

Extract from

**IN THE INTERESTS OF JUSTICE?
PROSPECTS AND CHALLENGES FOR INTERNATIONAL
JUSTICE IN AFRICA**

INTERNATIONAL REFUGEE RIGHTS INITIATIVE

**CONCLUSION:
TOWARDS AN AGENDA FOR ACTION**

The potential of international justice to contribute to combating impunity and promoting peace in Africa is clear. This report has offered a preliminary review of the highlights of the impact of international justice in Africa, while acknowledging the shortcomings of the principle mechanisms. As the space occupied by international justice in Africa expands and the venues

"...in the end, we remain satisfied that the genocide in Rwanda was an aberration, that killers are made, not born, and that such tragedies need never happen again. It is in the world's hands to make sure that it will never happen again."

Rwanda: the Preventable Genocide
International Panel of Eminent Personalities

where redress can be sought for human rights violations multiply, however, it is clear that it is time for a more thorough stocktaking of the work international justice and its prospects. There are a large number of unresolved questions about how international justice is promoted, received and operates, suggesting the need for a more coordinated approach and the creation of a broader, critical constituency for international justice on the continent.

Among practitioners and academic experts in Africa there is increasing preference for the adoption of a broad, multi-dimensional, restorative conception of justice, including elements such as peace, reconstruction, victim protection and participation, over the retributive conception often perceived as favoured by the broader international community.¹ Re-conceiving the concept of justice in this way tends to render the juxtaposition of peace and justice a false dichotomy. Recognition of the socio-economic and political contexts within which international justice unfolds is also an aspect of this re-conceptualisation.² Such a broader understanding of justice may also be helpful in conflict prevention programmes.

¹ Conference report, "International Justice in Africa: Prospects and Challenges," Kampala, July 17, 2008, available from International Refugee Rights Initiative.

² See Dani Wadada Nabudere, "Comprehensive Research Report on Restorative Systems of Justice and International Humanitarian Law," Marcus-Garvey Pan-Afrikan Institute, June 2008.

A Role for Civil Society

African civil society is both willing and able to engage with international justice. Civil society have been actively involved in the promotion and entrenchment of justice mechanisms on the continent, including the Coalition for the ICC (CICC), the Coalition for an Effective African Court on Human and Peoples Rights (the African Coalition) and the Taylor and Habré campaigns. The CICC is a global network of over 2,500 NGOs. Headquartered in New York and the Hague, it played a key role in the creation of the ICC and continues to undertake coordinated advocacy on a number of ICC issues, notably the ratification and domestication of the Rome Statute. The African regional division of the CICC boasts 21 members, more than any other regional coalition.

The African Coalition has played a similarly significant role with respect to the African Court on Human and Peoples Rights (now encompassed within the African Court of Justice and Human Rights), in particular working to ensure the 2004 entry into force of the protocol creating the Court on Human and Peoples Rights. Members of the coalition have also provided technical assistance to the ACHPR as it negotiated its relationship with the Court and have made influential written interventions at AU summits on decisions affecting the Court's functioning, including the elaboration of guidelines on the nomination and election of judges and ensuring that the human rights component of the new merged court was not undermined.

The work of the Taylor and Habré campaigns has been no less effective than that of the coalitions. The lobbying of the Campaign Against Impunity, a coalition of over 300 African and international civil society groups formed to press for Charles Taylor's surrender to the SCSL, was an instrumental aspect of Liberian President Ellen Johnson-Sirleaf's decision to request that Nigeria surrender Taylor. Similarly, Hissène Habré would likely never have been brought to justice without the work of civil society. It was the Chadian Association for the Promotion and Defence of Human Rights, along with seven of Habré's Chadian victims and with the support of the Dakar-based Rencontre Africaine pour la Défense des Droits de l'Homme and Human Rights Watch, that filed the initial 2000 complaint in a Dakar court accusing Habré of torture, barbarous acts and crimes against humanity. Civil society has also conducted outreach work around the ICC, supported OTP investigations by providing information and evidence and continues to advocate for the ratification and domestication of the Rome Statute.

