

'Africa must try its own criminals'

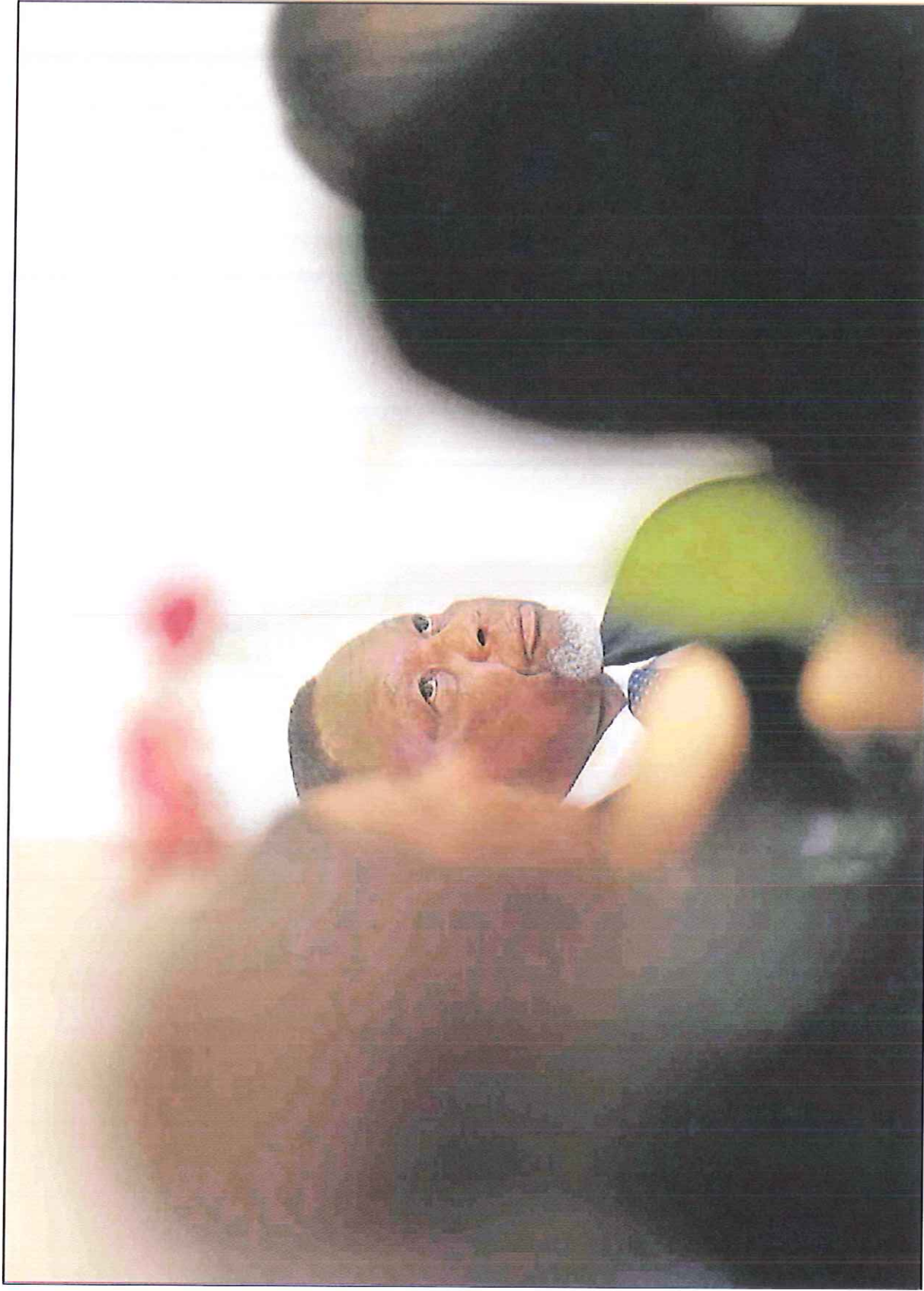
AFRICA needs its own court with the same powers as the International Criminal Court to try perpetrators of war crimes, among others, Deputy President Kgalema Motlanthe said yesterday.

