

Monageng, Sanji Mmasenono (Botswana)

Personal details

Date of birth: 9 August 1950

Gender: Female

Languages: English, Setswana

Professional work experience

March 2009 – June 2018	-	Judge, International Criminal Court (ICC) <ul style="list-style-type: none">• Appeals Division Judge (2012 – 2018)• President of the Appeals Division (2014 and 2015)• First Vice President of the ICC (March 2012 – March 2015)• Pre-Trial Division Judge (2009 – 2012)
April 2008 – May 2009		Judge, High Court of the Kingdom of Swaziland
2006 – 2007		Judge, High Court of the Republic of the Gambia
2007 – 2009		Chairperson, African Commission on Human and Peoples' Rights, Banjul, the Republic of the Gambia
2003 – 2009		Commissioner, African Commission on Human and Peoples' Rights, Banjul, the Republic of the Gambia
1997 – 2006		Founder and Chief Executive Officer, Law Society of Botswana, Gaborone, the Republic of Botswana
1987 – 1997		Magistrate, Courts of the Republic of Botswana

Secondments

September 2005		One week Residency and Lectureship at the Brandeis University, Boston, United States of America in conjunction with the conference "Telling the Story: Power and Responsibility in Documenting Human Rights Violations"
January – March 2005		Secondment to the Law Society of England and Wales, London, United Kingdom
February – March 1998		Secondment to the Law Society of Zimbabwe, Harare, Republic of Zimbabwe
March – May 1994		Secondment as Deputy Chief Adjudication Officer to the United Nations Observer Mission to South Africa, Johannesburg, Republic of South Africa

Professional and other memberships

- International Association of Women Judges, Washington, United States of America
- International Commission of Jurists, Geneva, Switzerland
- Chartered Institute of Arbitrators, London, United Kingdom (Fellow)
- Botswana Institute of Arbitrators, Gaborone, Botswana
- Arbitration Foundation of Southern Africa, Johannesburg, South Africa

- International Commission of Missing Persons, The Hague, The Netherlands

Awards

In recognition of her contribution to human rights, the rule of law and international justice, Judge Monageng has received the following awards:

- 2014: Human Rights Award, awarded by the International Association of Women Judges (IAWJ), for an exemplary judicial career, commitment to protect and promote human rights, women's rights and children's rights, and distinguished service for national and international human rights institutions. The award was given in Arusha, United Republic of Tanzania, during the IAWJ's biennial conference
- 2013: Presidential Order of Honour, awarded by the President of the Republic of Botswana for outstanding service to the Republic of Botswana
- 2012: Human Rights Award, African Human Rights Consortium, Gaborone, Republic of Botswana

Education

2015 – 2016	Diploma in International Commercial Arbitration, Chartered Institute of Arbitrators, London, United Kingdom (Fellow)
June – July 2007	International Criminal Law Course, Grotius Centre for International Law Studies, Leiden University, The Hague, Netherlands
June 1996	Court Administration Course, RIPA International, London, United Kingdom
1982 – 1987	Bachelor of Laws, University of Botswana, Gaborone, Republic of Botswana

Judge and magistrate

- **The International Criminal Court**

Judge Monageng was a judge of the International Criminal Court (ICC) from March 2009 to June 2018 during which time she served in multiple roles.

In March 2012, she was appointed a judge in the Appeals Division. As a judge in the Appeals Chamber of the ICC, she held one of the highest judicial positions internationally. The ICC's mandates include investigating and prosecuting individuals who are responsible for the most serious crimes including crimes against humanity, war crimes, genocide and the crime of aggression. The ICC was created pursuant to the Rome Statute, which entered into force in 2002 and is the world's only permanent international criminal court.

As an Appeals judge, she and four other judges reviewed and adjudicated appeals arising from decisions of the Pre-Trial and Trial Division Chambers. During the past nine years she sat on and decided four hundred and ninety-two orders, interlocutory decisions and judgements. Judge Monageng presided in the *Ngudjolo* merit final appeal and also sat on the *Lubanga*, *Bemba et al*, *Bemba*, *Katanga* and *Al Mahdi* merit final appeals.

