

Institution: University of Nottingham
Unit of Assessment: 20
Title of case study: Strengthening the Capacity of National and International Criminal Justice Institutions to Investigate and Prosecute the Most Serious International Crimes
<p>1. Summary of the impact</p> <p>The capacity of national and international criminal justice institutions to investigate and prosecute the most serious international crimes has been significantly strengthened as a result of Professor Bekou's research. They gain, through 'legal tools', universal access to legal information and to analytical legal frameworks which facilitate the efficient and effective administration of international criminal justice. By offering access to knowledge, skills and expertise, the International Criminal Court as well as States, e.g. the Democratic Republic of the Congo (DRC) and Sierra Leone are empowered to overcome the key challenges restricting their ability and capacity to pursue justice for atrocities.</p>
<p>2. Underpinning research</p> <p>United behind a determination to end impunity, the International Criminal Court (ICC) was established in 1998, as a permanent institution with jurisdiction over individuals accused of genocide, crimes against humanity, war crimes and, eventually, aggression. The "complementarity" principle stipulates that the Court can only exercise jurisdiction if national courts are "unwilling" or "unable" to investigate or prosecute the listed crimes. Consequently, the ICC regime places great emphasis on the capacity of such courts to undertake prosecutions.</p> <p>The research undertaken by Olympia Bekou, (Lecturer, Associate Professor and Professor, in the School of Law, 2005-present), identifies the key challenges impeding the capacity to investigate and prosecute the most serious international crimes. The research uniquely uses new technologies to enhance such capacity and to facilitate better administration of criminal justice for atrocities. It involves research outputs in the form of academic publications and legal databases. Whilst all references below relate to research carried out at Nottingham, the Legal Tools Database [6a], besides having a distinct Nottingham component (NILD) has benefitted from collaboration with other partners. However, Bekou's input in the overall design, methodology and dissemination renders the Legal Tools Database a predominantly Nottingham output.</p> <p>First, the research identifies capacity issues that hinder the effective administration of justice. These are: difficulties in accessing information, lack of skills and expertise. These are then addressed by identifying how to bridge the gap between institutions in well-resourced and under-resourced jurisdictions so as to level the playing field in the investigation and prosecution of the most serious international crimes. [3] The research channels its findings in the creation of a free, online, publicly available legal information platform, the Legal Tools Database, which, for maximum outreach and dissemination, is hosted on the Court's official website (see www.legal-tools.org). This platform is then used to build national and international capacity [6a].</p> <p>Second, the research introduces a set of conceptual/analytical resources: (a) the Legal Requirements document, detailing the legal requirements of all crimes and modes of liability in the Statute of the ICC; (b) a bespoke metadata scheme (i.e. a taxonomy that determines the mark-up of documents and increases the quality of database searches); (c) a comprehensive keywords list which maps the discipline of international criminal law [2,4,6a]. In addition, the research devises a methodology to oversee serious international crimes cases and provides a framework for structured analysis of the way courts deal with facts, means of proof and evidence which the ICC has adopted, in the form of 'in-depth analysis charts', to improve its jurisprudence [5,1].</p> <p>Third, by also concentrating on two particular post-conflict states, the DRC and Sierra Leone, the research has produced a separate methodology for the prioritisation and documentation of open case files (DOCF), which has been adopted by the DRC government to tackle sex crimes and a set of 'best practices' on fair trial standards, which have been officially adopted by the Sierra Leonean government. Both these outputs have significantly enhanced compliance with international standards [6a and 6b].</p>