Among the issues that might be considered in a civil society agenda for research, monitoring and advocacy around international justice in Africa are:

Building and strengthening an African constituency for international justice: One of the findings of the review is that outsiders have dominated the discourse on international justice in Africa. There is a need to mainstream conceptual/analytic and activist African perspectives on international justice. This could be accomplished by promoting and disseminating work by African academics and activists and capacity building with African students, practitioners and activists on issues of international justice. Both the network of east African international law lecturers working towards the incorporation of international criminal law in all law faculties of east Africa and the proposed Open University of Tanzania international criminal law centre in Arusha are promising in this regard. More broadly there is a need for more effective and consistent information sharing between institutions and individuals

working on international justice on the continent. This could be accomplished by promoting dialogue and information sharing on-line, through list serves and at workshops and conferences targeting key actors.

Leveraging the completion and legacy strategies of the *ad hoc*s: The outreach being undertaken by the ICTR and the SCSL around completion strategies presents an opportunity to encourage African states to partake in the legacy of the Tribunals. A civil society coalition has coalesced around a campaign to have the records and archive of the ICTR remain in Africa. How the management of the legacy of the ICTR might help support the practice of international justice more broadly on the continent could be explored. There might also be a particular effort to share the experience of the SCSL with those devising the Special Chamber for Burundi and support for advocates from Sierra Leone and Rwanda to exchange experiences of interaction with the Tribunals.

Strengthening the capacity of national justice systems: International justice is selective in focus and suffers significant shortcomings in the quality and scope of justice it delivers. Any strategy for its effective deployment must therefore include support for complementary national justice mechanisms, a prerequisite for dealing with the real and historical causes of conflict in the effort to achieve sustainable peace. A commitment to international justice should include investment in national justice systems, including appropriate engagement with law reform, otherwise it risks drowning under the weight of expectations it cannot fulfil. The winding down of the *ad hoc* tribunals and the expansion of the reach of the ICC on the continent may be opportunities to promote the legal framework and capacity building required at national level for African states to better participate in international justice. Further, support for the domestic incorporation of the Rome Statute and other key treaties such as the CAT – through the conduct of compatibility exercises and the dissemination of model legislation (such as that developed for the Rome Statute under the guidance of SADC) – should be encouraged.

Promoting the expansion and utilisation of universal jurisdiction: Where appropriately deployed, universal jurisdiction can be a powerful tool. African states are parties to treaties permitting and, in some cases, requiring, the exercise of universal jurisdiction but provision to operationalise the principle at national level is weak. Further to a survey of the state of provision for universal jurisdiction in African states, national and regional level campaigns to promote the incorporation of universal jurisdiction principles could be undertaken, including through the promotion of regional instruments such as the Great Lakes Pact's Protocol on the Prevention and Punishment of the Crime of Genocide, War Crimes and Crimes Against Humanity.

Activating the international justice responsibilities of the AU: Despite the “total rejection of impunity” which has been embraced at a political level by the AU Assembly, the lack of condemnation of serious violations of human rights on the continent and continued escalation of conflicts and instability calls into question the real commitment of Africa's leaders. There is an opportunity for civil society to engage more consistently on international justice questions with the AU. This might take the form of:

- Developing timely and coordinated policy responses to AU decision making on international justice, for example in relation to the AU position on the use of Article 16 in the Darfur case or the AU statement on universal jurisdiction adopted at its July 2008 summit in Sharm-el-Sheik.

- Monitoring emerging situations on the continent where impunity is driving insecurity and conflict (e.g., Kenya and Somalia) and formulating recommendations on accountability issues for presentation to key AU organs, from the Peace and Security Council to the Panel of the Wise.
- Developing and promoting an operational understanding the principle of R2P as expressed in the AU Constitution and pursuing a strategy for enforcing its requirements.³
- Devising and conducting ratification campaigns for key treaties which incorporate international justice principles and mechanisms, particularly the Rome Statute and relevant regional instruments.
- Planning a series of presentations and engagements with the PAP on international justice questions including through galvanising the input of sub-regional parliamentary groupings such as the Consultative Committee on Darfur.
- Engaging the Panel of the Wise.

