

# Africans and Hague Justice

## Realities and Perceptions of the International Criminal Court in Africa

Organised by the Netherlands Association of African Studies, The Hague University of  
Applied Sciences and  
the School of Human Rights Research

23<sup>rd</sup> and 24<sup>th</sup> May 2014  
The Hague University of Applied Sciences  
The Hague, Netherlands

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# INTRODUCTION

Dear participant,

On behalf of The Hague University of Applied Sciences, the Netherlands Association of African Studies and the School of Human Rights Research, the organising committee welcomes you to the conference.

Over the last six years, Africa's relationship with the International Criminal Court (ICC) has deteriorated. Through the African Union, African States have criticized the Court for jeopardizing the promotion of peace and for 'mistreating' African Heads of State. Moreover, individual African leaders have accused the ICC of "neo-colonialism" and "race-hunting". The court has been portrayed - and is increasingly perceived by Africans - as a selective and biased institution. This undesirable situation is the starting point for the conference, as it raises many questions about the role and status of the ICC in Africa.

Today and tomorrow a great variety of speakers from different disciplinary and regional backgrounds explore the complex and multi-layered perceptions of the ICC in Africa. Their contributions are an essential component in realizing the conference's ambition, which is to generate a lively exchange of ideas and in doing so reach more profound insights into African sentiments and positions surrounding the ICC. For this to be achieved, however, the input of each and every participant is essential. So feel free, and do join the discussions!

## Conference Scientific Framework

Legal perspectives have dominated the academic debate on the ICC. In light of the simmering tensions, it seems timely to broaden the debate and include other disciplines that provide insight into African perceptions of the court. Indeed, the objective of this conference is to engage participants in a debate that stimulates on-going interdisciplinary exchanges. Apart from prominent legal scholars, speakers

include experts in political theory and philosophy, international relations, media studies, contemporary (African) history and cultural anthropology.

## Conference highlights

### Keynote speakers

Keynote speakers Prof. Kamari Clarke, Prof. Charles Jalloh, Mr. Phakiso Mochochoko and Prof. Makau Mutua present an exciting mix of ICC expertise. Indeed, it is a rare occasion to have speakers of such high international acclaim in the field of international criminal justice together at one conference.

### Local voices

The voices of 'ordinary' Africans are given explicit shape in two conference projects sponsored by the Dutch Foundation for Democracy and Media (SDM). The first project from *Voices of Africa Media Foundation* will be presented by Dr. Olivier Nyirubugara. He will share the outcomes of his research, for which grass-root journalists have conducted smartphone video interviews with local people in the Democratic Republic of Congo and Kenya. Some of these interviews will be shown during the conference, highlighting the different and often conflicting perceptions of 'justice' in the wake of ICC trials.

The second project is an exhibition of African cartoons on the ICC by *Creative Court*, in the main hall of The Hague University. Thought provoking, entertaining and cynical, they not only alert us to some of Africa's most critical minds but also lure us into lively reflections during coffee and tea breaks. Do take the opportunity to have a look at some of Africa's best cartoonists!

### The Hague side events

'The international capital of peace and justice', as The Hague city brands itself, is the ideal location for the conference. On Friday evening we encourage you to explore this ambience a bit more closely. Nutshuis invites conference participants - free of charge - to a sneak preview of a film and an exhibition on 'forgiving' in the context of the 20<sup>th</sup> commemoration of the Rwandan genocide. Additionally, you may take the opportunity to do some sightseeing of the international legal institutions in The Hague.

We wish you an enjoyable, exciting and rewarding conference!

The conference organising committee



Froukje Krijtenburg (NVAS, VU University Amsterdam)



Eefje de Volder (NVAS, Tilburg University)



Abel Knottnerus (NVAS, Groningen University)



Ingrid Roestenburg (School of Human Rights Research Utrecht)



Jos Walenkamp (The Hague University of Applied Sciences)

# PROGRAMME

## Friday, 23 May 2014

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### 9.00 – 9.50 Registration

### 10.00 – 11.00 MORNING SESSION (plenary) – Venue: Aula

Day Chair: Jos Walenkamp, The Hague University of Applied Sciences (NL)

10.00 – 10.10 Word of welcome by Susana Menéndez, member of the Board of The Hague University of Applied Sciences

10.10 – 10.20 Opening address by Froukje Krijtenburg, Chair organizing committee

10.20 – 11.00 Keynote Lecture: *Africans and the ICC: Hypocrisy, Impunity, and Perversion* by Makau Mutua, dean, SUNY Distinguished Professor and the Floyd H. and Hilda L. Hurst Faculty Scholar at SUNY Buffalo Law School (US)

Q&A

### 11.00 – 11.30 Coffee and tea break on the ‘Plein’ (main hall)

### 11.30 – 12.45 TWO PARALLEL MORNING SESSIONS

#### Session 1 ICC vis-à-vis African perspectives of justice – Venue: K47

Chair: Anne-Marie de Brouwer, Tilburg University (NL)

1. Peace vs Justice? Integrating Victims’ Perceptions into the Debate regarding the ICC’s Intervention in northern Uganda - Philip Schulz, Uppsala University (SE)
2. Settling International Crimes in Darfur through ICC Prosecutions or Traditional and Reconciliatory Justice Mechanisms of the ‘Judia’ System? – Mohamed Abdelsalam Babiker, University of Khartoum (SD)
3. Shariá Qisma and Rakuba: Omar al Bashir and the Tribal Connection – Karin Willemse, Erasmus University Rotterdam (NL)

#### Session 2 ICC , Africa and the West – Venue: K53

Chair: Jaap de Zwaan, The Hague University of Applied Sciences (NL)

1. Chasing Africans? The AU position on the ICC and the Issue of Unjustified Asymmetry in International Criminal Law - Res Schuerch, University of Amsterdam (NL)
2. France, Africa and the ICC: Military Intervention and the Crisis of Institutional Legitimacy - Paul D. Schmitt, Attorney with DLA Piper LLP (US)
3. The Ivory Coast Crisis: the Anatomy of a Conflict and the Controversial Role of the ICC- Gervais Gnaka Lagoke, University of the District of Columbia (US).

### 12.45 – 14.00 Lunch break on the ‘Plein’

### 14.00 – 15.15 TWO PARALLEL AFTERNOON SESSIONS

#### Session 3 ICC and the AU – Venue: K47

Chair: Willem van Genugten, Tilburg University (NL)

1. ICC - AU Relations: A Compendium Epistolary Exegesis – Augustine Hungwe, School of Human Rights Research Utrecht (NL)
2. Avoiding the Playpumps Legacy: Practical Options for Re-engaging African Interest and Salvaging the ICC – Matthew C. Kane, Law firm of Ryan Whaley Coldiron Shandy PLLC (US)
3. The ICC’s Africa Problem: Who is to Blame for it? - Solomon Ayele Dersso, ISS and Addis Ababa University (ET)

#### Session 4 Narratives of International Criminal Judicial Practices – Venue: K53

Chair: Henno Theisens, The Hague University of Applied Sciences (NL)

1. Narratives of Conflict and International Criminal Justice: Law, Politics and History in the Gbagbo Case - Dov Jacobs, Leiden University (NL)
2. Expert Witness for the Special Court for Sierra Leone - Stephen Ellis, VU University Amsterdam and African Studies Centre Leiden (NL)
3. Prosecutorial Discretion During Case Selection - Rod Rastan, Legal Advisor in the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor (ICC)

### 15.15 – 15.45 Coffee and tea break on the ‘Plein’

### 15.45 – 16.30 AFTERNOON PLENARY SESSION – Venue: Aula

Keynote lecture *Africa, the Security Council and the International Criminal Court* by Charles Chernor Jalloh, Associate Professor, Florida International University (US)

Q&A

### 16.30 – 17.30 Drinks on the ‘Plein’

## Saturday, 24 May 2014

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### 9.30 – 10.00 Registration

### 10.00 – 10.45 MORNING PLENARY SESSION - Venue: OV337

**Day Chair:** Tom Zwart, School of Human Rights Research, Utrecht University

Keynote lecture *Legal Encapsulation and the Anti-ICC Pushback: Making Sense of New Geographies of Justice* by Kamari Maxine Clarke, professor of Anthropology and Law at the University of Pennsylvania (US)

Q&A

### 10.45 – 11.15 Coffee and tea break (n the 'Plein' (main hall))

### 11.15 – 12.30 TWO PARALLEL MORNING SESSIONS

#### Session 5 ICC and the ambivalence of African States - Venue: K47

**Chair:** Ton Dietz, African Studies Centre Leiden (NL)

1. The ICC and the DRC: A Decade of Partnership and Antagonism – Patryk Labuda, Graduate Institute of International and Development Studies Geneva (CH)
2. The ICC and Africa: Rhetoric, Hypocrisy Management and Legitimacy – Lee J.M. Seymour, University of Amsterdam (NL)
3. The Battle of Wills: Why the fight for institutional legitimacy is ruining the relationship between the ICC and the African Union – Ingrid Roestenburg-Morgan, School of Human Rights Research Utrecht (NL)

#### Session 6 ICC and Kenyan perceptions and politics - Venue: K53

**Chair:** Tom Zwart, School of Human Rights Research Utrecht (NL)

1. From Commitment to Contestation: Explaining Kenya's Ambiguous Relation to the ICC – Corinna Frey, University of Cambridge (UK)
2. 'Tell Bensouda we have moved on': Interrogating Local Perceptions of the ICC in Kenya - Njoki Wamai, University of Cambridge (UK)
3. Whose justice, Whose Votes? 'UhuRuto' vs the ICC in the 2013 Kenya Election - Thomas Wolf, Public Affairs Department of IPSOS Kenya (KE)

### 12.30 – 13.45 LUNCH BREAK on the 'Plein' - Venue: OV337

Annual General Meeting of the Netherlands Association of African Studies (NVAS) for members and for interested conference participants.

