



Summary Report

7TH COLLOQUIUM OF INTERNATIONAL PROSECUTORS

**LOCAL PROSECUTION OF INTERNATIONAL CRIMES: CHALLENGES AND
PROSPECTS**

4-5 NOVEMBER 2014, MOUNT MERU HOTEL, ARUSHA, TANZANIA

1. The 7th colloquium of international Prosecutors took place in Arusha, Tanzania from 4-5 November 2014. Justice Hassan B. Jallow, Prosecutor of the ICTR and the MICT opened the colloquium on 4 November 2014 with a welcome address to the participants.
2. The Prosecutor noted the unique significance of this particular colloquium by stating that this colloquium has brought together Prosecutors of all the international and hybrid tribunals with their national counterparts from some twenty countries in Africa, Europe and the Americas as well as representatives of regional courts, academic institutions and non-governmental organisations to discuss the critical issue of the challenges and prospects for local prosecution of international crimes.
3. The Prosecutor urged participants and the international community to give their full and unreserved support and commitment to the international courts, in the fight against impunity. He recognized that much of the ICTR's success over the past twenty years has been due to effective partnerships between international and local justice mechanisms and that the future lies in consolidating and enhancing that partnership.
4. Prosecutor Jallow's welcome address was followed by opening remarks by Mr. Bongani Majola, Registrar, ICTR, Ms. Fatou Bensouda, Prosecutor, ICC and Mr. Richard Muhumuza, Prosecutor General, Rwanda. Mr. Mohamed Othman Chande, Chief Justice, Tanzania delivered the keynote address. The speakers emphasized the importance of gatherings such as this that allow legal professionals from different backgrounds to meet and share experiences and lessons learned in prosecuting international crimes.
5. They emphasized that it is critical for Prosecutors at the national and international level to share their experiences in prosecuting international crimes in order to fully understand and appreciate the standard required for the successful prosecution of international crimes at the national level.
6. The speakers emphasized that international courts cannot operate in a vacuum. International prosecutions cannot be divorced from national prosecutions as they ought to and must validate each other in order to combat international crimes. They identified key challenges facing domestic courts prosecuting international crimes, including:

- The political will of states to accept or permit prosecutions of *all* persons accused or suspected of committing international crimes.
 - The inviolability and immunity of high ranking officials and heads of states in some countries.
 - The need for an independent, impartial, honest and competent judiciary free from undue restraints.
7. The colloquium consisted of five panel sessions which commenced immediately following the welcome and opening remarks. The sessions covered the following topics: Reports by Prosecutors of the International Courts and Tribunals on Lessons Learned in the Empowerment of National Jurisdictions to Prosecute International Crimes; Reports from National Prosecutors on the Implementation of their Mandates to Prosecute International Crimes; Financial and Other Administrative Obstacles to National Prosecution of International Crimes; Prospects for Participation in the Investigation and Prosecution of International Crimes by Regional Institutions and Defence and NGO Perspectives on National Prosecutions of International Crimes.
 8. The panelists discussed a wide range of issues, with the main focus on the successes, challenges and future of national prosecutions of international crimes. Prosecutors of international courts and tribunals, national prosecutors, defence counsel and NGOs each gave their perspectives on the successes and challenges of prosecuting international crimes in domestic courts.
 9. The panelists stated that there are often shortcomings in the adequacy of the laws in national jurisdictions and that law reform is often required to ensure that international crimes are fully reflected in the national legal provisions.
 10. They noted however, that no matter how much law reform takes place to accommodate international crimes in a national jurisdiction, there are four key points to prosecuting international crimes at the national level:
 - The political will in the country to prosecute the said crimes.
 - An efficient, independent and properly resourced prosecuting authority
 - Judicial independence and impartiality.

- A defence properly equipped to challenge the charges against the accused.
11. In terms of empowering national jurisdictions in their fight against impunity, the following key factors were identified as crucial in the fight against impunity:
- The need to share perspectives on the challenges experienced in prosecuting international crimes and the solutions adopted. In this regard it would be beneficial for national prosecuting authorities to organize national colloquia such as the current one, wherein they can share information on the challenges they face and the solutions they adopt.
 - The need for State commitment. Governments should support these institutions in carrying out their mandate from the onset.
 - The importance of appropriate funding to carry out the required functions and mandate.
 - The need for consistency in the applied laws and principles. Efforts should be made for international standards, rules and procedures to transcend national borders.
 - The need to focus efforts and adopt a selection requirement that calls for the prosecution of those who bear the greatest responsibility for the crimes. By focusing efforts limited resources will be better used.
 - The need to involve the population in the process. Encourage civil society to share their views and concerns.
 - The importance of holding every perpetrator accountable. One should be held accountable for the crimes that they commit no matter what they are fighting for or who they are.
 - The need to establish specialized units in both the prosecution and the police.
 - Close cooperation between various national authorities – immigration, foreign affairs and ministry of justice.

