

UNIVERSITY OF CAPE TOWN  
AND NOTRE DAME LAW SCHOOL

# Criminal Justice Reform in Africa

7TH FEBRUARY 2025

The University of Notre Dame and the University of Cape Town Law Schools are pleased to host a joint conference on 'Criminal Justice Reform in Africa'. This conference builds on themes from an earlier engagement hosted by the University of Notre Dame and Strathmore University Law School, which considers a 'Critical Analysis of Criminal Punishment in Africa'.

The workshop on 7 February 2025 will present a set of papers that take stock of where things stand on a set of issues in criminal justice and will link across the papers to consider what these may signal in terms of developing a Southern African contribution to decolonial criminology and criminal justice. The panel will raise questions about where and by whom knowledge is generated, and draw attention, in our different sites, to gross economic inequality and the continuing consequences of colonialism, patriarchy, racism and capitalist structures. We aim to use decoloniality as an opportunity not only for critique of the Global North but as a means to build alternative theoretical and empirical contributions about the role of the state and communities in framing and responding to crime. Discussants will be invited to reflect on the themes of the presentations across the African continent.

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**ARRIVAL**

from 08h30

Tea/coffee and snacks available in the Staff Common Room, Wilfred and Jules Kramer Law Building

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**CONFERENCE OPENING**

09h00 – 09h30

Moot Court Room

Welcome remarks from Prof Danwood Chirwa, Dean of the Law School, University of Cape Town and a response from Prof G. Marcus Cole, Joseph A. Matson Dean and Professor of Law, University of Notre Dame.

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**SESSION 1:****Gender and Criminal Justice Reform in South Africa**

09h30 – 11h30

Moot Court Room

Chair: A/Prof Jameelah Omar, Associate Professor of Public Law, University of Cape Town.

**Is the personal still political? Understanding the (non)response to violence against women in South Africa**

Presenter: A/Prof Kelley Moutt, Associate Professor, Centre for Criminology, University of Cape Town

Discussant: Dr Mediatrix Kagaba, Peace, Gender and Development Researcher, University of Rwanda &amp; University of Gothenburg

New, progressive laws on domestic violence and sexual offences were promulgated early on under the then-newly democratic South African government. Almost 30 years on, academic, civil society and activist attention to the desperate shortcomings in the implementation of these laws has resulted in amendments to both Acts but relatively little change in how the government administers justice or responds to the problem. Violence against women is widely considered to be an endemic and intractable problem in South Africa. Carol Bacchi (2009) invites scholars to ask what policy problems are represented to be – uncovering the political aspects of taken-for-granted ‘truths’ that shape interventions and the strategic relationships that enable or thwart them. This paper uses Bacchi’s invocation to examine the response to violence against women in South Africa, and argues that the emphasis on court and police intervention as the primary response has had the effect of constructing the problem of violence against women as the responsibility of the criminal justice system, rather than a problem that has its roots in our society, relationships and homes. The paper reflects on how this reinforces and thwarts real improvement in interventions, and whether using other, non-criminal justice response frames might provide opportunities for new thinking on the violence against women problem in South Africa.

## **Gendered Dynamics of Violence: The role of young women as instigators and participants in Cape Town Township Gangs**

Presenter: Dr Sisanda Mguzulwa, Post-doctoral Researcher, Centre for Criminology, University of Cape Town and Dr Reema Nunlall-Hiralal, Senior Lecturer, Centre of Criminology, University of Cape Town

Discussant: Dr Jane Wathuta, Dean of Strathmore Law School and Director of the Institute for Family Studies and Ethics, Strathmore University

