

Former Yugoslavia (ICTY) and its judges and prosecutor have been appointed by the United Nations General Assembly from a list provided by the Security Council all of which emphasize the idea of the court as an imposition on the Rwandan people.⁶¹ Additionally, the ICTR loses legitimacy in the eyes of the people because the punishment of the genocidaires convicted at the ICTR differs drastically from those convicted in Rwandan courts.⁶² More than ten thousand individuals have been tried for genocide by national criminal courts in Rwanda and a number of the convicted perpetrators received the death penalty and were executed.⁶³ It is difficult to justify why the ICTR should prescribe more lenient sentences for similar crimes. The perpetrators prosecuted by the ICTR also wind up serving out their sentences in conditions far superior to those in Rwandan prisons and villages, and they have the detached anonymity of being away from their victims and fellow Rwandans.⁶⁴ The ICTR is bound to observe international standards of justice in its proceedings but this does nothing to improve the court's legitimacy for the Rwandan people.

The ICTR has often fallen short of Rwandans' expectations of justice with regard to the people prosecuted and the judgments rendered by the Court. The acquittal of several individuals considered to be leading perpetrators of the genocide has left the impression that the ICTR was a betrayal.⁶⁵ For example, the acquittal of Zigiranyirazo⁶⁶ the brother-in-law of the late Rwandan President Habyarimana, who was initially found guilty by the trial chamber and Nsengimana,⁶⁷ a Catholic priest who was arrested in 2002 and was originally thought to have been at the center of a

⁶¹United Nations Security Council Resolution S/RES/1431 14 August 2002, See also website of the ICTR available at <http://www.unictr.org/tabid/103/Default.aspx> (accessed 26 October 2013).

⁶²Drumbl M 'Law and Atrocity: Settling Accounts in Rwanda' (2005)31 *Ohio Northern University Law Review* 47-8.

⁶³United Nations 'Background and Information on the Justice and Reconciliation Process in Rwanda' available at <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml> (accessed 26 October 2013).

⁶⁴Drumbl M (2005)48.

⁶⁵Musoni E 'ICTR betrayed Rwanda, justice Minister tells UN' *The New Times* 12 April 2013 available at <http://www.newtimes.co.rw/news/index.php?i=15325&a=65870> (accessed 26 October 2013), Yazdani S 'Victims Critique Rwanda' *Human Rights Brief* 20 January 2010 available at <http://hrbrief.org/2010/01/victims-critique-the-ict-2/> (accessed 26 October 2013).

⁶⁶*The Prosecutor v. Protais Zigiranyirazo* ICTR-01-73-T available at <http://www.unictr.org/Portals/0/Case%5CEnglish%5CZigiranyirazo%5CJudgement%5C081218e.pdf> (accessed 26 October 2013).

⁶⁷*The Prosecutor v. Hormisdas Nsengimana* ICTR-01-69-T available at <http://www.unictr.org/Portals/0/Case%5CEnglish%5CNsengimana%5Cdecisions%5C091117.pdf> (accessed 26 October 2013).

group of Hutu extremists that carried out attacks in Nyanza in 1994, sparked protests.⁶⁸

In this light the establishment of the Gacaca Courts can be viewed as a protest to the imposition of the ICTR's brand of justice. The Gacaca Courts resonated better with traditional conceptions of justice that prioritise family, community structure and reconciliation.⁶⁹ In just under eight years the Gacaca Courts tried nearly two million genocide suspects.⁷⁰ The accomplishments of the Gacaca Courts in prosecuting a large number of perpetrators over a shorter length of time and for a fraction of the cost are further indictments on the effectiveness of the ICTR.⁷¹ However, it is also true that the Gacaca Court structure was informal and resembled more a quasi-judicial body than a court of law. The relative success and expeditiousness of the process can probably be attributed to this absence of formal procedures and standards.

2.4 The Practice of the International Criminal Court

The International Criminal Court was set up as a permanent court with jurisdiction over persons for the 'most serious crimes of international concern', namely; genocide, crimes against humanity, war crimes and, potentially the crime of aggression.⁷² So far twenty cases in eight situations have been brought before the ICC. Four of these cases have been the result of self-referrals by Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali. The United Nations Security Council has also referred the situations in Darfur Sudan, and Libya both of which are not States Parties to the Rome Statute. Additionally, the ICC's prosecutor opened investigations into the situation relating to the post-election violence in Kenya and

⁶⁸Niyonshuti I 'Rwanda: Ibuka Stages Demo Against ICTR' *The New Times* 21 November 2009 available at <http://allafrica.com/stories/200911230084.html> (accessed 26 October 2013), Muramira G 'Rwanda: Mucyo Blames ICTR Prosecutors for Priest's Release' *The New Times* 18 November 2009 available at <http://allafrica.com/stories/200911180050.html> (accessed 26 October 2013).

⁶⁹Westberg MM (2011)248.

⁷⁰Summary of the Report Presented at the closing of Gacaca Courts Activities, National Service of Gacaca Courts, Kigali Rwanda(2012)34-35.

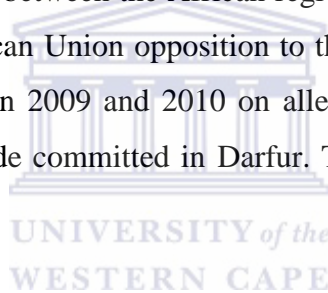
⁷¹Clarke P 'Hybridity, Holism and "Traditional" Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda' (2007)39 *George Washington International Law Review* 765.

⁷²Article 1 Rome Statute.

Côte d'Ivoire on the basis of his proprio-motu powers.⁷³ The ICC has so far issued a trial judgment in one case and an acquittal in another.⁷⁴

The African region was particularly instrumental in the creation and beginning of the ICC's operation.⁷⁵ African states contributed extensively to the preparations leading up to, during and after the diplomatic conference in Rome at which the Rome Statute of the ICC was adopted. The historic ratification of the Rome Statute by Senegal on 2 February 1999, capped African support for the Court.⁷⁶ African States Parties 'played a very important role prior to and during the establishment of the Court and perhaps, without Africa's support, the Rome Statute would never have been adopted.'⁷⁷ Significantly, of the 122 current States Parties to the Rome Statute 34 are African States. This makes Africa the largest regional bloc of ICC membership.⁷⁸

The once cordial relationship between the African region and the ICC has since gone sour beginning with the African Union opposition to the arrest warrant for Sudanese President Omar Al Bashir⁷⁹ in 2009 and 2010 on allegations of war crimes, crimes against humanity and genocide committed in Darfur. The subsequent issuance of an



⁷³See ICC Situations and Cases available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx (accessed 26 October 2013).

⁷⁴*Democratic Republic of the Congo, The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20case/s/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx (accessed 26 October 2013), *Democratic Republic of the Congo, The Prosecutor v. Mathieu Ngudjolo Chui* ICC-01/04-02/12 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20case/s/ICC-01-04-02-12/Pages/default.aspx (accessed 26 October 2013).

⁷⁵Jallow H & Bensouda F 'International Criminal Law in an African context' in Du Plessis M *African Guide to International Criminal Justice* (2008)15-55 at 47.

⁷⁶Dakar Declaration on an International Criminal Court adopted by the 67th ordinary session of the OAU Council of Ministers, meeting at Addis Ababa February 1998 and by the 34th Assembly of Heads of State and Government of the OAU Ouagadougou June 1998 available at www.iccnw.org/documents/Dakar_DeclarationFeb98Eng.pdf (accessed 26 October 2013), On African participation in the creation of the ICC see Mochochoko P 'Africa and the International Criminal Court' in Ankumah EA & Kwakwa EK (eds) *African Perspectives on International Criminal Justice* (2005)241-48 at 246.

⁷⁷See Motlogelwa M 'ICC President Praises Botswana' *Mmegi*online, 5 June 2009 available at <http://www.mmegi.com/index.php?sid=6&aid=27&dir=2009/June/Friday5> (accessed 26 October 2013).

⁷⁸Available at http://www.iccnw.org/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (accessed 26 October 2013).

⁷⁹*Bashir arrest warrants* ICC-02/05-01/09 & ICC-02/05-01/09.

arrest warrant for Muammar Al Gadhafi,⁸⁰ the Libyan President at the time and finally the indictment and prosecution of Uhuru Kenyatta and William Ruto,⁸¹ the President and Deputy President of Kenya, have had an adverse effect on the relationship between the ICC and the African Union which implies that the practice of the ICC so far has alienated its biggest constituency.

2.4.1 Criticisms of the International Criminal Court

The International Criminal Court has made several efforts to improve its accessibility to victim communities by facilitating victim participation in proceedings and conducting outreach in situation countries.⁸² Still, the euphoria and expectations that surrounded the coming into force of the Rome Statute have not been realized in the practice of the Court to date. The Court is facing much criticism particularly centred on its seeming preoccupation with the prosecution of only Africans.⁸³ At present all of the ICC's cases so far have been of Africans and all the situations the ICC is currently dealing with, concern African countries. Although this is not strictly a fair assessment since four of the situations in question were referred to the ICC by the States themselves. Two other situations are the result of Security Council referrals and two are a result of exercise of the Prosecutor's own discretion. This focus on Africa is problematic for the legitimacy of international justice in the region on several fronts.

First, the ICC has alienated the African Union. Since the arrest warrant for the Sudanese President was issued by the ICC, the African Union has passed several resolutions demonstrating its growing disregard for the ICC,⁸⁴ including encouraging member states not to cooperate in effecting the arrest warrant and even refusing the

⁸⁰ *Situation in the Libyan Arab Jamahiriya, Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi* ICC-01/11-13 27-06-2011 1/7 CB PT available at <http://www.icc-cpi.int/iccdocs/doc/doc1099321.pdf> (accessed 26 October 2013).

⁸¹ *Kenyatta and Ruto cases* ICC-01/09-02/2011, ICC-01/09-01/11.

⁸² Blattman R & Bowman K 'The International Criminal Court Five Years on: Progress or Stagnation? Achievements and Problems of the International Criminal Court A View From Within' (2008)6 *Journal of International Criminal Justice* 711-730.

⁸³ Schabas WA (2013)546.

⁸⁴ See e.g. Para 10 Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Tribunal (ICC) Doc. Assembly/AU/13(XIII) 3 July 2009, para 5-6 Decision on the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.270(XIV) on the Second Ministerial Meeting on the Rome Statute of the International Criminal Court (ICC) Doc. Assembly/AU/10(XV) 27 July 2010, para 5 Decision on the Implementation of the Decisions on the International Criminal Court (ICC) Doc. EX.CL/639(XVIII) 30-31 January 2011.

setting up of a liaison office by the Court at the AU headquarters in Addis Ababa.⁸⁵ These have culminated in the latest decision of 12 October 2013, which asserts the immunity of sitting heads of state from prosecution by the ICC and urges the President of Kenya to refrain from appearing before the Court in the on-going case against him.⁸⁶ The impasse between the AU and the Court is problematic because the ICC depends on the cooperation of member states for the exercise of its functions.⁸⁷ As is evidenced by the *Bashir* case which has failed to go forward since no African Country has effected the arrest warrant against him even though he regularly visits other countries that are States Parties to the Rome Statute.⁸⁸

Secondly, the ICC's focus on Africa anchors the argument that it is a weapon of western imperialism in the region. The referral of the situations in Darfur, Sudan and Libya both of which are not parties to the Rome Statute by the United Nations Security Council, some of whose permanent members are themselves not States Parties, supports this view. It gives the impression that the ICC and the UNSC are cohorts in the service of the interests of western powers.⁸⁹ This position is emphasized by the fact that the Security Council referred those situations and yet has chosen to take some others such as the on-going conflict in Syria less seriously. The decisions of both the former and current chief Prosecutors to exclusively concentrate on African situations and to ignore the commission of international crimes in Iraq (by British forces), Colombia, the Comoros (by Israel's attack on a ship registered in the Union of the Comoros 'the Mavi Marmara') and Palestine⁹⁰ when contrasted with the

⁸⁵Para 5, 8 & 9 AU Assembly Doc. Assembly/AU/10 (XV).

⁸⁶Para 10(i) Ext/Assembly/AU/Dec October 2013.

⁸⁷See Part 9 & 10 Rome Statute.

⁸⁸See *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09-139 available at www.icc-cpi.int/iccdocs/doc/doc1287184.pdf (accessed 26 October 2013), *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision pursuant to article 87(7) of the Rome Statute on the refusal of the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09-140 available at www.icc-cpi.int/iccdocs/doc/doc1384955.pdf (accessed 26 October 2013).

⁸⁹Mamdani M 'What Does Gaddafi's Fall Mean for Africa?' *Aljazeera* 26 October 2011 available at www.aljazeera.com/indepth/opinion/2011/08/201182812377546414.html (accessed 26 October 2013), See also Du Plessis M, Maluwa T & O'Reilly A 'Africa and the International Criminal Court' available at

http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/0713pp_iccafri.ca.pdf (accessed 26 October 2013).

⁹⁰See Palestinian National Authority, Declaration Recognising the Jurisdiction of the International Criminal Court 21 January 2009 available at www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf (accessed 26 October 2013), See

determination to proceed with the cases from Kenya and Mali where much less harm was done confirms the allegations of bias.⁹¹This has encouraged many in Africa to buy into the accusations of imperialism and has led to a shift of sympathies away from the court to the perpetrators as has been suggested in the case of Kenya.⁹²

This state of events emphasizes the political dimension of international criminal justice in general and the ICC in particular. It presents the ICC as a political organ influenced by political considerations rather than the interests of justice in its decisions and practice.⁹³If the primary considerations of international criminal justice are political then the victims are nothing but dispensable pawns.