Monitoring the impact of international justice in ICC situation countries: Critical assessment of the ICC's work in Africa is vital for the future of the Court. Whether a state is hostile or broadly supportive of the investigation, there are a host of options for the ICC in planning outreach and conducting its investigation and trials which can produce a variable range of short and long term impacts, from deterrence to capacity building for the local justice system. A framework for monitoring the impact of the cases across a set of core issues could be drawn up and regularly assessed. If appropriate in terms of advancing the interests of justice, a campaign could be launched for the ICC to exercise its facility to sit, or at least hear part of a case, in the region. In particular, understanding the impact of the Darfur referral to date, whether in terms of the prospects of achieving accountability or contributing towards creating a just peace, will be important in guiding how the Rome Statute's Article 13(b) referral power might be used more effectively and appropriately by the UN Security Council in the future.

Ensuring that international justice is accountable to victim communities: The complexity and depth of victim community concerns and interests in international justice efforts are often not sufficiently taken into account. There is a need for focus and sustained research and advocacy around the following issues:

- Witness protection.
- Outreach to victim groups and communities ensuring exchange of experiences about international justice processes affecting them.

³ International Refugee Rights Initiative, "Some Reflections on the Legal and Political Mechanisms Bolstering the Responsibility to Protect: The African Union and the Great Lakes, Eastern, Southern and Horn of Africa Sub-Regional Arrangements," <http://www.refugee-rights.org/Publications/2008/R2P%20RECs%20Discussion%20paper.102108.pdf>, accessed November 2, 2008.

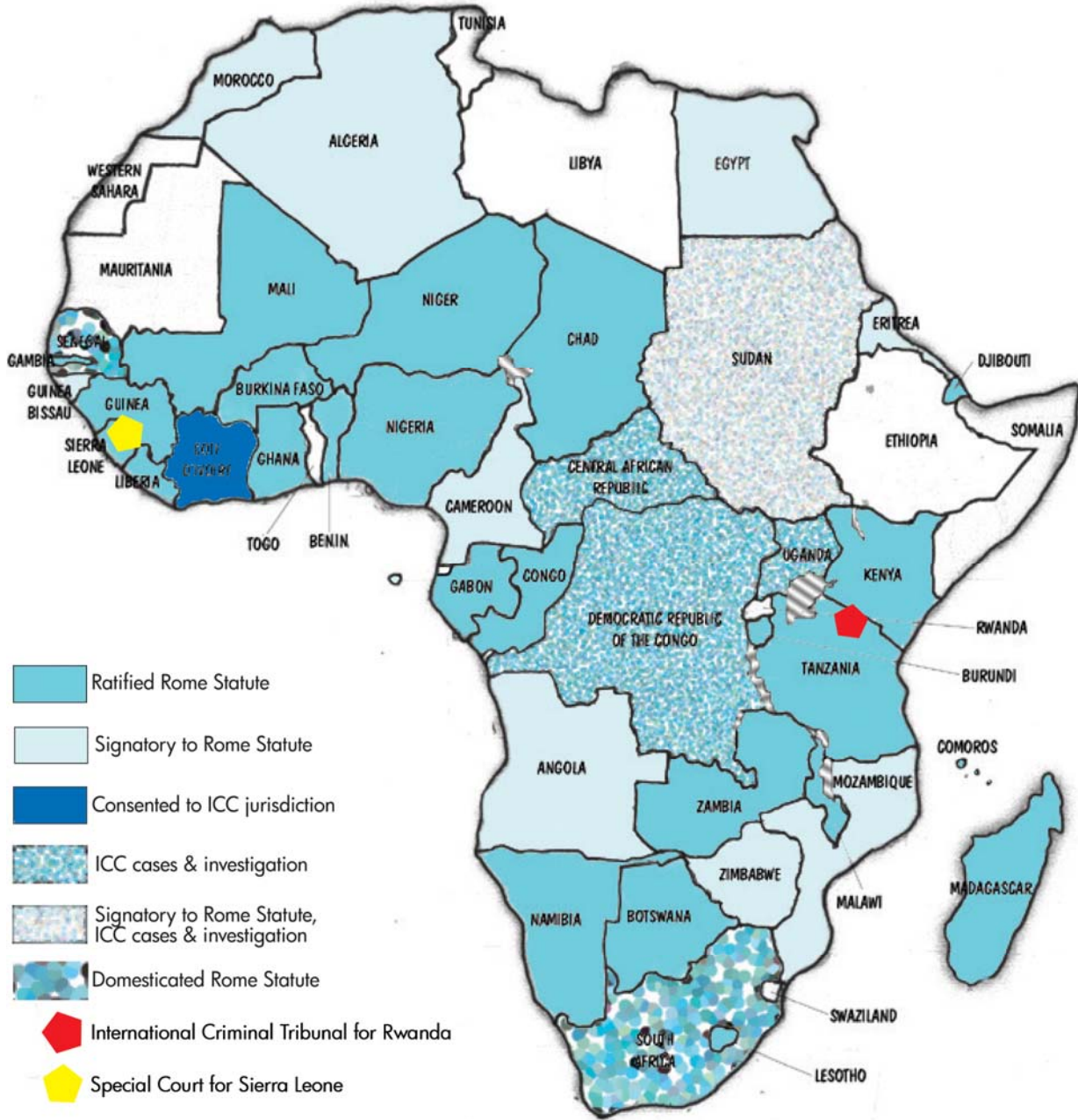
- Supporting the building of capacity within victim communities to engage with international justice, including participation in trials.
- A renewed focus on restorative elements of justice, including payment of reparations to victims and assistance with the post-conflict reconstruction of victim communities.