Between 2009 and 2012, she was a judge in the Pre-Trial Division of the ICC where her duties included assessing evidence to determine if a case can proceed to trial, confirm charges, issue arrest warrants and summons to appear and decide on admissibility of cases.

During this period she, together with two other judges of the Pre-Trial Chamber handed down decisions, orders and judgements in twenty three cases. She also sat as a single judge and Presiding Judge on some of the cases.

As a result of the above, Judge Monageng has the honour of being the only judge who has sat on all cases that were registered in the ICC up to mid-March 2018 when her term came to an end.

In 2014 and 2015, she served as the President of the Appeals Division where she managed the Division's legal team and oversaw the Division's administrative and operational activities.

Between 2012 and 2015, she also served as the First Vice-President of the ICC where her duties included acting as President of the ICC whenever the President was absent. As the most senior judge after the Presidency, she continued to act as the ICC President whenever the three members of the Presidency were unavailable.

Additionally, between 2012 and 2015, she was the Chairperson of the ICC's Working Group on Lessons Learned, and under her stewardship, the ICC advocated for several significant changes to its Rules of Procedure and Evidence. These rules were subsequently adopted by the Assembly of State Parties (ASP). During this time, she also appeared before the Study Group on Governance which was established by the ASP, and liaised with the United Nations Working Group on Amendments in order to explain the reasoning behind the amendment and promulgation of these rules.

She has served as a member of a Committee which reviewed regulations pertaining to the Office of the Public Counsel for Defence (OPCD) and the Office of the Public Counsel for Victims (OPCV). The Committee assessed these regulations and recommended strengthening the mandates of the OPCD and the OPCV, and the regulations were adopted by the ASP.

Finally, she has played an active role in the discourse on State cooperation by attending seminars, delivering papers and participating in many diplomatic activities while representing the ICC.

- **High Courts**

Prior to becoming a judge at the ICC, she was an expert judge of the High Court of the Kingdom of Swaziland under the Commonwealth Fund for Technical Cooperation program, a post she held since April 2008. In this capacity, she heard criminal, civil, and constitutional cases. She also heard appeals from Magistrate Courts' decisions in criminal and civil matters, bail applications, and delivered judgments in all these matters.

Prior to this appointment, Judge Monageng was an expert judge of the High Court of the Republic of the Gambia between February 2006 and January 2008, also under the Commonwealth Fund for Technical Cooperation program. In this capacity, she sat as the Court of First Instance and heard criminal, civil and constitutional matters, bail applications and other miscellaneous applications, and also heard appeals from Magistrates Courts and delivered judgments thereon. She also trained magistrates and other administrative staff in the judiciary, the police and the prosecution. She successfully introduced the Criminal Circuit Court in Basse, which has since become a permanent court in the Upper River Division of the Republic of the Gambia.

- **Magistracy**

From 1987 to 1997, she was a Magistrate in various magisterial districts in the Republic of Botswana and was subsequently promoted to Principal Magistrate. Throughout her 10 years of service she gained valuable experience and expertise in the practical legal field.

As head of judicial/magisterial stations, she was responsible for compilation and submission of her stations' monthly reports, conducting staff appraisals, preparing the station budget, and conducting quarterly visits to various prisons under her jurisdiction, to investigate and report on the welfare of the prisoners to the Chief Justice and the Ministry of Home Affairs.

Judge Monageng also gained substantial experience in civil cases. These cases dealt, *inter alia*, with women's and children's rights, including legal issues on spousal support and adoption, areas which she is deeply committed to and in which she continues to have a very keen interest. She also gained extensive experience in handling employment and industrial dispute cases and various other civil matters.

Through her experience as a magistrate and a judge both at national, regional and international levels, Judge Monageng has acquired extensive skills and knowledge in the areas of legal analysis, judgment writing and diplomacy.