Aside from the ICC's focus on Africa, the Court also faces the common legitimacy challenges associated with international tribunals. Inter alia, the employment of vast resources to try a relatively small number of people who receive lenient sentences compared to the ones they would receive at home including imprisonment in relative comfort causes it to be viewed in a negative light.⁹⁴The first judgment of the ICC in the Lubanga case reflects this dilemma. Thomas Lubanga who was a notorious warlord in the Democratic Republic of Congo has now been sentenced to fourteen years imprisonment for the war crime of conscripting and enlisting child soldiers.⁹⁵When this is weighed against the death and destruction that occurred and continues to occur in the DRC because of militias operated by Lubanga and other war lords, it seems like a very small price to pay.⁹⁶Similarly in the Ugandan situation

also Report of the United Nations Fact-Finding Mission on the Gaza Conflict UN Doc. A/HRC/12/48 (2009)149-283, at para 1966 states that the serious violations of international humanitarian law recounted in its report 'fall within the subject matter jurisdiction of the International Criminal Court' available at www2.ohchr.org/english/bodies/hrcouncil/docs/12session/a-hrc-12-48.pdf (accessed 26 October 2013).

⁹¹Smith D 'International Criminal Court to Deliver its First Judgment' *The Guardian* 13 March 2012 quoting William Schabas available at www.guardian.co.uk/law/2012/mar/13/international-criminal-court-first-judgment (accessed 26 October 2013) Dugard J 'Palestine and the International Criminal Court: Institutional Failure or Bias?' (2013)11 *Journal of International Criminal Justice* 569.

⁹²'Did the ICC help Uhuru Kenyatta win Kenyan election?' *BBC News Africa* 11 March 2013 available at www.bbc.co.uk/news/world-africa-21739347 (accessed 26 October 2013), Mehari TM 'The Future of the ICC and Africa: the good, the bad and the ugly' *Aljazeera* 11 October 2013 available at <http://www.aljazeera.com/indepth/opinion/2013/10/future-icc-africa-good-bad-ugly-20131011143130881924.html> (accessed 26 October 2013).

⁹³Nouwen SMH & Wouter GW 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' (2011)21 4 *European Journal of International Law* 941-965, Luban D 'After the Honeymoon, Reflections on the current State of International Criminal Justice' *Journal of International Criminal Justice* (2013) 11 508.

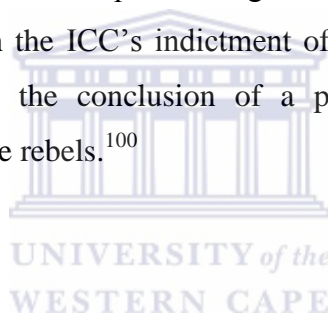
⁹⁴Okechukwu O (2008)365-375.

⁹⁵*The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06.

⁹⁶Bueno O (2012)10.

where prosecution of the leaders of the Lord's Resistance Army is pending before the ICC,⁹⁷ many believe that justice requires that they be tried in Uganda where there is a better guarantee of a heavy sentence should they be prosecuted, including perhaps the death sentence should they be prosecuted.⁹⁸

The ICC and indeed international tribunals in general also face the challenge of restorative versus retributive justice. In post conflict states, victim communities are often more concerned with restoring peace than holding people accountable through a criminal justice process. These expectations are then projected onto international tribunals that are not always able to deliver the desired outcome. In several situations, the ICC has been perceived negatively because of this. In the Democratic Republic of Congo for example, interviews with victim communities concerning their expectations from the ICC revealed this pattern.⁹⁹ In Uganda as well, the initial support for the ICC's involvement in prosecuting members of the Lord's Resistance army eventually waned when the ICC's indictment of Joseph Kony and other LRA leaders appeared to prevent the conclusion of a peace agreement between the government of Uganda and the rebels.¹⁰⁰



2.5 Concluding Remarks

The intense criticism directed at both the ICTR and the ICC reflects the volatile relationship that Africa has had with internal criminal justice. The resulting legitimacy crisis is thus comprehensible. In the end, both institutions have helped to cement the idea that international criminal justice is a foreign concept that is neither useful nor necessary in Africa. In order to alter this misconception international justice institutions need to adapt to ideologies of justice in the region. Proponents of

⁹⁷*The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* ICC-02/04-01/05 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/Pages/situation%20index.aspx (accessed 26 October 2013).

⁹⁸Maseruka M 'The ICC Should Let Uganda Try Kony-Kadaga' *The Red Pepper* 13 December 2012 available at <http://www.redpepper.co.ug/icc-should-let-uganda-try-kony-kadaga/> (accessed 26 October 2013).

⁹⁹See Bueno O (2012)8.

¹⁰⁰See Hovil L 'A Poisoned Chalice? Local civil society and the International Criminal Court's engagement in Uganda' International Refugee Rights Initiative Discussion Paper no.1 2012 available at <http://www.refugee-rights.org/Assets/PDFs/2012/PoisonChaliceFINAL.pdf>

the hybrid tribunal model believe that these tribunals have the ability to accomplish this task. The following chapters investigate the extent to which this is true.



CHAPTER THREE

AN OVERVIEW OF HYBRID COURTS

3.1 Introduction

Hybrid tribunals are alternately referred to as internationalized criminal tribunals or the third generation of international prosecutions as distinct from the first generation of the Nuremberg and Tokyo tribunals and the second generation of the Adhoc Tribunals (ICTR and ICTY).¹⁰¹ They represent a radical move from the notion that purely international courts are the best way to ensure the impartiality of a fair judicial process that meets approved international standards.¹⁰²

When criminal justice is viewed as one tool in the broader arsenal of transitional justice measures, the vitality of engaging the local population in on-going judicial processes is revealed. Hybrid tribunals have been perceived as the best way to accomplish the goals of international criminal justice. They promise to end impunity while building the capacity of local judiciaries and thereby promoting the rule of law.¹⁰³ Usually situated at the scene of the atrocities, they foster reconciliation by having a cathartic effect on the victim community and promote procedural effectiveness.¹⁰⁴ Hybrid courts respond to the legitimacy challenge often posed by the alien nature of international criminal justice by bringing the judicial process closer to home and providing an avenue for the local population to engage with it.

These advantages associated with the hybrid tribunal model have not been realised to expected proportions in the practice of the extant hybrid tribunals so far leading to criticism and a recommendation by some scholars that the model be abandoned altogether.¹⁰⁵ This chapter provides an overview of the hybrid tribunals in existence

¹⁰¹Cassese A (2004) 3.

¹⁰²Linton S (2001)185.

¹⁰³Dickinson LA(2003) 301-7,Higgonet E(2005)2,13,71,Megret F 'In Defence of Hybridity: Towards a Representational Theory of International Criminal Justice'(2005)38 *Cornell International Law Journal* 747,Hall B 'Using Hybrid Tribunals as Trivias: Furthering the Goals of Post-Conflict Justice While Transferring Cases from the ICTY to Serbia's Domestic War Crimes Tribunal'(2005)13 *Michigan State Journal of International Law* 39.

¹⁰⁴Cassese A 'The Role of Internationalized Courts and Tribunals in the Fight Against International Criminality' in Romano CPR, Nollkaemper A &Kleffner JK (2004)3-13 at 6.

¹⁰⁵McAuliffe P (2011)21.

so far and the current debate relating to their utility especially with regard to promoting the legitimacy of international criminal justice in post conflict situations.

3.2 The Creation of the Hybrid Courts

It has been argued that the existing examples of hybrid tribunals are too distinct from each other to be properly assessed together as one model of international criminal prosecutions. Each hybrid tribunal is distinct in historic background, its manner of establishment and legal personality.¹⁰⁶ In Cambodia for example the Extraordinary Chambers in the Courts of Cambodia were the result of a long drawn out negotiation process between the United Nations and the Government of Co-Prime Ministers Hu Sen and Norodom Ranariddh from 1997.¹⁰⁷ Points of contention included the fact that the government of Cambodia wanted to limit the level of international involvement in order to have more control of the process. The United Nations on the other hand was concerned about the effect the control of the government would have on the fairness and impartiality of the process.¹⁰⁸ A compromise was eventually reached when a Memorandum of Understanding was agreed on¹⁰⁹ and ratified by the Cambodian Parliament in October 2004.¹¹⁰

In Sierra Leone on the other hand an agreement for the Special Court was quickly reached between the Government and the United Nations Secretary General following a request by President Ahmad Tejan Kabbah to the Security Council.¹¹¹ The

¹⁰⁶Nouwen S (2006)194-203.

¹⁰⁷Etcheson C 'The Politics of Genocide Justice in Cambodia' in Romano CPR, Nollkaemper A & Kleffner JK (2004)181-201.

¹⁰⁸See UN Doc. GA/RES/52/135 (1997) on the establishment of a group of experts by the secretary general to assess the best solution for Cambodia, See Report of the Group of Experts for Cambodia Established Pursuant to GA/52/135 UN Docs. A/53/850 and S/1999/231 at para 190 noting concern by the UN that more Cambodian control would compromise the fairness of the court's process.

¹⁰⁹Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea 6 June 2003 available at <http://www.cambodia.gov.kh/krt/english/index.htm> (accessed 26 October 2013).

¹¹⁰Law on the Ratification of the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea and Law on Amendments to the Law on the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea available at <http://www.cambodia.gov.kh/krt/english/index.htm> (accessed 26 October 2013)

¹¹¹See Letter from the President of Sierra Leone to the Secretary-General 12 June 2000 UN Doc. UN Doc. S/2000/786 annex S/RES/1315 (2000).

agreement was ratified by Sierra Leone in March of that same year.¹¹² Elsewhere in Kosovo and East Timor the hybrid tribunals were created by the United Nations transitional administrations¹¹³ in those countries and were thus under the complete control of the United Nations.

In East Timor, the United Nations Transitional Administration in East Timor (UNTAET) established a partly internationalized institution in the capital, Dili. Acting under the jurisdiction of the District Court of Dili, the hybrid applied both international law and the hybrid laws of the UNTAET administration. The tribunal had both national and international judges and Special Panels were created to exercise jurisdiction over cases of Serious Crimes.¹¹⁴

In Kosovo, the possibility of a special Kosovo War and Ethnic Crimes Court was considered to prosecute the cases that did not fall within the ICTY's jurisdiction over only the most serious crimes¹¹⁵ but was never implemented. Instead the United Nations Mission in Kosovo (UNMIK) adopted regulations providing for the involvement of international and domestic judges in the district courts of Kosovo. These regulations led to the creation of the Regulation 64 Panels in the courts of Kosovo applying a combination of international and domestic law.¹¹⁶

¹¹²Special Court Agreement Ratification Act 2002 available at <http://www.sc-sl.org/Documents/SCSL-ratificationamendmentact.pdf>(accessed 26 October 2013).

¹¹³United Nations Resolution establishing the United Nations Transitional Government in Kosovo (UNMIK) UN Doc. S/RES/1244 (1999), United Nations Resolution establishing the United Nations Transitional Government in East Timor (UNTAET) UN Doc. S/RES/1272 (1999).

¹¹⁴UNTAET Regulation 1999/1 on the Authority of the Transitional Administration in East Timor , UNTAET Regulation 1999/3 on the Establishment of a Transitional Judicial Service Commission as amended by UNTAET Regulation 2000/25,UNTAET Regulation 2000/11providing for a mixed panel of national and international judges in the special panels in East Timor as amended by UNTAET Regulation 2000/14,UNTAET Regulation 2000/15 on the establishment of panels with exclusive jurisdiction over serious criminal offences ,UNTAET Regulation 2000/16 on the organization of the public prosecution service in East Timor ,All UNTAET regulations are available at <http://www.un.org/peace/etimor/untaetR/UntaetR.htm>(accessed 26 October 2013).

¹¹⁵ICTY Press Release PR/P.I.S./437-E 29 September 1999 available at <http://www.un.org/icty/latest/index.htm> (accessed 26 October 2013).

¹¹⁶United Nations Regulation UNMIK/REG/2000/6 granting the UN Special Representative the authority to appoint and remove from office international judges and prosecutors to the courts in Mitrovica as amended by UNMIK/REG/2001/2 (on the specific powers of the international prosecutor), United Nations Regulation UNMIK/REG/2000/34 expanding the authority of UNMIK/REG/2000/6 to appoint and remove from office international judges and prosecutors beyond the District Court of Mitrovica to all five district courts in Kosovo, United Nations Regulation UNMIK/REG/2000/64 s. 1& 2 prolonged by UNMIK/REG/2001/34, United Nations UNMIK/REG/2002/20 and UNMIK/REG/2003/36 on the regulation 64 panels.

The Bosnian War Crimes Chamber began in March 2005 as a part of the ICTY's completion strategy¹¹⁷ pursuant to a United Nations Security Council decision that the ICTY should complete all its trials in 2008 and all activities in 2010 and then transfer unfinished cases to competent national jurisdictions. An agreement between Bosnia and Herzegovina and the High Representative established the War Crimes Chamber within the Bosnia judiciary.¹¹⁸

The Special Tribunal for Lebanon was established under Chapter VII of the Charter of the United Nations by Security Council Resolution 1757 of 13 May 2007.¹¹⁹ Its purpose is to prosecute the persons responsible for the acts of terrorism that resulted in the death of the former Lebanese Prime Minister Rafic Hariri when a quantity of explosives was detonated close to his and other vehicles in his convoy in a street in Beirut on 14 February 2005.¹²⁰ The mandate of the tribunal stretches to other international crimes committed in relation to this assassination.

3.3 Characteristic Features of Hybrid Courts

The examples demonstrate the extent to which each hybrid tribunal is distinguishable. Still, enough similarities exist to point to the existence of a hybrid tribunal model. The hybrid tribunals discussed share several important features including the combination of domestic and international elements in the institutions and the applicable law. Foreign judges sit alongside their domestic counterparts to try cases prosecuted and defended by teams of local and international lawyers and at the same time, the judges apply domestic law that has been reformed to include international standards.

