" (*The Prosecutor v. Omar Hassan Ahmad Al Bashir* [No. ICC-02/05-01/09], 2011, p. 20), sidestepping the AU's heads of state immunity argument. Disappointed with the Pre-Trail Chamber's decision, the AU Assembly asked the AU Commission to make hast with the implementation of the AU Assembly's decision on the ACJHR being able to prosecute serious international crimes committed on African soil (Ssenyonjo, 2013). This led to an amendment on the Merger Protocol

which in turn led to the adoption of the Malabo Protocol in 2014. In sum, it can be argued that even though the idea to expand the ACHPR's mandate to include international criminal law was already present, the process was fast-tracked due to the rise in tensions between the ICC and the AU (Nimigan, 2019; Ssenyonjo & Nakitto, 2016).

Since the Malabo Protocol is the Protocol on Amendments on the Merger Protocol, the Malabo Protocol widens the jurisdiction of the yet to be established ACJHR to encompass international and transnational crimes (Nimigan, 2019). Once the Malabo Protocol is ratified by 15 or more AU Member States, the ACJHPR is established. The ACJHPR will consist of a General Affairs Section, a Human and Peoples' Rights Section and an International Criminal Law Section (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014).

As the previous paragraph established, the creation, ratification and operationalisation of both human rights and criminal courts in Africa has taken a considerable amount of time. The previous paragraph also highlighted that AU Member States often lack the political will to establish an African human rights and criminal court and that they are not keen on submitting themselves to the jurisdiction of such a court. The ACJHPR is no exception to this. The AU Assembly adopted the Malabo Protocol in 2014, however while 15 AU Member States have thus far signed the Protocol, none have ratified it (List of Countries which have signed, ratified/acceded to the Protocol on Amendments to the Protocol on the Statute of the African Union Court of Justice and Human Rights, 2019). The fact that only 15 of the 54 AU Member States have signed the Protocol and none have ratified it confirms that it takes a certain amount of time to establish a human rights and criminal court in Africa. Furthermore, it confirms that AU Member States lack the political will to establish such a court and that they are not keen on subjecting themselves to the jurisdiction of such a court. This confirmation indicates that AU Member States might have reservations about creating an African court that has jurisdiction over international crimes and can thus hold them accountable for purportedly committed crimes. Furthermore, the confirmations indicate that AU Member States might be content with the current legal situation. Either way, both indications are surprising given that there have been calls for an African court to try Africans and given that some AU Member States have expressed strong sentiments against the ICC (Niang, 2017; Jeangène Vilmer, 2016; Imoedemhe, 2015). However, Omorogbe (2019) argues that AU Member States remain committed to the ICC when they are not threatened by the ICC's legal actions. Additionally, both indications oppose TWAIL scholars' viewpoints because these scholars endeavour to create and re-create international law from a third world perspective (Gathii, 2019). In short, the small number of

AU Member States that joined and acceded to the Malabo Protocol highlights that the ACJHPR lacks the necessary political commitment needed from the AU and its Member States and that the ACJHPR, just like the ACJHR, currently exists only on paper. It also means that the ACHPR, the AU's first judicial institution, remains the only existing and functioning AU human rights court (Zschirnt, 2018), albeit without a mandate that covers the prosecution of international crimes.

3.4 Malabo's institutional and legal concerns

While the ACJHPR is not yet established or operational, it has attracted significant attention from the international community (Nmehielle, 2014). The international community has paid attention to the institutional and legal set up of the ACJHPR and has expressed its respective concerns about it. The institutional concerns are focused on the scope of the ACJHPR's jurisdiction, its human and capital resources which includes the Court's funding, and its relationship with the ICC. The legal concerns mainly focus on Article 46A*bis* of the Malabo Protocol (Amnesty International, 2017; du Plessis, Maluwa & O'Reilly, 2013; Ssenyonjo & Nakitto, 2016).