- The right people who are not afraid to fail and subsequently learn from their own failures.
 - Connections between national and international prosecutors should be reinforced.
 - Efforts should be made to have more special criminal courts, even without international participation, within national systems.
12. The speakers recognised that for all of this to be possible, it is incumbent upon all actors in the fight against impunity for international crimes to work together. They emphasized that a lot has to happen and therefore, strong partnerships should be formed in order to increase cooperation between international and national offices. There was support for a proposal made recently for the adoption of an international convention of cooperation of states in prosecuting atrocity crimes. If successfully adopted, a convention of this nature will open doors for connections that will make prosecutorial cooperation possible, as well as those that will assist capacity building efforts across the global justice sector.
13. National prosecutors reported on the successes achieved in prosecuting international crimes in their domestic courts. They explained the measures taken in their jurisdictions to ensure that they can effectively prosecute international crimes domestically. These measures include, enacting significant legal and judicial reforms to incorporate international criminal law into their legal systems in countries in which it did not exist, creating specialized units to investigate and prosecute cases and also specialized units to liaise with and assist other authorities and organisations in their endeavor to prosecute international crimes in their jurisdictions.
14. They acknowledged that despite the successes, several domestic jurisdictions still experience difficulties prosecuting international crimes. One major challenge of trying international crimes at the national level is lack of cooperation among states, particularly those in which those suspected of having committed crimes are believed to be hiding. Prosecuting authorities have experienced reluctance from states to search for and extradite suspects. Greater cooperation amongst states is also required to facilitate access to witnesses. Witness movement is often restricted by the visa requirements of the country or countries in which a witness is required to testify. In this regard

it was recommended that states should be flexible in their laws governing the granting of visas to witnesses in such cases.

15. The lack of financial resources to investigate and prosecute international crimes at the national level also affects states' ability to prosecute such crimes. Prosecuting international crimes at the national level raises specific financial difficulties because of the peculiarities of the litigation. Trials of international crimes attract great interest and therefore there is a need for large courtrooms to accommodate the public and the media to cover the trials. These trials are also usually emotionally charged and this brings about the need to provide security for the witnesses from the general public and also from the Accused and their sympathizers. All these come at a cost. Additionally, there is always a challenge of human and financial resources during investigations. International crimes are usually investigated outside the borders of the national jurisdictions trying them. There are therefore costs involved in sending investigators and investigative judges to the field to locate and interview witnesses, as well as the cost of translation.
16. Panelists sharing the defence perspective highlighted the need for equality of arms between the prosecution and the defence during trials of international crimes both at the national level and in international courts and tribunals. They emphasized that it is impossible to have a fair trial without a properly equipped defence. The speakers identified some key challenges facing defence counsel in national jurisdictions, including the following:
 - Witness protection can be a challenge for both the prosecution and the defence. In particular relocation can be problematic given the wide concept of "family" in Africa.
 - Limited cooperation from state authorities can make it harder for the defence to access documents and witnesses.
 - Defence witnesses can also face greater scrutiny from national authorities when seeking asylum.
 - Many national jurisdictions do not have a legal aid scheme to pay defence counsel. Therefore, the fees paid to defence counsel is often insufficient for the work done.

- The defence is often considered peripheral to matters surrounding international criminal justice. Therefore, training on issues such as investigating gathering evidence is important.
17. The role and importance of NGOs in the prosecution of international crimes was recognized during the presentations and discussions. It was stated that NGOs can enhance national prosecutions in a number of ways. They have the power to voice concerns or reservations on unpopular subjects. NGOs can also provide evidence or advocate for the victims, and NGOs' presence on the ground enables them to provide recommendations and lessons learnt.
 18. The NGOs stressed the importance of protecting the rights of the victims during national and international criminal prosecutions. The panel emphasized that the victims are the ones that remain to judge the legacy of national or international prosecutions and it is the States' duty and obligation to respect victims' rights. These rights should be fully incorporated in national prosecution mechanisms and should comprise:
 - The right to be treated with compassion and dignity. Prosecutors should establish guidelines on the treatment of victims and provide training to their staff.
 - The right to be provided with any information that is not confidential through the radio, social network etc. or by establishing a focal point for victims. Prosecutors could also publish information booklets to explain proceedings.
 - The right to safety and well-being. Prosecutors should conduct individual risk assessments for each victim.
 - The right to present concerns. Prosecutors should consult victims on prosecutorial strategy.
 19. The prospects of participation in the investigation and prosecution of international crimes by regional bodies was explored. Representatives of regional bodies such as The African Court of Human and People's Rights (ACHPR), the ECOWAS Community Court of Justice, Pan African Lawyers Union (PALU), African Institute of International Law and IHRDA emphasized that while no regional body is currently involved in the investigation and

prosecution of international crimes, there is a pressing need for them to start getting involved. the following challenges were identified:

- The political will to ratify, domesticate and implement the treaties that provide for the prosecution of international crimes.
 - The financial capacity and know-how with the regional institutions. To effectively investigate and prosecute international crimes, regional institutions will require a lot of assistance in education, infrastructure, capacity building, and financial support.
20. The speakers stressed that as States bear the primary responsibility to prosecute crimes committed within their territories, complementarity is the only way through which regional institutions can effectively participate in the investigation and prosecution of international crimes.
 21. The speakers recognized that regional bodies such as the AU and its organs have a very important role to play in the investigation and prosecution of international crimes. With the volume of information gathered through the various reporting mechanisms and decisions of the AU institutions, they can be very instrumental in providing institutions like the ICC with the evidence required to investigate and prosecute international crimes. African institutions and international bodies such as the ICC can complement each other in the investigation and prosecution of international crimes.
 22. The meeting ended on 5 November 2014 with the adoption of the Resolution of the 7th Colloquium of International Prosecutors, closing remarks from Mr. Stephen Rapp, US Ambassador-at-large for War Crimes Issues, Ms. Brenda Hollis, Prosecutor, Residual Special Court and Mr. Miguel de Serpa Soares, USG for Legal Affairs and UN Legal Counsel. Following the closing session, the Prosecutor formally closed the Colloquium and together with representatives from the international and hybrid tribunals held a press conference to discuss its outcomes.