3. References to the research

1. Bekou, Bergsmo, 'The In-Depth Evidence Analysis Charts at the International Criminal Court', 2011, book chapter in Bergsmo (ed.), Active Complementarity: Legal Information Transfer in Criminal Justice for Atrocities, (TOAEP, 2011), ISBN 978-82-93081-55-5. Also available at: http://www.fichl.org/fileadmin/fichl/documents/FICHL_8_Web.pdf
2. Bekou, 'Data Structures and the National Implementing Legislation Database', 2011, book chapter in Bergsmo (ed.), Active Complementarity: Legal Information Transfer in Criminal Justice for Atrocities, (TOAEP, 2011), ISBN 978-82-93081-55-5. Also available at: http://www.fichl.org/fileadmin/fichl/documents/FICHL_8_Web.pdf
3. Bekou, Bergsmo, Jones, 'Positive Complementarity and the Construction of National Ability', 2011, book chapter in Stahn (ed.), The International Criminal Court and Complementarity: From Theory to Practice (Cambridge University Press, 2011) [available on request]
4. Bekou, Bergsmo, Jones, 'New Technologies in Criminal Justice for Core International Crimes: The ICC Legal Tools Project', 2010, Journal Article, Human Rights Law Review 10:4(2010), pp. 715-729 [DOI:10.1093/hrlr/ngq042]
5. Bekou, Bergsmo, Jones, Preserving the Overview of Law and Facts: the Case Matrix', 2010, book chapter in Smeulers (ed.), Collective Violence and International Criminal Justice, (Intersentia, 2010), pp. 413-435 [available on request]
6. Legal Databases: 27 April 2009 – present: **a)** Legal Tools Project: www.legal-tools.org; and **b)** 'Best Practice Guide' on how to improve fair trial standards in criminal trials in Sierra Leone, entitled: 'Bridging the Gap: Ensuring the Lasting Legacy of the Special Court for Sierra Leone and the Truth and Reconciliation Commission' available at: <http://nottingham.ac.uk/hrlc/documents/projects/summaries/bpgfinalfull.pdf>

(Some of the outputs have intentionally been placed with open-access peer-reviewed publishers, to be accessible for beneficiaries who have no access to proprietary resources. Their frequent citation by other scholars is testament to their quality).

GRANTS:

- International Criminal Justice Unit, HRLC (led by Bekou), 'Creation of an International Criminal Court Statute National Implementation Database', The Government of Switzerland, June-November 2006, **USD 10,000**
- International Criminal Justice Unit, HRLC (led by Bekou), Database of National Implementation Legislation of the ICC Statute, The Canadian Department of Foreign Affairs and International Trade, February - March 2007, **CAD 19,142**
- Bekou, Hunter, University of Nottingham Knowledge Transfer and Innovation Award, University of Nottingham, June 2008-March 2009, **GBP 24,057**
- Bekou, CAS Research Development Funds: "Translating Legal Cultures: Using Technology to Fight Impunity", Centre for Advanced Study, University of Nottingham, 26 April 2010- 30 October 2010, **GBP 5,214.13**
- Bekou, FCO's Human Rights and Democracy Programme: "Bridging the Gap - Ensuring Lasting Legacy of the Truth and Reconciliation Commission and the Special Court for Sierra Leone", Foreign and Commonwealth Office, July 2011 – March 2012, **GBP 84,666**
- Case Matrix Network (represented by Bekou, Utmelidze), Documentation of Open Case Files (DOCF) DRC database, UNOPS, 2 May – 30 September 2011, **USD 40,192.50**
- Legal Tools Trust Fund, N/A: Contributions by the EU Austria, Canada, Finland, Germany, the Netherlands, Norway and Sweden, 2008- present: **EUR 424,500**

A variety of smaller grants obtained from within the University: (approx.) **GBP 12,000**

4. Details of the impact

Since 2008, Bekou's research has significantly strengthened the capacity of International Criminal Justice Institutions (the ICC) and States (investigators, prosecutors, judges, defence lawyers, legislation drafters, ministries) dealing with the most serious international crimes. The distinctive significance of the research is that it tackles the key challenges by:

- 1) providing global access to legal information;
- 2) facilitating the transfer of legal knowledge, expertise and skills through appropriate analytical and methodological frameworks, and

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3) enhancing capacity in post-conflict States.