International Human Rights and Humanitarian Law

- **African Commission on Human and Peoples' Rights**

In July 2003, Judge Monageng was elected and appointed a Commissioner of the African Commission on Human and Peoples' Rights by the Assembly of Heads of State and Government of the African Union. The African Commission is an organ of the African Union and a quasi-judicial body whose Secretariat is in Banjul, the Republic of the Gambia. The Commission is the premier body mandated to promote and protect human and people's rights on the African continent.

As a Commissioner, together with the other ten Commissioners, she reviewed reports submitted by State Parties on the legislative and administrative measures that they had adopted to give effect to the rights and freedoms guaranteed by the African Charter on Human and Peoples' Rights (African Charter).

She also interpreted the African Charter and heard cases of alleged violations of human and people's rights brought to the African Commission by individuals, non-governmental organizations and other States Parties against the 53 African States Parties. While reviewing and adjudicating on the decisions from the highest courts in these African States, she applied standards established under human rights and humanitarian law.

During her tenure at the African Commission, she carried out several other mandates as well. She was the Chairperson of one of the Special Mechanisms of the Commission: the Follow-up Committee on Torture, Inhuman, Degrading and Other Treatment (presently known as The Committee for the Prevention of Torture in Africa). She spearheaded setting up of the Committee, which is involved in research, advocacy and other efforts to prevent and prohibit such treatment in Africa. The Committee played a key role in the development of the Robben Island Guidelines for the Prohibition and Prevention of Torture. In addition, in November 2007, she was elected the Chairperson of the African Commission on Human and Peoples' Rights by her fellow Commissioners. In this capacity, she directed the Head of the Secretariat, took policy decisions on behalf of the Commission, and served as the chief spokesperson of the Commission. In her capacity as Chairperson of the Commission, she was periodically called on to intervene in emergency and serious human rights situations, where the lives of people may be at risk. Judge Monageng issued urgent appeals and requests for provisional measures to African Heads of States and Government, and undertook missions to meet with government officials and relevant human rights advocates in the countries concerned.

As a member of the Commission, she worked relentlessly to promote the other special mechanisms of the Commission, such as the Special Rapporteur on the Rights of Women in Africa, the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, the Special Rapporteur on Freedom of Expression and Access to Information, The Working Group on Indigenous Populations/Communities in Africa as well as the Special Rapporteur on Prisons and Conditions of Detention in Africa.

Judge Monageng represented the Commission in its collaboration with other organs of the African Union and spearheaded and supervised all activities of the Commission. She also represented the Commission in managerial meetings of the African Union, for example, the Permanent Representative Council, the Council of Foreign Ministers (Executive Council), and the Assembly of Heads of States and Government. She also presented the Activity Reports and the budget proposals of the African Commission to these bodies and was the chief liaison officer of the Commission.

Judge Monageng has visited several African countries to promote human rights protection through, among other things, human rights missions, fact-finding/investigative missions, and participation in seminars and conferences. She has also been invited by organizations in Europe and the Americas to speak on the African human rights system.

As a practitioner in the field of human rights, Judge Monageng is very proficient in the application of human rights standards and principles in a criminal court setting. Given her extensive legal and human rights background, she has contributed significantly to building the African human rights jurisprudence/cases, in particular through the consideration of complaints and communications submitted to the Commission.

With respect to international humanitarian law, she has worked very closely with the African Commission's Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, as well as with a number of nongovernmental organizations that have observer status before the African Commission. She has presented several seminal papers in many different forums covering a wide range of issues, including human rights and humanitarian law.

Judge Monageng is a strong advocate of women's rights, and has been actively involved in various national, regional and international initiatives, aimed at women's empowerment and gender mainstreaming. Her involvement includes membership in women's non-governmental organisations in the Republic of Botswana, and in regional and international organizations.

She has also worked and acquired expertise in the areas of older persons' rights and rights of indigenous peoples and communities. For instance, while at the African Commission, she sat on the Working Group on the Rights of Older Persons. She was the Rapporteur in a leading case on the rights of indigenous peoples and communities, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya – Case number 276/2003*.

