

**JUDICIAL DEFERENCE AS A LENS THROUGH
WHICH TO SEE THE APPLICATION OF THE
PRINCIPLE OF COMPLEMENTARITY UNDER THE
ROME STATUTE**

By

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Declaration

I declare that this masters dissertation entitled “**Judicial Deference as a Lens Through Which to See the Application of the Principle of Complementarity Under the Rome Statute**”, which I hereby submit for the degree of **Masters of Laws (LLM)** at the **University of Pretoria**, is my own original work and has not previously been submitted by me for examination or the award of a degree at this or any other university. All the sources used or quoted have been duly acknowledged and referenced.

Noluthando Princess Ncame

Signature:

Dated at Pretoria this 29th day of October 2019.



ABSTRACT

This dissertation sets out to achieve an alternative approach to assessing complementarity. In this respect, it seeks to provide a new approach for the Court to follow to ensure that it complies with the complementarity regime of the Court.

The core content, from a legal perspective, of the principle of complementarity in the Rome Statute is identified and explored. This is achieved by looking at how previous international tribunals have addressed the distribution of jurisdictional competence between international and domestic jurisdiction. This essence of the principle of complementarity as it stands in article 17 of the Rome Statute, which is the heart of the Court's complementarity regime, is set out.

The study addresses the situations in Libya, Kenya, Uganda and the Sudan. In addressing these situations an attempt will be made to establish the manner in which the ICC applies the principle of complementarity. A critically analyse the judgements delivered by the Court on admissibility in the context of these situations is carried out. In the situation in Sudan, there has not been a formal admissibility challenge brought before the Court. However, even there the tensions arising from the distribution of jurisdictional competence also plays itself out in the rhetoric relating to the ICC's exercise of jurisdiction in that situation. These are distilled principally from the AU High Level Panel report on Sudan.

This paper proposes that the judges of the Court need to embrace a deference doctrine to assist them in the task of realising the complementary nature of the Court. The following deference doctrines are set out: exhaustion of domestic remedies, margin of appreciation, proportionality, rationality, reasonableness and judicial deference. These doctrines are then tested against the four situations.

It is concluded that the ideal deference doctrine for the ICC is one that has a supervisory element to it. It is recommended that this doctrine should be incorporated into the system by the judge through their inherent powers rather than by an amendment of the Rome Statute, as that would be unrealistic.



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DEDICATION

To my late grandmother, Yoliswa Runeli-Ncame.

Mampinga, Mawawa, Senzwa, Mbali, Mbolokoqoshe, ingaba noboya ifanele
abadala, mtuwomtwana...Camagu!



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