One institutional concern is about the scope of the ACJHPR's jurisdiction. Besides human rights law, the ACJHPR has jurisdiction over individuals who have committed crimes against humanity, war crimes, genocide, the crime of unconstitutional change of government, piracy, terrorism, mercenarism, corruption, money laundering, trafficking in persons, trafficking in drugs, trafficking in hazardous wastes, illicit exploitation of natural resources and the crime of aggression (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014). The scope of the ACJHPR's jurisdiction is immense and Nimigan (2019) argues that it is beyond the scope of any other existing international criminal justice mechanism. In a report on the Malabo Protocol, Amnesty International (2017) confirms that the ACJHPR's jurisdiction is vast as it covers three areas of international law. In addition, the definitions of crimes as set out in the Malabo Protocol have warranted concern. Amnesty International (2017) continues to argue that the crimes in the Malabo Protocol are vaguely and broadly defined and may raise serious concerns about the adherence with the legality principle established under international law. For instance, the description for the crime of unconstitutional change of government is unclear and general which could lead to the criminalisation of popular protests (Amnesty International, 2017). Another concern about the ACJHPR's jurisdiction is that four of the fourteen crimes fall within the ICC's jurisdiction.

These four crimes are crimes against humanity, war crimes, genocide and the crime of aggression.

A second institutional concern concerns the ACJHPR's human and capital resources. Ssenyonjo and Nakitto (2016) state that the ACJHPR's human and capital resources are insufficient for the Court's broad jurisdiction. In its totality, the ACJHPR will have 16 judges of which only the President and the Vice-President work full time (Ssenyonjo & Nakitto, 2016). Of the 16 judges, nine judges will preside over the International Criminal Law Section, three judges will preside over the General Affairs Section and three others will preside over the Human and Peoples' Rights Section (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014). In comparison, the AU's current human rights court, the ACHPR, has 11 judges that deal with possible violations of human rights law (Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Huma and Peoples' Rights, 1998). Ssenyonjo and Nakitto (2016) argue that the decrease in the number of judges presiding over the Human and Peoples' Right Section suggests that the AU has given prominence to criminal justice matters over human rights matters. Hence, Ssenyonjo and Nakitto (2016) argue that an unforeseen consequence of providing the ACJHR with a criminal chamber is that violations of human rights appear to be less significant if these violations do not lead to international crimes within the proposed Court.

To add, a comparison can be made regarding the number of ICC judges. As discussed above, four out of the fourteen crimes that fall within the ACJHPR's jurisdiction resonate with the ICC's mandate. The ICC has 18 judges to deal with cases that concern crimes against humanity, war crimes, genocide and the crime of aggression (Rome Statute of the International Criminal Court, 1998). Amnesty's International report on the Malabo Protocol (2017) demonstrates that even the ICC, which has qualified and experienced judges, the know-how *and* the required finances, is at times seriously short on capacity, expertise and resources. Ssenyonjo and Nakitto (2016) rightly ask how the ACJHPR with its nine judges that preside over the International Criminal Law Section will efficiently and effectively deal with its mandate that covers 14 international crimes.

A similar question can be asked regarding the ACJHPR's funding. The AU and its Member States are expected to fund the Court but it remains uncertain whether they are capable of meeting the ACJHPR's financial needs. Amnesty's International's report (2017) highlights that the AU struggles to properly finance its own operations, which includes the AU's human rights treaty bodies. Hence, the Merger Protocol. Furthermore, Amnesty International (2017) points out that the AU funds less than 25 per cent of its own budget and is reliant on donors for

the remaining 75 per cent. Du Plessis, Maluwa and O'Reilly (2013) underscore this by highlighting that the ICC's budget for investigating four international crimes is more than 14 times that of the ACHPR, which does not have an international criminal law section and has approximately double the budget of the AU. Moreover, the ACJHPR places a double financial burden on the AU Member States that are also State Parties to the Rome Statute. Having ratified both the Rome Statute and the Malabo Protocol, the AU Member States in question are obliged to fund both. Given the dire financial situations of many AU Member States this might be too great a burden to bear (Nimigan, 2019; Ssenyonjo & Nakitto, 2016).