First, the capacity of national and international criminal justice institutions is significantly empowered through free, universal access to legal information. Bekou's electronic knowledge platform (www.legal-tools.org), offers an expansive library of legal documents and a range of research and reference tools. 42,000 users from over 150 countries access the 67,000 documents currently on the database each month [B]. A letter sent to all ICC State parties by the ICC Prosecutor (2011) recognises that the Legal Tools "has become the leading resource for legal information on core international crimes"[C]. Given that such legal information is not normally available free of charge, under-resourced jurisdictions are usually precluded from accessing it, thereby significantly lacking in capacity. The fact that the Legal Tools tackles this key challenge has been recognised by numerous States. In its official address to the ICC Assembly of States Parties (ASP), Finland (2012) noted that the Legal Tools "provid[e] equal access to legal sources, which lies at the heart of the complementarity challenge"[G]. Austria (2008, 2009), Denmark (2012), Finland (2009, 2011, 2012), the Netherlands (2011), Norway (2011, 2012) and Romania (2012), acknowledge the Legal Tools' value and "significant contribution" to building national capacity through extensive references in their official statements at the United Nations and the ASPs [F,G]. Finally, in the 2012 *Mbarushimana* decision, (ICC-01/04-01/10-OA-4, fn.79, 84, 86) the ICC Appeals Chamber started using the Legal Tools methodology in all its citations [A]. In its official statement in the 2012 ASP, Norway (commenting on this development) stated that "this attests to the reliability of this database and makes the sources cited immediately available to all readers who have access to the internet"[G]. Besides this universal reach, the analytical frameworks developed alongside the raw data [6],[C,F,G] facilitate increased compliance with the ICC regime. Romania (2012) [G] observed that 'it leads towards an effective universality of the Rome Statute'. The significance of NILD, the Nottingham-developed legal tool for drafting national legislation (used also by Samoa for the drafting of its legislation) has been recognised by the ASP Cooperation Working Group. In its 2012 report (paras. 9,10,13), the Group formally requested its future expansion [2],[D]. Since 2009, the 122 State Parties to the ICC, in Resolutions adopted by consensus at the end of each ASP session (2009, para.36; 2010, para.48; 2011, para.63; 2012, para.10), have repeatedly highlighted the value of the Legal Tools, recognising their "significant contribution [...] to the promotion of international criminal law and justice and thus to combating impunity" [3],[H].

Second, the methodology developed by Bekou has changed the way in which serious international crimes cases are organised, presented and disclosed before the ICC [1,4,5]. The ICC adopted this methodology when it held in *Bemba*: "Each piece of evidence must be analysed -page by page or, where required, paragraph by paragraph- by relating each piece of information contained in that page or paragraph with one or more of the constituent elements or one or more of the crimes with which the person is charged, including the contextual elements of those crimes, as well as the constituent elements of the mode of participation in the offence with which person is charged" [1,4,5],[A]. Since 2008, nine ICC decisions have adopted this approach (in the *Bemba*, *Katanga*, *Muthaura* and *Ruto* cases), which has been found to enhance: (i) the efficiency of the criminal justice process and (ii) protection of the rights of the accused [A,E]. The ICC President acknowledged in 2009 that this legal tool 'mak[es] the review of evidence more efficient and enable[es] the judges to organise the presentation of evidence in an expeditious manner' [E].

Third, in 2011-3 the research provided resources that led to improvements in sex crimes prosecutions in the DRC and an increased observance of fair trial standards in Sierra Leone. In DRC, the Minister of Justice (MoJ) adopted the Nottingham developed 'DOCF', [6a],[J] and piloted it in two regions. In 2012, the MoJ decided to expand its use to a third region with DOCF gaining first place in 2013 regarding the price/quality correlation as a coordination tool. More than 350 cases have been mapped as a result and for the first time the MoJ has an accurate overview of (a) the number of open case files involving sex crimes; (b) the stage of the criminal process; (c) the approximate number of suspects; and (d) the alleged criminal incidents. The National Coordinator for Sexual Violence confirms that since November 2011, DOCF has enabled them to determine (i) the anticipated number of pre-trial, trial and appellate proceedings; (ii) the distribution of case files between different courts and geographical regions; (iii) the extent to which the current case-load will address incidents during the armed conflict; (iv) which procedural reforms should be

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considered to increase national capacity; and (v) to identify which, if any, alternative measures are required. [6a],[J].

