

## PROSECUTING INTERNATIONAL CRIMES IN AFRICA

**Adeniyi S. Basiru**

Department of Political Science  
University of Lagos, Lagos, Nigeria.

asbash72@yahoo.com

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The emergence of the doctrine—the responsibility to protect—that sought to cage all forms of criminal violation of human rights, official and non-official— in the first decade of the twenty-first century may have led to the proliferation of scholarly works in the area; mostly in the sphere of criminal prosecution. However, some of these works have been concentrated in journal articles. Even the few books that have attempted to dwell on this area often treat the prosecutorial aspect of international crime superficially. Added to this is the fact that these books have tended to focus on cases outside of Africa with the implications that African-based scholars and researchers have few African cases to work with. Filling these lacunae would probably have motivated the publication of the book under review.

*Prosecuting International Crimes in Africa*, edited by Chacha Murungu and Japhet Biegon, is a collection of well researched chapters written by the alumni of the Centre for Human Rights, Faculty of Law, and University of Pretoria (South Africa). It has, in addition to the introduction, 14 chapters; divided into four parts. In the introductory column, the editor opens the discussions by presenting the background, the rationales and the major arguments presented by the authors of the chapters therein.

In Part One of the book, two articles are accommodated. This section begins with a well- written chapter crafted by Ken Obura, in which the practices of prosecuting international crimes under International Law are brought to the fore. After surveying materials from legal authorities and leaning on concepts of *jus cogens* and the obligation *erga omnes*, he canvasses the argument that principles of International Law, both customary and conventional, impose on states the duty to prosecute and punish international crimes, and that amnesty does not bar the prosecution of persons responsible for international crimes. Taking the *jus cogens*

thesis further, the author posits that though immunity is a recognisable norm under customary International Law, and also affirmed by the Roman Statute, it does not prevail over the other higher *jus cogens* norms, imposing the duty to prosecute and punish individuals; including state officials responsible for international crimes. Put differently, Murungu avers that immunity is not a bar to prosecution of perpetrators of international crimes—war crimes, genocide and crime against humanity.

In Part Two of the book, there are four chapters. The section starts with Chapter 3, in which the International Criminal Tribunal for Rwanda (ICTR) is the focus of analysis. In this chapter, George William Mugwanya, drawing from his first-hand experience of the ICTR, navigates the various courses that shaped the outcomes of the first UN sanctioned international criminal tribunal. Specifically, his chapter argues that the unique case of Rwanda led to the emergence of issues never envisaged in the extant law, and for which clarification has to be made.

In the chapter that follows, the analytical compass was to another country, in which people were victims of war crimes and genocide (Sierra Leone)—in which the author, Chacha Murungu, like his colleague in the previous chapter, examines the roles that the Special Court for Sierra Leone (SCSL) had in prosecuting international crimes in post-conflict Sierra Leone. Specifically, he itemises contributions made by the SCSL to include—the clarification of international law concepts, particularly persons bearing the greatest responsibility for international crimes, the status of the SCSL in international law, forced marriage at the time of armed conflict, the official position of individuals charged with international crimes – including state officials, the relationship between the Truth and Reconciliation Commission and the SCSL in prosecuting international crimes and the illegality of amnesty for individuals charged with international crimes. Given all these, he submits that the SCSL has made a meaningful contribution to certain areas of international law and its jurisprudence.

Still on Sierra Leone, in the fifth chapter Bonolo Dinokopila, leaning on classical criminal law theory, interrogates the sentencing practices of the SCSL, most especially how it has approached the issue of sentencing. Through his efforts, like the two authors who immediately preceded him, he comes to the conclusion that the SCSL has added value to the existing jurisprudence on the subject, and outlines how the jurisprudence could be of future use. In Chapter Six, the author attempts to unravel the international politics behind international criminal justice. Adopting the neo-colonial theoretical framework and using the arrests of the Sudanese President, Omar Bashir, and the refusal of the United States to ratify the Rome Statute, as the reference points, he contends that the working of the international criminal justice, particularly in the area of criminal prosecution of offenders, is not in favour of Africa due to the continent's peripheral position in the global pecking order.

The Third Part of the book has five chapters. Chapters Seven, Eight and Nine have a common theme as they all discuss the trials of African leaders that were alleged by the ICC prosecutors to have committed genocides in their countries. Firew Tiba's contribution in chapter seven is on the Trial of Mengistu Haile-Mariam, the leader of the Ethiopian revolution of 1974 and other members of his government for genocide, torture and summary executions. Although, he commends the Ethiopian courts for their contribution to the law on genocide, especially at the domestic level by going beyond the Genocide Convention, he criticises the trials for representing victors' justice, their lack of fairness, disregard of the rights of accused and the inherent problems associated with trials 'in absentia'.

In a similar vein, *Kameldy Neldjingaye*, in the chapter that follows, discusses the trial of Hissene Habre, Chad's former strongman, not in Chad but in Senegal. In Chapter Nine Christopher Mbazira follows the footsteps of Tiba and Neldjingaye. Using the prosecution of leaders of the Lord's Resistance Army (LRA) as the focus of analysis, he identifies some of the challenges often faced by African countries in trying to punish perpetrators of genocide. One of those that is worthy of note in this review is the challenge of balancing traditional mechanisms of dispute resolution; based on restorative justice, on the one hand, and formal retributive and punitive justice mechanisms, on the other. In Chapter Ten, Christian Garuka compares the prosecutions of genocidal crimes under two jurisdictions in Uganda, by analysing the prosecution of genocide in ICTR and Gacaca courts. From his insightful analysis of the two systems, he comes to the conclusion that the ICTR system, based on fact that the judges are well trained, has the prospect to develop jurisprudence more than the Gacaca system. In the Eleventh Chapter, Osogo Ambani examines the pains of fighting sea piracy in Kenya and in the process identifying some of the challenges as: inadequate international and municipal legislative frameworks, jurisdictional problems and a lack of capacity.

Benson Olugbuo opens the last part of the book with the discussion of the issues of positive complementarity and the fight against impunity in Africa, focusing on Uganda and Sudan. He argues vociferously that the Court must complement and not supplant national judicial systems. In the chapter that follows, Mwiza Nkhata, using Malawi and Zambia as empirical referents, probes the challenges these countries are facing in implementing the Rome Statute. He believes that the domestication of the Rome Statute by countries would tackle some of these challenges. The book is concluded by a chapter on the implementation of the Rome Statute in South Africa. Written by Lee Stone, it discusses the role played by South Africa in the drafting and adoption of the Rome Statute. Specifically, it analyses the way the Rome Statute has been domesticated by South Africa.

Given the topical issues raised in the book and the wide coverage, two lacunae are observed. One, being Chapter Eleven titled, *Prosecuting piracy in the Horn of Africa: The case of Kenya*, should not have been included in the volume since the issues raised and discussed by the author have no connection with theme of the book. Two, in a book of such nature, a separate chapter should have been designated as the conclusion, in which the editors would have made prognosis about the future of International Crimes prosecution in Africa.

These, notwithstanding, this book is a major resource material and companion in the hands of students, scholars, policy makers and the reading public, who are interested in knowing the state of literature on the subject of international crimes in Africa.