Delivering a public lecture at the University of Pretoria, Motlanthe said the court would not replace the ICC but would fill the void beginning to emerge between what the ICC was intended for and what it was turning out to be in the eyes of African leaders. He said this could be done by extending the powers of the African Court on Human and People's Rights.

Motlanthe said cases of Western superpowers committing human rights violations were never brought to the ICC. "Particularly concerning for many African nations are apparent double standards on display when powerful Western nations commit the same political crimes for which African leaders are prosecuted," he said.

Political and legal expert Professor Shadrack Gutto said: "At heart is the fact that international crimes only cover individuals and not corporations that are causing harm in African populations ... if successful, the African court would also cover corporate crimes." — *Sipho Masombuka*

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FRESH PERSPECTIVE: Deputy President Kgalema Motlanthe at the University of Pretoria where he gave a public lecture yesterday arguing for the establishment of an African war crimes court. He highlighted the bias against Africa by the International Criminal Court. Picture: SYDNEY SESHIBEDI

Motlanthe calls for 'African Court'

KENNEDY MUDZULI

AFRICA needs its own court, vested with universal jurisdiction over genocide, crimes against humanity and war crimes.

The International Criminal Court (ICC) is an indispensable international judicial organ, but it could best serve African judicial interests in the context of a complementary court.

This is according to outgoing

Deputy President Kgalema Motlanthe, who was delivering a public lecture at the University of Pretoria yesterday.

The lecture was part of celebrating 15 years of the Master's programme in Human Rights and Democratisation in Africa, and was hosted by the law faculty.

"Parenthetically, at present an African court on human and people's rights exists with jurisdiction over all cases and

disputes submitted to it concerning the interpretation of the African Charter on Human and People's Rights, the protocol and any other human rights instruments ratified by it," said Motlanthe.

"Our contention is that this court should incorporate the three international crimes of genocide, crimes against humanity and war crimes. The African Court is not envisaged as a substitution of the ICC. Instead, it is an initiative

necessitated by the challenges that seem to impair the efficacy of the ICC with regards to the African situation."

Motlanthe said the African Court would fill a void in the widening gulf beginning to emerge between what the ICC was intended for and what it was turning out to be in the eyes of its African detractors.

On issues of international crimes in Africa, Motlanthe said

such a court would be able to refer matters to the ICC when it experienced innate limitations or where, in the context of its relationship with the ICC, it is ideal to do so in the interest of justice.

"The African Court should be so structured that in the event the victims feel thwarted in their efforts for justice, they can proceed to petition the ICC on their own accord."

Motlanthe said the ICC had prosecuted more cases from Africa than any other part of the world, but some would say there had equally been cases that it could, but did not, prosecute. "Relations

between the ICC and the AU took a turn for the worse when the ICC decided to charge President Omar al-Bashir of the Sudan.

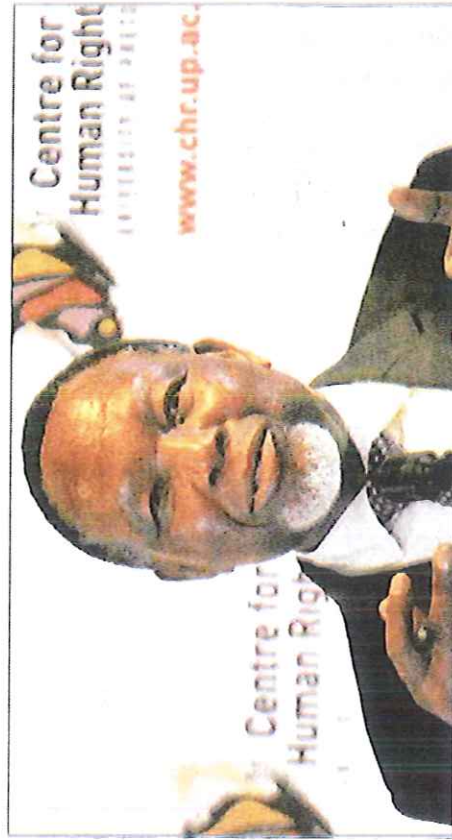
"What made matters worse was the ICC took this action at a time that the AU was involved in a peace process in the Sudan, therefore fearing that threats of indictment would only compound an already brittle political situation.