### 13.45 – 15.00 TWO PARALLEL AFTERNOON SESSIONS

#### Session 7 Tribunals to be or not to be?: Special Courts - Venue: K47

**Chair:** André de Hoogh, University of Groningen (NL)

1. Congo: the Special Court that Never Was – Luc Reydam, Catholic University of Lublin (PL) and University of Notre Dame (US)
2. African Supranational Criminal Jurisdiction: One Step Towards Ending Impunity in Africa or two Steps Backwards for the International Criminal Justice System? – Dorothy Makaza, University of Hamburg (DE)
3. National Judicial Systems in Africa and the Adjudication of International Crimes: Lessons from Rwanda's Gacaca Courts – Elvis Mbembe Binda, University of Utrecht (NL)

#### Session 8 ICC and the Media - Venue: K53

**Chair:** Froukje Krijtenburg, VU University Amsterdam (NL); Discussant Seada Nourhussen, Africa Journalist *Trouw*

1. Discursive Reconstruction of the ICC-Kenya Engagements through Kenyan Newspapers' Editorial Cartoons – Sammy Gakero Gachigua, Lancaster University (UK)
2. Grass-root Media reportage of ICC – Olivier Nyirubugara, Erasmus University Rotterdam and The Hague University of Applied Sciences (NL)
3. title to be announced - Alpha Sesay, Open Society Justice Initiative (NL)

### 15.00 – 15.30 Coffee and tea break

### 15.30 – 16.30 AFTERNOON PLENARY SESSION - Venue: OV337

15.30 – 16.20 Keynote lecture The International Criminal Court in Africa: Complementarity, Cooperation and the Fight against Impunity (deze titel cursief), by Phakiso Mochochoko, Head of the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor (ICC)

Q&A

16.20 – 16.30 Closing remarks by Felix Ameka, President of the Netherlands Association of African Studies

## SPECIAL PROJECTS

The conference hosts two projects that add an important 'real life' component to the conference. They have been set up in close cooperation with the organizing committee and have been sponsored by Foundation for Democracy and Media (SDM).

### VOAMF mobile training programme



The mobile training programme of Voices of Africa Media Foundation started in 2007 and has since been guided by the conviction that young Africans could be active players in the news media landscape if they received appropriate training and equipment. The mobile phone with the capability to make and edit videos as well as connect to the Internet was the most obvious technology for that training. Between 2007 and 2013, more than 100 citizen reporters were trained in eight countries (Ghana, Cameroon, Kenya, Uganda, Tanzania, The Democratic Republic of Congo, South Africa and Zimbabwe). About 30 percent of them continued their career in the media after the training and manage, though not regularly, to publish their mobile reports on established news media websites. The programme targets young men and women between 20 and 30 years who have a secondary education and are passionate about journalism. The mobile reports made by trainees and alumni are freely accessible on [www.voicesofafrica.com](http://www.voicesofafrica.com).

### Cartoon exhibition

#### Creative Court

For the duration of the conference, the main hall of the conference building will feature a cartoon exhibition. Differing in style, perspective and engagement, African cartoonists share their thoughts on the ICC. The curator of the exhibition is Creative Court.

Creative Court develops art projects and reflects on peace and justice from The Hague. <http://www.creativecourt.org>

## SIDE EVENT

### 23 May: Rwanda 20 Years evening programme

On Friday 23<sup>rd</sup> May conference participants are most cordially invited to Nutshuis, where *Rwanda 20 Years* takes place, Creative Court's travelling photo exhibition with work by Pieter Hugo and Lana Mesić.

The New York Times on *Rwanda 20 Years*:

*"Last month, the photographer Pieter Hugo went to southern Rwanda, two decades after nearly a million people were killed during the country's genocide, and captured a series of unlikely, almost unthinkable tableaux.[...] 20 years after the genocide in Rwanda, reconciliation still happens one encounter at a time."*

[http://www.nytimes.com/interactive/2014/04/06/magazine/06-pieter-hugo-rwanda-portraits.html?\\_r=0](http://www.nytimes.com/interactive/2014/04/06/magazine/06-pieter-hugo-rwanda-portraits.html?_r=0)

At 8pm, an evening programme will explore future scenarios with a new generation Rwandans. With work by photographer Lana Mesić and a sneak preview of the 2014 film *The Next Generation: 20 Years after the Genocide* by Julia Strijland.

**Time:** Nutshuis is open from 19:30hrs, programme starts at 20hrs

**Entrance:** free

**Venue:** Nutshuis, Riviervismarkt 5, The Hague.

The venue is within walking distance from the conference (approx. 15 min).

**More information:**

<http://www.rwanda20years.org>

<http://nutshuis.nl/agenda/kigali%E2%80%99s-piers>

HET NUT?HUIS

Creative Court



# ABSTRACTS AND BIOS KEYNOTE SPEAKERS

## **KEYNOTE 1:** **Africans and the ICC: Hypocrisy, Impunity, and Perversion**

### **Makau Mutua**

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While international law – including international criminal justice – has deep roots in Eurocentric biases, Africa’s relations with the International Criminal Court are not completely asymmetrical. The African Union’s duplicity in deploying the language of democracy and human rights, on the one hand, while on the other perpetuating impunity by those in the corridors of power reeks of hypocrisy. Africans – states and civil societies – were instrumental in constructing the ICC. It therefore fails any test of integrity when the AU seeks to delegitimize the ICC because – and only because – it seeks to hold accountable powerful African heads of state. The charges of selectivity and “race-hunting” – while they may have some purchase – are insufficient to defeat the ICC as the last resort for African victims. Resorting to race-baiting, or playing the race card, to protect egregious offenders should prick the conscience of every African.



*Makau Mutua is dean, SUNY Distinguished Professor and the Floyd H. and Hilda L. Hurst Faculty Scholar at SUNY Buffalo Law School. He teaches international human rights, international business transactions and international law. Professor Mutua was educated at the University of Nairobi, the University of Dar-es-Salaam and Harvard Law School. In 2002-03, while on sabbatical in Kenya, he chaired the Task Force on the Establishment of a Truth, Justice, and Reconciliation Commission, which recommended a truth commission for Kenya. Professor Mutua was also a delegate to the National Constitutional Conference, which produced a contested draft constitution for Kenya.*



*Mutua is the author of several books, including Kenya's Quest for Democracy: Taming Leviathan (2008), Human Rights NGOs in East Africa: Political and Normative Tensions (2008) and Human Rights: A Political and Cultural Critique (2002).*

## **KEYNOTE 2: The Security Council and the International Criminal Court: Help, Hindrance, or Both?**

**Charles Chernor Jalloh**

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During the negotiations of the Rome Statute of the International Criminal Court, the United Nations Security Council (UNSC or the Council) was controversially entrusted with two important responsibilities over the objections of many developing countries. Firstly, the states agreed to confer on the UNSC the power of referral under Article 13(b) of the Rome Statute. This essentially enables the Council to refer situations deemed to constitute threats to international peace and security to the ICC for possible investigations and prosecutions. Secondly, the Council, also provided that it is acting under its Chapter VII authority, may request the ICC Prosecutor to “defer” a situation for one year pursuant to Article 16 of the Rome Statute. If the ICC accedes to a deferral request, the legal implication is significant: it may lead to the suspension of investigations or prosecutions in situations involving war crimes, crimes against humanity, and even genocide. Since the entry into force of the Rome Statute on July 1, 2002, the Council has invoked its referral power twice. In March 2005, the Council adopted Resolution 1593 by which it referred the situation in Darfur to the ICC Prosecutor. Second, in what has been described as a historic resolution because of its unusual unanimity, the Council adopted Resolution 1970 on February 26, 2011. In each of these situations, the ICC went on to issue several arrest warrants for high profile personalities, including Sudanese President Omar Al Bashir and Libyan Leader Muammar Al Gaddafi.

Over a decade after the Rome Statute entered into force, this paper will assess whether the theoretical, legal and political justifications offered for the Council’s involvement in matters of international criminal justice during the ICC treaty negotiations match the emerging practice. The overarching question I will seek to

answer is whether, and if so how, the Council’s referral and deferral practice may have assisted, or hindered, the Court’s ability to achieve its mandate especially with respect to the applicable law and sanctions for non-cooperation. This examination will take place against the backdrop of the UNSC’s failure, for apparently political reasons, to refer Syria to the ICC as well as the Council’s abject refusal to pay for its referrals as required by the provisions of the Rome Statute. I will argue that the Rome Statute conferral of the extraordinary referral and deferral powers, when they would override state consent in order to trigger or suspend the permanent international court’s jurisdiction, necessarily implies that the Council must also act in a manner more consonant with the purposes of advancing, rather than undermining, the particular interests of the ICC as well as the broader international rule of law.



*Charles Chernor Jalloh is an associate Professor of Law, Florida International University (FIU) College of Law, USA. He is a renowned expert in the field of International Criminal Law and particularly with respect to the tense relations between Africa and the International Criminal Court. His numerous publications focus among others on crimes against humanity, the role of the UN Security Council in the International Court, universal jurisdiction and the Sierra-Leone tribunal. Prof. Jalloh’s scholarship seeks to bridge theory and practice, drawing from his experiences as practising attorney at the ICC, the*

*International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, where he worked as Legal Advisor to the Defence Office and as the court-appointed duty counsel to former Liberian President Charles Taylor.*

### KEYNOTE 3: Legal Encapsulation and the Anti-ICC Pushback: Making Sense of New Geographies of Justice

**Kamari Maxine Clarke**

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This presentation will ponder the new field of law, human rights and emotion to examine the nexus of affect and power in the study of international law regimes. The focus of this talk is the various responses to the International Criminal Court's release of arrest warrants and requests for extradition of various African leaders. I explore the way the symbolism of extradition maps onto various histories and produces particular meanings. By detailing the relationship between the control and movement of black African bodies and their connection to histories of inequality, I examine how the idea of Africa as a social imaginary is constantly remade and influenced by deep histories situated in structures of feelings about disenfranchisement. Here we see how the shadows of colonialism, realities of economic disparity and the complexities of violence, shape the relation between African decision-makers and their social imaginaries. At the core of this presentation is an attempt to rethink international criminal law in relation to affective political action. In addition to exploring the way that law works to encapsulate social meaning, the goal of the presentation is to reflect on how the politics of the extradition is tied to the African Union's response to promote an African court with criminal jurisdiction.