Developing a programme of research and monitoring on international justice in Africa: There are a number of questions around international justice on the continent that deserve further research. As part of this work, an African international justice legal experts group could be constituted to reflect on the findings of the research and make the juridical assessments to underpin future campaigns.

- Is there a more effective way international justice can be employed to tackle gender-based crime on the continent?
- Should an African regional criminal jurisdiction be constituted? The suggestion that there is an “African context” for which a special justice mechanism could be fashioned and that there is an “African justice” which can have a differential impact echoed throughout discussions of the Habré case. Although ultimately the AU Assembly did not pronounce on the recommendation, the CEAJ did suggest the establishment of an African regional jurisdiction at the new merged African Court. To what extent would such a jurisdiction, whether at the regional or sub-regional level, be duplicative of, or complementary to, the work of the ICC?
 - There is also potential for the sub-regional institutions to consider adopting international justice functions where appropriate and where they are not duplicative of other mechanisms. The legal professional organisations attached to the NGO fora for the sub-regional organisations might be encouraged to examine this possibility.
- Is there a need to consider the extension of criminal responsibility for international crime beyond natural persons to “other legal entities” as suggested by the legal experts of the Cairo principles and in context of the economic and environmental roots of much of Africa’s conflicts?⁴ SADC states during the Rome Statute negotiations had proposed that the ICC should also have jurisdiction over legal persons such as corporations.
- How can strategic use of human rights mechanisms bolster efforts to ensure criminal accountability?
- What is the appropriate role of African peacekeeping forces and missions in supporting international justice mechanisms?
- Taking into account its problematic impact to date on protection of human rights, can the focus of African states on developing anti-terrorism programmes through coordinated work at the AU level be used to promote the incorporation of international justice principles and mechanisms?

⁴ The Cairo-Arusha Principles on Universal Jurisdiction in Respect of Gross Human Rights Offences: An African Perspective,” Principle 2.

Map of International Justice in Africa



About the International Refugee Rights Initiative

The International Refugee Rights Initiative (IRRI) was founded in 2004 to enhance the protection of the rights of the forcibly displaced worldwide. IRRI grounds its advocacy in the rights accorded in international human rights instruments to those who are forced to flee and strives to make these guarantees effective in the communities where the displaced and their hosts live.

A focus of IRRI's work in Africa is understanding and integrating the principles of human rights and international justice into responses to forced displacement as a necessary aspect of moving from conflict to peace. IRRI also acts a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home.

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