Particularly concerning are the apparent double standards when powerful Western nations commit the same political crimes for which African leaders are prosecuted... UN members must be held accountable the same as Africans."

Motlanthe used the case of the Convention for a Democratic South Africa. "Imagine a scenario where the ICC insisted on charging all the key players to the apartheid conflict purely on legalistic grounds, disregarding the historical conditions at play before 1994.

"The simplistic legalistic approach may mete out justice but not guarantee long-term national reconciliation."

Motlanthe said South Africa supported international criminal tribunals working on African situations, and the work of the AU to develop a criminal jurisdiction for the African Court.



OUTSPOKEN: Deputy President Kgalema Motlanthe delivers a public lecture at the University of Pretoria.
PICTURE: OUPA MOKOENA

MOTLANTHE SUGGESTS SOLUTION TO TENSIONS WITH ICC

Africa court should hear international crimes

Sapa

JOHANNESBURG: The International Criminal Court (ICC) is an indispensable judicial organ that should complement the AU's African Court on Human Rights, says Deputy President Kgalema Motlanthe.

In a speech prepared for delivery at the University of Pretoria yesterday, Motlanthe said: "My thesis is that Africa needs its own court, vested with universal jurisdiction over the three core international crimes of genocide, crimes against humanity, and war crimes."

The jurisdiction of the African Court on Human

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Rights, or African Court, was limited to the interpretation of the African Charter on Human and Peoples' Rights, and other human rights instruments the AU had ratified.

Motlanthe said the African Court should also have the powers to hear cases involving the three international crimes of genocide, crimes against humanity, and war crimes.

"What is worth noting about this proposition is that the African Court is not envisaged as a substitution for the ICC.

"Instead, it is an initiative necessitated by the challenges that seem to impair the efficacy of the ICC with regard to the African situation."

The African Court could fill such a void, given the gulf that was beginning to emerge between what the ICC was intended to be and what it was turning out to be in the eyes of its African detractors and many in the developing south.

"Such a court would be able to refer matters to the ICC in cases where it experiences innate limitations or where, in the context of its relationship with the ICC, it is ideal to do so in the interests of justice."

The African Court should be structured in a way that allowed victims who felt thwarted in their efforts to get justice to turn to the ICC.

"As an international tribu-



KGALEMA MOTLANTHE

nal, the ICC is charged with the responsibility of throwing the book at perpetrators of mass commission of crimes against

ception that the ICC is biased against Africans."

Some Africans had pointed out several cases that had occurred outside their continent and on which the ICC could have set its judicial sights, but inexplicably had not done so.

This criticism had been endorsed by the AU, giving the matter political gravitas. It provided grounds to re-imagine a judicial scenario that could respond to the needs of ordinary Africans seeking justice.

"For a start, I would argue that in modern history any understanding of international institutions of governance cannot succeed until it takes into

account the prevailing meta-context - by which I mean the character of geopolitical power relations."

Power came in two forms - hard and soft. Hard power was characterised by raw aggression typified by the saying "survival of the fittest", while soft power was often a nuanced and considered nudging of the world into particular directions.

"In either case the ultimate object of wielding power is to serve the interests of the powerful, the global hegemons," Motlanthe said.

"Further, it is a fact that at this point in history the West, meaning developed nations of Europe and North America,

are perched at the commanding heights of global power."