¹¹⁷See for the War Crimes Chamber, Balkan Investigative Reporting Network 'In Pursuit of Justice: Guide to the War Crimes Chamber of the Court of BiH' available at <http://www.birn.eu.com> (accessed 26 October 2013), Human Rights Watch 'Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina' (2006) 18 available at <http://hrw.org/reports/2006/ij0206/> (accessed 26 October 2013).

¹¹⁸Agreement between the High Representative for Bosnia and Herzegovina and Bosnia and Herzegovina on the Establishment of the Registry for Section I for War Crimes and Section II for Organised Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organised Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia and Herzegovina available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_1503_2003_en.pdf (accessed 26 October 2013).

¹¹⁹United Nations Security Council Resolution, 2007 S/RES/1757 (2007) available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Chap%20VII%20SRES%201757.pdf> (accessed 26 October 2013).

¹²⁰Article 1(1) Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon Annex to UNSC Resolution, S/RES/1757(2007).

On one end of the spectrum is Sierra Leone where the Statute of the Special Court provides for appointment of the majority of the judges in the Trial and Appeals Chambers by the UN Secretary General and the remainder by the Sierra Leonean government.¹²¹ The Registrar and the Prosecutor are also appointed by the Secretary General¹²² and the Statute requires the Deputy Prosecutor to be Sierra Leonean.¹²³ On the other end of the spectrum is Cambodia's Extraordinary Chambers where Cambodian judges are in the majority. The international judges are nominated by the UN Secretary General but must be appointed by Cambodia's Supreme Council of the Magistracy.¹²⁴ A 'super-majority' rule has been developed so that at least one international judge has to vote in favor of every decision for it to pass.¹²⁵ A Cambodian and an international serve as equal co-prosecutors¹²⁶ and as co-investigating judges. The office of administration is headed by a Cambodian with an international deputy responsible for the international matters.¹²⁷

In Kosovo according to Regulation 64, the UN Special Representative can designate an international prosecutor, an international investigating judge or a panel of three judges with at least two internationals, on the request of the prosecutor, the defense counsel or the accused.¹²⁸ In East Timor the Special Panels were presided over by two international judges and one East Timorese judge.¹²⁹ The Deputy General Prosecutor for Serious Crimes had exclusive prosecutorial authority over the crimes and was an international¹³⁰, assisted by nationals.¹³¹ The Special Tribunal for Lebanon also allows for international and domestic judges and prosecutors to work alongside each other.¹³²

¹²¹ Article 12 Statute of the Special Court for Sierra Leone.

¹²² Article 15(3) & 16 Special Court Statute.

¹²³ Article 15(4) Special Court Statute.

¹²⁴ Articles 9-11 Amended Extraordinary Chambers Law.

¹²⁵ Article 14 Amended Extraordinary Chambers Law.

¹²⁶ Article 16 Amended Extraordinary Chambers Law.

¹²⁷ Article 30 Amended Extraordinary Chambers Law.

¹²⁸ UNMIK/REG/2000/64.

¹²⁹ S.9,10(3) & 22 UNTAET/REG/2000/15 in accordance with UNTAET/REG/2000/11 as amended by UNTAET/REG/2001/25.

¹³⁰ S.14 (4) UNTAET/REG/2000/16 as amended by UNTAET/REG/2001/26.

¹³¹ S.14 (6) UNTAET/REG/2000/16 as amended.

¹³² Article 8 & 11 Statute of the Special Tribunal for Lebanon.

The combination of domestic and international law is another important feature of hybrid courts.¹³³ The documents establishing the hybrid courts in Sierra Leone, Cambodia and East Timor mandate the panels to directly apply both substantive international criminal law and substantive domestic law. In all three cases direct reference is made to crimes under international law and under domestic law. Thus, the Extraordinary Chambers Law grants the Chambers the authority to prosecute three specific crimes under the 1956 Penal Code of Cambodia (homicide, torture and religious persecution) as well as the international crimes of genocide, crimes against humanity, grave breaches of the 1949 Geneva Convention, the destruction of cultural property and crimes against internationally protected persons.¹³⁴ Likewise, the Statute of the Special Court incorporates both international crimes (crimes against humanity, violations of common Article 3 of the Geneva Conventions and of Additional Protocol II and other serious violations of humanitarian law) and crimes under Leonean law (offences relating to the abuse of girls and offences relating to the wanton destruction of property).¹³⁵ The Serious Crimes Panels in East Timor had the widest substantive jurisdiction over murder and sexual offences under the applicable Penal Code of East Timor and over most of the recognized international crimes.¹³⁶ Moreover, it is the only hybrid court, and the only international crimes court in general that claimed universal jurisdiction.¹³⁷

Similarly, although the hybrid panels in Kosovo and the War Crimes Chamber in Bosnia have jurisdiction only over crimes under domestic law, the applicable domestic law also incorporates international crimes. In the Kosovo courts international criminal law is applied indirectly, through the vehicle of pre-existing domestic legislation.¹³⁸ In Bosnia and Herzegovina, legislation has been amended to include international crimes. Although the Special Tribunal for Lebanon provides for the application of Lebanese law relating to the crime of terrorism and associated

¹³³Dickinson LA 'The Relationship between Hybrid Courts and International Courts: The Case of Kosovo' 2003 *New England Law Review* 1059.

¹³⁴Articles 3-8 Amended Extraordinary Chambers Law.

¹³⁵Articles 2-5 Special Court Statute.

¹³⁶S.4-9 UNTAET/REG/2000/15.

¹³⁷S.2 UNTAET/REG/2000/15.

¹³⁸UNMIK/REG/2003/25.

offences,¹³⁹ the tribunal of necessity takes customary international criminal law into account.

Hybrid tribunals share other characteristics that are not tied to their hybrid nature but contribute to their collective identity as a distinct mode of international criminal prosecution. Key among them is the location of the tribunals in the locus of the atrocities. This is true for all hybrids apart from the Special Tribunal for Lebanon and the Extraordinary African Chambers in the courts of Senegal, which are located in The Hague and Dakar respectively. Hybrid tribunals have also shared a characteristic United Nations involvement in some capacity although the trend has now evolved to envisage other forms of regional and international cooperation as exemplified by the EACCS, which was established pursuant to an agreement between the African Union and the Government of Senegal.

In addition, hybrid tribunals share an adhoc nature in that they are created to respond to special situations.¹⁴⁰ They also have a similar level of financial independence from the United Nations in contrast to the ICTR and ICTY which were completely funded by the UN. Hybrid tribunals typically rely on funding from the Government in question and independent donations from the international community.¹⁴¹ The distinctions between the various examples of hybrid tribunals can thus be seen as primarily contextual and do not negate their classification as an independent mode of international criminal justice.

3.4 Hybrid Courts and Legitimacy

The aim of hybrid tribunals is to marry the best of two worlds; the professional experience of the international community and the perceived legitimacy of local participation.¹⁴² As such hybrid courts have the potential and in several cases have indeed improved the legitimacy of international criminal justice.

¹³⁹Article 2 Statute of the Special Tribunal for Lebanon.

¹⁴⁰Condorelli L & Boutruche T 'Internationalized Criminal Courts and Tribunals: Are they necessary?' in Romano CPR, Nollkaemper A & Kleffner JK (2004) 427-37 at 429.

¹⁴¹Ingadottir T 'The Financing of Internationalized Criminal Courts and Tribunals' in Romano CPR, Nollkaemper A & Kleffner JK (2004) 271-89 at 71.

¹⁴²Cockayne J 'The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals' (2005) 28 *Fordham International Law Journal* 616-17, Linton S (2001).

The addition of international judges to the judicial process improves the perceived fairness and impartiality of the judicial process. Criminal prosecutions in a transitional justice context are highly political and can easily be manipulated into a tool to vindicate one side of the conflict to the detriment of the other. They are also vulnerable to biased influence by local leaders and are thus prone to unfairness.¹⁴³ This was especially true in Kosovo where previous domestic prosecutions were often considered biased by ethnic Serbs since many of the Judges were ethnic Albanians. Serbian judges refused to cooperate with their Albanian counterparts and the judgments passed by these courts were regarded as flawed. The addition of international judges helped to improve the image of the judicial process and promote wide acceptance of the judgments.¹⁴⁴

On the other hand the participation of local judges promotes local ownership of the process and ensures respect and sensitivity for the historical and cultural context. It also allows the otherwise alien international criminal justice process to be more accessible to the local community.¹⁴⁵ Aside from judges, hybrid tribunals inevitably hire other local judicial and non-judicial staff all of whom improve the cultural accessibility of the tribunal since they are more in tune with the cultural nuances of the society in question.¹⁴⁶ Conducting trials in the local language makes them accessible to the community. Local media, which plays a big role in influencing the perception of the tribunal in the society are also better placed to access the courts when they are situated in the victim society.¹⁴⁷

The physical location of the tribunal where the atrocities occurred is also important in improving legitimacy since the local population is more likely to be involved with and engage with the tribunal when it is physically accessible. It also enables a more efficient and cost effective outreach process which is an important element for the legitimacy of the tribunal and the perpetration of rule of law norms.¹⁴⁸

¹⁴³Burke-White WW (2003)742.

¹⁴⁴Dickinson LA (2003)306, Organisation for Security and Cooperation in Europe (OSCE) Report (2002)6 available at <http://www.osce.org/secretariat/13603>(accessed 26 October 2013).

¹⁴⁵Rapoza P 'Hybrid Criminal Tribunals and the Concept of Ownership: Who Owns the Process?'(2006)21 *American University International Law Review* 525.

¹⁴⁶Higonnet E (2005)16.

¹⁴⁷Higonnet E(2005) 20.

¹⁴⁸Cohen D (2007)6.

The situation of the tribunals within the domestic judicial structure also has the potential to leave a long term impact on the capacity of the local justice system.¹⁴⁹ Although this expectation has not generally been realised it is still possible to envisage circumstances where international judicial officers leave some lasting skills with their domestic counterparts.

The incorporation of the domestic law of the land also makes the process more accessible and acceptable to the community since it recognises the established understanding of justice in the community. It also allows local lawyers and judicial officers to play a leading role in the tribunal.

The often adhoc nature of hybrids means that they can be set up as and when required in a particular post conflict society. They can thus be tailored to respond to the specific context of the conflict in question. They do not have to be constrained in terms of jurisdiction. In this way they maintain the advantage of the ICTR and the ICTY.



3.5 Criticisms of Hybrid Courts

Despite the many positive attributes of hybrid courts, they have experienced criticism for failing to meet the expectations of their greatest proponents. In several cases instead of combining the advantages of both international and domestic prosecutions they have exhibited the worst traits of both such as the ignorance of international actors of the local environment along with the weakness of the local judicial institutions that caused the breakdown of the State in the first place.¹⁵⁰

Where they were expected to promote legitimacy, hybrid tribunals have instead often been rejected by and faced extensive criticism from the local population.¹⁵¹ The exclusion of local participation in the design process of the courts has left a negative perception among the people and alienated even the most natural allies such as the lawyers and other elites. Local moral authorities are also explicitly excluded from the decision making of the tribunals.¹⁵² For example in East Timor the sidelining of

¹⁴⁹Higonnet E (2005)12.

¹⁵⁰Cockayne J (2005)619.

¹⁵¹Higonnet E (2005)410, Ramji-Nogales J (2010)31.

¹⁵²Ramji-Nogales J (2010)31.

traditional healers who were respected and considered important moral authorities by the people was criticized. They employed traditional methods of dispute resolution that had worked so well in the past and which the Timorese people believed could be incorporated into the tribunal's procedure.¹⁵³ The complex legal concepts and structures are also inaccessible to the vast majority of the population and locals are disappointed with the scope and pace of the court processes.¹⁵⁴

Specific hybrids have been criticized on various grounds. In East Timor for example the Special Panels were criticized for only prosecuting lower level perpetrators¹⁵⁵ and ignoring the major perpetrators many of who were enjoying asylum in Indonesia.¹⁵⁶ As mentioned above, the tribunal was also criticized for not addressing the need for reconciliation through traditional methods of dispute resolution and the desire to locate missing persons which was a key concern of the Timorese people.¹⁵⁷ The absence of an outreach program was also a major flaw that seriously undermined the tribunal's ability to have a lasting impact on the country. The Special Panels were marred with difficulty and eventually only achieved limited success because of poor management, lack of funding, experienced personnel, and political will.¹⁵⁸

In Kosovo as well, the failure of UNMIK to engage the local population in the process of creating the Regulation 64 panels led to a bias among the people which was compounded by an absence of efforts to sensitize them about the purpose and mandate of the panels. Many ethnic Albanians thought that the Kosovo Liberation Army were national heroes and resisted their prosecution.¹⁵⁹ As a result many of them boycotted the panels altogether. The hybrid experiment in Kosovo thus largely failed

¹⁵³Ramji-Nogales (2010)32, Pigou P 'Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste Community Perspectives and Expectations' International Centre for Transitional Justice (2003)35 available at www.ictj.org/images/content/0/9/096.pdf (accessed 26 October 2013).

¹⁵⁴Ramji-Nogales J (2010)30.

¹⁵⁵Pigou P (2003)34.

¹⁵⁶Hirst M & Varney H 'Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor' ICTJ (2005)25-26 available at <http://www.ictj.org/images/content/1/2/121.pdf> (accessed 26 October 2013).

¹⁵⁷Pigou P (2003)31-5.

¹⁵⁸de Bertodano 'East Timor: Trials and Tribulations' in Romano CPR, Nollkaemper A & Kleffner JK (2004)79-96 at 96, Linton S (2001) 206-207.