The double financial burden, like the overriding mandates, leads to the third and final institutional concern about the ACJHPR: its relationship with the ICC. Since the ACJHPR and the ICC have jurisdiction over the same crimes and have 33 Members in common, it would be expected that the Malabo Protocol mentions its relationship with the ICC. However, du Plessis, Maluwa and O'Reilly (2013) note that the Malabo Protocol does not mention a relationship with the ICC, nor does it set out a path for the AU Member States to balance their relationship with both courts. The fact that the Malabo Protocol does not mention the ICC indicates that the AU wants to establish a court that is not linked to the ICC and, potentially a western mind set. This is reflected in the AU's call for non-cooperation with the ICC and its Withdrawal Strategy. The omission of the ACJHPR's relationship with the ICC unnecessarily complicates matters for the 33 AU Member States that are also State Parties to the Rome Statute. Amnesty International (2017) and du Plessis, Maluwa and O'Reilly (2013) point out that the hierarchy between the two courts is unclear. This obscurity remains in a situation where both courts indict the same person and order their Members to surrender the person in question to the premises of their respective Courts. Would this situation occur, it will be up to the Member States in question to decide which obligation it will honour (Amnesty International, 2017). This predicament could have been prevented if the AU was open to a relationship with the ICC and had mentioned this in the Malabo Protocol.

The international community's main legal concern is the immunity of heads of state or government. The immunity of these actors is mentioned in Article 46A*bis* of the Malabo Protocol. This Article stipulates that "no charges shall be commenced or continued before the Court against any serving AU Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their function, during their tenure in office" (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014, p. 38). Article 46A*bis* of the Malabo Protocol severely decreases the possibilities for the ACJHPR and the ICC to hold AU heads of state or

government and senior state officials accountable for the crimes they may have committed. This in turn means that Article 46A*bis* of the Malabo Protocol allows the culture of impunity that is present in Africa to continue to exist, dismantling every opportunity for the victims to obtain justice (Nimigan, 2019). Amnesty's International report on the Malabo Protocol (2017) adds that Article 46A*bis* undercuts the ACJHPR's legitimacy, hinders the fight against impunity in Africa and opposes the organisational and founding principles of the AU.

The immunity of heads of state or government and senior state officials is a delicate matter, because international criminal courts do not grant immunity to serving heads of state or government and senior state officials of a third state, whereas courts operating under customary international law do (Amnesty International, 2017; Nimigan, 2019). The immunity clause is also a sensitive matter because once the ACJHPR is established with Article 46A*bis* in its founding treaty, the AU risks losing donors it needs to fund the ACJHPR. Amnesty's International report on the Malabo Protocol (2017) notes that some donors which have always financed projects of the AU have already informed the AU that they will not finance the ACJHPR because of the immunity clause.

3.5 The AU's interpretation of international criminal law

This section examines how the AU's judicial response to the ICC's African bias seeks to interpret international criminal law.

The AU's judicial response to the ICC's African bias seeks to interpret international criminal law by Africanising it. This is reflected in the extension of criminal responsibility. Where international criminal law restricts responsibility to individual and personal criminal responsibility, the Malabo Protocol extends this responsibility to corporations (Nmehielle, 2014). The extension of criminal responsibility to corporations seems justified, given the roles that national and multinational corporations have played in fuelling conflicts in Africa. The majority of these conflicts with corporations are over natural resources which, among other things, can lead to war (Nmehielle, 2014). Nmehielle (2014) therefore argues that extending criminal responsibility to corporations is Africa's way of making clear that it will no longer conduct business the way it used to. Said differently, corporations big or small will no longer be able to escape prospective liability because mainstream international criminal law is hesitant to widen criminal responsibility to the principles of such corporations (Nmehielle, 2014).

The AU's judicial response by Africanising international criminal law is also reflected in the ACJHPR's mandate that covers 14 crimes. Besides the core crimes that are usually

included in the jurisdiction of international justice mechanisms, the crimes of terrorism, corruption, piracy, unconstitutional change of government, mercenarism, money laundering, trafficking in hazardous wastes, trafficking in drugs and trafficking in persons and illicit exploitations of natural resources are also included in the ACJHPR's jurisdiction (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014). As the ACJHPR can be considered an international justice mechanism and because the crimes of terrorism, corruption, piracy, unconstitutional change of government, mercenarism, money laundering, trafficking in hazardous wastes, trafficking in drugs, trafficking in persons and illicit exploitations of natural resources have not yet been part of the mandate of any international justice mechanism Nmehielle (2014) argues that the Malabo Protocol produces nine new crimes within in the field of international criminal law. Manirakiza (2019) adds that the nine new international crimes can be seen as a justification for the AU's new human rights and criminal court, as it permits the ACJHPR to prohibit offences of particular resonances to the continent.