*Kamari Maxine Clarke is a Professor of Anthropology and Law at the University of Pennsylvania. Her graduate work was completed in the United States – an M.A. was from the Department of Anthropology at The New School for Social Research, a Master in the Study of Law from Yale University (MSL), and a Ph.D. (1997) from the University of California, Santa-Cruz. Her research explores issues related to legal institutions, human rights and international law, and the interface between culture, power and globalization. During her academic career Professor Clarke has taught at many institutions in the US and*

*Canada, including The University of California, Berkeley and for fourteen years at Yale University. She has also held numerous prestigious fellowships, grants and awards. The most recent being a large three-year National Science Foundation research grant on the relationship between the ICC and Africa, and while on faculty at Yale University a four-year 1.5 million grant US Government Title VI NRC and FLAS grant. Professor Clarke's articles and books have included the publication of *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (Cambridge University Press, 2009) and *Mirrors of Justice: Law and Power in the Post-Cold War Era* (with Mark Goodale) (Cambridge University Press, 2010).*

### KEYNOTE 4: The ICC in Africa: Complementarity, Cooperation and the Fight against Impunity

**Phakiso Mochochoko**

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The International Criminal Court (ICC) has introduced a new paradigm in international relations: utilizing the same standard of law as a global tool to promote peace and international security and contributing to ending impunity. The Rome Statute system framework was notably constructed with the strong involvement, backing and commitment from the African continent. Moreover, since its inception, the African continent has been supporting and assisting the Court at each step of its development: in referring situations of massive atrocities to the Office of the Prosecutor (OTP) for investigation, in cooperating with the OTP and facilitating the investigations, in pursuing and arresting individuals sought by the Court, and in protecting witnesses. The African States' support and commitment to international criminal justice has been unwavering. The strength of the Rome Statute system thus lies in the possibility for shared responsibility and complementary action between the Court and national judicial institutions. It is a joint effort by domestic judiciaries of at least 122 States Parties, including 34 African States Parties, national, regional and international actors, and the ICC. The Court is but one element of this network of criminal justice. Firm commitment of States will be necessary for this system to work effectively.



**Phakiso Mochochoko** is the Head of the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor of the International Criminal Court. He began his involvement with the process of establishing the ICC in 1994 in his capacity as Legal Counsellor for the Permanent Mission of Lesotho to the United Nations. He later became Vice-Chairman of the Committee of the Whole during the Rome Conference and was part of the ICC Advance Team created to set up the Court in 2002. He eventually joined the ICC in 2004; initially as Senior Legal Advisor (Registry) and since February 2011 as the

Head of JCCD, which provides advice to the Prosecutor on issues of jurisdiction and admissibility.

Mr. Mochochoko holds a B.A. Law and L.L.B. Degrees from the National University of Lesotho; M.A. in International Relations and a Post Graduate Diploma in International Law and Diplomacy from St. John's University, New York.

## ABSTRACTS AND BIOS PANEL SESSION speakers

### SESSION 1 ICC VIS-À-VIS AFRICAN PERSPECTIVES OF JUSTICE

#### 1. Peace versus Justice? – Integrating victims' perceptions into the debate regarding the ICC's intervention in northern Uganda

**Philip Schulz, Uppsala University (SE)**  
[philippschulz1@freenet.de](mailto:philippschulz1@freenet.de)

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The situation in northern Uganda regarding the notoriously known Lord's Resistance Army (LRA) rebel group was initially referred to the International Criminal Court by the Government of Uganda (GoU) in December 2003, with investigations officially starting as of July 2004.

Previously, much scholarly debate has centred on whether the ICC arrest warrants against the LRA's notorious leader Joseph Kony and four of his top commander constitutes a catalyst for peace or rather hinder the respective peace processes. While investigating crimes committed during the at the time still on-going conflict in northern Uganda, the Court has widely been accused of being an impediment to what it, *inter alia*, intends to achieve: peace. Although it is a general, theoretical assumption that international criminal justice constitutes a contribution to peacemaking, the ICC's involvement in northern Uganda rather serves as a controversial experiment, causing a wave of disputes. Little attention, however, has been paid to the respective considerations of those most affected by both, the conflict as well as the outcome and consequences of the arrest warrants: the victims and survivors across northern Uganda.

The proposed article, therefore, attempts to shed light on the affected population's perceptions regarding the ICC's intervention in order to complement and guide the existing academic discourse. The research will primarily be based on insights and findings derived from primary research on issues surrounding justice and reconciliation in post-conflict northern Uganda conducted between August 2011 and April 2012.

Throughout in-depth interviews and consultations with a wide variety of conflict-affected communities in Northern Uganda – including formerly abducted persons (FAPs), survivors, witnesses and representatives of victims' groups and – as well as civil society advocates, the paper argues that the communities' perspective more effectively has to be integrated in the debate. Victims' points of view regarding international criminal justice as a response to mass violence and armed conflict are crucial in designing appropriate responses of a wider transitional justice framework, especially in a situation as complex and long-lasting as the northern Ugandan conflict. By majority, victims in Uganda call for more transparency in the ICC's investigations and moreover demand crimes committed by both sides of the conflict – the LRA and the Ugandan Army – to be investigated. The paper at hand, hence, aims to put forward those claims in order to provide victims with their necessary position in the still ongoing debate.

*Philipp Schulz is a graduate-student in Peace and Conflict Studies at Uppsala University in Uppsala / Sweden. He also holds a B.A. degree in Political Science from Philipps-University of Marburg in Marburg / Germany and additionally studied six months at The Hague University of Applied Science, focusing on human rights and international humanitarian law. Philipp's final undergraduate thesis "Peace versus Justice? The International Criminal Court in Africa" has been published by VDM Dr. Müller in 2011. Additionally, Philipp carried out primary qualitative field research on transitional justice issues in Rwanda in the summer of 2013, and previously extensively worked on issues related to reconciliation and transitional justice, amongst others in northern Uganda and with the International Criminal Tribunal for the former Yugoslavia (ICTY). Philipp furthermore worked with the United Nations Resident Coordinator in Cambodia and the Center for International Peace Operations in Berlin.*

## 2. Settling International Crimes in Darfur through ICC Prosecutions or Traditional and Reconciliatory Justice mechanisms of the 'Judia' System?

**Mohamed Abdelsalam Babiker, University of Khartoum (SD)**

[mobabiker@uofk.edu](mailto:mobabiker@uofk.edu)

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This paper questions whether the supra-national criminal prosecution for the alleged crimes committed in Darfur by the International Criminal Court (ICC) represents the only viable option for the prosecution of international crimes in this region. It argues that prosecution of international crimes may be settled through the traditional justice mechanisms recognized by the Darfurian communities and through invoking local dispute mechanisms such as the 'Judia' system. This traditional system has its well-established customary norms and procedures; it is an African traditional and customary system not based on the western philosophy of retributive justice but derives its own concepts and philosophies from the dictates and ethos of reconciliatory justice. The paper hence enquires whether this traditional African justice system in Darfur can effectively address the dilemma of realizing communal peace and reconciliation from a traditional justice perspective and provide a viable option for the victims in Darfur rather than only focusing all efforts on the ICC supra-national criminal prosecution.

The paper hence examines this traditional justice system applied in Darfur (both at the substantive and procedural levels) in terms of its ability to redress effectively international crimes such as war crimes, crimes against humanity and genocide. The paper debates whether traditional justice customary standards can be invoked to redress victims and community grievances or whether these standards fall short of international criminal law standards and principles dedicated to realize justice for victims of international crimes allegedly committed in Darfur. The paper also critically examines whether supra-national criminal prosecution represented by the ICC intervention better serves the victims or whether traditional African philosophy of reconciliatory justice suits the Darfurian communities.

*Mohamed Abdelsalam Babiker is Associate Professor of Public International Law and Head of International and Comparative Law Department at the Faculty of Law,*

University of Khartoum. He holds a PhD from the University of Nottingham, UK (2005), LLB City University-London (1998), MA, SOAS, University of London (1996), BA, University of Khartoum (1994). His field of expertise and research interest is International Criminal Law, International Humanitarian Law and International Human Rights Law. Dr. Babiker is the author of *Application of International Humanitarian Law and Human Rights Law to the Armed Conflicts of the Sudan: Complementary or Mutually Exclusive Regimes* (Intersentia, Antwerp Oxford, 2007). He is also the editor with others of *Child Soldiers and Protection of Children's Rights in Conflict and Post Conflict Environments in Central and Eastern African*, L'Armatan Publishing, France, November 2013.

Dr. Babiker contributed chapters in books as well as publishing in peer reviewed international journals in the United Kingdom, France, Italy, USA and South Africa. He has also contributed in research projects with academic and research institutions in European and American Universities. Dr. Babiker also worked as a Legal Advisor and a Human Rights Officer with several UN and AU peacekeeping operations in Sudan such as AMIS, UNMIS, UNMAID and as a Consultant with a number UN agencies and international NGOs, with particular focus on Darfur.

### 3. Shari'a, Qisma and Rakuba: Omar al Bashir and the tribal connection

**Karin Willemse, Erasmus University Rotterdam (NL)**  
[willemse.karin@gmail.com](mailto:willemse.karin@gmail.com)

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When Omar al-Bashir was indicted by the ICC for war-crimes in 2008, in Khartoum most reactions among intellectuals were indignant: though against the regime, they felt that the indictment would endanger defectors of the regime, and was a sign of the ICC specifically targeting of Africa, since Israel was not under scrutiny of the ICC, despite repeated violations of UN Security Council resolutions. In the same year, the Federal Government of Sudan announced the nomination of Musa Hilal, leader of part of a militia referred to as Janjaweed and one of the main war-lords in Darfur, as the chief advisor of the Ministry of Federal Affairs. In the same period al-Bashir installed a tribal council in Khartoum.

In this paper, based on anthropological fieldwork in Darfur (1980s and 1990s) and in Khartoum 2000-2008), the relations between tribal institutions, in particular tribal courts, and *sharia* courts as well as national politics will be central. When Omar al-Bashir was indicted by the ICC, the war in Darfur had been waged for over 5 years. However, the ethnic clashes that were at the basis of the war extended further back to the 1980s. The coup staged by al-Bashir in 1989 prevented the agreements between Fur and Arabs that had been reached at the so-called 'reconciliation conferences' to be implemented, which caused the ethnic conflicts to flare up again. Directly after the coup, the new Islamist regime tried to curb the power of local tribal leaders and their tribal courts (*mahkamat al-gabila, judia*) by sending *qadi's* and their 'travelling *sharia* courts' to Darfur in order to 'bring justice to the people'. Interestingly, in the same period, tribal courts were revived in Khartoum where they cooperated with *sharia* courts in trying homicide cases.

