



ROUNDTABLE DISCUSSION

PROSPECTS FOR INTERNATIONAL CRIMINAL JUSTICE IN AFRICA: LESSONS FROM EASTERN AND SOUTHERN AFRICA, AND SUDAN

MONDAY 8 DECEMBER 2008

FARM INN, PRETORIA

1 Background

Some states in Africa have recognised the threat that impunity poses to democracy, development and the rule of law, but it is increasingly clear that support for international criminal justice as a means to deal with the problem is tenuous on the continent. Although African countries were generally in favour of the ICC's creation, only two (South Africa and Senegal) have passed domestic legislation in keeping with their obligations under the Statute. And although domestic implementation is an essential step, the negative stance taken by political leaders, some legal practitioners and the media in South Africa, shows that this alone does not translate into practical support for international justice. The obstacles to complying with international criminal justice obligations, whether in domestic courts or through the ICC, remain profound.

There are several reasons why African states are reluctant to tackle international crimes: lack of awareness about the importance of the Rome Statute and its technical requirements, capacity shortages, the absence of domestic pressure (from civil society in particular) to implement ICC laws, other government priorities, and political misgivings (particularly when peace processes or negotiations may be at stake). The primary barrier is that co-operation on international crimes does not have sufficient importance, relevance and priority.

Current events in Africa make it much less likely that states will accord international justice the priority it deserves. The recent decision by the ICC Prosecutor to indict the president of Sudan has reinforced concerns about the politics surrounding the work of the ICC. The controversy in Africa surrounding this decision has been well documented, and reflects a growing resentment towards the role of international justice on the continent. This sentiment has spread among political leaders, practitioners and civil society (including the media), despite Africa's leading role in the development of international criminal justice mechanisms including the ICC and criminal tribunals. As a result, international criminal justice in Africa is facing a legitimacy crisis.

2 Objectives of the roundtable discussion

- To consider and debate the role of international criminal justice in general in promoting durable peace, with reference to some of the controversial developments that have taken place in recent months in Africa.
- To discuss practical ways in which lawyers and associated organisations can co-operate to promote an African-driven response to international crimes, including the establishment of an African action network.

3 Agenda and outputs

The high-level roundtable discussion, which is being funded by the Open Society Institute for Southern Africa (OSISA), will take place over one day at the Farm Inn lodge in Pretoria. Approximately 30 participants will be invited, with the focus being on presidents and senior representatives of lawyers' associations and related bodies from eastern and southern Africa, and Sudan. Participants have been invited from the following countries: Sudan, Uganda, Burundi, Rwanda, Kenya, DRC, Malawi, Zambia, Zimbabwe, South Africa, and Namibia.

The agenda has been developed to encourage discussion and debate. In this regard, all participants should prepare inputs for discussion on the issues noted below.

8:30	Coffee/Tea
9:00	Opening remarks: Anton du Plessis, ISS
9:10 - 12:00	Session 1: Developments in international criminal justice in Africa Facilitator: Sternford Moyo, Zimbabwe Discussants: Charles Jalloh, International Criminal Tribunal for Rwanda, Godfrey Musila, ISS, and George Kegoro, ICJ-Kenya (tbc) <i>This session will review the controversial developments that have taken place in recent months in Africa, and discuss some of the myths and misconceptions about Africa's position in relation to international criminal justice.</i>
12:00 – 13:00	Lunch
13:00 – 15:30	Session 2: International criminal justice in practice – what role can lawyers associations play? Facilitator: Tom Ojienda, President, East Africa Law Society Discussant: Max du Plessis, ISS & University of KwaZulu-Natal <i>This session will discuss the role of defense lawyers and lawyers associations in promoting an African-driven response to international crimes, and will draw on the lessons from two recent southern African cases: the Zimbabwe torture docket and the Chinese arms shipping case. Practical challenges facing lawyers, victims, and human rights groups in their efforts to respond to these crimes will be explored. This session will also provide an opportunity to discuss the establishment of an African-wide action network on international crime that can ensure rapid response and intervention to committed or potential international crimes and mass human rights violations.</i>
15:30 – 16:00	Agreement on key outcomes and next steps

Outputs of the roundtable will include:

- An electronic report of proceedings and outcomes published on the ISS website and accessible to the public.
- A media statement after the roundtable on outcomes.

4 Note on the Institute for Security Studies (ISS) www.issafrica.org

The ISS is a regional strategic studies institute that engages on peace and security issues in Africa. The mission of the ISS is to conceptualise, inform and enhance the debate on human security in Africa in order to support policy formulation and decision-making at every level towards the enhancement of human security for all. With a staff of around 120 people, the ISS's head office is in Pretoria South Africa, and other continental offices are in Cape Town, Nairobi and Addis Ababa. The International Crime in Africa Programme (ICAP) is one of 13 programmes currently running at the ISS. Launched in February 2008, ICAP works towards enhancing peace, justice and accountability in Africa by raising awareness and building capacity to respond to international crime and terrorism. ICAP's work is motivated by the goals of durable peace building and strengthening the rule of law, both of which are threatened in Africa by the pervasive culture of impunity and the general lack of criminal justice capacity to respond effectively to these crimes, including war crimes, crimes against humanity, genocide and terrorism.