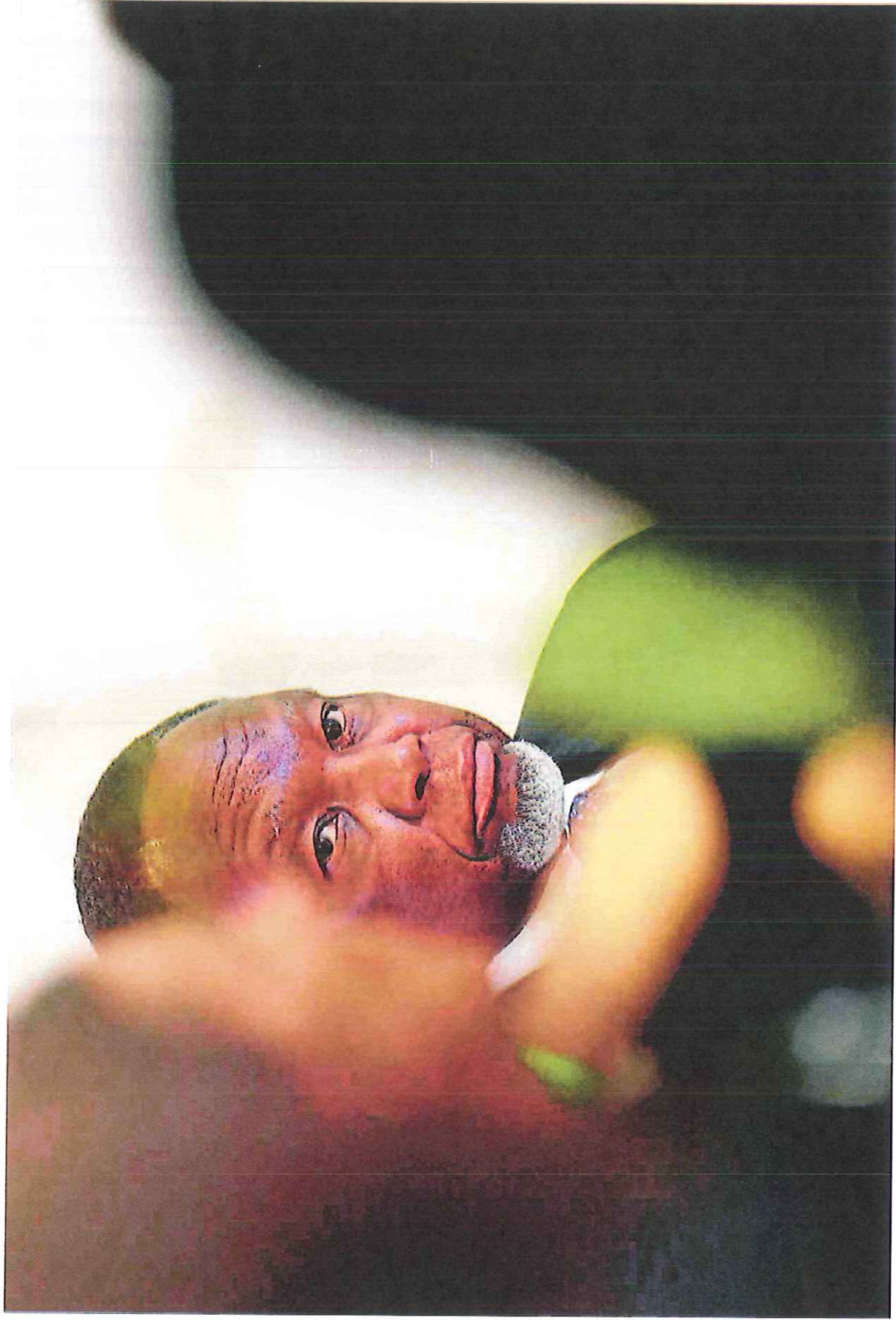
The lived reality was that Western political norms constituted the matrix from which the rest of the world derived its shape.

"In this way the ethos of the powerful global forces is universalised as naturally beneficial to the international community."

"History is depicted as unidirectional, going against which is not only disastrous to one's interests but to those of humanity at large."

As a result, the ICC was beginning to be seen as a transnational legitimisation of hegemony

BATTING FOR AFRICA



Deputy President Kgalema Motlanthe in the Conference Centre at the University of Pretoria where he gave a public lecture in which he argued for the establishment of the African Court and highlighted the bias against Africa by the International Criminal Court

Picture: THE TIMES

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Motlanthe: African Court would fill void

PERSPECTIVE: ICC SEEN AS BIASED AGAINST AFRICAN NATIONS

» The court will deal with issues specific to the continent.

The International Criminal Court (ICC) is an indispensable judicial organ which should complement the African Court on Human Rights, Deputy President Kgalema Motlanthe said yesterday.

Speaking at the University of Pretoria, Motlanthe said: "My thesis is that Africa needs its own court, vested with universal jurisdiction over the three core international crimes of genocide, crimes against humanity, and war crimes."

The African Court on Human Rights (African Court) already existed, but its jurisdiction was related to the interpretation of the African Charter on Human and Peoples' Rights, and other human rights instruments it had ratified.