The argument will center on the ways in which cases related to violence, in particular homicide, cases, are tried in the diverse judicial settings (tribal courts, *sharia* courts, tribal reconciliation conferences). The way violence is evaluated, judged, and contained depends on the context in which it was enacted and thus has no universal meaning, cause or goal. Violence does not inhere a clear division of victims and perpetrators, but, rather, forms part of daily practices. It is these practices that need to be taken into account in order to understand the locally perceived nature of violence and notions of 'justice being done'. Thereby legal concepts of *qisma*, *diyya* and in particular *rakuba* are important to understand why for most Darfur victims the ICC indictment does not give them a sense of 'justice being done'.

*Karin Willemse is Associate Professor at the Erasmus School of History, Culture, and Communication, Erasmus University Rotterdam. She received her doctorate in cultural anthropology from Leiden University in 2001, based on her dissertation entitled One Foot in Heaven: Narratives on Gender and Islam in Darfur, West-Sudan (Brill, 2007). She conducted anthropological fieldwork in Darfur, Sudan (Jebel Marra, 1986-87; Kebkabiya 1990-95) and in Khartoum (2006-08). She was Chair of the Netherlands Association of Feminist Anthropologist (LOVA). Till recently she was a member of the Academic Advisory Board of the Islam Research Project, a cooperative venture between the Ministry of Foreign Affairs and Leiden University. She worked with scholars from South Africa, Senegal, and Sudan and wrote extensively on her research in Sudan and*

South Africa, most recently “Zawiya, zikr and the authority of sheikh ‘Al-Pepsi’: The social in sacred place making in Omdurman, Sudan” (2013) and co-authored some chapters with Dr. Goolam Vahed of UkaZ in the volume ‘Chatsworth, the making of a South African Township’. She teaches and conducts research on African anthropology and history, notably on issues of gender and Islam, violence, urban youth and migration and she developed a method of con/text analysis to read all kinds of ‘texts’ (oral, written, visual, embodied) ‘against the grain’.

## SESSION 2      ICC, AFRICA AND THE WEST

### 1. Chasing Africans? The African Union Position on the International Criminal Court and the Issue of Unjustified Asymmetry in International Criminal Law

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The present article discusses the continuing disaffection of the African Union (AU) towards the International Criminal Court (ICC). It argues that the AU position on the ICC must not only be considered in terms of the performance of the Court but also in the context of the African experiences and prejudices which were generated by the European states’ exercise of universal jurisdiction over the past years. In particular the alleged misuse of the concept of universal jurisdiction by European states has moulded the AU perception that ICL is unjustifiably applied in an asymmetric manner to the detriment of nationals of states of the Global South. However, by now, the selection of situations and cases by the ICC – only African defendants have thus far been involved in proceedings before the ICC – did not give occasion to erase this negative perception of the AU. Rather, the present author asserts that particularly the rejection of the AU requests pertaining to the application of Article 16 Rome Statute in the context of the situations in Sudan, Kenya and Libya have boosted the African perception of a persisting dynamic of unjustified asymmetry within the system of the ICC. The following analysis will first demonstrate that African experiences within the ambit of the concept of universal jurisdiction indeed vindicate resentments in terms of a dynamic of unjustified asymmetry. Bearing this in mind, the present paper will shift the focus towards the rejected application of Article 16 Rome Statute in the context of the situations in Sudan, Kenya. This part is aimed at analysing to what extent Article 16 Rome Statute bolsters the AU perception of a persisting dynamic of unjustified asymmetry within the system of the ICC. Ultimately, the present author briefly outlines to what extent the (non-)application of Article 16 Rome Statute is effectively attributable to the ICC rather than the Security Council.



*Res Schuerch* is a PhD candidate at the Amsterdam Center of International Law exploring the issue of unjustified asymmetry in the context of the ICC. He graduated at the Faculty of Law of the University of Zurich in October 2009. As of March 2012, Res Schuerch in addition is an academic assistant at the department of public law/constitutional law at the University of Zurich.

## 2. France, Africa, and the International Criminal Court: Military Intervention and the Crisis of Institutional Legitimacy

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Given its almost exclusive focus on prosecuting war crimes in sub-Saharan Africa, the International Criminal Court is increasingly criticized as a “neocolonialist” institution, purportedly dispensing victors’ justice at the whims of the western powers. This criticism has largely focused on western European nations, as the United States has been largely unsupportive of and disengaged from the Court during its short history. That is not the case for France, one of the Rome Statute’s first signatories and a strong supporter of the Court. Notably, having once held significant territory in Africa as a colonial power, France has recently taken an active role in supporting the Court and encouraging prosecution of crimes carried out during civil wars in Libya, Côte d’Ivoire, and Mali – the latter two of which are former French colonies.

However, France’s advocacy for the Court’s prosecution of prominent leaders (notably Côte d’Ivoire’s Laurent Gbagbo and Libya’s Saif al-Islam Gaddafi) is potentially undermined by its standing as a former colonial power engaged in military intervention during these respective conflicts. This dual role as both intervening power and proponent of Court jurisdiction arguably weakens the Court’s legitimacy in these countries, as well as throughout Africa. To be sure, France’s interventions in Libya, Côte d’Ivoire, and Mali were all generally endorsed by the larger international community, and (at least on their face) supported democratic principles. Nevertheless, France’s history in Africa raises skepticism. Specifically, some argue that France’s post-colonial practice of maintaining influence in its former colonies

in Africa (referred to as Françafrique), often through support of autocratic regimes, provides context for France’s motives in recent interventions, as well as its support for the Court’s post-conflict role.

This paper examines France’s support for the Court’s prosecution of international crimes in African conflicts, and its impact on the Court’s institutional legitimacy. It evaluates how France’s unique standing as both former colonial power and present military intervener impacts France’s endorsement of the Court as a proper instrument of post-conflict justice, and whether that dynamic lends support to the growing neocolonialist critique of the Court. The relationship between France and the Court is explored as a “case study”, and therefore does not seek to single out France among the western powers. Accordingly, I will also provide brief comparative comments regarding the relationship of former colonial powers Britain and Belgium to the Court.

*Paul D. Schmitt, Ph.D., J.D., is an attorney with DLA Piper LLP (US). He has a broad practice focusing on various aspects of international litigation, including foreign sovereign immunity, sovereign debt, and anti-corruption issues. He has appeared on behalf of clients in both trial and appellate courts in the United States. Dr. Schmitt received his Ph.D. in European History from the University of Maryland at College Park and his J.D. from the Georgetown University Law Center. His doctoral dissertation, “From Colonies to Client-States: The Origins of France’s Postcolonial Relationship with Sub-Saharan Africa, 1940-1969” focused on the evolution of France’s diplomatic relationship with its former colonies and other sub-Saharan African nations after World War II. During law school, Dr. Schmitt served as a legal intern with the UN International Criminal Tribunal for the Former Yugoslavia. He also published an article in the Georgetown Journal of International Law, “The Future of Genocide Suits at the International Court of Justice: France’s Role in Rwanda and Implications of the Bosnia v. Serbia Decision.” During his Ph.D. studies, Dr. Schmitt taught courses at the university level on human rights, war crimes and genocide, colonialism, and modern European history.*

### 3. The Ivory Coast Crisis: the Anatomy of a Conflict and the Controversial Role of the International Criminal Court

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The International Criminal Court (ICC) created to combat impunity has been in the center of a controversy. The majority of its prisoners thus far are of African origin. Celebrated by some, decried by others, the ICC has been perceived by many as an instrument in the hands of neocolonial forces against Africa. The hallmark of that controversy is its role in the Ivory Coast crisis which this study will critically examine, while discussing the anatomy of the conflict through the lens of several features such as ethnicity, violence, electoral dispute, neocolonialism, and panafricanism. The research will therefore deconstruct the mainstream and the widespread Manichean view about the crisis. The paper stresses that the forceful engagement of the ICC is seen by some critics as an extension of neocolonialism.

The crisis in the Ivory Coast has been the theater of the confrontation between the regime of former president Gbagbo and the former rebellion raised by Alassane Ouattara, currently president of the country. It registered also the involvement of a former colonial master, France, which chose a side. France was accused of attempting to overthrow former president Gbagbo in 2004, led a military expedition alongside the UN troops in 2011. This action gave a competitive advantage to Ouattara's forces in the resumption of the war following the controversial presidential election of 2010-2011, hence the neocolonial dimension of the conflict. Since 2002, diverse types of human rights violations were committed during the recurrent military confrontations by various sides, as evidenced by the reports from human rights organizations. As of today, only former president Gbagbo is being prosecuted by the ICC which is still pressing to prosecute his close allies among whom his wife Simone Gbagbo, currently imprisoned in Ivory Coast. Three years after the removal of Gbagbo from power, his supporters continue to be prosecuted, and the international community has denounced the victor's justice.

The study will attempt to answer the following questions: how can the ICC prove its impartiality in Ivory Coast while its one-sided prosecution seems to reinforce the consolidation of the victor's justice? How can the ICC claim that it is not serving neocolonial interests while the consequences of its actions coincide with the plans of the neocolonial forces that initially opposed president Gbagbo?

In sum, standing upon two theoretical frameworks, realism and panafricanism, the researcher will demonstrate that the credibility of the ICC is at stake through the historical account of the crisis in the Ivory Coast and will highlight the fact that the ICC is perceived by many as another instrument of neocolonialism.

*Dr. Gervais Gnaka Lagoke has a Master's degree in Spanish and a PhD in African Development Policy from the Howard University African Studies Department. He is a specialist in African political affairs, development, and Pan-Africanism. While in Ivory Coast he worked for 8 years as a journalist, a political reporter for independent newspapers. As a student at the University of Abidjan, he was one of the students' architect whose struggle led to multiparty system in Ivory Coast in 1990. Currently, he is a professor of Latin-American Culture and Civilization and Spanish at UDC. He is also a political analyst who appeared on several news organization such as Australian Broadcast Corporation, Voice of America, Russia Today, HispannTV, and Democracy Now with Amy Goodman, and WBAI. He is the founder of a panafrican public forum which engages a permanent conversation on Africa from the panafrican perspective, The Revival of Panafricanism Forum ([www.revivalofpanafricanism.org](http://www.revivalofpanafricanism.org)). He featured in a documentary on the current US president in French entitled: "Barack Obama: From Chicago to the White House". For more info, please visit [www.gnakalagoke.com](http://www.gnakalagoke.com)*



## SESSION 3 ICC AND THE AU

### 1. ICC-AU relations: A compendium epistolary exegesis

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The paper will critically interrogate the content and context of a brief but tense exchange of official letters between the ICC and AU on the legal matter pertaining to the case *The Prosecutor v. William Samuel Ruto and Joshua Arap Sang*. The pertinent official letters are Official Letter 1. The 10 September 2013 letter (Ref. No. BC/U/1096.07.13) written to the ICC President Judge Sang-Hyun Song by the Chairperson of the African Union, Mr. Hailemariam Desalegn (who is also the Prime Minister of Ethiopia) and Dr. Nkosazana Dlamini-Zuma, Chairperson of the African Union Commission; and Official Letter 2. The 13 September 2013 official letter (Ref. No. 2013/PRES/00295-4/VPT/MH), which is the reply to the AU official letter of 10 September 2013, is written by Judge Cuno Tarfusser (Second Vice-President of the ICC).