Leadership in the Legal Fraternity

- **The Law Society of Botswana**

Prior to being appointed a judge, she was the Executive Secretary of the Law Society of Botswana in the Republic of Botswana. She single-handedly set up the Law Society in November 1997 and was its first Chief Executive Officer. She continued in this role until January 2006. In this capacity, she was responsible for the day-to-day administration of the office of the Law Society. The responsibilities included being Secretary to the Society, the Council of the Society and Committees of the Society. Committees included the Disciplinary Committee, Legal Education and Pupillage, Law Reform and Rule of Law and Ethics, Tariffs and Human Rights. She was also the Secretary of the Board of Trustees of the Society's Fidelity Guarantee Fund.

She supervised staff, acted as the Society's main public relations officer and financial controller, and performed other functions as assigned by the Council of the Law Society. Judge Monageng ensured the implementation of the objectives of the Law Society as envisaged by the *Legal Practitioners Act*, the enabling statute of the Law Society which included, holding lawyers accountable to highest standards of professional conduct, and

assisting the Government and the Courts of the Republic of Botswana in all matters affecting the administration of law and justice.

Furthermore, she introduced and implemented a strong continuing legal education program for lawyers, both in the private and other sectors, which ran very successfully. She liaised with heads of governments and private sector stakeholders, and as such, was the Society's chief negotiator. She also represented the Law Society at the High-Level Consultative Council (HLCC) where individuals from the government and the private sector met, *inter alia*, to discuss policy issues of mutual interest.

In her capacity as Executive Secretary, she also acted as co-Councillor at the International Bar Association, London, United Kingdom, the world's largest international organization of law societies, bar associations and lawyers engaged in transnational law.

During this period, she was seconded to the Law Society of England and Wales, and the Law Society of Zimbabwe in 2005 and 1998 respectively, where she learnt best practices in the management of the Law Society office, law firms and the Court system. The training also included issues of regulating the legal profession.

- **Other leadership experiences**

Additionally, she has sat on several Committees and Boards at the national and international levels.

In her capacity as Executive Secretary of the Law Society of Botswana, she represented the Botswana Civil Society in the Southern African Development Community (SADC) dialogues on combating corruption in the sub region. These dialogues culminated in the promulgation of the SADC Protocol against Corruption and the Southern African Forum against Corruption (SAFAC). Further, she was one of the founding members of the Botswana Chapter of Transparency International, an international anti-corruption and transparency organization.

She also chaired the Sector on Ethics, Law and Human Rights until January 2006, which was part of the National AIDS Council of Botswana. The Sector, among other things, was responsible for integrating and coordinating an ethical, legal and human rights dimension into the national response to HIV/AIDS. The Sector was also responsible for identifying and supporting the review of national legislation, especially in areas of employment, education, provision of medical services and research.

Judge Monageng is a founder Trustee member of the Southern Africa Litigation Centre (SALC), which is based in Johannesburg, in the Republic of South Africa. The SALC promotes human rights and the rule of law primarily through litigation support and training on constitutional, human rights and rule of law issues.

- **Lectures and presentations**

During her professional life, Judge Monageng has attended numerous conferences and seminars as a participant, moderator and keynote speaker.

As a result of the expertise she continues presenting lectures and papers on human rights and international criminal law. For instance, she has been a member of a group of international personalities who have been training East African judges on international crimes since 2009, under the auspices of the Institute for Security Services, in Pretoria, the Republic of South Africa, and the International Commission of Jurists in Geneva, Switzerland.

She has also been part of a group of Judges at the International Association of Women Judges (IAWJ) who, through the IAWJ's Global Leadership of Women programme, have trained female judges on a number of issues including international law, human rights law and sextortion cases.

Finally, in 2016, she completed a Diploma in International Commercial Arbitration from the Chartered Institute of Arbitrators (CI Arb) in London, United Kingdom a qualification that led to her being a Fellow of the CI Arb.

Publications

- S. M. Monageng, “The Crime of Aggression: Following the Needs of a Changing World?”, 58 Harvard International Law Journal Online (2017), p. 79
- S. M. Monageng, “Africa and the International Criminal Court: Then and Now” in G. Werle et al. (eds.), African and the International Criminal Court, (T. M. C. Asser Press, 2014), p. 13.

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