

African Civil Society Stakeholders call for Global and Inclusive Justice

Introduction

International criminal justice on the African continent is at a critical juncture: on 26-27 May 2013, at the 21st Session of the African Union, Africa's leaders reaffirmed their concern with 'the misuse of indictments against African leaders', and stressed 'the need for international justice to be conducted in a transparent and fair manner, in order to avoid any perception of double standard, in conformity with the principles of international law'. This was rapidly interpreted by observers as raising further question marks over the degree of political support for that most iconic mechanism of international criminal justice, the International Criminal Court (ICC).

When the failure of the ICC to sustain popular support in African countries in which it has sought to operate is coupled with shifts in global power relationships and the declining influence of former colonial powers, it is clear that today, on International Justice Day (July 17), we require a re-think on how best to attain equitable criminal justice.

Notwithstanding the fact that on the occasion of President Obama's recent visit to Africa his itinerary did not bring him to Kenya, and notwithstanding the United States of America's (USA) own withdrawal from the Rome Statute less than a month after its ratification on 11 April 2002, the establishment by the Obama administration in April 2012 of an Atrocities Prevention Board appears to reflect concern by the USA with the intricate relationship between impunity, failings in justice, and the threat of future violence at a societal level. The recent renaming of the Office of War Crimes Issues at the US State Department to the Office for Global Criminal Justice, with the stated intention of advising "**U.S. Government and foreign governments on the appropriate use of a wide range of transitional justice mechanisms, including truth and reconciliation commissions, lustrations, and reparations in addition to judicial processes**", is a further indicator that the Obama administration is strengthening its efforts to define global justice.

As African Civil Society stakeholders with President Obama's visit fresh in our minds, we believe that the time is right for

a fresh look at what truly equitable and effective global justice should look like in a world of newly emerging powers, a renewed concern with the prevention of mass atrocities, and a growing popular unwillingness to accept unequal levels of impunity between states.

We recognize that for too long 'international' criminal justice has been synonymous with a focus on selective prosecutorial justice. Yet ours are societies in which reparations and acknowledgment of wrongs done are often prioritized above prosecutions and prison sentences. Questions must therefore be asked regarding what is being delivered - both in the narrow terms of international criminal trials and in terms of "justice" as understood by the communities which are supposedly its focus.

When the disconnect between popular expectations and the reality of international criminal justice to date is coupled with USA, the Russian Federation and Chinese exceptionalism vis-à-vis the ICC, the failure of the ICC to win popular legitimacy in the very countries where it has sought to build its track record is readily understood. It is evident that challenging some truth to some power in the absence of a consistent, contextualised international relations strategy which acknowledges and addresses much larger inequalities and power relations, is unlikely to bear much fruit.

We note with concern that US-led technological developments - notably the increasingly widespread use of drones to achieve politico-military objectives - are changing not just the parameters of conflict and the management of political tensions, but also are challenging existing models and mechanisms of criminal accountability. Specifically, we are deeply concerned that the United States' and other major powers expanding military engagements in Africa, including through the US Africa Command (AFRICOM), are not matched by a willingness to submit to the very rules of engagement that are demanded of others.

In light of the above, and recognizing that the existing international criminal justice system can only be legitimate when justice applies equally to all, we call upon the major and emerging powers, in particular, the USA, the Russian Federation, and China to ratify the Rome

Statute. It is impossible for states to call effectively for an end to impunity while attempting to make themselves immune from international justice processes. We also call upon the Obama administration to revoke any extant Bilateral Immunity Agreements (BIAs, also known as the Article 98 Agreements) which were established under the Bush administration.

We remind global partners that members of African civil society and local communities—from Sudan to Kenya to Mali—have been on the front lines of embedding and expanding the reach of international justice whether through advancing principles and standard-making or engaging directly with mechanisms such as the ICC. Many have put their lives on the line for their commitment to the transformative promise of equitable global justice. We also celebrate that over the last ten years Africa has been building an impressive tool box for the prevention of and response to international crimes within a multi-disciplinary transitional justice framework. These include;

- the embedding of the right to intervene in situations of grave crimes in the powers accorded regional and sub-regional entities
- the ordering of special mechanisms for the trial of former heads of state
- the enactment of new treaties setting out measures for the prevention of discrimination and the promotion of harmony as strategy for the prevention of mass atrocity
- the creation of cross-border investigative commissions
- the development of binding treaty standards governing the return of property of displaced populations
- undertakings relating to the treatment of perpetrators of sexual and gender-based violence as international crimes and;
- the establishment of the world's first treaty body with an atrocity prevention mandate, namely the Regional Committee for the Prevention and the Punishment of the Crime of Genocide, War crimes, and Crimes against Humanity and All Forms of Discrimination.

Building on Africa's demonstrated record in pioneering normative developments on justice, we urge civil society from across the continent to join us in building

an African Movement for Global Justice. This movement should not limit itself to democratizing the process of consolidating the ICC; it should also address the need for a global justice model that can address emerging challenges to existing mechanisms and principles, such as the drones, and that can incorporate key non-prosecutorial responses to mass atrocities, such as reparations, truth-telling, and reconciliation.

As civil society stakeholders in the development of transitional justice on the African continent we call on concerned parties to join us in supporting the development of Africa's own proposed African Court of Justice and Human and Peoples' Rights. This court will have jurisdiction over human and peoples' rights, general affairs and international crimes, and will thus be positioned to tackle a wider range of crimes and issues that respond, in a more complete and substantive manner, to the African context and needs and will complement the work of the ICC. Join us also in supporting the process towards a comprehensive policy framework on transitional justice for the AU.

This statement is the outcome of extensive joint discussions and drafting by the five sponsoring organisations. For further information, please contact us:

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