A study of these official letters dramatically exposes the nuanced tensions between the ICC and the AU. The epistolary examination also reflects the fundamentally different organizational cultures between the ICC and AU, which suggests an extremely complicated relationship between the two organizations. The letters also seem to suggest that both organizations do not have a common understanding of the appropriate institutional levels of engagement—all this is reflected in the barely concealed frustrations in the text of the official letters. There is clearly a sharp and apparent difference in institutional procedures, values, ethos and norms between the AU and the ICC. The study of the official letters also reflects the fundamental differences in the ontological dispositions between the AU and ICC in terms of how the two organizations view and understand the issue of justice, international criminal law, international court procedure and institutional culture, legal timeframe, strategic priorities and history. In very simple terms, the AU and ICC do not understand each other.

This critical review of the official letter exchange between the ICC therefore gives us a rare insight into the institutional dissonance and acrimony between the ICC and the AU. What is significant is that this remarkable evidence of misunderstanding and asperity is manifesting itself at the highest levels of the ICC and the AU relations, raising fundamental questions about the quality and sustainability of that relationship. Clearly, the ICC-AU relations are troubled, and indeed, a critical review of this tense official letter exchange between the ICC-AU shows that the scheduled AU meeting on 13 October 2013 to discuss the possible withdrawal of African countries from the ICC was inevitable. Any public denials by either the ICC or AU about this deeply troubled relationship are either an exercise of polite diplomacy or hopeless denialism. This paper will offer practical suggestions as to how the AU and ICC can improve this important relationship.

*Augustine Hungwe is a Research Fellow at the School of Human Rights Research (Netherlands). He has previously taught at Bard College (New York), Trinity College (Connecticut), University of Zimbabwe, University of Cape Town (South Africa) and Tilburg University (Netherlands). His research interests include: Human Rights, International Law, International Relations, the Receptor Approach to Human Rights, AU-ICC Relations and African History, Politics, Philosophy, Literature, Art, Mythology, Religion, Dances, Languages, Music and Food.*

### 2. Avoiding the “PlayPumps” legacy: Practical options for Re-engaging African interest and salvaging the International Criminal Court

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Long marginalized or directly opposed by the United States and other superpowers, the International Criminal Court is facing a crisis, as dissent has arisen from countries that need, and most frequently have relied, on the institution. While those of us in the legal community often think of the ICC as the culmination of an emerging jurisprudence of international criminal law, there is simply no certainty that the ICC can avoid becoming the legal version of the ill-fated “PlayPumps,” a

project welcomed with great enthusiasm that a decade later is evidenced only by rusty merry-go-rounds littering the sub-Saharan landscape. Yet there are numerous opportunities to “fix” the ICC. To accomplish such a task, the Court must find ways to appeal to its African audience, while appreciating political and economic realities – “practical” solutions must avoid anything requiring substantial additional funding or revisions to the Rome Statute.

To find such answers, this paper will examine the successes and failures of other international criminal tribunals, particularly those situated in African countries, and the author’s personal experience with such entities. It will consider how changes at the ICC can satisfy concerns voiced in support of a regional African Criminal Court and how the perspectives of firm supporters of the International Criminal Court within Africa can and should be emphasized.

While the election of African judges, and, perhaps more importantly, an African Prosecutor are important factors, additional “universal” positives would include greater speed and efficiency at trial, well-reasoned and detailed opinions, and logical sentences.

Meanwhile, specific actions can be taken to address concerns of various groups. African leaders must be convinced that safeguards from unwarranted prosecution and potential prosecution of those seeking violent change in regime outweigh their own desire for immunity from prosecution. The educated and politically motivated, perhaps most interested in maintaining the stability necessary for a prosperous economy and personal safety, can also find benefit from direct employment with the Court or as counsel for defense and victims. A positive relationship with the latter group, which often maintain permanent employment in their home countries, can further support of the ICC. Other aspects of direct regionalization could be greatly beneficial, including the use of African venues for hearings and detention, and increased interaction with local and regional NGOs. Those who are victims of atrocity crimes may have direct involvement with the ICC, as participants, witnesses or interviewees, yet, at present, the Court’s victim and witness unit is experiencing significant criticism from virtually every front. Reparations are also available to victims, but funding is extremely limited and opportunities to receive such reparations very limited.

To succeed, the Court must not merely look good in theory; it must take practical, meaningful steps to appeal to, and actually provide value for all stakeholders, with a useful end product desired by those it is intended to benefit. This paper will present realistic options to accomplish those goals.

*Matthew C. Kane is a shareholder at the law firm of Ryan Whaley Coldiron Shandy PLLC, where he focuses on federal criminal defense and complex litigation. He is a member of the list of counsel for the ICC and teaches courses on international criminal law and comparative criminal law at the University of Oklahoma College of Law and the Oklahoma City University School of Law. Matt has long been involved in international criminal law issues, having attended various Preparatory Commissions and Assemblies of States Parties as an NGO observer and interned at the Office of the Prosecutor for the International Tribunal for Rwanda.*

### 3. The International Criminal Court’s Africa problem: who is to blame for it?

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It is now well recognized that the International Criminal Court (ICC) has an Africa problem. Although ICC’s trouble with Africa started in 2008 when Moreno Ocampo, former ICC Prosecutor, launched charges against Sudanese President Bashir, the problem reached a new height when the African Union (AU) convened an extraordinary session on Africa’s relationship with the ICC in October 2013. With this increasing opposition emerging to be possibly the most formidable challenge to face the ICC, it becomes obvious that a critical review of ICC’s engagement in Africa is a worthwhile endeavour. Such endeavour needs to consider a number of questions including what is the opposition against ICC exactly about? Is it just about insulating African leaders from criminal responsibility? Or does it also involve a more fundamental and policy disagreement? Whether and how ICC’s Africa problem can be addressed or mitigated? Whether, and if, there are lessons to be taken from the recent decision of the Trial Chamber V(b) in the Prosecutor v. Uhuru Muigia Kenyatta case on defence request for conditional excuse from continuous presence at trial? In the

process of probing these and similar questions in this paper, I also plan to decipher the myth from reality in the controversy between Africa and the ICC.

*Solomon Ayele Dersso is a Senior Researcher at the Institute for Security Studies, a leading pan-African think tank working across Africa, and adjunct professor of law at the School of Governance Addis Ababa University. Formerly a research fellow at the South African Institute for Advanced Constitutional, Public, International and Human Rights Law (SAIFAC), Dr Dersso completed his PhD degree from the School of Law University of Witwatersrand in 2009. In his current position, Dr Dersso undertakes research and policy analysis on peace and security issues in Africa and African international affairs. Among others, he initiated and published a new yearly publication called the Annual Review of the AU Peace and Security Council whose second edition was published and launched in early 2014 at the AU Commission in Addis Ababa. His recent publications covered issues including the responsibility to protect and Africa and the International Criminal Court. Apart from continuing to engage in legal scholarship including teaching, Dr Dersso regularly writes commentaries and op ed articles on current African affairs including on Al Jazeera English.*

## SESSION 4 NARRATIVES OF INTERNATIONAL CRIMINAL JUDICIAL PRACTICES

### 1. Narratives of Conflict and International Criminal Justice : Law, Politics and History in the Gbagbo Case

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The proposed presentation aims at identifying the tensions between judicial, historical and political narratives in situations and cases that the International Criminal Court (ICC) deals with in the exercise of its mandate to prosecute the alleged perpetrators of international crimes. More particularly, it aims at challenging two specific claims often made about international trials by their supporters : 1) that they allow for the establishment of an accurate historical record of events and 2) that they deal with law and not politics. The situation in practice is far more complex, as highlighted by the current Gbagbo case.

In October 2011, the Office of the Prosecutor (OTP) of the ICC obtained an authorization to open an investigation into the situation of Ivory Coast and more particularly the violence that erupted after the Presidential election that took place at the end of 2010. In November 2011, Laurent Gbagbo who had been arrested in April 2011, was transferred to the ICC following the issuance of an arrest warrant. At that point he became the first former head of State to be prosecuted at the Court.

The presentation will explore, in light of a number of examples chosen from the ongoing proceedings in the case, how the judicial narrative can be at odds with the historical narrative and lead, albeit indirectly, to political evaluations of the situation. For example, and most notably, the document containing the charges against Laurent Gbagbo makes no reference to the existence of a civil war situation that has existed in the country since the failed *coup d'état* of 2002. Other examples, such as the analysis made by the judges of the recognition of the jurisdiction of the Court by Ivory Coast or the analysis of the electoral process by the Prosecutor, will

be discussed in order to show that in fact, international trials cannot avoid making political evaluations of a situation and will inevitably provide a truncated vision of the history of a conflict.

*Dov Jacobs is an Assistant Professor in International Law at the Grotius Centre. Previously, he was a postdoctoral researcher at the University of Amsterdam, a PhD Researcher at the European University Institute in Florence and a lecturer in Public International Law at the University Roma Tre. He holds degrees in Law from King's College in London, Paris I Panthéon-Sorbonne and Paris II Panthéon Assas and a degree in Political Science from Sciences Po, Paris. He is currently a member of the editorial board of the Leiden Journal of International Law and the senior editor of international law of the European Journal of Legal Studies. Dov Jacobs regularly comments on international law issues on his blog, Spreading the Jam. He has published extensively in the field of international law and international criminal law. His current research interests cover international criminal law, public international law (particularly State Responsibility) and legal theory.*

## 2. Expert Witness for the International Court for Sierra Leone

**Stephen Ellis, VU University Amsterdam and African Studies Centre  
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This presentation is an account of my experience as an expert witness in the trial of Charles Taylor, the former president of Liberia, by the International Criminal Court for Sierra Leone. I will present some reflections on the status of expert witnesses – and perhaps of witnesses more generally – appearing before this court, often described as a “hybrid” since it operated in accordance with principles of both Sierra Leonean and international law.