Another example of how the AU's judicial response to the ICC's African bias seeks to interpret international criminal law is by extending the definition of war crimes to include the prohibition of using nuclear weapons or other weapons of mass destruction (Jalloh, 2019). Jalloh (2019) argues that the objects of this extension are officials of developed nations, because no existing African state is known to have nuclear weapons jurisdiction and because there is a high probability that such weapons would only be used by non-African states. Jalloh (2019) adds that officials of developed nations may be tempted to use such weapons in times of war that involve states from their region. Since Africa has witnessed a multitude of foreign interventions, the prohibition of nuclear weapons or other weapons of mass destruction can be seen as part of the process with which Africa tries to leave its mark on international criminal law. However, mainstream international criminal law has thus far largely resisted Africa's attempts to Africanise international criminal law (Jalloh, 2019).

Anghie (1999) states that international law is universal as it applies to all countries irrespective of their belief systems, distinctive cultures and political organisations. However, international law is not universal when it comes to treating belief systems, cultures and political organisations equally when there is a preference for the western or European belief system, culture and political organisation. International criminal law's resistance toward Africa's attempts to Africanise its process and its prevailing European point of view confirms that international law is not universal. More importantly, it demonstrates that African countries are still not in a position to make changes to the established international law and to have it

acknowledge their viewpoints. This leads to the conclusion that international law and its system might be diverse but not inclusive.

3.6 Conclusion

The aim of this chapter was two-fold: it sought to examine what the AU's judicial response to the ICC's African bias has been and how this response sought to interpret international criminal law. Despite the AU's previous rejection and the international community's concerns about the institutional and legal set up of the ACJHPR, it can be concluded that the AU's judicial response to the ICC's African bias has been to provide the ACHPR with a criminal chamber that deals with international criminal law. Unfortunately, the low number of signatures and ratifications demonstrate that AU Member States lack the political will to establish this Court, wherefore it currently exists only on paper. Based on the AU's decision to extend criminal responsibility to corporations and to create nine crimes that are new to the field of international criminal law that are specifically in Africa's interest, it can be concluded that the AU's judicial response to the ICC's African bias has been to seek an 'Africanised' interpretation of international criminal law. However, international criminal law and the system it operates in do not allow for such alterations, as they favour their European origins.

Chapter 4 Conclusion

4.1 Introduction

This thesis has aimed to answer the main research question: "How has the ICC's African bias affected the judicial system in Africa at regional and international levels?" The answer was sought through analysing why the AU and its Member States see the ICC as biased against Africa. The answer was also sought through analysing what the AU's judicial response was and how this response has sought to interpret international criminal law. This thesis has employed a qualitative research method and has analysed legal, political and academic texts which have been approached from an international law and TWAIL perspective.

4.2 The findings

In chapter one, this thesis presented an overview of the relevant academic literature on the ICC's African bias and the African judicial system. The literature review has pointed out that the AU and several of its Member States have become hostile towards the ICC and that this hostility is reflected in the relationship between the AU and the ICC. The hostility in this relationship is caused by the ICC's Prosecutor's decision to open an investigation into the situation in Sudan and the issuance of the two arrest warrants against the former President of Sudan (Imoedemhe, 2015). Additionally, the literature review has pointed out that although international courts and tribunals have arisen and thrived in Africa, they have emerged and thrived without a clear understanding of the hierarchy between courts, which courts have jurisdiction over what crimes and whether court decisions are enforceable (Fon, 2019). This suggests that Africa intents to create an integrated, functioning and hierarchical judicial system but that it is in a need of improvement and further development of its judicial system.