¹⁵⁹International Crisis Group Balkans Report 'Finding the Balance: The Scales of Justice in Kosovo' (2002)21-22 available at <http://www.crisisgroup.org/~media/Files/europe/Kosovo%2032.ashx> (accessed 26 October 2013).

because of a poor design compounded by an absence of funds and capacity for its successful implementation.¹⁶⁰

The law of the Extraordinary Chambers in the Courts of Cambodia has been criticised for having insufficient references to international law and for having an overly limited jurisdiction. This turn of events can be attributed to the difficulty of the negotiation process between the United Nations and the Cambodian government which led to major compromises on the part of the UN to the detriment of international law standards.¹⁶¹ Additionally the ECCC has been plagued with accusations of bias and corruption. According to Scully, the insufficient legal protections, limited jurisdiction, political interference and lack of judicial independence coupled with the bias and corruption that was rampant in the court reflected negatively on the court's image and undermined its legitimacy.¹⁶² The Special Court for Sierra Leone also experienced a lot of criticisms which will be discussed in detail in the following chapter.

Many of the shortcomings of hybrid tribunals are similar to those attributed to the international tribunals such as the ICTR which has prompted critics of the model to say that they are not an improvement as such. However it is also possible to view the criticisms of the tribunals so far as simply kinks in the development of the model that need to be ironed out.

3.6 Hybrid Courts and the International Criminal Court

The prominent examples of hybrid tribunals were established before the International Criminal Court was operational. As such it begs the question as to what the place of hybrid tribunals is in relation to the Court. The ICC operates on the principle of complementarity which means that the court can only prosecute cases when the State Party having jurisdiction over the matter is unable or unwilling to do so.¹⁶³ This implies that there is room for the possible co-existence of hybrid tribunals and the

¹⁶⁰Cady JC & Booth N 'Internationalized Courts in Kosovo: An UNMIK Perspective' in Romano CPR, Nollkaemper A & Kleffner JK (2004)41-56 Schabas WA 'Internationalized Courts and their Relationship with Alternative Accountability Mechanisms: The Case of Sierra Leone' in Romano CPR, Nollkaemper A & Kleffner JK (2004)159-179.

¹⁶¹Horstings H 'The Cambodian Khemer Rouge Tribunal: The Promise of a Hybrid Tribunal' (2004)5*Melbourne Journal of International Law* 462-65.

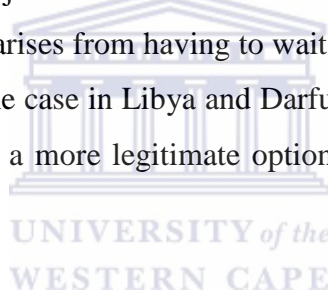
¹⁶²Scully S (2011)331-8.

¹⁶³Article 1&17 Rome Statute.

ICC. Given that hybrid tribunals are usually established pursuant to an agreement to which the country concerned is a party, it is possible for the establishment of a hybrid tribunal to fall within a State's obligation to prosecute international crimes.

In any case, the jurisdiction of the ICC is limited to prosecuting only those most responsible for the commission of international crimes within its jurisdiction.¹⁶⁴ This limited scope leaves an impunity gap that can be filled by the establishment of a hybrid tribunal. Although hybrid tribunals have until now also focused on the prosecution of perpetrators bearing the greatest responsibility, it can be argued that broadening the jurisdiction of future hybrid courts would be an improvement on the model since previous tribunals have been criticized for their limited prosecutions.

The jurisdiction of the ICC is also limited to acts relating to state parties which occur after the State becomes a party. Hybrid tribunals can thus be used to fill this gap since they do not need to have such jurisdictional constraints. Hybrid courts can also be used to avoid the controversy that arises from having to wait for a Security Council referral for non-state parties as was the case in Libya and Darfur. A hybrid tribunal in each of those cases would have been a more legitimate option of seeking accountability for the crimes committed.



3.7 Concluding Remarks

It is true that hybrid courts have faced similar shortcomings to the adhoc tribunals. However the major criticisms of the various tribunals have been related more to the context and practice of the specific tribunal in question. This suggests that the hybrid tribunal model per se is not necessarily flawed and can still be exploited to improve the legitimacy of international criminal justice. In Africa, where only one hybrid tribunal has operated so far, there is still room for the development of the model to suit the context of particular post conflict communities especially when consideration is given to the advantages of the model that allow for flexibility.

¹⁶⁴Article 11 Rome Statute.

CHAPTER FOUR

HYBRID COURTS IN AFRICA

4.1 Introduction

This chapter places the discussion of hybrid tribunals within the African Context. The Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Senegal are the two hybrid tribunals that have been established in Africa so far. Whereas the SCSL is in the final stages of discharging its mandate and is about to close, the EACCS has not yet even tried its first case. The different approaches to the establishment, structure and operation of these tribunals presents an interesting case study of the innovations that may be possible with future tribunals.

4.2 The Special Court for Sierra Leone



4.2.1 Background

In March 1991 a rebel group known as the Revolutionary United Front (RUF) launched an attack on the government of Sierra Leone with the help of Charles Taylor, President of neighbouring Liberia. This was the beginning of a war that spanned over a decade and ended only with the intervention of regional and international forces. The civil war ruined the economic, political and social infrastructure of the country and left a significant proportion of the population dead, severely injured, in exile or internally displaced not to mention acting as a trigger for destabilization in the wider West Africa sub region.¹⁶⁵ Although during the course of the conflict several efforts at a peaceful reconciliation of the various warring factions were attempted¹⁶⁶ these were ultimately unsuccessful and peace was only eventually

¹⁶⁵See Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission Vol 3A available at <http://www.sierra-leone.org/Other-Conflict/TRCVolume3A.pdf> (accessed 26 October 2013), Pratt D 'Sierra Leone: The Forgotten Crisis' 1999, available at <http://www.globalsecurity.org/military/library/report/1999/crisis-e.htm> (accessed 26 October 2013), Akinrinade B 'International Humanitarian Law and the Conflict in Sierra Leone' (2001) 15 *Notre Dame Journal of Law, Ethics & Public Policy* 391.

¹⁶⁶Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) of 30 November 1996 available at

returned to the country after a military intervention by British forces and the subsequent capture of Foday Sankoh the leader of the RUF.¹⁶⁷ The failure of the peaceful solutions sowed the seeds for a criminal justice response. The idea for a Special Court for Sierra Leone¹⁶⁸ was born when President Ahmad Tejan Kabbah requested the United Nations Security Council to ‘initiate a process whereby the United Nations would resolve on the setting up of a special court for Sierra Leone...to try and bring to credible justice those members of the Revolutionary United Front (RUF) and their accomplices responsible for committing crimes against the people of Sierra Leone....a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace.’¹⁶⁹ This court would ‘meet international standards for the trial of criminal cases while at the same time having a mandate to administer a blend of international and domestic Sierra Leonean law on Sierra Leonean soil.’¹⁷⁰ The UNSC acknowledged this request and the Special Court for Sierra Leone was born following an agreement between the government of Sierra Leone and the Secretary General of the United Nations which entered into force on 12 April 2002.¹⁷¹

4.2.2 The Structure and Practice of the Special Court for Sierra Leone

The Special Court for Sierra Leone was set up to try those bearing the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law as well as crimes under the domestic law of Sierra Leone committed within the territory of Sierra Leone since 30

www.sc-sl.org/abidjanaccord.html (accessed 26 October 2013), Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone Annex to UN Doc. S/1999/777(1999) of 12 July 1999.

¹⁶⁷Anthony C ‘Historical and Political Background to the Conflict in Sierra Leone’ in Ambos K & Othman M (eds) *New Approaches in International Criminal Justice* (2003)131-149.

¹⁶⁸See *Prosecutor Against Morris Kallon, Sam Hinga Norman & Brima Bazzy Kamara* SCSL-04-15-PT-060-11 2004 Decision on Constitutionality and Lack of Jurisdiction discussing the establishment of the SCSL in detail available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=OHwH%2fG1fDS0%3d&tabid=195>(accessed 26 October 2013).

¹⁶⁹Permanent Representative of Sierra Leone to the United Nations ,Letter to the President of the Security Council,9 August 2000 UN Doc. S/2000/786 (10 August 2000). Attached to this letter was an annex containing the letter of the President of Sierra Leone.

¹⁷⁰UN Doc.S/2000/786 at 3.

¹⁷¹UNSC Resolution, 2000 S/RES/1315(2000) available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SRES1315.pdf> (accessed 26 October 2013),see also Schabas WA *The UN International Criminal Tribunals, Former Yugoslavia, Rwanda and Sierra Leone* (2006)5-9.

November 1996.¹⁷² The SCSL is not a part of the Sierra Leone judicial structure but is an independent institution having primacy over the domestic courts of Sierra Leone with regard to the crimes within its jurisdiction.¹⁷³ It has been described as a sui generis treaty-based organ which has ‘the characteristics associated with classical international organizations (including legal personality; the capacity to enter into agreements with other international persons governed by international law; privileges and immunities; and an autonomous will distinct from that of its members)’.¹⁷⁴ It is distinct from preceding hybrid tribunals because it did not arise out of a decision by the UNSC¹⁷⁵ and is not run by the United Nations or the government of Sierra Leone although both have an influence on the court.¹⁷⁶ The SCSL is composed of three primary organs; the Chambers, the Office of the Prosecutor and the Registry.¹⁷⁷

The Court has both judicial and non-judicial functions. For example, the Registry, which is responsible for administering the Court, also manages detention matters, negotiates the necessary agreements with states and preserves and manages access to the Court’s archive. The SCSL is run by a Management Committee which relies on donations from UN member States for its budget. Members on the Committee include representatives from the Government of the United States, the United Kingdom, Canada, Nigeria and the Netherlands as well as representatives from the United Nations and the Government of Sierra Leone.¹⁷⁸

The SCSL eventually prosecuted nine individuals in four cases summarized as the Armed Forces Revolutionary Council (AFRC),¹⁷⁹ the Revolutionary United Front (RUF),¹⁸⁰ the Civil Defence Forces (CDF)¹⁸¹ trials and the Charles Taylor trial.¹⁸²

¹⁷² Article 1 Special Court Statute

¹⁷³ Article 8 Special Court Statute.

¹⁷⁴ *Prosecutor v. Charles Ghankay* SCSL-2003-01-I, Appeals Chamber 2004 Decision on Immunity from Jurisdiction para 41 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=7OeBn4RulEg=&tabid=191> (accessed 26 October 2013).

¹⁷⁵ Rather it followed an agreement between the President of Sierra Leone and the United Nations Secretary General.

¹⁷⁶ Article 12 & 15 Special Court Statute authorises the government of Sierra Leone and the Secretary General to appoint a Prosecutor and Judges for the court.

¹⁷⁷ Article 11 Special Court Statute.

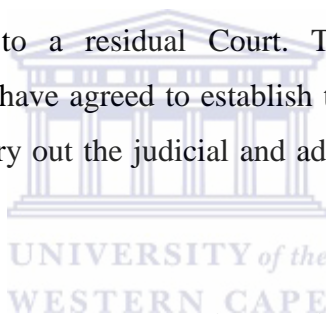
¹⁷⁸ Mochochoko P & Tortora G ‘The Management Committee for the Special Court for Sierra Leone’ in Romano CPR, Nollkaemper A & Kleffner JK (2004) 141-156.

¹⁷⁹ *Prosecutor v. Brima, Kamara & Kanu* SCSL-04-16-A Judgment 2008 available at <http://www.sc-sl.org/CASES/sl.org/LinkClick.aspx?fileticket=EqikfVSpLWM=&tabid=106> (accessed 26 October 2013).

¹⁸⁰ *Prosecutor v. Sesay, Kallon & Gbao* SCSL-04-15-T Judgment 2009 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=buPKIwx%2bWSo%3d&tabid=215> (accessed 26 October 2013).

The cases against Foday Sankoh and Sam Bockarie were withdrawn due to their confirmed deaths¹⁸³ and Samuel Hinga Norman also died while in the custody of the court in the period between the conclusion of his case and issuance of the judgment. The deaths of these key perpetrators dealt a major blow to the legitimacy of the court and left only Charles Taylor as the major perpetrator to be tried by the court. With their appeals now exhausted, the eight surviving convicts from the RUF, AFRC and CDF trials have since been transferred to Mpanga Prison in Rwanda to serve their lengthy sentences.¹⁸⁴

The Judgment in the case of Charles Taylor was a major accomplishment for the SCSL and was a great milestone towards the completion of its mandate. It was also the first time that an African head of state was brought to justice and convicted for international crimes. The SCSL is set to break new ground in international criminal justice by being the first international tribunal to complete all of its judicial proceedings and transition to a residual court. The United Nations and the Government of Sierra Leone have agreed to establish the Residual Special Court for Sierra Leone (RSCSL) to carry out the judicial and administrative responsibilities of the SCSL after its closure.¹⁸⁵



4.2.3 Special Court for Sierra Leone: Fostering Legitimacy

The SCSL is considered to be an improvement on the hybrid tribunal model in comparison to the preceding tribunals especially with regard to procedural

¹⁸¹*Prosecutor v. Fofana & Kondewa* No.SCSL-04-14-T Judgment 2007 available at <http://www.scsl.org/CASES/sl.org/LinkClick.aspx?fileticket=9xsCbIVrMIY%3d&tabid=194>(accessed 26 October 2013).

¹⁸²*Prosecutor v. Charles Ghankay Taylor* SCSL-03-01-T Judgement 2012 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=k%2b03KREPCQ%3d&tabid=107>(accessed 26 October 2013), See Press Release Special Court for Sierra Leone Office of the Prosecutor, Chief Prosecutor Announces the Arrival of Charles Taylor at the Special Court 29 March 2006) available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=hWEjA9QZg10%3d&tabid=196> (accessed 26 October 2013).

