



ISS Seminar Report: Emerging International Criminal Justice Developments in Africa: Prospects and Challenges for African Peace and Security Architecture

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1. The creation of the International Criminal Tribunals for the Former Yugoslavia and Rwanda in 1993 and 1994 respectively spawned 'mixed' or 'hybrid' courts for Cambodia and Sierra Leone and gave the impetus for a permanent International Criminal Court (ICC), which was created by the Rome Statute that was adopted on 17 July 1998 and entered into force on 1 July 2002.
2. Endowed with jurisdiction to prosecute the most serious crimes of concern to the international community as a whole, the ICC is currently investigating three situations referred to it by States through the so-called 'self-referral mechanism and one referred to it by the UN Security Council, acting under its extraordinary Chapter VII powers. From those situations, the Hague-based ICC has a small number of Africans in its custody and a series of outstanding and controversial indictments, including that of current Sudanese President Omar al Bashir.
3. Despite the end of the Cold War, the African continent is still mired in intractable conflicts whose solutions can be linked to impunity. With the creation of a permanent court to deal with international crimes, there is high expectation that bringing to justice perpetrators of violent conflicts will help to bring about the peace that continues to elude the continent. However, ten years since the signing of the Rome Statute, Africa's dream of ending endemic and destructive conflicts through international justice seems to be facing major challenges.
4. Informed by this background, on 30th September 2008, the Training for Peace Programme together with International Crime in Africa Programme at ISS jointly held a seminar titled, *Emerging International Criminal Justice Developments in Africa: Prospects and Challenges for African Peace and Security Architecture*.
5. The seminar aimed at providing a platform for a brief examination of the prospects of the emerging international criminal justice developments and how they fit into the African Peace and Security Architecture (APSA). The key question that informed the discussions was: 'what opportunities and prospects do the emerging international criminal justice architecture, anchored on the ICC, offer to the people of Africa and their policy-makers, without aggravating the fragile balance of peace and security, and sustainable democratic governance?'
6. The event was opened by Advocate Anton du Plessis (ICAP Programme) who also introduced this esoteric, but yet fascinating thematic area. He levelled the ground for very informative discussions that followed. Advocate du Plessis also introduced the speaker, Mr. Charles Jalloh (Associate Legal Officer, UN International Criminal Tribunal for Rwanda) and his two discussants Festus Aboagye (Programme Head TFP) and Godfrey Musila (Senior Researcher, ICAP). A prominent Ghanaian Scholar, Dr. Kwesi Aning from Kofi Anan International Peacekeeping Training Centre (KAIPTC) based in Accra, Ghana, chaired the seminar. Presence of General Martin Luther Agwai (UNAMID Force Commander) was acknowledged.

7. Making reference to the past and emerging International Criminal Justice dispensations, the speaker contextualised the debate and located his argument on the existing international criminal justice instrumentalities. Talking about Africa-ICC Relations he said that African support for international criminal justice is very symbolical. He added that ICC invitation by some African (what he called “continent in perpetual turmoil”) countries symbolise that these countries see ICC as part of the solution to their problems. ICC itself has a lot to gain from Africa, the gains are mutually reinforcing, and it is a win-win situation between ICC and Africa. He challenged the view held by some Africans that there is one -sided application of the international criminal law. Addressing the complaints about lack of pragmatism, he said that people need to acknowledge the reality that international tribunals are different from national tribunal; they don't have police and armed forces to ensure cooperation and to fully enforce some decisions. He said that there are those people who are more sceptical about the emerging international criminal justice developments and the impact these might have on the African Peace and Security Architecture.

8. Godfrey Musila provided a critical interrogation of the peace-justice nexus. He argued that there are still many misconceptions around these two mutually reinforcing concepts. He said that there is a tendency to look at peace and justice exclusive of each other. Agreeing with the comment from the floor, he said that although these are complimentary of each other, at times tensions are inevitable. However he further argued that these need to be pursued simultaneously. He further argued that there is a need in the international arena not only to look at the retributive side of the justice but also at the restorative side of justice. Tribunals forms part of the security architecture mechanisms, the question then is how these relate to each other. Centrally to many political debates in Africa is the question whether tribunals would prejudice the peace processes. Mr. Musila submitted that tribunals do contribute in removing threats to peace and security. Although they cannot solve all the problems on the ground, they send out a good message that justice can be done. He also alluded to the fact that there are misconceptions on the international jurisdiction principle.

9. With his thought provoking presentation, Festus mapped out the African Peace and Security Architecture and its relation to emerging international criminal justice developments. He called for a view of the APSA that is not only about security, but other critical elements, including justice. He pointed out that there are mixed perceptions about ICC's involvement in the continent. He said that one of the justifications for ICC's involvement in Africa is the belief that a troubled continent needs aggressive remedies. This school of thought argues that the emerging international criminal justice developments within Africa provide a win-win dividend for the APSA, especially in light of the institutional lacunas and deficiencies that belie the rhetoric of 'African solutions to African problems'. He contended that if the expediency of African ownership dose not deliver, then there is need for other external actors and interventions. These issues therefore speak to the 'conspiracy theories' that the ICC is targeting Africans and abusing the principle of 'universal jurisdiction'. He drew attention to relevant provisions of the AU Constitutive Act and the Common African Defence and Security Policy that recognise the principle of universal jurisdiction. He particularly pointed out that the work of the ICC and other special courts offers a soft, but powerful alternative to the use of force and adds synergy to the work of the other institutions charged with ensuring continental security. He concluded by saying that “global security is and should be a global responsibility; Africa's security is indivisible from global security; Africa's security requires synergy with global intervention tools”.

10. The speakers and the participants at the seminar agreed that both justice and peace are very important parts and components of security and that they should be treated with equal degrees of attention and focus by the implementing organs of the APSA.