Motlanthe said the African Court therefore should also incorporate the three international crimes he had pointed out.

"What is worth noting about this proposition, however, is that the African Court is not envisaged as a substitution for the ICC," he said.

"Instead, it is an initiative necessitated by the challenges that seem to impair the efficacy of the ICC with regard to the African situation."

The African Court would fill such a void, given the widening gulf that was beginning to emerge between what the ICC was intended to be and what it was turning

out to be in the eyes of its African detractors and many in the developing south.

"Such a court will be able to refer matters to the ICC in cases where it experiences innate limitations or where, in the context of its relationship with the ICC, it is ideal to do so in the interests of justice."

Motlanthe said the African Court should be structured in such a way that if the victims felt thwarted in their efforts for justice, they could take the matter up with the ICC of their own accord.

"As an international tribunal, the ICC is charged with the responsibility to throw the book at perpetrators of mass commission of crimes against humanity, war crimes, and genocide," Motlanthe said.

"There has been restlessness from many African nations prompted by the perception that the ICC is biased against Africans."

Some Africans had even pointed out a few cases outside the

African continent where the ICC could have set its judicial sights but inexplicably had not.

Such accusations had been met with the formal endorsement of the African Union, giving the matter political gravitas.

Such accusations against the ICC provided the necessary and sufficient grounds to re-imagine a judicial scenario which could respond to the needs of ordinary Africans seeking justice.

"For a start, I would argue that in modern history any understanding of international institutions of governance cannot succeed until it takes into account prevailing meta-context," said Motlanthe.

"By which I mean the character of current geo-political power relations."

"In either case the ultimate object of wielding power is to serve the interests of the powerful, the global hegemon," he said.

The ICC was beginning to be seen as a transnational legitimisation of hegemony. — Sapa.

The African Court is not envisaged as a substitution for the ICC

Kgalema Motlanthe
Deputy President

Motlanthe pleit vir Afrika se eie strafhof

Michelé O' Connor

KAAPSTAD. – Afrika moet, ondanks die vasteland se ondersteuning van die internasionale strafhof, sy eie soortgelyke hof hê.

Dié hof moet veral op gevalle van volksmoord, oorlogsmisdade en misdade teen die mensdom konsentreer, het adj.pres. Kgalema Motlanthe gesê.

Hy het gister in 'n lesing oor menseregte in Afrika aan die Universiteit van Pretoria sy ondersteuning aan só 'n hof gegee.

Volgens hom sal 'n eie strafhof vir Afrika reeds in September vanjaar op samesprekings tussen verskeie Afrikalande op die sake-

lys wees.

Hy stel nie voor dat 'n strafhof in Afrika die plek van die internasionale strafhof inneem nie.

“Dié Afrika-hof sal steeds sake na die internasionale hof moet kan verwys. Slagoffers van misdade wat in Afrika gepleeg is, moet die reg hê om na die internasionale strafhof te appelleer indien hulle glo dat die Afrika-hof nie reg laat geskied het nie,” het Motlanthe verduidelik.

Hy het bygevoeg dat daar 'n beskouing is dat die internasionale strafhof bevooroordeel teen Afrika is en dié beskouing word nou ook deur die Afrika-Unie ondersteun.

“Die internasionale hof word meermale van selektiewe vervolging van Afrika-leiers beskuldig. 'n Soortgelyke hof in Afrika kan dié beskouing verander.”

Volgens Motlanthe is aanvanklik aangevoer dat die strafhof ook sake oor korrupsie, terrorisme en ondemokratiese bewindsoornames moes verhoor.

'n Buitengewone kommissie van ondersoek het egter beslis dat die Afrika-hof aanvanklik net op die drie belangrikste internasionale misdade, volksmoord, oorlogsmisdade en misdade teen die mensdom, moet konsentreer.

“Onderhandelinge om ander misdade in die hof te verhoor, sal



Adj.pres. Kgalema Motlanthe

in September voortgesit word,” het hy gesê. Motlanthe het bygevoeg dat die hof, sodra dit ingestel is, deur die 15 lidlande van die AU ondersteun sal word.

Die hof sal waarskynlik as die Afrika-hof vir Mense en Menseregte bekend staan.