Feminist scholars have long been committed to shedding light on the exercise of male power through patriarchal structures and women’s agency in responding to it. Yet close empirical site-specific work is needed to understand women’s capacity to resist, be subjected to, and enact patriarchal power. The involvement of young women in violence reflects this complex dynamic of control and subjugation. Traditionally viewed as victims or passive participants within male-dominated social groups, lately, women are taking on active and visible roles that go beyond trivial compliance. A case study from a township in Cape Town revealed how a group of young women played a critical role in escalating an ongoing dispute between gang-related violence. Young males often coercing females into participating in violent acts, against other women, as a demonstration of loyalty and commitment, while females become cheerleaders and spies for their male counterparts. This highlights a cyclical relationship where male influence drives violent behavior, whereas female involvement, as cheerleaders and spies, feeds into male egos, further escalating violence. This indicates the role of women as instigators, using indirect strategies to manipulate gang dynamics and incite violence. Simultaneously, these women leverage their proximity to male gang members for various reasons, suggesting a complex dynamic where they both suffer and benefit from these relationships. The involvement of women in gang-related violence reflects a broader cycle of male-female influence, where both genders contribute to the perpetuation of violent norms. This complex interplay reveals that women, far from being only the victims of violence, may also act as instigators of violence within these social groups. By examining these roles, we gain a more nuanced understanding of gendered power dynamics in youth gang culture, shedding light on how patriarchal violence is both reinforced and perpetuated by female participation.

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**TEA BREAK**

11h30 – 11h45

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## **SESSION 2: Governing through International Criminal Law**

11h45 – 13h45

Chair: Prof Michael Addo, London Law Programme, University of Notre Dame

### **Governing through International Criminal Law in Rwanda**

Presenters: Dr Nicola Palmer, Visiting Scholar, Centre for Criminology, University of Cape Town and Reader in Criminal Law, King's College London and Dr Felix Ndahinda, Honorary Associate Professor, Faculty of Law, University of Rwanda

Discussant: Prof Tim Murithi, Head of Peace Building Interventions, Institute for Justice and Reconciliation

The Rwandan genocide against the Tutsi is one of the most litigated episodes of large-scale violence in human history. Genocide, war crimes and crimes against humanity committed in Rwanda between October 1990 and December 1994 have been adjudicated through the United Nations International Criminal Tribunal for Rwanda (ICTR), the Rwandan criminal courts and the gacaca courts. This litigation has also been extended into Rwandan diaspora communities through criminal and immigration-related cases pursued in countries around the world. While often examined in isolation from one another, in practice these proceedings have overlapped, interacted with and diverged from one another. In this chapter we widen the lens on these legalized responses to genocide in a bid to unpack how the prosecutions of the crime of genocide both operate as a form of governance and influenced other mechanisms of governing Rwandans, inside and outside of the country. Looking beyond the ICTR, the chapter examines how the charge of genocide has led to the revocation or refusal of refugee status or citizenship, deportation and prosecution for immigration offenses alongside extradition and universal jurisdiction trials of Rwandan nationals. What emerges is that state sovereignty is being re-asserted but rather than the dominant focus on the Rwandan state, it is the sovereignty of the US, the Netherlands, France and even South Africa that is reinforced through these external legal processes. In addition, looking beyond the governance role of gacaca, the chapter examines how the harm articulated and experienced through the crime of genocide has given rise to the revival of a wide variety of traditional mechanisms, that fuse governmental order with reparatory and educational responses to violence. Overall, the chapter argues for the need to look beyond, between and alongside Rwandan state power to fully grasp the role of international criminal law, and the crime of genocide specifically, in governing Rwandans.

### **Blame, Horror, and Despair as Apt Responses to Genocide in International Criminal Law**

Presenter: Dr Khomotso Mushikaro, Senior Lecturer, University of Cape Town

Discussant: Prof Phil Clark, Professor of International Politics, SOAS, University of London

The accepted ground to just criminal responsibility in moral philosophy has tended to involve blame as an appropriate or 'apt' response to criminal wrongdoing. This intuition is best defended by thinking of blame as what the philosopher PF Strawson called a 'reactive attitude' – a fundamental response to the ill or good will of someone who you believe to have harmed you. If blame is a reactive attitude that responds to the quality of especially ill will of another, it is also the basis of holding such a person accountable for their wrong doing. Blame is also usefully 'standard-regarding' since it will identify a particular standard that a perpetrator violated as the reason to hold them accountable for any harm to a victim. Blame for genocide would then focus on the particular intention (ill will) that a wrongdoer has to destroy a specific population or group in whole or part. However, blame seems insufficient to explain one's responses to an instance of genocide. The conception of the 'wrong' at the core of genocide must

be different in nature and degree to other wrongs. Naturally, it is clearly a collective wrong directly against a group or people. However, to capture the nature of the wrong it may do to examine the reactive attitudes that may be 'apt' for genocide and work backwards to isolating the uniqueness of the wrong itself. In this paper, I would argue that genocide elicits two main responses that help to 'concretise' the blameworthiness of a perpetrator – horror and despair. Horror here is understood as a wrong that aims to destroy the whole 'person' of an individual rather than simply infringing on a single interest. Despair may be understood as the reactive attitude one has to 'upscaled' horror directed at a group.