In chapter two, the analysis has exposed that the AU's criticism directed at the ICC for being biased against Africa is not completely correct as it cannot be fully justified by the cases under the ICC's investigations and preliminary examinations. These investigations and preliminary examinations show that the ICC's Prosecutor is also investigating cases in non-African State Parties. Furthermore, the analysis has exposed that the AU appears to be biased in its criticism directed at the ICC. The AU started to accuse the ICC of being biased against Africa after the ICC had indicted the former President of Sudan. However, the AU therewith neglects that the ICC already had captured a number of African suspects who, unlike the President of Sudan, were not an African head of state.

In chapter three, the analysis has shown that the AU's judicial response to the ICC's African bias is to provide the ACHPR, the AU's current human rights court, with a criminal chamber that deals with international criminal law. The analysis has demonstrated that this response was accelerated due to the tensions between the AU and the ICC and that it has suffered political setbacks. In addition, the analysis has shown that the AU's judicial response to the ICC's African bias has been to seek an 'Africanised' interpretation of international criminal law. However, international criminal law and its system do not allow for such changes, as it favours its European heritage.

In light of the above, the thesis concludes that the ICC's African bias has affected the judicial system in Africa at regional and international levels by creating a continental human rights and criminal court that has jurisdiction over international criminal law and that replaces the AU's current continental human rights court. However, this new African continental human rights and criminal court has caused for the African judicial system to be overreach in terms of its jurisdiction over international criminal law. The reasons for this new court's inability to fulfil its mandate stems from the lack of AU's Member States' political commitment to properly establish and operationalise the Court, the Court's unsound founding treaty and a lack of human and capital resources. Therefore, the thesis can accept its hypothesis that the ICC's African bias has ensured that the judicial system in Africa at regional and international levels is overreached.

4.3 Further research

This thesis has contributed to a research gap in the study of the AU's political and institutional influence on its Member States, given the that the AU, as its Member States' representative has a substantial amount of influence.

The findings of this research could only be exported to the EU, as the foundations of the AU and the EU are alike. However, the findings of this thesis cannot be exported to the EU because the EU and its Member States do not accuse the ICC of being biased against Europe or the EU and do not criticise the ICC's modus operandi. Additionally, the findings of this thesis cannot be generalised to other legal systems because the AU's legal system is not fully developed, whereas others are.

The AU has urged its Member States to sign and ratify the Malabo Protocol in order for the ACJHPR to be established and to be operational. Therefore, further research can be conducted as to why the AU Member States have not been forthcoming in signing and ratifying the Protocol. Furthermore, further research can be conducted on the ACJHPR's relationship

with the ICC since their mandate and Members partly overlap. Another possibility for further research is on the AU's alleged bias in its criticism towards the ICC's strong presence in Africa.

From the outset, it has been unclear whether the Malabo Protocol was adopted to replace the ICC, to create an extra judicial layer between Africa and the ICC, or to strengthen the African judicial system. From this thesis' analysis, it can be concluded that the Malabo Protocol was adopted to replace the ICC as they both have jurisdiction over crimes against humanity, war crimes, genocide and the crime of aggression. However, the adoption of the Malabo Protocol can change into creating an extra layer between Africa and the ICC once the relationship between the ACJHPR and the ICC has been established and the hierarchy between the two Courts is clear.

References

African (Banjul) Charter on Human and Peoples' Rights. (1986). Retrieved June 20, 2020, from https://www.achpr.org/legalinstruments/detail?id=49

African States. (n.d.). Retrieved June 14, 2020, from https://asp.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/african%20states.aspx

Amnesty International (2017). *Malabo Protocol: legal and institutional implications of the merged and expanded African court SNAPSHOTS* (AFR 01/6137/2017). UK: Amnesty International Ltd.

Anghie, A. (1999). Finding the peripheries: Sovereignty and colonialism in nineteenth-century international law. *Harvard International Law Journal, 40*(1), 1-80.