*Stephen Ellis is the Desmond Tutu professor in the Faculty of Social Sciences at the VU University Amsterdam and a senior researcher at the African Studies Centre in Leiden, the Netherlands. He has worked as the editor of the newsletter Africa Confidential and is also a past editor of African Affairs, the journal of Britain's Royal African Society. In*

*2003-2004 he was director of the Africa programme at the International Crisis Group. He is an advisor to the West Africa Commission on Drugs established by Kofi Annan. He is currently doing research on organised crime in Africa.*

## 3. Prosecutorial Discretion During Case Selection -

**Rod Rastan, Legal Advisor in the Jurisdiction, Complementarity and  
Cooperation Division of the Office of the Prosecutor (ICC)**

*Rod Rastan serves as Legal Advisor in the Office of the Prosecutor at the International Criminal Court, where he deals with international law issues, particularly as related to jurisdiction, admissibility and judicial assistance. Prior to joining the ICC, he worked for several years in the area of human rights, rule of law, and mediation with United Nations missions in Bosnia and Herzegovina, East Timor and Cyprus as well as with field presences of the European Union and the Organisation for Security and Cooperation in Europe. He also participated in the negotiation of the ICC Statute and Rules of Procedure and Evidence. He holds a PhD in Law from the London School of Economics and has published and lectured on international criminal law.*

## SESSION 5 ICC AND THE AMBIVALENCE OF AFRICAN STATES

### 1. The International Criminal Court and the Democratic Republic of Congo: A Decade of Partnership and Antagonism

**Patryk Labuda, Graduate Institute of International and Development Studies Geneva (CH)**

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This paper examines the first decade of the International Criminal Court's (ICC) involvement in the Democratic Republic of Congo (DRC). It does so from three angles, with the Court's influence on domestic law and politics serving as a conceptual lens. Firstly, it explores the political and legal stakes of enacting legislation domesticating the Rome Statute and establishing a hybrid war crimes tribunal; in particular, how perceptions of the ICC, interpretations of the Rome Statute's objectives and limitations, and the international community's policies, have affected the struggle against impunity in Congo. Secondly, it assesses the broader context of the ICC's case against Bosco Ntaganda, especially the debate surrounding 'peace versus justice' in the eastern DRC. Lastly, the paper surveys why and how military tribunals have used the jurisprudence of international criminal tribunals to achieve accountability for war crimes and crimes against humanity at the domestic level.

The paper aims to test some of the assumptions underlying the Rome Statute's idea of complementarity, in particular the tacit expectation that the domestic legal systems of States Parties will adjust to international standards as codified in the Statute, and that this, in turn, will lead to more prosecutions of international crimes at the domestic level. It queries whether this top-down trickling down of international principles and their gradual assimilation into the legal and societal fabric of African countries enhances the struggle against impunity, and vindicates the universalistic aspirations of international criminal law. By examining the challenges that the ICC

has faced in the DRC, the paper seeks to contribute to the debate about the efficacy of international criminal law and the universality of its principles and mechanisms.

*Patryk I. Labuda is a Ph.D. Candidate at the Graduate Institute of International and Development Studies (Geneva). His research focuses on international criminal law, transitional justice and legal history. Patryk previously worked as a Research Fellow (Africa Projects) at the Max Planck Institute for Comparative Public Law and International Law, where he provided legal assistance to government officials and members of Parliament from Sudan and South Sudan, including constitution-drafting training for South Sudan's parliamentarians. Before that he worked as a Civilian Justice Expert at the European Police Mission in the Democratic Republic of Congo, where he provided legal assistance to the Congolese Parliament in the drafting of Rome Statute implementing legislation, and to the Ministry of Justice with respect to legislation on establishing a hybrid war crimes tribunal. Patryk holds an LL.M. in constitutional and international law from Columbia Law School, a Certificate of Transnational Law from the University of Geneva, and degrees in law (five-year Magister iuris) and history (B.A.) from Adam Mickiewicz University.*

### 2. The ICC and Africa: Rhetoric, Hypocrisy Management and Legitimacy

**Lee J. M. Seymour, University of Amsterdam (NL)**

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The ICC has faced repeated charges of hypocrisy from the African Union (AU), African leaders, and prominent voices in the African public. Why does hypocrisy matter, to what ends are charges of hypocrisy used, and how are they managed? This article investigates the diplomacy around the ICC and what its relationship to Africa reveals about the social structure of the international system. I chart shifts in African states relationship to the ICC and the emergence of charges of hypocrisy, assess the interests this rhetoric serves, identify the ways the Court has sought to address it, and tentatively evaluate its effects. Much of the debate around the ICC in Africa takes the form of "rhetorical action," or norms-based arguments manipulated to mobilize shame through the charge of hypocrisy. On the one hand these arguments

are often effective precisely because the ICC is highly susceptible to accusations of bias. The Court presents itself as politically neutral despite the manifestly political world within which it operates. Attacks that expose obvious political constraints potentially undermine the Court's legitimacy – and thus its authority and effectiveness. On the other hand, even when the ideal of politically neutral justice conflicts with realities in ways that expose hypocrisy, there are reasons to believe that the ideals the Court pursues might nonetheless be advanced over time, both on the continent and beyond.

*Dr. Lee J. M. Seymour is an assistant professor in Political Science at the University of Amsterdam. He studied political science at Northwestern University, Sciences Po Paris, Dalhousie University and the University of British Columbia. His current research on factionalism, alignment and fragmentation in civil wars is supported by a VENI grant from the Dutch Organization for Scientific Research (NWO). His work has appeared in the Journal of Conflict Resolution, Perspectives on Politics and the European Journal of International Relations. His interests include the role of truth and deception in international diplomacy, the politics of international justice, and civil wars.*

### 3. The Battle of Wills: Why the fight for institutional legitimacy is ruining the relationship between the ICC and the African Union

**Ingrid Roestenburg-Morgan, School of Human Rights Research Utrecht (NL)**  
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With climatic turning points characterizing the relationship between the International Criminal Court (ICC) and Africa during the past ten years, the relationship between the ICC and African States can at present be described as nothing less than short of tense. Exclusive ICC involvement in Africa has as a consequence vilified the Court as a judicial institution lacking in impartiality and manifesting its political bias through its exclusive African caseload. Following such sentiment, the spokesperson of African States, the African Union (AU), has called on its member states to balance its obligations to the Court, culminating in diminished African support and open defiance towards the Court. While surreptitiously, the legitimacy of the Court is being

eroded away in Africa, the main reasons representing the rift between the Court and the AU have in essence been overlooked. The ICC's claim to legitimacy is essentially based on the premise that it is a purely judicial institution focused solely on the law with no political motives, only bent on carrying out its institutional mandate, which is to prosecute those most responsible. In a similar fashion, the AU as a regional organization claims its legitimacy through the promotion of regional peace and security and through the utilization of political will and local ownership. The result is that both institutions thrive on the legitimacy of its own constituents for its survival, despite often of the time being cloaked as a substitute for its true effectiveness. By maintaining and gaining diffuse support, the true effectiveness of such institutions remains overlooked by its support base and rather emphasis is placed on which institution is perceived to be better and to whom? This paper will therefore focus on the ambivalent relationship between the AU and ICC through the 'oblivious' lens of institutional legitimacy as an explanation as to why both institutions will continue to remain at loggerheads within the African context.

*Ingrid Roestenburg-Morgan is a South African PhD Researcher at The Netherlands School of Human Rights Research and The Netherlands Institute for Human Rights, as well as a member of the Organizing Committee for the African and Hague Justice Conference.*

## SESSION 6 ICC AND KENYAN PERCEPTIONS AND POLITICS

### 1. Whose Justice, Whose Votes? 'UhuRuto' vs the ICC in the 2013 Kenya Election

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This paper examines the impact of the International Criminal Court on the March, 2013 Kenyan election. In particular, it explores how the indictments issued against Uhuru Kenyatta and William Ruto in January, 2012 (whatever the ultimate outcome of their cases), initially perceived as effectively removing them from the presidential contest, transformed them into 'victims-heroes' of their respective ethnic (i.e., Kikuyu, Kalenjin) communities. This allowed them both to overcome the historically-embedded hostility between these communities in crafting an electoral ('UhuRuto') alliance, and to successfully market their joint candidacy largely in terms of opposing a novel version of alleged Western/global 'neo-colonialism'.

This opportunity, it is argued, emerged from a combination of two 'bifurcations' stemming from that election: (1) the doubtful legitimacy of incumbent president Mwai Kibaki's December, 2007 victory together with the violence/humanitarian crisis it ignited; and (2) the contrasting mechanisms devised to deal with each of these aspects of that election. The ultimate – and starkly ironic – consequence of such efforts was the cementing of the political alliance noted above, in opposition to, and ultimate triumph in the 2013 election over, the 'loser' of that 2007 contest: Raila Odinga. At the same time, their efforts served to erode much of the public's initial support for an 'end-to-impunity' through first, a proposed national judicial mechanism, and subsequently (after efforts to establish one failed), the International Criminal Court.

These developments are discussed using two main categories of data. The first consists of statements by particular categories of people (obtained from media

reports, published works and personal interviews) in terms of how the post-election violence and subsequent political settlement and quest for 'justice' affected them. The second is comprised of the results of national opinion surveys conducted over several years leading up to the 2013 election. In both cases, such 'categories' are largely – but not entirely – based on ethnic identity.

Conclusions emphasize the salience of community notions of 'justice', and how, in the context of two bitterly contested elections, these notions were largely divorced from an increasingly marginalized 'accountability' agenda, thereby clashing with relevant and currently ascendant 'global' norms.

Altogether, the paper underscores the quite novel nature of this election, where a national issue came to be 'internationalized', even if it can make no prediction as to whether the next or any future Kenyan election will have a similar, 'global' character. Nor, obviously, can it foresee the outcome of the Kenyan cases that are still in-progress, even if just how they are concluded will undoubtedly have a major impact on country's political as well as its judicial-moral terrain, and its relationship with a myriad of external state and non-state actors.