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## LUNCH BREAK

13h45 – 14h45

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## SESSION 3: Decolonialisation Then and Now

14h45 – 16h45

Chair: Christine Venter, Director, Legal Writing Program, University of Notre Dame.

### **From Apartheid to Democratic Policing: A return to the security state?**

Presenter: A/Prof Irvin Kinnes, Associate Professor, University of Cape Town

Discussant: Dr Mutuma Ruteere, Director, National Crime Centre in Nairobi, Kenya

Policing and police reform have faced several challenges since the end of apartheid and the advent of democratic policing in South Africa. In thirty years of democracy, the policymaking imperative for a new democratic state has shifted from 'high policing' to 'low policing' with the election of the first democratic government in South Africa. But thirty years after the advent of democracy, a new picture emerges from the trenches of policing. Despite the disputes and fissures prevalent between provincial and national government, especially in the Western Cape, a clear return to 'high policing' as envisaged by JP Brodeur and Jonny Steinberg, has emerged. The picture is replete with all the bells and whistles of a national policing department that is too weak to prevent and control violent crime, unable to pursue an effective policing policy, and a Western Cape Province and City that has increased its policing functions and operations by stealth. This includes functions of crime prevention, surveillance and crime combatting. In the face of low public trust in the national police, the growth of vigilante and mob justice, increasing group killings of suspects by police and non-cooperation between the City of Cape Town Metro police and SAPS, an ominous policing approach has re-emerged: return to the security state. This paper looks at the dichotomy between the two approaches and the relationship that has spawned a return to the security state as a result. The paper will examine policing policies and its application in communities to reduce violent crime and argues that the paralysis of the police leadership and political disputes has created the opportunity for the emergence of a return to a security state through policing.

### **Towards an African Criminology**

Presenter: Dr Lufuno Sadiki, Senior Lecturer, University of Cape Town

Discussants: Prof Onwubiko Agozino, Professor of Sociology, Virginia University of Technology (Online)

The on-going debate on decolonisation of knowledge across disciplines has primarily focused on the differences between the global North and the global South and calls on the dismantling of structures that places high regard for

Western systems over other knowledge systems, particularly African ones. Similarly, in criminology, the focus has been on the discipline's claim of universality and its genealogical links with colonialism, further exacerbating the disjunction between European and African views and explanation of crime and criminality. Without disregarding the differences in the knowledge systems inherent in the discipline, there is evidence of commonalities that may provide a more global perspective of crime and its sociological underpinning. The paper affirms the potential for incorporating African worldviews and knowledge systems to dismantle historical barriers of 'otherness.' By examining the principle of ubuntu, the gacaca courts in Rwanda, mato oput in Uganda and the traditional Igbo systems in Nigeria, the paper will demonstrate that traditional African systems remain relevant for crime control and harm prevention in Africa. The paper ultimately argues for a paradigm shift in criminology. It calls for moving beyond the prevalent critiques of Western criminological theories and advocates for a more inclusive, active, and collaborative engagement in developing criminological theory that reflects diverse perspectives. This includes building a body of knowledge that values African epistemologies, thereby enriching global criminological discourse. By doing so, the paper encourages a decolonisation of criminological thought and practice, positioning African systems not as 'other' but as integral to understanding and addressing crime in Africa and beyond.

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## CLOSING REMARKS

16h45 – 17h15

Prof Michael Addo, Professor of Law and Director of the London Law Programme,  
University of Notre Dame

Thanks: Dr Reema Nunlall-Hiralal, Senior Lecturer, Centre of Criminology,  
University of Cape Town

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Centre of Criminology PhD candidate Varsha Patel will act as note taker for each session.

Session format: 2 x 20 minutes presentations, 2 x 20 minutes discussant responses,  
40 minutes discussion from the floor.

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