Anghie, A. (2006). The evolution of international law: Colonial and postcolonial realities. *Third World Quarterly, 27*(5), 739-753. doi: 10.1080/01436590600780011

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) (n.d.). Retrieved June 29, 2020, from https://www.icj-cij.org/en/case/121

Assembly of the Union Twenty-Eight Ordinary Session, Decisions, Declarations, Resolution and Motion. (2017). Retrieved July, 1, 2020, from https://au.int/sites/default/files/decisions/32520-sc19553_e_original_-_assembly_decisions_621-641_-_xxviii.pdf

Ba, O. (2017). International Justice and the Postcolonial Condition. *Africa Today, 63*(4), 44-62. doi: 10.2979/africatoday.63.3.03

Burundi Situation in the Republic of Burundi ICC-01/17. (n.d.). Retrieved June 14, 2020, from https://www.icc-cpi.int/burundi

Cases. (2019). Retrieved 27 December, 2019, from https://www.icc-cpi.int/cases

Case of The Prosecutor v. Omar Hassan Ahmad Al Bashir [No. ICC-02/05-01/09] (2011).

Chimni, B.S. (2007). The past, present and future of international law: critical third world approach. *Melbourne Journal of International Law, 8*(2), 499-515.

Cole, R.J. (2013). Africa's Relationship with the International Criminal Court: More Political than Political. *Melbourne Journal of International Law, 14*, 670-698.

Du Plessis, M., Maluwa, T. & O'Reilly A. (2013). Africa and the International Criminal Court. *International Law*, 1, 2-13.

Eneström, A. (2019). Statement by Sweden on behalf of the Nordic Countries (Denmark, Finland, Iceland, Norway and Sweden). *General Assembly, Seventy-fourth Session Plenary Agenda item 73: Report by the International Criminal Court*

Eslava, L. (2019, April, 1). TWAIL Coordinates. *Blog of the Groningen Journal of International Law – In Cooperation with the Department of International Law at the University of Groningen. https://grojil.org/2019/04/01/twail-coordinates/*

European Union. (2006). *Agreement between the International Criminal Court and the European Union on cooperation and assistance.* Retrieved April 3, 2020, from https://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=2881

Fischer, T. & Julsing, M. (2007). *Onderzoek doen!*. Groningen/Houten, NL: Noordhoff Uitgevers.

Fon, N.N.A. (2019). An 'African Justice': Legal Integration and the Emergence of an African Judicial System. *Journal of Asian and African Studies, 54*(4), 485-497. doi: 10.1177/0021909619830712

Gathii, J.T. (2019). The Agenda of Third World Approaches to International Law (TWAIL). In J. Dunoff & M. Pollack (Eds.), *International Legal Theory: Foundations and Frontiers.* Cambridge, UK: Cambridge University Press.

Grovogui, S.N. (1998). *Sovereigns, Quasi Sovereigns, and Africans.* Minnesota, MN: University of Minnesota Press.

Griffith, C. (2012). The Politics of International Criminal Law. *New Africa,* 515, 26-29.

ICC-OTP (2003). *The Principle of Complementarity in Practice* (Informal Expert Paper). Retrieved from https://www.icc-cpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf

Imoedemhe, O. (2015). Unpacking the Tension between the African Union and the International Criminal Court: The Way Forward. *African Journal of International and Comparative Law, 23*(1), 74-105. doi: 10.3366/ajicl.2015.0111

International Criminal Court (n.d.). retrieved June 11, 2020, from https://www.icc-cpi.int/Pages/Main.aspx

Iommi, L.G. (2020). Whose justice? The ICC 'Africa problem'. *International Relations, 34*(1), 105-129. doi: 10.1177/0047819842294

Jalloh, C.C. (2019). A Classification of the Crimes in the Malabo Protocol. In C.C. Jalloh, K.M. Clarke, & V.O. Nmehielle (Eds.), *The African Court of Justice and Human and Peoples' Rights' in Context* (pp. 225-256). Cambridge, UK: Cambridge University Press.

Jeangène Vilmer, J.B. (2016). The African Union and the International Criminal Court: counteracting the crisis. *International Affairs, 92*(2), 1319-1342.

Koskenniemni, M. (2002). *The gentle civilizer of nations: the rise and fall of international law, 1870-1960.* Cambridge, UK: Cambridge University Press.

Legal Skills and Research: Legal Research. (n.d.). Retrieved May 19, 2020, from https://ox.libguides.com/c.php?g=423012&p=2888691

Lingaas, C. (2019). *The Concept of Race in International Criminal Law.* London, UK: Routledge Taylor and Francis Group.