*Thomas P. Wolf is Research Consultant/Analyst for the Public Affairs department of IPSOS' Kenya office. (IPSOS is a leading global media monitoring and market-survey research company.) Dr. Wolf first came to Kenya as a US Peace Corps secondary school teacher in 1967, and has lived there intermittently for more than thirty years. He has an M.A. in African Studies (Ohio University) and a D. Phil. in Comparative Politics (University of Sussex), the latter degree based on his thesis that examined political leadership at the Kenya Coast, 1960-80. He subsequently taught Politics at the University of Nairobi, and served as Democracy/Governance Advisor for USAID/Kenya.*

*Since 2002, as an independent consultant, he has undertaken research and program assessments in Kenya and the region on a wide variety of governance issues, including corruption, political parties, government-civil society relations and electoral conflict. His most recent work has involved the design, implementation and analysis of national research surveys, which began with the first Afrobarometer Survey in Kenya (2003) for which he was Co-National Investigator. Subject-matter of his published articles and book chapters include: (Kenya) Coast political history, the accountability-immunity debate with regard to retired Kenyan president Daniel arap Moi, Kenya's*



*new constitution, the accuracy and political impact of political opinion/voter-intention polls in Kenya, and the evolution and consequences of the ICC cases in Kenya's 2013 election.*

## 2. From Commitment to Contestation – Explaining Kenya's ambiguous relation to the ICC

**Corinna Frey, University of Cambridge (UK)**

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As a major international institution without enforcement mechanism, the International Criminal Court (ICC) is fully dependent on the cooperation of its member states, first and foremost African states as all formal investigations are taking place on the African continent. Despite having strongly supported the establishment of the court and its work in the initial phase, during recent years some African states have become increasingly opposed to and disengaged from the court, one recent example being the Republic of Kenya. Based on rational as well as constructivist compliance-literature, this paper identifies crucial conditions to explain why a committed state as Kenya refuses to implement and cooperate with the court's request. Comparing this situation with the other ongoing formal investigations in Uganda, the Democratic Republic of the Congo (DRC), the Central African Republic (CAR) and Côte d'Ivoire reveals surprising explanations for a state's unwillingness to cooperate. Contrary to the popular claim that the legitimacy of the ICC is questioned due to its 'African-centeredness' and being viewed as a 'hegemonic Western instrument', the paper argues that it is legal controversies caused by the ambiguity of the norm as well as the targeting of acting politicians who use their power to hinder investigations that explain non-compliance.

In the Kenyan case, it remains ambiguous whether the crimes committed during the post-election violence can be defined as 'crimes against humanity' and consequently whether they fall within the jurisdiction of the ICC. In addition, it is debated if the crimes have been grave enough to be admissible for the Court. Furthermore, Kenya is the first country where sitting politicians from both sides of the conflict are prosecuted and any effective action to cooperate with the ICC can be prevented by these politicians. Contrary, in all other countries with formal investigations the

involvement of the Court was in the interest of the respective acting government as only rebel groups or political opponent, not part of the current government, were prosecuted.

The fact that cooperation with the Court until now relied exclusively on the states self-interests discloses a serious challenge for the future work of the ICC; its legitimacy might not be questioned due to an African-Centeredness, but due to the application of 'victor's justice'.

*Corinna Frey is currently enrolled in the MPhil program in Innovation, Strategy and Organisation at the Judge Business School, University of Cambridge. She holds a M.A. in Political Sciences from Frankfurt-University, Germany, where she has also been working as research assistant for the Cluster of Excellence "The formation of Normative Orders". Her research focuses on the compliance of African states with the International Criminal Court as well as knowledge and evidence-based management in international organisations. She gained work experience within the UN Refugee Agency (UNHCR) and the German Development Cooperation (GIZ) and published, amongst others, on the impact of higher education in refugee situations.*

## 3. 'Tell Bensouda we have moved on': Interrogating local perceptions of the ICC in Kenya

**Njoki Wamai, Cambridge University (UK)**

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In December 2010, the International Criminal Court (ICC) charged President Kenyatta and his Deputy President William Ruto with crimes against humanity for their alleged roles in orchestrating post election violence (PEV) in Kenya in 2007/8. The post election violence claimed the death of 1,133 people and displaced more than 650,000 people.<sup>1</sup>

This paper traces the history of the ICC in Kenya and the court's changing popularity since the then prosecutor Louis Moreno Ocampo started investigations in Kenya in

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<sup>1</sup> GOK (2008), Commission of Inquiry into the Post Election Violence Report. Nairobi, Government Printers.



2009. Through preliminary fieldwork investigations by observation and in-depth interviews in three counties, the paper observes that the ICC has been perceived in different ways by different groups in Kenya: for some it is the best court to dispense justice to victims of PEV and to end impunity in Kenya. It is also seen as a threat to Kenya's sovereignty by the political elite and this has resonated with the Kalenjins and Kikuyu ethnic groups in the select counties where the research was carried out. The ICC is also seen as an 'unwelcome distraction to peace and development' after the inauguration of a progressive constitution in 2010, hence the message to the current ICC prosecutor from some of the participants in the research that 'they have moved on from the past', the ICC included. The paper interrogates why these perceptions have been advanced and appropriated especially by residents of three select counties where there was violence in the Rift Valley and where victims of the ICC case are located.

*Njoki Wamai is a Doctoral Gates Cambridge Scholar at the University of Cambridge in Politics and International Studies. She was previously a Peace, Security and Development Scholar at the Africa Leadership Centre based in Kings College London and the University of Nairobi. Her research interests include conflict prevention, transitional justice, human rights and women peace and security.*

## SESSION 7      TRIBUNALS TO BE OR NOT TO BE?: SPECIAL COURTS

### 1. Congo: The Special Court that Never Was

**Luc Reydam, Catholic University of Lublin (PL) and University of Notre Dame (US)**

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*Congo: the Special Court that Never Was* is the second of five chapters of a book in progress 'Let's Be Friends: The Politics of International Justice in the Great Lakes Region of Africa (1994-2014).'

During the period under study (1994-2014), international(ized) courts were established for the former Yugoslavia, Rwanda, Sierra Leone, East Timor, Lebanon, Cambodia, Bangladesh – but not for Congo. *Congo: the Special Court that Never Was* discusses the various attempts to investigate atrocities committed during the First and Second Congo War, the calls to expand the jurisdiction of the ICTR or establish a special Congo tribunal, and the failure to do either because Congolese, regional, and global actors and powers never aligned. I explain why the interests of the various stakeholders never converged and why, unlike e.g. in Sierra Leone, Lebanon, and Cambodia, the United States (and the United Nations) failed to push for accountability.

Besides using numerous documentary sources, the essay draws on interviews and email correspondence with former US Ambassadors-at-Large for War Crimes Issues David Scheffer, Pierre-Richard Prosper, and Stephen Rapp, former US Ambassador to the United Nations Bill Richardson (1997-1998), former US Ambassador to Zaire/Congo Daniel Simpson (1995-1998), former US Ambassador to Rwanda Robert Gribbin (1996-1999), Deputy Chief of the UN Secretary-General's investigative team Reed Brody, Chief of the DRC 'Mapping Exercise' Luc Côté, and still to be conducted interviews with Congolese officials and politicians.

*Luc Reydam* is Professor of Law at the Catholic University of Lublin (PL) and Professor of the Practice in the Department of Political Science of the University of Notre Dame (US). He is the author of *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford University Press 2003), editor of the *Global Activism Reader* (Continuum Publishing 2011), and co-editor of *International Prosecutors* (Oxford University Press 2012). His new book project is a monograph with working title *Let's Be Friends: the Politics of International Justice in the Great Lakes Region of Africa (1994-2014)*.

## 2. African supranational criminal jurisdiction: One step towards ending impunity in Africa or two steps backwards for the international criminal justice system?

**Dorothy Makaza, University of Hamburg (DE)**

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Following attempts by the African Union and the East African Legislative Authority to empower their respective courts with international criminal jurisdiction, there might be potential for the establishment of an African supranational criminal jurisdiction. The aim of this paper will be to weigh the pros and cons of the establishment of such African supranational criminal jurisdiction. Ultimately, the paper will outline whether or not such jurisdiction will be a great step towards defeating impunity in the continent or whether it will defeat the spirit of the entire criminal justice system.

The establishment of an African supranational criminal jurisdiction would also provide a similar mandate to that of the ICC. The fact that both the drafters of the Rome statute and the African regional authorities did not provide a solution for the potential jurisdictional clash creates the impression that the establishment of African supranational criminal jurisdiction is meant to rival the jurisdiction of the ICC. This poses a major threat to the complementarity principle and raises a myriad of other problems such as; the differences in principles between the ICC and the AU regarding the immunity of heads of state, amnesties and alternative justice mechanisms. The paper will also focus on some positive aspects of the establishment of an African supranational criminal jurisdiction which mostly stem from geographic proximity to

victims and affected communities. Finally, the paper will submit that the creation of African supranational criminal jurisdiction could be of benefit not only to the continent in terms of stamping out impunity but also to the international criminal justice system. However, in order for this to happen, the work of regional courts and the ICC need to mutually complement each other and not work against each other. In its entirety, the paper will show that although the jurisdictional clash that might exist needs to be solved, a first step towards this would be putting to rest the suspicions between the ICC and African regional bodies.

*Dorothy Makaza* holds a bachelor degree in law (LLB) from the University of Fort Hare in South Africa and a Master's degree in Human Rights and Conflict Management from Scuola Superiore Sant' Anna in Italy. In the past two years, Dorothy has worked as an intern for various international organisations in Germany including Amnesty for Women and the German Institute of Global and Area Studies (Institute for African Affairs). She is now pursuing her PhD in international law at the University of Hamburg in Germany. Dorothy also holds various certificates in international criminal law and humanitarian law.

## 3. National Judicial Systems in Africa and the Adjudication of International Crimes: Lessons from Rwanda's Gacaca Courts

**Elvis Mbembe Binda**

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Abstract komt nog.

*Elvis Mbembe Binda* is the International President and cofounder of Initiatives for Peace and Human Rights (IPHR), a local organization active in Burundi, DR Congo and Rwanda where it strives to enhance the culture of peace through human rights and good governance education. He also initiated the creation of Stichting Initiatives for Peace and Human Rights in the Netherlands.

