



**CRIME AND CRIMINAL JUSTICE SYSTEMS IN AFRICA-ENHANCING HUMAN
SECURITY**

COURT CLASSIQUE SUITE HOTEL

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Summary Report

AFRICAN HUMAN SECURITY INITIATIVE

Cheryl Frank, the ISS Pretoria Office Director, opened the seminar by emphasizing the importance of CSOs in criminal justice systems on the continent. She posed the following questions and explained that the major issue is how to negotiate the gap between state security and individual Security:

- What is the role of CSOs in Criminal Justice in Africa? What is so special about Africa? How helpful is it to determine the role of CSOs in Criminal Justice System? What is the plurality of the range of criminal justice in the rule of law especially in relation to Non-State actors and restorative justice?
- Why do all criminal Justice Reform efforts tend to fail? What explains their failure to find traction?
- When would Civil Society know that they have been successful in bringing about the desired reforms in the criminal justice system?
- When should CSOs not become an accomplice in the perpetuation of skewed criminal justice systems?

Yvonne Chibiya of HURIDETSA, an AHSI partner and the Chair of the Seminar, gave a brief background on AHSI.

Irvin Kinnes – University of Cape Town, presented on '**The Challenges of Studying Crime and Criminal Justice Systems in Africa**' pointed out the challenges posed by the diverse economic, social, cultural and political environments to crime researchers. This is because of the existence of grey areas between political and criminal crimes in the continent as well as the problem of characterizing Human Rights Violations (HRV) is complicated partly by state elites who very often deny the existence of violations. However, Kinnes expressed that there is a way forward especially through the SADC and ECOWAS protocols which may help when it comes to compiling data on crime and criminal justice systems.

Annette Hubschle – OCML/ISS warned on the upward trend in organized crime in the region in her presentation on '**Mapping Organized Crime in Southern Africa and its Impact on Democratization**'. She noted the similarities between countries and many forms of organised crime occur at a transnational (regional and international) level, however, the divergence of legal and social morality has created perceptions that some crimes are not seen as such in some communities and this deprives law enforcement of legitimacy and support from civil, political and social structures. The presentation gave an extensive picture of capacity of the SADC member states to tackle organized crimes from the local to the international level and it also revealed the priorities of the different countries.

Dr. Annie Barbara Chikwanha – AHSI/ISS presented on **‘Crime Survey Findings in 3 Western African Countries [Sierra Leone, Benin and Bamako]’**. The prevalence of crime in the three cases was determined by a number of factors, the neighbours each case had, its history and its geographic position e.g.- the presence of a coast led to an increase in housebreaking incidences as compared to places that were inland where livestock theft was a recurrent problem. Furthermore, the survey found out that at least 60% of the citizens in these cases resort to customary justice mechanisms [chiefs] and sometimes to ‘known gangs’ to solve their crime related problems such as livestock and crop theft.

Pete Gitonga – IACP/ISS in his presentation on **‘Criminal Justice Systems in SADC Countries’** analysed the role SADC has played in influencing the criminal Justice systems of the sub region by Standard Setting; Adjudication of Disputes; and Capacity Building in cooperation with different security organizations. However, challenges and capacity gaps can be identified among the SADC member states. These include: lack of ratification and domestication of key legislation that deal with combating crime; inadequate funds and resources (national and sub-regional); inadequate technical expertise (especially dealing with organized crime); lack of Independent Institutions (Judiciary); insufficient awareness about the legislation and policies at the national level; and a lack of political will. The different legal systems in the region make it difficult to harmonize the laws as well as ensure effective cooperation and free movement of legal expertise within the region. This is complicated by the variation in definitions of crimes and imposition of penalties. Some SADC countries are also members of other RECs, which puts a strain on their resources.

Romain Malejacq – Northwestern University/Sciences Politique, Paris, presented on **‘Criminal Justice Systems in Francophone African Countries’**. He observed that if at independence all Francophone African countries adopted the French criminal justice system as a whole, overtime, there was a trend in all these countries to adapt to local societies, local political conditions, and local resources. Unfortunately, it has been done most of the time with no overall penal policy. So, the main challenge today is probably to make these systems coherent and functional, so they really are systems, and not just different agencies dealing with crimes. Emphasis was on the fact that civil order control is an essential component of French policing, because of a very bumpy political history. It is also essential in most African countries because of troubled political histories. Overall, in the French system, specialized units tend to be militaristic in nature and not as accountable as it should be in a democracy. Although Francophone African countries usually organized the police following the French model, actual structures reflect specific historical developments. In France and Francophone African countries, the judicial police investigate and make the arrest under the direction of the Prosecutor (Procureur de la

République). In that sense, the police are accountable to the law rather than to the government, or at least should be in a democracy.

Dr. David Zounmenou – ASAP/ISS talked on **‘The Challenges of Harmonising Africa’s Criminal Justice Systems in Africa [Francophone, Lusophone and Anglophone] and The Role of the RECs in Reforming the Criminal Justice Systems’**. He reiterated that Africa’s criminal justice system as a whole is facing special challenges because of the dual heritage of colonialism and traditionalism. This indicates that it is crucial to look at national criminal justice systems not only in terms of broad comparison across the region, but also in historical terms as being subject to transformation over time. The primary emphasis should therefore, be placed on the structural issues and processes that enhance both transparency and accountability, as well as participatory, information-oriented, mutually-supportive programs and strategies designed to promote public trust in the judiciary. In the endeavor to build a Continental Justice System that is capable of tackling common challenges associated with criminal justice system in Africa, it is essential to go through two types of harmonization: a. the Internal harmonization process- this would involve seeking convergence between the customary laws and formal justice systems. b. the External harmonization process- this would involve the Formal justice systems across countries and the international legal standards.

There was a general consensus that there is a need to generate new theories and concepts and to stop relying on age-old ones like common Law if Africa is to progress.

George Kabongah – APFO an AHSI partner, made the closing remarks.

See www.africareview.org for the presentations.

Programme

- 08:30 – 09:00 **Registration**
- 09:00 – 9:10 **Welcoming Remarks**
Cheryl Frank – ISS Pretoria Office Director
- 09:00 – 09:15 **Brief Background on AHSI**
Yvonne Chibiya – HURIDETSA/AHSI
- 09:15 – 11:00 **The Challenges of Studying Crime and Criminal Justice Systems in Africa**
Irvin Kinnes – University of Cape Town
- Mapping Crime in Southern Africa and its Impact on Democratization**
Annette Hubschle – OCML/ISS
- Discussion**
- 11:00 – 11:15 **Tea Break**
- 11:15 – 12:30 **Crime Survey Findings in 3 Western Africa Countries**
Dr. Annie Barbara Chikwanha – AHSI/ISS
- Criminal Justice Systems in SADC Countries**
Peter Gitonga – IACP/ISS
- Discussion**
- 12:30 – 13:30 **Lunch**
- 13:30 – 15:30 **Criminal Justice Systems in Francophone African Countries**
Romain Malejacq – Northwestern University/Sciences Politique, Paris
- The Challenges of Harmonizing Africa's Criminal Justice Systems in Africa [Francophone, Lusophone and Anglophone traditions] and The Role of the RECS in Reforming Criminal Justice Systems.**
Dr. Dossou David Zounmenou – African Security Analysis
- Discussions**
- 15:30 – 16:00 **Closing Remarks:** George Kabongah – APFO/AHSI