



# Civil Society and International Criminal Justice in Africa

Report of the Workshop held  
4-5 February 2015  
Wilfred and Jules Kramer Law Building  
University of Cape Town

## Overview and Reflections: Executive Summary

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# EXECUTIVE SUMMARY

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Recent decades have witnessed an increased role for civil society actors in international law making and the development of international institutions, with the establishment, design and legal framework of the International Criminal Court (ICC) being a key example. Yet once international justice institutions are established, there are generally few opportunities and mechanisms for the participation of civil society actors directly within the formal processes of such institutions. Civil society actors are increasingly seeking to participate directly in proceedings before international criminal tribunals, including as an *amicus curiae*, or friend of the court. It is essential to understand the nature and extent of civil society interventions, the influence of civil society on legal outcomes and the representativeness of such interventions.

This report details the proceedings and outcomes of a workshop held at the University of Cape Town on 4-5 February 2015. The workshop focused on the role of civil society actors in influencing the establishment, design and proceedings of international criminal justice mechanisms. It engaged a range of academics, legal practitioners, and NGO representatives.

The main aim of the workshop was to examine the various ways in which civil society can initiate, monitor, support, and intervene in trials concerning crimes against humanity, genocide or war crimes. The panel sessions considered: the roles of civil society actors

surrounding international crimes trials carried out by national courts, including through the exercise of universal jurisdiction; the challenges and strategies faced by civil society in securing international criminal justice in Africa; and the processes of monitoring and participating in international crimes trials, including through the provision of *amicus curiae* briefs.

Professor John Dugard, an ad hoc judge at the International Court of Justice, and Carla Ferstman, director of REDRESS, provided two excellent keynote addresses. Professor Dugard considered the opportunities presented for civil society in submitting Article 15 communications to the Office of the Prosecutor at the International Criminal Court (Prosecutor). Carla Ferstman provided a persuasive case for the need for reparations processes at the ICC and Extraordinary Chambers in the Courts of Cambodia (ECCC) to recognise the centrality of their victim participation mandates. The workshop also involved a number of group discussion sessions in which the participants were invited to discuss their views about the potential role for civil society in relation to international criminal proceedings.

The workshop identified a number of challenges and opportunities for civil society actors in supporting international criminal justice in Africa, which are detailed below.

# CONTEXT

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## ***Background***

The Civil Society and International Criminal Justice in Africa workshop was organised with the support of the Faculty of Law, University of Cape Town and the Faculty of Law and Australian Human Rights Centre, UNSW Australia. It was part-funded under the Australian Research Council Discover Projects Funding Scheme (DP140101347). It was the first workshop organised with this theme at the University of Cape Town.

The workshop was designed to allow researchers, legal personnel, practitioners and civil society representatives working in the field to present their research and experiences regarding the role of civil society in international criminal justice, with a focus on Africa. It aimed to create an informal and collaborative forum for sharing ideas about the challenges and strategies for civil society in promoting and developing international criminal justice across the region.

## ***Participants***

Participants included legal practitioners and a member of the judiciary, representatives of NGOs based in South Africa, Uganda, the Democratic Republic of the Congo, London and New York, academics from the University of Kwa-Zulu Natal, University of Johannesburg, Uganda Christian University, Leiden Law School, University of Cape Town and UNSW Australia.

# CONCLUSIONS

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The presentations, keynotes and discussions highlighted several key challenges and opportunities for civil society actors in international criminal justice in Africa.

## *Challenges*

### DEVELOPING A CLEAR AGENDA

There is a need to recognise the normative positions of various civil society actors and to identify the core goals of the organisations, as well as being transparent about the different forces that challenge and distort those goals. These include reliance upon external funding and donor-driven agendas that can be unreliable and/or inconsistent.

### CRITICAL COLLABORATION

It is crucial for civil society, including academics, to collaborate and seek to engage with governments and judicial institutions more closely, including by providing research, training, legislative drafting support and other services. However, it can be challenging to balance this closer cooperation with the maintenance of a critical distance.

### SUSTAINABLE FUNDING AND CAPACITY

Civil society groups that lack resources or capacity can become vulnerable, especially to the risk of funding being removed when countries are no longer considered a priority for international aid. This unstable situation can mean that some organisations feel forced to reorient toward shifting 'fashionable' topics and short-term projects that are currently attract funding. This financial inconsistency can encourage the misallocation of resources away from civil society organisations' areas of expertise, as well as leading to competitiveness, rather than cooperation.

## *Opportunities*

### NATIONAL PROCEEDINGS AND UNIVERSAL JURISDICTION

Universal jurisdiction and ICC implementation legislation present opportunities for advocacy by civil society. Civil society actors can play a critical role as litigants where national legislation provides possibilities for ‘creative lawyering’ – including by bringing novel cases before national courts to explore and broaden the options for prosecuting international crimes.

### LEGAL INTERVENTIONS

Civil society actors could explore the possibilities of providing *amicus curiae* briefs in cases where organisations can offer ‘neutral’ assistance to the court drawing on their specific areas of expertise. Other areas to consider include appearing as expert witnesses and submitting and publicly commenting upon Article 15 communications to the ICC Prosecutor.

### COOPERATION ACROSS CIVIL SOCIETY

Coordinated responses and messages such as group declarations can be effective advocacy tools, including through building civil society coalitions that facilitate cooperation, rather than competition, at the local, national, regional and international levels. The reality that funding and resources are finite means that it is important for civil society actors to build sustainable and robust projects and to take up opportunities to engage in partnerships, capacity-sharing and collaboration across civil society organisations both within and across different countries.

### COLLABORATION

There is scope to identify further areas for academic institutions to share knowledge and information that can support NGOs and other civil society actors. Recognising the crucial role of the media in disseminating narratives about the ICC and international criminal justice, there are opportunities to develop regular interactions and relationships with the media. There may also be opportunities for civil society organisations to provide training and assistance to judicial institutions and state investigative and enforcement authorities.

### LEARNING FROM SURVIVORS

Donors and civil society groups can further explore opportunities to learn from local and grassroots experiences, information and skills. Consultation and capacity sharing should move beyond tokenistic or uni-directional engagement to include accessible avenues for ground-level feedback that is directed back toward courts, with provision for appropriate follow-up. There is a need for inclusiveness and ensuring that local consultation is representative and responds to barriers to participation and the “silences” of certain groups. There are also opportunities for empowerment and skills training to allow sustainable avenues for bottom-up and horizontal sharing of experience across grassroots organisations.