¹⁸³*Prosecutor v. Bockarie* SCSL-2003-04-PT Withdrawal of Indictment 2003 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=et=w81c%2bZX4wAI%3d&tabid=189>(accessed 26 October 2013).

¹⁸⁴Press Release Special Court for Sierra Leone Outreach and Public Affairs Office ‘Special Court Prisoners Transferred to Rwanda to Serve Their Sentence 31 October 2009 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=YiPY3dNd%2fi1%3d&tabid=214>(accessed 26 October 2013).

¹⁸⁵See The Residual Special Court for Sierra Leone Agreement (Ratification) Act 2011 available at www.sc-sl.org/LinkClick(accessed 26 October 2013).

fairness.¹⁸⁶ Aside from the advantages associated with hybrid tribunals in general the SCSL has had a significant impact on the legitimacy of international justice in Sierra Leone and elsewhere.

The court's relative success in the fulfilment of its mandate has made a positive contribution to legitimacy. A nationwide survey in Sierra Leone and Liberia on the impact and legacy of the SCSL found that 79.16 per cent of people in Sierra Leone and Liberia believe the SCSL has accomplished its mandate to carry out prosecutions and restore justice, peace and the rule of law.¹⁸⁷

Notable among its contributions is the work of the outreach program which enabled Sierra Leoneans to have a relationship with the Court.¹⁸⁸ The program was established as an office under the Registry in 2003 and is mostly staffed by Sierra Leoneans with a network reaching into the districts. It educates the public about the existence and operation of the Court and its efforts to rebuild the national judiciary.¹⁸⁹ Through activities such as town hall meetings attended by the Prosecutor and Registrar, production of informational booklets in Krio, Training and Trainer workshops with target groups such as the army, radio and television programs, video screenings, formation of School Human Rights and Peace Clubs, quizzes and debating competitions.¹⁹⁰

The capture and prosecution of Charles Taylor made a significant impact on the legitimacy of international justice. He had terrorised the region for over a decade and given his level of influence and powerful connections it would have been virtually impossible for any domestic court to put him on trial.¹⁹¹ His successful conviction by

¹⁸⁶Higonnet (2005)33.

¹⁸⁷No Peace Without Justice 'Making Justice Count: Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia' 2012 available at www.npwj.org/ICC/SCSL-and-NPWJ-organise-pre-launch-Report-impact-and-legacy-Special-Court-Sierra-Leone.html (accessed 26 October 2013).

¹⁸⁸Kerr R & Lincoln J 'The Special Court for Sierra Leone: Outreach, Legacy and Impact' King's College London War Crimes Research Group, Department of War Studies, Final Report (2008)11.

¹⁸⁹Cruvellier T 'From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test' International Centre for Transitional Justice and Sierra Leone Court Monitoring Program (2009)29.

¹⁹⁰Kerr R & Lincoln J (2008) 11, Perriello T & Wierda M 'The Special Court for Sierra Leone Under Scrutiny' International Centre for Transitional Justice (2006)36.

¹⁹¹Interviews revealed that people in Sierra Leone perceived Charles Taylor as being one of those most responsible for the civil war see Perriello T & Wierda M (2006) 27.

the SCSL therefore lends credence to the utility of an international component in the special court that allowed it to take advantage of additional resources in bringing him to justice. Anything less than a conviction of Charles Taylor would have left a negative impression on the overall role and success of the Court.¹⁹²

The SCSL is currently working with its Management Committee, the Government of Sierra Leone and the United Nations to ensure the set up and successful transition of its responsibilities to the Residual Special Court for Sierra Leone. At the same time, the Court is also striving to consolidate its legacy by preserving and handing over 'its intellectual assets including archives, replicable programs and jurisprudence' to the Government of Sierra Leone.¹⁹³ This organised transition process is important for the maintenance of the legacy of the court.

4.2.4 Criticisms of the Special Court for Sierra Leone

The decision to transfer the Charles Taylor case to the Hague¹⁹⁴ dealt a serious blow to the legitimacy of the SCSL among Sierra Leoneans, as many wished to have closer and easier access to the trial.¹⁹⁵ His trial was the piece de resistance of the Special Court given the extent of his influence in the civil war.¹⁹⁶ It would have been very important for the people to witness his trial first hand and the failure of the Special Court to deliver this was a serious short coming. In any case the location is one of the key positive features of any hybrid tribunal and holding the trial in a different country robbed both the immediate victims of the crime and the victim community as a whole

¹⁹²Njikam O (2013)35.

¹⁹³Report on the Special Court for Sierra Leone: activities and the completion of its mandate S/2012/741 available at http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_741.pdf 32-61 (accessed 26 October 2013).

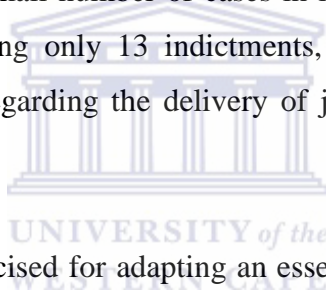
¹⁹⁴Preamble U.N. Doc. S/RES/1688 (2006), Press Release 'Special Court for Sierra Leone, Special Court President Requests Charles Taylor be Tried in The Hague' 30 March 2006 available at www.sc-sl.org/LinkClick.aspx?fileticket=gR%2bYctzTfKg%3d&tabid=111 (accessed 26 October 2013).

¹⁹⁵See Kendall S & Staggs M 'Interim Report on the Special Court for Sierra Leone' University of California Berkeley War Crimes Studies Centre (2005)32-34, Amnesty International USA 'Special Court for Sierra Leone: Issues for Consideration Regarding the Location of the Trial of Charles Taylor' 2005 available at <http://www.amnestyusa.org/document.php?id=ENGAFR510052006&lang=e> (accessed 26 October 2013), Kelsall T 'Insufficiently Hybrid: Assessing the Special Court for Sierra Leone' (2009)27 *Law in Context*136.

¹⁹⁶Perriello T & Wierda M (2006)27, See also Crane D 'International Criminal Tribunals in the 21st Century: Terrorists, Warlords, and Thugs' (2006)21 *American University International Law Review* 504.

and undermined the retributive and restorative elements of the trial that are indispensable in establishing the tribunal's legitimacy.¹⁹⁷

The choice of cases and in particular the CDF trial was another bone of contention for the Special Court. Many Sierra Leoneans viewed the CDF as a liberation movement and were thus biased against the court. The indictment of Samuel Hinga Norman and not President Kabbah who had also been part of the CDF and had in fact been Norman's superior smacked of bias.¹⁹⁸ This position was emphasized by the acquittal of the two final accused in that case by the only Sierra Leonean judge who believed that 'fighting for the restoration of democracy and constitutional legitimacy could be rightly perceived as an act both of patriotism and altruism, overwhelmingly compelling disobedience to a supranational regime of prescriptive norms'¹⁹⁹ This dissenting view was in accord with the popular opinion of Sierra Leoneans at the time. In relation to this the small number of cases in itself is also a challenge to the Court's legitimacy. By issuing only 13 indictments, the court failed to meet the expectations of the people regarding the delivery of justice for a war that spanned over a decade.²⁰⁰



The Court has also been criticised for adapting an essentially western institution to a local African culture and imposing alien international law norms on the local population. The offences of recruiting or enlisting child soldiers and the charges of forced marriage were particularly criticised.²⁰¹ The charge of recruiting child soldiers depends upon an understanding of adulthood premised on reaching a certain

¹⁹⁷McAuliffe P 'Transitional Justice in Transit: Why Transferring a Special Court for Sierra Leone Trial To the Hague Defeats the Purposes of Hybrid Tribunals' 2008 *Netherlands International Law Review* 378.

¹⁹⁸Kelsall T (2009) 134, Sawyer E & Kelsall T 'Truth vs. Justice: popular views on the Truth and Reconciliation Commission and Special Court for Sierra Leone' (2007) 7 *Journal of Peace and Conflict Resolution* 1, Cruvellier T (2009), Schabas WA 'A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone' (2004) 15 *Criminal Law Forum* 43.

¹⁹⁹Judge Bankole Thompson in *Prosecutor vs. Fofana and Kondewa (CDF Case)* Trial Judgment (2007) 364 available at <http://www.sc-sl.org/CASES/ProsecutorvsFofanaandKondewaCDFCase/TrialChamberJudgement/tabid/175/Default.aspx> (accessed 26 October 2013).

²⁰⁰Jalloh CC (2013) 420, Human Rights Watch 'Bringing Justice: The Special Court for Sierra Leone: Accomplishments, Shortcomings, and Needed Support' (2004) 6 available at <http://www.hrw.org/sites/default/files/reports/sierraleone0904.pdf> (accessed 26 October 2013), Stromseth J, Wippman D & Brooks R *Can Might Make Rights? Building the Rule of Law After Military Interventions* (2006) 294.

²⁰¹Article 4(C) Special Court Statute.

biological age yet adulthood in the society is rather forged in the practice of secret society initiation which may take place at a variety of ages.²⁰² A similar dilemma arose with regard to the offence of forced marriage which was often difficult to distinguish from traditional forms of marriage.²⁰³ However given that the thirteen people who were actually indicted by the Court were charged on numerous offences it cannot really be said that these provisions biased the population against the court.

Although the situation of the Court in Sierra Leone was expected to leave a powerful legacy by transforming the domestic legal sector, this was not the case. The Statute of the Court specified that the deputy Prosecutor should be a Sierra Leonean, but the Government of Sierra Leone chose to quietly amend the legislation and appoint a British QC instead which caused domestic lawyers to feel alienated from the court and resentful of it.²⁰⁴ Until recently Sierra Leoneans have not occupied the higher positions in the Office of the Prosecutor. At present only one of the Trial Chamber judges is Sierra Leonean and there is only one Sierra Leonean on the Appeals Bench as well.

The initial optimism surrounding the future utility of the Court site itself has recently cooled. The International Centre for Transitional Justice for example at one time speculated that buildings, offices, computers and detention centres could all greatly assist a struggling and under-resourced national legal sector.²⁰⁵ It is now clear however that the courtrooms are not really appropriate to the needs of the domestic legal sector and the government lacks the funds to maintain the site.²⁰⁶ The building now risks becoming a 'white elephant' with its main prospect at the moment being conversion into a dancehall.²⁰⁷

²⁰²Kelsall T *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone* (2009)243-54.

²⁰³Kelsall T (2009)147, Kelsall T *Culture Under Cross Examination: International Justice and the Special Court for Sierra Leone*(2009)243-54.

²⁰⁴Perriello T & Wierda M 'The Special Court for Sierra Leone Under Scrutiny' International Centre for Transitional Justice(2006) 40.

²⁰⁵Perriello T & Wierda M (2006)39, See also International Crisis Group Africa Briefing 'The Special Court for Sierra Leone: promises and pitfalls of a new model' *International Crisis Group* (2003) 19-20 available at <http://www.crisisgroup.org/en/regions/africa/west-africa/sierra-leone/B016-the-special-court-for-sierra-leone-promises-and-pitfalls-of-a-new-model.aspx>(accessed 26 October 2013).

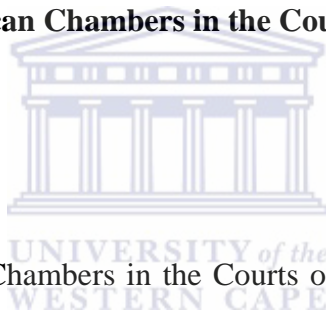
²⁰⁶Cruvellier T (2009)40-1.

²⁰⁷ Kerr R & Lincoln J (2008)29.

The SCSL has also been criticised for repeating some of the major shortcomings of the Adhoc tribunals. Perhaps this is because its structure and legal framework align it more with the international tribunals than with hybrid tribunals. According to Schabas, the Special Court ‘is a close relative of the ‘hybrid tribunals’, but is more accurately classified with the ad hoc tribunals because it is a creature of international law, not domestic law.’²⁰⁸ Like the Adhoc tribunals the SCSL experienced criticism with regard to the duration of its trials and the expense involved and thus failed to be a significant improvement on their record.²⁰⁹ The cost of approximately 23 million dollars for each trial is perhaps too high especially in the context of Sierra Leone’s justice system which operates on less than one million dollars each year.²¹⁰ Thus, it is not surprising to hear that many Sierra Leoneans consider the overall cost of the SCSL too high a price to pay for what they have received in return.²¹¹

4.3 The Extraordinary African Chambers in the Courts of Senegal

4.3.1 Background



THE Extraordinary African Chambers in the Courts of Senegal were inaugurated in February 2013 to prosecute the person or persons most responsible for international crimes committed in Chad between 1982 and 1990.²¹² This hybrid tribunal was set up to hold former Chadian President Hissène Habré accountable for the crimes committed during his presidency in Chad from 1982 to 1990 when he was deposed by Idriss Déby Itno, the current President.²¹³ Habré fled to Senegal in 1990 and has been

²⁰⁸Schabas WA (2006)6.

²⁰⁹See Cassese A ‘Independent Expert, Report on the Special Court for Sierra Leone’ (2006) 5 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=VTDHyrHasLc=&> (accessed 26 October 2013).

²¹⁰According to the 2010 budget for example the Supreme Court, Court of Appeals and High Court have a combined budget of 1420.3 million Leones (361 200 USD). Even when combined with the budgets for other law enforcement institutions the total budget for law enforcement is 3 774.1 Leones (about 959 800 USD) Government of Sierra Leone, Budget Profile, Fiscal Year 2008-2010 available at http://www.mofed.gov.sl/index.php?option=com_content&task=view&id=13&Itemid=28 (accessed 26 October 2013).

²¹¹See Fofana U ‘Did Sierra Leone Get War Crimes Justice?’ *BBC News* 6 November 2009 available at <http://news.bbc.co.uk/2/hi/africa/8345618.stm> (accessed 26 October 2013).