List of Countries which have signed, ratified/acceded to the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. (2019). Retrieved June 22, 2020, from https://au.int/sites/default/files/treaties/36398-sl-PROTOCOL%20ON%20AMENDMENTS%20TO%20THE%20PROTOCOL%20ON%20THE%20STATUTE%20OF%20THE%20AFRICAN%20COURT%20OF%20JUSTICE%20AND%20HUMAN%20RIGHTS.pdf

Manirakiza, P. (2019). Complementarity between the International Criminal Law Section and Human Rights Mechanisms in Africa. In C.C. Jalloh, K.M. Clarke, & V.O. Nmehielle (Eds.), *The African Court of Justice and Human and Peoples' Rights in Context* (pp. 989-1020). Cambridge, UK: Cambridge University Press.

Murungu, C.B. (2011). Towards a Criminal Chamber in the African Court of Justice and Human Rights. *Journal of International Criminal Justice,* 9, 1067-1088. doi: 10.1093/jicj/mqr053

Niang, M. (2017). Africa and the Legitimacy of the ICC in Question. *International Criminal Law Review, 17,* 615-624. doi: 10.1163/15718123-01704003

Nimigan, S. (2019). The Malabo Protocol, the ICC, and the Idea of 'Regional Complementarity' *Journal of International Criminal Justice, 17,* 1005-1029. doi: 10.1093/jicj/mqz040

Nmehielle, V.O. (2014). 'Saddling' the New African Regional Human Rights Court with International Criminal Jurisdiction: Innovative, Obstructive, Expedient? *African Journal of Legal Studies,* 7, 7-42. doi: 10.1163/17087384-12342039

O'Grady, S. (2016, October 26). Gambia: the ICC Should Be Called the International Caucasian Court. *Foreign Policy.* Retrieved from https://foreignpolicy.com/2016/10/26/gambia-the-icc-should-be-called-the-international-caucasian-court/

Omorogbe, E.Y. (2019). The Crisis of International Criminal Law in Africa: A Regional Regime in Response. *Netherlands International Law Review,* 66, 287-311. doi: 10.1007/s40802-019-00143-5

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. (2014). Retrieved June 23, 2020, from https://au.int/sites/default/files/treaties/36398-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e.pdf

Protocol on the Statute of the African Court of Justice and Human Rights (2008). Retrieved June 23, 2020, from https://au.int/sites/default/files/treaties/36396-treaty-0035_-_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e.pdf

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. (1998). Retrieved June 20, 2020, from https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and

Rome Statute of the International Criminal Court. (1998). Retrieved November 7, 2019, from https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf

Sibiya, V.E. & Nel, M. (2017). Withdrawal from the International Criminal Court: Does Africa have an alternative? *African Journal on Conflict Resolution, 17*(1), 79-103.

Ssenynjo, M. (2013). The Rise of the African Union Opposition to the International Criminal Court's Investigations and Prosecutions of African Leaders. *International Criminal Law Review, 13,* 385-428. doi: 10.1163/15718123-01302002

Ssenyonjo, M. & Nakitto, S. (2016). The African Court of Justice and Human and Peoples' Rights 'International Criminal Law Section': Promoting impunity for African Union Heads of State and Senior State Officials? *International Criminal Law Review,* 16, 71-102. doi: 10.1163/15718123-01601003

Ssenyonjo, M. (2018). State Withdrawal Notifications From The Rome Statute of the International Criminal Court: South Africa, Burundi and The Gambia. *Criminal Law Forum, 29,* 63-119. doi: 10.1007/s10609-017-9321-z

Schabas, W.A. (2011). *An Introduction to the International Criminal Court.* Cambridge, UK: Cambridge University Press.

The States Parties to the Rome Statute. (n.d.). Retrieved June 26, 2020, from https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx

Verzijl, J.H.W. (1968). *International law in historical perspective.* Leiden, NL: Sijthof & Noordhoff.

Zschirnt, S. (2018). Locking In Human Rights in Africa: Analyzing State Accession to the African Court on Human and Peoples' Rights. *Human Rights Review*, 19, 97-119. doi: 10.1007/s12142-018-0492-8