In Sierra Leone, the Best Practice Guide (BPG) [6b] was adopted by the Special Court for Sierra Leone as a completion strategy initiative. In a speech endorsing the BPG, the President of the Special Court stressed that 'its usefulness[...] can never be overstated' and that it infuses 'life[...] in [the Sierra Leonean] out-dated criminal statutes' [1a]. As evidenced by the Project report endorsed by the Foreign and Commonwealth Office [1b], the BPG has also been endorsed by the Ministry of Justice, the Chief Justice, the Director of Public Prosecutions and through a Knowledge Transfer Exercise, reached 197 law and policy stakeholders. The BPG was most readily absorbed by all 17 High Court Judges who, since February 2012, use it particularly regarding delays and disclosure. It has also been incorporated in the training syllabi of the Police Prosecution Service, the Law Society and Bar Association, and adopted by the Pilot National Legal Aid Scheme for use by paralegals and lawyers, significantly increasing fair trial compliance [1b].

5. Sources to corroborate the impact

- A.** 080731 ICC Pre-Trial Chamber III Bemba, 'Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties'; 081110 ICC Pre-Trial Chamber III Bemba, 'Decision on the Submission of an Updated, Consolidated Version of the In-depth Analysis Chart of Incriminating Evidence'; Ibidem, Annex; 090313 ICC TC II Katanga, 'Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol'; Ibidem, Annex; 100129 ICC TC III Bemba, 'Decision on the In-Depth-Analysis Chart'; 110421 ICC PTC I Mbarushimana, 'Decision on Disclosure'; 110502 ICC PTC II Ruto et al., 'Decision on Regime for Evidence Disclosure'; 110502 ICC PTC II Muthaura, 'Decision on Regime for Evidence Disclosure'. See also Prosecutor v. Mbarushimana, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012.
- B.** E-mail showing numbers of hits and countries where hits originate from.
- C.** http://www.casematrixnetwork.org/uploads/media/111006_Letter_from_ICC_Prosecutor_on_Legal_Tools_Database.pdf
- D.** Report of cooperation working group: http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-28-ENG.pdf paras. 9, 10 and 13.
- E.** http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/Statements/ICC-ASP9-statements-SangHyunSong-ENG.pdf
- F.** <http://www.norway-un.org/Statements/Committee-Meetings/C6-Report-of-the-International-Criminal-Court/> ; <http://www.un.org/News/Press/docs/2011/ga11163.doc.htm>
- G.** http://www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Finland-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/library/asp/ICC-ASP-ASP7-GenDebe-Austrian-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Finland-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Austria-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Finland-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-TheNetherlands-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Statements/ICC-ASP10-GenDeba-Norway-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-DEN-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-FIN-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-NOR-ENG.pdf; http://www.icc-cpi.int/iccdocs/asp_docs/ASP11/GenDeba/ICC-ASP11-GenDeba-ROM-ENG.pdf
- H.** http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.3-ENG.pdf para. 36; p http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-9-Res.3-ENG.pdf, para. 48; http://www.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.5-ENG.pdf, para. 63; http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP11/ICC-ASP-11-Res6-ENG.pdf para. 10
- I. a.** SCSL president's speech on the significance of the 'Best Practice Guide' for Sierra Leone; **b.** Bridging the Gap: Project report endorsed by the UK Foreign Office. [both available on request]
- J.** Reference from Mr Papy Ndongoboni Nsakoy, National Coordinator for Sexual Violence, DRC Ministry of Justice.