²¹²Article 3 EACCS Statute.

²¹³See Government of Chad ‘Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habre, His Accomplices and Accessories: Investigations of Crimes Against the Physical and Mental Integrity of Persons and their Possessions,’ 7

living in exile there since. He has until recently successfully evaded justice for his crimes. On 2 July 2013, Hissène Habré was charged with crimes against humanity, torture and war crimes and placed in pre-trial detention by the EACCS.²¹⁴

Prior to this, several attempts had been made to hold him accountable for his crimes. Domestic criminal proceedings accusing him of torture and crimes against humanity were initiated in Senegal in early 2000. The case was eventually unsuccessful and the charges against him were dismissed by the Dakar Appeals Court²¹⁵ a decision then confirmed by the Senegalese Court of Cassation²¹⁶ on the grounds that Senegal did not have legislation domesticating the offence of crimes against humanity and that the Code of Criminal Procedure did not give Senegalese courts jurisdiction over acts of torture committed by foreigners abroad.

Subsequently Belgium opened investigations against Habré under its universal jurisdiction law culminating in the issuance, in September 2005, of an international arrest warrant against Habré for crimes against humanity, torture, war crimes and other human rights violations. Belgium then requested Senegal for his extradition. Extradition was denied because Habré enjoyed immunity from prosecution as a former Head of State.²¹⁷ Similar extradition requests in August 2011 and January 2012 were also denied. A recommendation by the African Union asking Senegal to prosecute and ensure that Hissène Habré be tried 'on behalf of Africa by a competent

May 1992 available at <http://www.usip.org/files/file/resources/collections/commissions/Chad-Report.pdf> (accessed 26 October 2013), See also Silva R, Klingner J & Weikart S 'State Coordinated Violence in Chad under Hissène Habré: A Statistical Analysis of Reported Prison Mortality in Chad's DDS Prisons and Command Responsibility of Hissène Habré 1982-1990' Report by Benetech's Human Rights Data Analysis Group to Human Rights Watch and the Chadian Association of Victims of Political Repression and Crimes 3 February 2010 available at <http://www.hrdag.org/about/chad.shtml> (accessed 26 October 2013).

²¹⁴See 'Habré Faces War Crimes Charge' *iol news* 2 July 2013 available at <http://www.iol.co.za/news/africa/habre-faces-war-crimes-charges-1.1540536#.Um-khVNj-18> (accessed 26 October 2013).

²¹⁵Chambre d'accusation de la Cour d'appel de Dakar (Criminal Chamber of the Dakar Appeals Court), Senegal, *Ministere Public et Francois Diouf Contre Hissène Habré* (arret no 135) 4 July 2000 available at <http://www.hrw.org/legacy/french/themes/habre-decision.htm> (accessed 26 October 2013).

²¹⁶Cour de Cassation Senegal, *Souleymane Guengueng et Autres Contre Hissène Habré* (arret no 14) 20 March 2001 available at <http://www.icrc.org/ihlnat.nsf/46707c419d6bd424125673e00508145/90e26efa1bb31189c1256b21005549b0!OpenDocument> (accessed 26 October 2013).

²¹⁷Chambre d'accusation de la Cour d'appel de Dakar (Criminal Chamber of the Dakar Appeals Court), Avis du 25 Novembre relatif a' la demande d'extradition de Hissène Habré par la Belgique (unreported). Excerpts available at http://www.haguejusticeportal.net/Docs/NLP/Senegal/Habr%E9_Cour Appel Avis Extradition 25-11-2005%28Extraits%29.pdf (accessed 26 October 2013).

Senegalese court with guarantees for fair trial' then brought the case back to Dakar.²¹⁸

Habré was also prosecuted in absentia in Chad for allegedly supporting a rebel movement opposed to the current Chadian President Idriss Deby. On 15 August 2008, a court in N'djamena sentenced him to death for crimes against the state.²¹⁹ The Court of Justice of the Economic Community of West African States (ECOWAS) also became involved in the case²²⁰ Habré brought a complaint to the Court against Senegal claiming that changes in the country's legislation deliberately targeted him and were in violation of the principle of non-retroactivity of criminal law.²²¹ The changes had been made after the African Union requested Senegal to take action against Habré. According to the ECOWAS court the only way Senegal could carry out the mandate assigned to it by the African Union was by setting up an Adhoc Tribunal 'in accordance with the international custom which has emerged in similar situations.'²²²

On 20 July 2012, the International Court of Justice found that Senegal had failed to meet its obligations under the Torture Convention and ordered Senegal to immediately prosecute or extradite Habré.²²³ These decisions prompted an agreement to create the Extraordinary African Chambers within the Senegalese judicial system. On 17 December 2012 the Senegalese National Assembly adopted the law establishing the EACCS.²²⁴ Apart from Habré the Prosecutor of the EACCS has requested the indictment of five further officials of Habré's administration suspected of having committed international crimes.

²¹⁸Decision on the Hissène Habré Case and the African Union Assembly/AU/Dec. 03(VI) 2 August 2006 at para 5(ii) available at <http://www.hrw.org/en/news/2006/08/02/decision-hiss-ne-habr-case-and-african-union> (accessed 26 October 2013).

²¹⁹Judgment unreported see The New York Times for a summary of the judgment available at <http://www.nytimes.com/2008/08/15/world/africa/15iht-chad.5.15339685.html> (accessed 26 October 2013).

²²⁰*Hissène Habré Contre République du Sénégal* (ECW/CCJ/JUD/06/10) ('ECOWAS Judgment') Judgment of 18 November 2010 available at <http://www.hrw.org/fr/news/2010/11/18/arr-t-cedeaoecowas-ruling-hissein-habr-c-r-publique-du-s-n-gal> (accessed 26 October 2013).

²²¹Spiga V 'Non-Retroactivity of Criminal Law: A New Chapter in the Hissène Habré Saga' (2011)9 *Journal of International Criminal Justice* 10.

²²²Para 58 ECOWAS Judgment.

²²³*Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* ICJ judgement of 20th July 2012 available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=144> (accessed 26 October 2013).

²²⁴See Human Rights Watch 'Chronology of the Habré Case' available at <http://www.hrw.org/news/2012/03/09/chronology-habr-case> (accessed 26 October 2013).

4.3.2 The Structure of the Extraordinary African Chambers in the Courts of Senegal

The Extraordinary African Chambers have been created inside the existing Dakar District Court and the Appeals Court. The Chambers have four levels; an Investigative Chamber with four Senegalese investigative judges, an Indicting Chamber comprised of three Senegalese judges, a Trial Chamber and an Appeals Chamber.²²⁵ The Trial Chamber and the Appeals Chamber each have two Senegalese judges and a president from another Member State of the African Union. The Chamber's Statute gives it jurisdiction over the crimes of genocide, crimes against humanity, war crimes and torture which were committed in Chad between 7 June 1982 and 1 December 1990, corresponding to the duration of Habré's rule.²²⁶ The Statute also allows for the participation of victims as civil parties, represented by legal counsel.²²⁷ The Chambers may also make orders for reparations to be paid into a victims' fund.²²⁸



4.3.3 Possible Contributions to Legitimacy

The EACCS has an important advantage over previous hybrid tribunals which were established under the auspices of the United Nations. Arising from an agreement between the African Union and the government of Senegal places it in a position of greater legitimacy among Africans. It has the potential to respond effectively to the current challenges plaguing the legitimacy of international criminal justice in Africa by presenting itself as an African solution.²²⁹

The location of the tribunal within the existing judicial structure of Senegal also promises to minimise the large costs usually associated with international justice tribunals. It also ensures that there are no issues of continuity after the tribunal discharges its mandate and avoids the embarrassing experience of the SCSL where resources were invested in building structures that don't seem to have any use once

²²⁵ Article 2 EACCS Statute.

²²⁶ Article 4-8 EACCS Statute.

²²⁷ Article 14 EACCS Statute.

²²⁸ Article 28 EACCS Statute.

²²⁹ See Chapter 2.3.1 *infra* on the criticisms of the ICC.

the court finishes its work.²³⁰

The fact that the court is in Senegal presents a picture of fairness compared to if it had been in Chad. The previous *ex parte* prosecution of Hissène Habré in Chad can be dismissed as political posturing by the incumbent government but his present trial at the EACCS has the legitimacy of a fair and impartial judicial process.

4.3.4 Preliminary Criticisms of the EACCS

First, the location of the EACCS in Senegal is an inevitable result of the background to its establishment. It does however have the potential to impede the legitimacy of the trial process among the victim community. It may prove difficult to justify to the victims of his brutality why he is being tried in Senegal and not Chad. Serious outreach efforts are necessary to bridge this gap and the mandate of the tribunal to provide outreach should be exploited to do so.²³¹

Secondly, aside from the international law applicable the EACCS has the mandate to apply the domestic law of Senegal.²³² This is potentially a problem since the atrocities over which the tribunal is presiding occurred in Chad. This may create a possible legitimacy gap. However this is mitigated by the fact that both Senegal and Chad are civil law countries thus their domestic laws are materially similar.

Thirdly, the African Union and the government of Senegal have the authority to appoint all the judicial and administrative officials of the tribunals.²³³ This sidelines the victim community and does not allow them to participate in the Court's processes. This State of events arises out of Senegal's obligations to extradite or prosecute Habré but it may have the unfortunate effect of alienating the victims. As it stands the tribunal appears to be a project for the benefit of Senegal. It would be useful for the engagement and involvement of the victim community if they were better represented in the administration of the court.

²³⁰Cruvellier T (2009)40-1.

²³⁰ Kerr R & Lincoln J (2008)29, Cruvellier T (2009)40-1.

²³¹ Article 15(3) EACCS Statute.

²³² Article 16 & 17 EACCS Statute.

²³³ Article 11, 12 & 15 EACCS Statute.

4.4 Concluding Remarks

Although the Special Court for Sierra Leone made some important contributions to the development of international criminal justice as well as to the establishment of accountability and the rule of law in Sierra Leone, the criticisms experienced suggest a need for further improvement of the hybrid court model. The EACCS which is fundamentally different in structure from the SCSL and other hybrid tribunals before it attempts to address this issue. At this point it is too soon to tell what the impact of this new innovation will be on the legitimacy of international criminal justice in the victim community and the future utility of the hybrid tribunal model. The Court's presentation as an African solution is however a refreshing change from the typical United Nations involvement and potentially encourages a more positive perception in Senegal, Chad and elsewhere in Africa.



CHAPTER FIVE

FINAL OBSERVATIONS

5.1 Summary of Findings

The research has revealed that the interaction of the African region with the various international criminal justice institutions thus far has created a particular legitimacy challenge. The extensive criticism and disenchantment of the Rwandan people with the ICTR set the stage for a negative perception that was not dissuaded by the practice of the ICC. The latter court's preoccupation with the prosecution of Africans has come to be its Achilles heel.

Unfortunately, the challenges and short comings of the extant hybrid tribunals have compromised the utility of the model. In several cases, hybrid tribunals have exhibited the negative characteristics of the ICTR and the ICTY. In spite of this the relative success and accomplishments of the Special Court for Sierra Leone for example continues to suggest that hybrid courts are useful tools for accountability in post conflict situations. The operation of the EACCS also promises to provide some useful insights into the future of the model.

5.2 Conclusion

Although the International Criminal Court has been criticised for its focus on Africa, it is also true that the region has experienced and continues to experience more civil unrest than any other part of the world. The greatest atrocities are often committed by the people in authority which means that they usually escape justice in the domestic courts. In other situations the conflict leaves the country in shambles and devoid of any judicial structure.

Africa needs international criminal justice institutions. That said, the status quo cannot be maintained and new innovations are necessary to meet the dynamic needs of post conflict situations. The determination of the African Union to extend the jurisdiction of the African Court on Human and Peoples' rights to cover international

crimes shows that there is a gap that needs to be filled. An African Union court would be at the regional level and just like the ICC would be removed from the victim communities. It does not therefore completely negate the need for hybrid tribunals to cater for particular post conflict situations. The hybrid tribunal model offers the dynamism and contextual sensitivity that the specific circumstances in post conflict situations require. This is why hybrid tribunals continue to be a viable option for post conflict justice and have been considered for several other States in transition such as the Democratic Republic of Congo and Burundi.²³⁴

5.3 Recommendation

The challenges facing the legitimacy of international criminal justice in Africa are ultimately associated with the absence of a sense of ownership and the failure of international criminal tribunals to adapt to the understanding of justice in a particular context. These are exaggerated by the inevitable political dimensions of international criminal justice. Hybrid courts have the potential to address these challenges. However, in order for the hybrid court model to continue to be relevant as a mode of international criminal justice, it needs to find a place in a hierarchy where there is a functional international criminal court as well possible regional and sub-regional courts.

Future hybrid tribunals should be closer aligned to domestic judicial systems. Focus on the integration of hybrid tribunals within domestic judicial systems is in line with the current trend for the implementation of international criminal justice which is implementation at the national level.²³⁵ Closer alignment with the domestic judicial system allows hybrid tribunals to capitalize on the legitimacy of national prosecutions while harnessing the impartiality and fairness of international processes. Although previous such attempts in Kosovo and Bosnia were not successful, the lessons learnt from those experiences can be used to improve future interactions between

²³⁴See Lee R 'Plans for a Hybrid Court in Congo-Pascale Kambale' 6 March 2012 Open Society Initiative for Southern Africa available at <http://www.osisa.org/openspace/drc/plans-hybrid-court-congo-pascale-kambale> (accessed 26 October 2013), see also Wormington J & Khan T 'Mobile Courts in the DRC: Lessons from Development for International Criminal Justice' available at <http://otjr.csls.ox.ac.uk/materials/papers/178/mobile%20courts%20DRC.pdf> (accessed 26 October 2013).