In addition to his field work, Elvis also teaches law at the University of Rwanda since 2007. At Utrecht University, he is attached as a PhD candidate at the institute of Jurisprudence, Constitutional and Administrative Law.

## SESSION 8 ICC AND THE MEDIA

### 1. Discursive reconstruction of the ICC-Kenya engagements through Kenyan newspapers' editorial cartoons

**Sammy Gakero Gachigua, Lancaster University (UK)**  
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The International Criminal Court (ICC) was thrust into everyday public discourse and imagination in Kenya in 2008, and has since thrown up complex and profound political events, and fierce debates – both locally and internationally – that impact on the court's perceived role, jurisdiction, and intent (whether it is in pursuit of justice or has a neocolonialist agenda). ICC's direct involvement in Kenya was set off by the adoption of the recommendation of the Commission of Inquiry on Post-Election Violence (CIPEV) – constituted as part of the reconciliation process after the volatile 2007-2008 post election violence – that provided for a self triggering mechanism that would allow the ICC to take up the Kenyan cases if the government failed to form a special tribunal of national and international judges to investigate and prosecute the perpetrators of the violence. Afterward, the ICC prosecutor – Luis Moreno-Ocampo – named six suspects bearing the greatest responsibility for crimes against humanity, among them two prominent politicians – Uhuru Kenyatta and William Ruto, whose case is now subject to a full trial at The Hague.

The two used the platform afforded by ICC's indictment to form a political merger that saw them mount a highly choreographed anti-ICC campaign leading to their election as Kenya's President and Deputy President respectively in 2013. The election of the indicted politicians caused both consternation and celebration alike in Kenya, Africa and across the globe as questions emerge about the fate of the fight against impunity, justice for violence victims, how and why the two suspects triumphed despite their indictment at ICC, how the ICC should treat the two – both as suspects and state leaders, how the two indicted leaders will simultaneously manage state affairs and attend trial, and how the two leaders' trial impacts on the Kenya's relation with international actors.

Using the editorial cartoons of four national newspapers, this study seeks to reconstruct the complex discourses, perspectives and debates that inform the evolution of the ICC-Kenya engagement since 2008 to date. The focus on editorial cartoons is informed by the understanding that editorial cartoons are artistic objects drawing from everyday occurrences, which 'can be political chronicles, editorials satire, creative cultural productions and moral statements all rolled into one' (Eko 2007: 222). Therefore, editorial cartoons can provide valuable critical insights that can throw light on the everyday public discourses, debates and perceptions and impact of the ICC-Kenya engagement.

*Sammy Gakero Gachigua is working towards a PhD in Applied Linguistics at Lancaster University, UK. His thesis focuses on the tensions between power elite and public interests in Kenyan parliamentary debates using a discourse-historical approach. His research interests include: critical discourse analysis, argumentation theory, parliamentary, media and political discourses, cartoon research, and Power & Ideology.*

### 2. Grass-root media reportage of International Criminal Court

**Olivier Nyirubugara, Erasmus University Rotterdam and The Hague University of Applied Sciences (NL)**  
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In late 2007 and early 2008, Kenya was in a situation close to civil war as both rival presidential candidates were claiming victory. Over 1,000 people died and the country has not yet fully recovered from that sad episode of its history. Three months prior to the election, mobile community reporters trained by the Netherlands-based Voices of Africa Media Foundation had started monitoring the situation from the community perspective. Those pre-election videos provided clues that something chaotic was in the making. During the crisis, international journalists flew in and mainly reported that the violence was unexpected. The reports that covered the aftermath of the crisis reflected mostly a sentiment of powerlessness, of hopelessness, and, above all, of thirst for justice. This presentation aims to analyse the current perceptions of justice, local and international, in Kenya and in the Democratic Republic of Congo through the lens of mobile reporters' phones. Both

countries share a history marked by crimes that have drawn the attention of the International Criminal Court.

*Dr. Olivier Nyirubugara is a lecturer of New Media and Online Journalism at Erasmus University Rotterdam. He also teaches Journalism and Communication at The Hague University of Applied Sciences. Nyirubugara started practicing journalism in 2002 in Central Africa and went on to report for various news media from the Netherlands since 2004. He embraced citizen journalism in 2007 not as citizen journalist but as a coach and trainer for the Netherlands-based Voices of Africa Media Foundation since. The main motivation was his conviction that non-elite layers of society had considerable potential to report news from their own perspective. Nyirubugara's latest publication, *Mobile Community Reporting: A Grassroots Perspective on Journalism* (Leiden: Sidestone, [April] 2014), analyses that potential based on projects conducted in 8 African countries.*

### 3. title to be announced

#### **Alpha Sesay, Legal Officer International Justice, Open Society Justice Initiative (NL)**

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*Alpha Sesay is the legal officer for international justice based in The Hague. Prior to joining the Open Society Justice Initiative full time, Sesay was Trial Monitor on Justice Initiative's Charles Taylor Trial Monitoring project for which he wrote thematic commentaries and analysis on the work of the Special Court for Sierra Leone and other international criminal justice, human rights, and humanitarian law issues as related to the Charles Taylor case.*

*Sesay has held various positions in the human rights and international justice sectors— as a legal assistant/officer of the Morris Kallon Defence Team at the Special Court for Sierra Leone; as a human rights lecturer at the University of Sierra Leone; and as a consultant with Human Rights Watch's International Justice Program.*

*Sesay received a degree of Utter Barrister (Bar License certificate) from the Council of Legal Education at Sierra Leone Law School, a Bachelor of Laws degree (LLB Hons.) from Fourah Bay College, University of Sierra Leone, and an LLM in International Human Rights Law from the University of Notre Dame Law School.*

## BIOS OF ORGANISING COMMITTEE

**Froukje Krijtenburg** is a postdoctoral fellow at the VU University of Amsterdam, department of Social and Cultural Anthropology. Currently, she is a researcher at the NWO funded Integrated Programme Development as a Trojan Horse: Large Scale Foreign Land Acquisitions in Ethiopia, Uganda, Madagascar and Kenya. Her doctoral dissertation 'Cultural Ideologies of Peace and Conflict: A Socio-cognitive Study of Giryama Discourse (Kenya)' (2007) demonstrates that concepts of peace, conflict and peace-making are socio-culturally defined. She is secretary of the executive board of the Netherlands Association of African Studies.

**Eefje de Volder** is a PhD Researcher at the Department of European and International Public Law of Tilburg University and has an educational background both in cultural anthropology and in law. Her PhD research focuses on the African Union's collective security system and assesses how the AU has envisaged and advanced collective security through forcible measures and how it can be positioned within international security law. In addition to her doctoral studies, she does research into and publishes on the phenomenon of human trafficking.

**Abel S. Knottnerus** is a PhD Researcher at the Legal Theory Department of the University of Groningen. He is currently working on his dissertation "the Contested Legitimacy of the International Criminal Court", in which he explores the ongoing legitimation process of the ICC. His research interests are in the fields of International Relations, International Legal Theory and International Criminal Law. In recent and forthcoming publications he focusses on the concepts of social legitimacy and legal ambiguity, the relationship between the Security Council and the ICC as well as on the growing rift between African States and the ICC.

**Ingrid Roestenburg-Morgan** is a South African living in the Netherlands. She is currently completing a PhD in International Criminal Law and Human Rights at the University of Utrecht through the School of Human Rights Research (SHRR) and the Netherlands Institute for Human Rights (SIM). She was one out of 300 selected by NWO's Mosaic Programme to undertake her research, which focuses on the International Criminal Court's (ICC) legitimacy and efficacy within Africa. Prior to this she was employed as a Legal Officer at the International Criminal Tribunal for the

former Yugoslavia (ICTY), on the Stanisić and Simatović Case and the Popović et al Case (Srebrenica Case).

**Dr. Jos Walenkamp** is lector International Cooperation at The Hague University of Applied Sciences, where he heads a research group investigating i.a. the acquisition of international competencies and lectures on the future of international cooperation. He studied biology at Leiden University and fisheries biology and management at the University of Wales. He did his PhD research on the systematics and zoogeography of Caribbean starfish. In the 1980's he worked at the Eduardo Mondlane University in Mozambique as dean of the Biology Faculty. Later, in Nigeria, he was responsible for the Training and Research Programmes of the European Commission. In the 1990's he joined the Netherlands Organization for International Cooperation in Higher Education and Research and was Director Development Cooperation and Director Knowledge and Innovation.

## THE ORGANISING INSTITUTIONS

### **Netherlands Association of African Studies**

[www.afrikastudies.nl](http://www.afrikastudies.nl)

The *Netherlands Association of African Studies* (NVAS) is a national network of, and for, experts and students of Africa. It aims to facilitate interdisciplinary contact and synergy among experts on Africa in the Netherlands, and strives to stimulate interest in knowledge and research about Africa among a broad public. Every three years NVAS organizes a two-day international conference for experts and students of a specific area within the field of African studies. In 2011 NVAS and Groningen University hosted the international conference “*Africa for Sale??: Analyzing and Theorizing Foreign Land Claims and Acquisitions*”.

### **The Hague University of Applied Sciences**

[www.thehagueuniversity.com](http://www.thehagueuniversity.com)

The Hague University of Applied Sciences gives students the opportunity to become qualified, independent professionals through the provision of high-quality, innovative higher education: professionals who are trained to combine theory and practice. How? By challenging and stimulating students, by rousing their curiosity and by inciting them to think. The Hague University of Applied Sciences aims to deliver world citizens, graduates who know what is at stake in the world and who possess the international academic, professional, linguistic and intercultural competencies necessary in the globalized and multicultural society of today and tomorrow.

### **The School of Human Rights Research**

[www.schoolofhumanrights.org](http://www.schoolofhumanrights.org)

The *School of Human Rights Research* aims at promoting disciplinary and multidisciplinary scientific research in the field of human rights. By means of critical analysis and the submission of proposals, based on thorough scientific research, it wants to contribute to the further implementation and strengthening of international, regional and national systems of protection of human rights. The School is an alliance of universities and research institutes – a joint effort of the School of Law and the Faculty of the Humanities of Utrecht University, and the Faculties of Law of Maastricht University, Erasmus University Rotterdam, Tilburg University and Leiden University. The T.M.C. Asser Institute in The Hague, also participates in the Research School and the University of Amsterdam is an aspirant member.

