

**“Can Africa prosecute
international crimes? The
DRC example.”**

*Nick Elebe, Jacques Mbokani,
Emmanuel Kabengele and Franck
Kamunga*

*Supranational Criminal Law Lectures Series
in cooperation with Open Society Foundations
14 June 2017, 19.00 - 20.30hrs
T.M.C. Asser Instituut, The Hague*

On 14 June 2017, Nick Elebe, Jacques Mbokani, Emmanuel Kabengele and Franck Kamunga provided a lecture at the Asser Institute in The Hague in the context of the Supranational Criminal Law Lecture Series. The lecture was organised by the T.M.C. Asser Instituut in cooperation with the Coalition for the International Criminal Court (CICC), the Grotius Centre for International Legal Studies of Leiden University and Open Society Foundations.

After a welcoming introduction from Dr Christophe Paulussen, Senior Researcher at the Institute, the speakers took the floor to present the findings of a study on the application of the Rome Statute by the national justice system of the Democratic Republic of the Congo (DRC). The speakers were Nick Elebe and Franck Kamunga, both from Open Society Initiative for Southern Africa (OSISA), Jacques Mbokani, author of the just-mentioned study, and Emmanuel Kabengele, from Réseau pour la Réforme du Secteur de Sécurité et Justice.

Nick Elebe took the floor introducing the work of OSISA and what led to the development of the study. OSISA has been active in the DRC since 2007 and has since then tried to build and enhance a solid knowledge of the issues surrounding international criminal justice to allow the partners it works with to develop effective advocacy and outreach activities. Consolidating this knowledge is one of the reasons that render the study on the manner in which the Rome Statute is applied by the Congolese justice system of extreme importance. The study enhances the results achieved by the case law developed and raises awareness of the challenges encountered in the Congolese implementation of the Rome Statute and the fight against impunity.

Following this introduction on the work of OSISA, Jacques Mbokani took the floor to provide the audience with an overview of the most salient aspects the study touches upon. The research involves approximately thirty judicial decisions issued by national courts in the DRC. The question that was posed in the study was whether the Congolese decisions on Rome Statute crimes were in compliance with international standards. He reflected on the context of great political instability and conflicts in which the decisions were issued. Specific questions addressed in the study include the possibility to retroactively apply the Rome Statute, the matter of sentencing, the fairness of trials vis-à-vis the accused and the issues arising from the victims' right to participate in the proceedings and to receive reparations. He concluded noting how, despite the challenges and the difficulties faced by the DRC's national justice system and there being room for improvement, the fight against impunity for the commission of heinous crimes is possible even in the absence of political will, as long as this is brought forward by all players of the judicial system.

Emmanuel Kabengele followed the analysis presented by Mbokani with a two-fold examination on the current national context in which the fight against impunity unfolds in the DRC and on the connection between reforming the security and justice sectors. He depicted a scenario where the population has no trust in the authorities, where "justice means corruption, tribalism, trickeries, and irregularities" and where uncertainty rules to the extent that those seeking the verdict of the court "do not know what the judge has in store for them". He sketched a context where "people are eager, thirsty for justice, but this thirst cannot be quenched". Restoring the trust of the population in the governmental institutions is fundamental. Kabengele reflected on the multitude of problems arising from the situation where a state does not implement legal

decisions holding its forces accountable while incorporating armed groups in the national army, pushing further away the possibility to develop a sustainable rule of law in the DRC. He argued political unwillingness must be fought with the support of the international community, and that a reform of the security sector must be connected with a reform of the justice sector.

Concluding the presentation, Franck Kamunga observed how justice delayed is justice denied. The time the judicial process takes in the attempt to bring justice to victims is a real concern. The study permitted to draw useful lessons on challenges involved in prosecuting international crimes and the capacity of the national justice system. Since the International Criminal Court (ICC) is not in the position to deliver justice and support to victims in all cases and in a timely manner, having a national system with the capacity to deliver justice for international crimes is important. The unwillingness of the state to provide the financial and human capacity for the national justice system to deliver its promises and live up to the people's expectations denies justice.

The capacity of the national justice system must be strenuously supported by those stakeholders endowed with willingness at the national level and by the international community. Support is needed for the system to progress and to become a viable alternative to the intervention of the ICC, in particular where justice must be "brought directly at the victims' doors and immediately".