²³⁵See Roht-Arriaza N 'Perspectives on the Enforcement of International Criminal Law by National Courts' (2013) 11 *Journal of International Criminal Justice* 537-43.

international and domestic components within the domestic judicial structures of States in Africa.



LIST OF REFERENCES

A. PRIMARY SOURCES

Agreements and Resolutions

1. African Union, Decision of the Extraordinary Session of the Assembly of the African Union, Ext/Assembly/AU/Dec12 October 2013 available at http://www.au.int/en/sites/default/files/Ext%20Assembly%20AU%20Dec%20%20Decl%20_E.pdf (accessed 26 October 2013).
2. African Union, Decision on the Implementation of the Decisions on the International Criminal Court (ICC) Doc. EX.CL/639(XVIII) 30-31 January 2011.
3. African Union, Decision on the Progress Report of the Commission on the Implementation of Decision Assembly/AU/ Dec.270(XIV) on the Second Ministerial Meeting on the Rome Statute of the International Criminal Court (ICC) Doc. Assembly/AU/10(XV) 27 July 2010.
4. African Union, Decision on the Meeting of African States Parties to the Rome Statute of the International Criminal Tribunal (ICC) Doc. Assembly/AU/13(XIII) 3 July 2009.
5. African Union, Decision on the Hissène Habré Case and the African Union Assembly/AU/Dec. 03(VI) 2 August 2006 at para 5(ii) available at <http://www.hrw.org/en/news/2006/08/02/decision-hiss-ne- habr-case-and-african-union> (accessed 26 October 2013).
6. Organisation of African Unity, Dakar Declaration on an International Criminal Court adopted by the 67th ordinary session of the OAU Council of Ministers, meeting at Addis Ababa February 1998 and by the 34th Assembly of Heads of State and Government of the OAU Ouagadougou June 1998 available at www.iccnw.org/documents/Dakar_DeclarationFeb98Eng.pdf (accessed 26 October 2013).

7. Government of Sierra Leone, Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone Annex to UN Doc. S/1999/777(1999) of 12 July 1999.
8. Government of Sierra Leone, Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) of 30 November 1996 available at www.sc-sl.org/abidjanaccord.html(accessed 26 October 2013).
9. Palestinian National Authority, Declaration Recognising the Jurisdiction of the International Criminal Court 21 January 2009 available at www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf (accessed 26 October 2013).
10. United Nations, Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon Annex to UNSC Resolution, S/RES/1757(2007).
11. United Nations, Security Council Resolution 2007 S/RES/1757 (2007) available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Chap%20VII%20SRES%201757.pdf>(accessed 26 October 2013).
12. United Nations, Agreement between the High Representative for Bosnia and Herzegovina on the Establishment of the Registry for Section I for War Crimes and Section II for Organised Crime ,Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department For War Crimes and the Special Department for Organised Crime, Economic Crime and Corruption of the Prosecutor's office of Bosnia and Herzegovina available at http://www.sudbih.gov.ba/files/docs/zakoni/en/Registry_Agreement_English_version.pdf(accessed 26 October 2013).

13. United Nations, Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea 6 June 2003 available at <http://www.cambodia.gov.kh/krt/english/index.htm> (accessed 26 October 2013).
14. United Nations, Letter to the President of the Security Council from the Permanent Representative of Sierra Leone to the United Nations 9 August 2000 UN Doc. S/2000/786 (10 August 2000).
15. United Nations, Letter from the President of Sierra Leone to the Secretary General 12 June 2000 UN Doc. UN Doc. S/2000/786 annex S/RES/1315 (2000).
16. United Nations, Security Council Resolution 2000 S/RES/1315(2000) available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IJ%20SRES1315.pdf> (accessed 26 October 2013).
17. United Nations, Resolution establishing the United Nations Transitional Government in Kosovo (UNMIK) UN Doc. S/RES/1244 (1999).
18. United Nations, Security Council Resolution 22 February 1995 S/RES/977 (1995).
19. United Nations, Resolution establishing the United Nations Transitional Government in East Timor (UNTAET) 1999 UN Doc. S/RES/1272 (1999).
20. United Nations, Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone available at <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx>(accessed 26 October 2013).

Conventions, Treaties and Statutes

21. Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) at http://www.eccc.gov.kh/sites/default/files/legaldocuments/KR_Law_as_amended_27_Oct_2004_Eng.pdf (accessed 26 October 2013).
22. Law on the Ratification of the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea and Law on Amendments to the Law on the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea available at <http://www.cambodia.gov.kh/krt/english/index.htm> (accessed 26 October 2013).
23. Rome Statute on the establishment of the International Criminal Court U.N. Doc. A/CONF.183/9 17 July 1998.
24. Special Court Agreement Ratification Act 2002 available at <http://www.scs-sl.org/Documents/SCSL-ratificationamendmentact.pdf> (accessed 26 October 2013).
25. Statute of the United Nations Special Court for Sierra Leone UN Doc. S/RES/1315 (2000).
26. Statut des Chambres africaines extraordinaires au sein des juridictions sénégalaises pour la poursuite des crimes internationaux commis au Tchad durant la période du 7 juin 1982 au 1er décembre 1990 available at <http://www.hrw.org/node/113271> (accessed 26 October 2013).

27. Statute of the Special Tribunal for Lebanon UN Doc. S/RES/1757 (2007) available at <http://www.stl-tsl.org/en/documents/statute-of-the-tribunal/statute-of-the-special-tribunal-for-lebanon> (accessed 26 October 2013).
28. Statute of the United Nations International Criminal Tribunal for Rwanda UN Doc. S/RES/955 (1994) 8 November 1994 available at <http://www1.umn.edu/humanrts/peace/docs/scres955.html>(accessed 26 October 2013).
29. The Residual Special Court for Sierra Leone Agreement (Ratification) Act 2011 available at www.sc-sl.org/LinkClick(accessed 26 October 2013).
30. United Nations Mission in Kosovo Regulation UNMIK/REG/2003/36.
31. United Nations Mission in Kosovo Regulation UNMIK/REG/2002/20.
32. United Nations Mission in Kosovo Regulation UNMIK/REG/2000/64 15 December 2000 at <http://www.unmikonline.org/regulations/2000/reg64-00.htm> (accessed 26 October 2013).
33. United Nations Mission in Kosovo Regulation UNMIK/REG/2000/34
34. United Nations Mission in Kosovo Regulation UNMIK/REG/2000/6 as amended by UNMIK/REG/2001/2.
35. United Nations Transitional Administration in East Timor, Regulation 2000/16 on the organization of the public prosecution service in East Timor available at <http://www.un.org/peace/etimor/untaetR/UntaetR.htm>(accessed 26 October 2013).
36. United Nations Transitional Administration in East Timor, Regulation 2000/15 on the establishment of panels with exclusive jurisdiction over serious criminal offences available at <http://www.un.org/peace/etimor/untaetR/UntaetR.htm>(accessed 26 October 2013).

37. United Nations Transitional Administration in East Timor, Regulation 2000/11 providing for a mixed panel of national and international judges in the special panels in East Timor as amended by UNTAET Regulation 2000/14 available at <http://www.un.org/peace/etimor/untaetR/UntaetR.htm> (accessed 26 October 2013).
38. United Nations Transitional Administration in East Timor, Regulation 1999/3 on the Establishment of a Transitional Judicial Service Commission as amended by UNTAET Regulation 2000/25 available at <http://www.un.org/peace/etimor/untaetR/UntaetR.htm> (accessed 26 October 2013).
39. United Nations Transitional Administration in East Timor, Regulation 1999/1 on the Authority of the Transitional Administration in East Timor available at <http://www.un.org/peace/etimor/untaetR/UntaetR.htm> (accessed 26 October 2013).
40. Statut des Chambres africaines extraordinaires au sein des juridictions sénégalaises pour la poursuite des crimes internationaux commis au Tchad durant la période du 7 juin 1982 au 1er décembre 1990 at <http://www.hrw.org/node/113271> last visited 27/03/2013 (accessed 26 October 2013).

Cases

41. *Democratic Republic of the Congo, The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx (accessed 26 October 2013).

42. *Democratic Republic of the Congo, The Prosecutor v. Mathieu Ngudjolo Chui* ICC-01/04-02/12 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/ICC-01-04-02-12/Pages/default.aspx (accessed 26 October 2013).
43. *Hissène Habré Contre République du Senegal* (ECW/CCJ/JUD/06/10) ('ECOWAS Judgment') Judgment of 18 November 2010 available at <http://www.hrw.org/fr/news/2010/11/18/arr-t-ceedaoecowas-ruling-hissein-habr-c-r-publique-du-s-n-gal> (accessed 26 October 2013).
44. *House of Lords: Regina v. Bartle/Evans, ex parte Pinochet* Judgment of 26 March 1999, 38 ILM (1999)581-663.
45. *Omar Hassan Ahmad Al Bashir (Omar Al Bashir)* Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir (Public Redacted Version) ICC-02/05-01/09, (4 March 2009).
46. *Prosecutor v. Charles Ghankay Taylor* SCSL-03-01-T Judgment 2012 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=k%2b03KREEPCQ%3d&tabid=107>(accessed 26 October 2013).
47. *Prosecutor v. Sesay, Kallon & Gbao* SCSL-04-15-T Judgment 2009 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=buPK1wx%2bWSo%3d&tabid=215>(accessed 26 October 2013).
48. *Prosecutor v. Brima, Kamara & Kanu* SCSL-04-16-A Judgment 2008 available at <http://www.sc-sl.org/CASES/sl.org/LinkClick.aspx?fileticket=EqikfVSpLWM=&tabid=106>(accessed 26 October 2013).

49. *Prosecutor v. Fofana & Kondewa* No.SCSL-04-14-T Judgment 2007 available at <http://www.scsl.org/CASES/sl.org/LinkClick.aspx?fileticket=9xsCbIVrMIY%3d&tabid=194>(accessed 26 October 2013).
50. *Prosecutor v. Charles Ghankay* SCSL-2003-01-I), Appeals Chamber 2004 Decision on Immunity from Jurisdiction para 41 available at <http://www.scsl.org/LinkClick.aspx?fileticket=7OeBn4RulEg=&tabid=191>(accessed 26 October 2013).
51. *Prosecutor v. Morris Kallon, Sam Hinga Norman & Brima Bazzy Kamara* SCSL-04-15-PT-060-11 2004 Decision on Constitutionality and Lack of Jurisdiction discussing the establishment of the SCSL in detail available at <http://www.scsl.org/LinkClick.aspx?fileticket=QHwH%2fG1fDS0%3d&tabid=195> (accessed 26 October 2013).
52. *Prosecutor v. Bockarie* SCSL-2003-04-PT Withdrawal of Indictment 2003 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=w81c%2bZX4wAI%3d&tabid=189>(accessed 26 October 2013).
53. *R v Desire' Munyaneza* (2009) QCCS 2201.
54. *Senegal, Ministere Public et Francois Diouf Contre Hissene Habre* (arret no. 135) 4 July 2000 Chambre d'accusation de la Cour d'appel de Dakar (Criminal Chamber of the Dakar Appeals Court), available at <http://www.hrw.org/legacy/french/themes/habre-decision.htm> (accessed 26 October 2013).
55. *Senegal, relatif a' la demande d'extradition de Hissene Habre par la Belgique*Chambre d'accusation de la Cour d'appel de Dakar (Criminal Chamber of the Dakar Appeals Court), Avis du 25 Novembre (unreported). Excerpts available at <http://www.nytimes.com/2008/08/15/world/africa/15iht-chad.5.15339685.html> (accessed 26 October 2013).

56. *Senegal, Souleymane Guengueng et Autres Contre Hissène Habré* (arret no 14) Cour de Cassation Senegal 20 March 2001 available at <http://www.icrc.org/ihlnat.nsf/46707c419d6bdfa24125673e00508145/90e26efa1bb31189c1256b21005549b0!OpenDocument> (accessed 26 October 2013).
57. *Situation in the Libyan Arab Jamarihiya, Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi* ICC-01/11-13 27-06-2011 1/7 CB PT available at <http://www.icc-cpi.int/iccdocs/doc/doc1099321.pdf> (accessed 26 October 2013).
58. *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Second Decision on the Prosecution's Application for a Warrant of Arrest, ICC-02/05-01/09 12 July 2010.
59. *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09-139 available at www.icc-cpi.int/iccdocs/doc/doc1287184.pdf (accessed 26 October 2013).
60. *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision pursuant to article 87(7) of the Rome Statute on the refusal of the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09-140 available at www.icc-cpi.int/iccdocs/doc/doc1384955.pdf (accessed 26 October 2013).
61. *The Prosecutor v. Ferdinand Nahimana et al* ICTR 99-52-T Judgment of 3 December 2003.
62. *The Prosecutor v. Jean Kambanda* Case No. ICTR 97-23-S Judgement of 4 September 1998.

63. *The Prosecutor v. Protais Zigiranyirazo* ICTR-01-73-T available at <http://www.unictr.org/Portals/0/Case%5CEnglish%5CZigiranyirazo%5CJudgement%5C081218e.pdf> (accessed 26 October 2013).
64. *The Prosecutor v. Hormisdas Nsengimana* ICTR-01-69-T available at <http://www.unictr.org/Portals/0/Case%5CEnglish%5CNsengimana%5Cdecisions%5C091117.pdf> (accessed 26 October 2013).
65. *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* ICC-02/04-01/05 available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/Pages/situation%20index.aspx (accessed 26 October 2013).
66. *The Republic of Kenya, The Prosecutor v. Uhuru Muigai Kenyatta* ICC-01/09-02/11.
67. *The Republic of Kenya, The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* ICC-01/09-01/11.
68. *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* ICJ judgement of 20th July 2012 available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=144> (accessed 26 October 2013).

Reports and Periodicals

69. Bueno O 'Just Justice Civil Society, International Justice and the Search for Accountability in Africa' *International Refugee Rights Initiative* Discussion Paper No.2 (2012)10 available at <http://www.refugee-rights.org/Assets/PDFs/2012/StepsTowardJusticeFinal.pdf> (accessed 26 October 2013).
70. Cassese A 'Independent Expert Report on the Special Court for Sierra Leone' (2006) 5 available at <http://www.scsl.org/LinkClick.aspx?fileticket=VTDHyrHasLc=&> (accessed 26 October 2013).

71. Cruvellier T 'From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test' International Centre for Transitional Justice and Sierra Leone Court Monitoring Program (2009).
72. Government of Chad 'Report of the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex President Habre, His Accomplices and Accessories: Investigations of Crimes Against the Physical and Mental Integrity of Persons and their Possessions,' 7 May 1992 available at <http://www.usip.org/files/file/resources/collections/commissions/Chad-Report.pdf> (accessed 26 October 2013).
73. Government of Sierra Leone, Budget Profile, Fiscal Year 2008-2010 available at http://www.mofed.gov.sl/index.php?option=com_content&task=view&id=13&Itemid=28 (accessed 26 October 2013).
74. Government of Rwanda, Summary of the Report Presented at the closing of Gacaca Courts Activities, National Service of Gacaca Courts, Kigali Rwanda.
75. Hirst M & Varney H 'Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor' *International Centre for Transitional Justice* (2005)25-6 available at <http://www.ictj.org/images/content/1/2/121.pdf> (accessed 26 October 2013).
76. Human Rights Watch 'Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina' (2006) 18 available at <http://hrw.org/reports/2006/ij0206/> (accessed 26 October 2013).
77. Human Rights Watch 'Bringing Justice: The Special Court for Sierra Leone: Accomplishments, Shortcomings, and Needed Support' (2004)6 available at <http://www.hrw.org/sites/default/files/reports/sierraleone0904.pdf> (accessed 26 October 2013).

78. International Crisis Group Balkans Report 'Finding the Balance: The Scales of Justice in Kosovo' (2002)21-22 available at <http://www.crisisgroup.org/~media/Files/europe/Kosovo%2032.ashx>(accessed 26 October 2013).
79. Kendall S & Staggs M 'Interim Report on the Special Court for Sierra Leone' University of California Berkeley War Crimes Studies Centre (2005).
80. Kerr R & Lincoln J 'The Special Court for Sierra Leone: Outreach, Legacy and Impact' King's College London War Crimes Research Group, Department of War Studies, Final Report (2008).
81. No Peace Without Justice 'Making Justice Count: Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia'2012 available at www.npwj.org/ICC/SCSL-and-NPWJ-organise-pre-launch-Report-impact-and-legacy-Special-Court-Sierra-Leone.html (accessed 26 October 2013).
82. Organisation for Security and Cooperation in Europe (OSCE)Report 2002 at 6 available at <http://www.osce.org/secretariat/13603>(accessed 26 October 2013).
83. Perriello T & Wierda M 'The Special Court for Sierra Leone Under Scrutiny' International Centre for Transitional Justice (2006).
84. Pigou P 'Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste Community Perspectives and Expectations' ICTJ (2003)34available at www.ictj.org/images/content/0/9/096.pdf (accessed 26 October 2013).
85. Report of the International Criminal Tribunal for Rwanda A/68/270–S/2013/460 August 2013 at 3 available at http://www.unictr.org/Portals/0/English/AnnualReports/A-68-270-S-2013-460_EN.pdf (accessed 26 October 2013).

86. Report on the Special Court for Sierra Leone: activities and the completion of its mandate S/2012/741 available at http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_741.pdf 32-61 (accessed 26 October 2013).
87. Sierra Leone ‘Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission’ Vol 3A available at <http://www.sierra-leone.org/Other-Conflict/TRCVolume3A.pdf> (accessed 26 October 2013).
88. Silva R, Klingner J & Weikart S ‘State Coordinated Violence in Chad under Hissène Habré: A Statistical Analysis of Reported Prison Mortality in Chad’s DDS Prisons and Command Responsibility of Hissène Habré 1982-1990’ Report by Benetech’s Human Rights Data Analysis Group to Human Rights Watch and the Chadian Association of Victims of Political Repression and Crimes 3 February 2010 available at <http://www.hrdag.org/about/chad.shtml> (accessed 26 October 2013).
89. United Nations, Report of the Fact-Finding Mission on the Gaza Conflict UN Doc. A/HRC/12/48 (2009).
90. United Nations, Secretary General Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies UN Doc. S/2004/616 (2004) 38 available at <http://www.unrol.org/files/2004%20report.pdf> (accessed 26 October 2013).
91. United Nations, Report of the Group of Experts for Cambodia Established Pursuant to GA/52/135 UN Docs. A/53/850 & S/1999/231.

B. SECONDARY SOURCES

Books

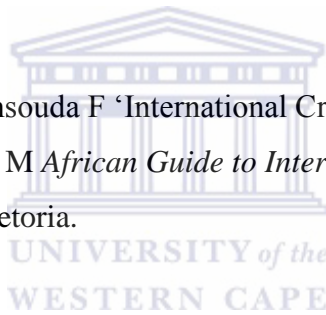
92. Ankumah EA & Kwakwa EK (eds) *African Perspectives on International Criminal Justice* (2005) African Legal Aid: Maastricht.
93. Bornkamm P *Rwanda's Gacaca Courts* (2012) Oxford University Press: London.
94. Del Ponte C & Sudetic C *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity* (2009) Other Press: New York.
95. De Nike H, Quigley J & Robinson J *et al* (eds) *Genocide in Cambodia: Documents from the Trial of Pol Pot and Leng Sary* (2000) University Press of Pennsylvania: Philadelphia.
96. Kauffman ZD & Clark P (eds) *After Genocide: Transitional Justice, Post Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (2009) Columbia University Press and C. Hurst & Co: New York.
97. Kelsall T *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone* (2009) Cambridge University Press: New York.
98. Njikam O *The Contribution of the Special Court for Sierra Leone to the Development of International Humanitarian Law* (2013) Duncker & Humblot: Berlin.
99. Peskin V *International Justice in Rwanda and the Balkans* (2008) Cambridge: New York.

100. Schabas WA *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (2006) Cambridge University Press: New York.
101. Stromseth J, Wippman D & Brooks R *Can Might Make Rights? Building the Rule of Law After Military Interventions* (2006) Cambridge University Press: New York.

Chapters in Books

102. Anthony C 'Historical and Political Background to the Conflict in Sierra Leone' in Ambos K & Othman M (eds) *New Approaches in International Criminal Justice* (2003) Max Planck Institute: Freiburg.
103. Cady JC & Booth N 'Internationalized Courts in Kosovo: An UNMIK Perspective' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
104. Cassese A 'The Role of Internationalized Courts and Tribunals in the Fight Against International Criminality' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
105. Condorelli L & Boutruche T 'Internationalized Criminal Courts and Tribunals: Are They necessary?' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.

106. de Bertodano 'East Timor: Trials and Tribulations' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
107. Etcheson C 'The Politics of Genocide Justice in Cambodia' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
108. Ingadottir T 'The Financing of Internationalized Criminal Courts and Tribunals' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
109. Jallow H & Bensouda F 'International Criminal Law in an African Context' in Du Plessis M *African Guide to International Criminal Justice* (2008) Other Press: Pretoria.
110. Mochochoko P 'Africa and the International Criminal Court' in Ankumah EA & Kwakwa EK (eds) *African Perspectives on International Criminal Justice* (2005) Africa Legal Aid: Pretoria.
111. Mochochoko P & Tortora G 'The Management Committee for the Special Court for Sierra Leone' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
112. Pellet A 'Internationalised Courts: Better than Nothing' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalised Criminal Courts Sierra Leone, Kosovo and Cambodia* (2004) Oxford: New York.



113. Schabas WA 'Internationalized Courts and their Relationship with Alternative Accountability Mechanisms: The Case of Sierra Leone' in Romano CPR, Nollkaemper A & Kleffner JK (eds) *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (2004) Oxford: New York.
114. Schabas WA 'Post Conflict Justice in Rwanda: A Spectrum of Options' in Kauffman ZD & Clark P *After Genocide: Transitional Justice, Post Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (2009) Hurst & Co: London.

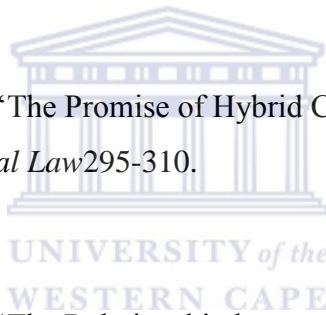
Journal articles



115. Akhavan P 'The Rise and Fall, and Rise of International Criminal Justice' (2013)11 *Journal of International Criminal Justice* 527-37.
116. Akinrinade B 'International Humanitarian Law and the Conflict in Sierra Leone' (2001)15 *Notre Dame Journal of Law, Ethics & Public Policy* 391-455.
117. Blattman R & Bowman K 'The International Criminal Court Five Years on: Progress or Stagnation? Achievements and Problems of the International Criminal Court A View From Within' (2008)6 *Journal of International Criminal Justice* 711-31.
118. Branch A 'Uganda's Civil War and the Politics of ICC Intervention' (2007)21 2 *Ethics and International Affairs* 179-98.

119. Bruch EM 'Hybrid Courts: Examining Hybridity Through A Post-Colonial Lens' (2010) 28 *Boston University International Law Journal* 1-30.
120. Buergenthal T 'Proliferation of International Tribunals: Is it Good or is it Bad?' (2001) 14 *Leiden Journal of International Law* 267-75.
121. Burke-White WW 'Regionalisation of International Criminal Law Enforcement: A Preliminary Exploration' (2003) 38 *Texas Journal of International Law* 729-63.
122. Cassese A 'The legitimacy of international criminal tribunals and the current prospects of international criminal justice' (2012) 25 *Leiden Journal of International Law* 491-501.
123. Clark P 'Hybridity, Holism and "Traditional Justice": The Case of The Gacaca Courts in Post Genocide Rwanda' (2007) 39 *George Washington International Law Review* 765-837.
124. Cockayne J 'The Fraying Shoestring: Rethinking Hybrid War Crimes Tribunals' (2005) 28 *Fordham International Law Journal*
125. Cohen D 'Hybrid Justice in East Timor, Sierra Leone and Cambodia: Lessons Learned and Prospects for the Future' (2007) 43 *Stanford Journal of International Law* 1-38.
126. Crane D 'Hybrid Tribunals—Internationalised National Prosecutions' (2007) 25 *Penn State International Law Review* 803-17.

127. Crane D 'White Man's Justice: Applying International Justice After Regional Third World Conflicts' (2006) 27 *Cardozo Law Review* 1683-86.
128. Crane D 'International Criminal Tribunals in the 21st Century: Terrorists, Warlords, and Thugs' (2006) 21 *American University International Law Review* 505-17
129. de Bertodano S 'Current Developments in Internationalised Courts' 2003 *Journal of International Criminal Justice* 226-45.
130. De Ycaza C 'Victor's Justice in War Crimes Tribunals: A study of the International Criminal Tribunal in Rwanda' (2010) 23 *New York International Law Review* 53-81.
131. Dickinson LA 'The Promise of Hybrid Courts' (2003) 97 *American Journal of International Law* 295-310.
132. Dickinson LA 'The Relationship between Hybrid Courts and International Courts: The Case of Kosovo' 2003 *New England Law Review* 1059-72.
133. Dickinson LA 'Transitional Justice in Afghanistan: The Promise of Mixed Tribunals' (2002) *Denver Journal of International Law and Policy* 23-42.
134. Drumbl M 'Law and Atrocity: Settling Accounts in Rwanda' (2005) 31 *Ohio Northern University Law Review* 41-76.



135. Dugard J 'Palestine and the International Criminal Court: Institutional Failure or Bias?'(2013)11 *Journal of International Criminal Justice* 563-71.
136. Ford S 'A Social Psychology Model of the Perceived Legitimacy of International Criminal Courts: Implications for the Success of Transitional Justice Mechanisms' (2012) 45 *Vanderbilt Journal of Transnational Law* 405-76.
137. Gallimore T 'The Legacy of the International Criminal Tribunal for Rwanda (ICTR) and its Contributions to Reconciliation in Rwanda' (2008)14 *New England Journal of International and Comparative Law* 239-66.
138. Galbraith J 'The Pace of International Criminal Trials' (2009) 31 *Michigan Journal of International Law*
139. Glasius M 'Do International Criminal Courts Require Democratic Legitimacy?'(2012)23 *European Journal of International Law* 43-67.
140. Hall B 'Using Hybrid Tribunals as Trivias: Furthering the Goals of Post-Conflict Justice While Transferring Cases from the ICTY to Serbia's Domestic War Crimes Tribunal' (2005)13 *Michigan State Journal of International Law* 39-50.
141. Haskell L& Waldorf L 'The Impunity Gap of the International Criminal Tribunal for Rwanda: Causes and Consequences' (2011) 34 *Hastings International and Comparative Law Review* 49-87.



142. Higonnet E 'Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform' *Yale Law School Student Scholarship Papers*. Paper 6. (2005) 1-71.
143. Horstings H 'The Cambodian Khemer Rouge Tribunal: The Promise of a Hybrid Tribunal' (2004)5 *Melbourne Journal of International Law*462-83.
144. Keith KMF 'Justice at the International Criminal Tribunal for Rwanda: Are Criticisms Just?'(2009)27 *Law in Context* 79-102.
145. Linton S 'Cambodia, East Timor and Sierra Leone: Experiments in International Justice' 2001 *Criminal Law Forum* 185-246.
146. Luban D (2013)11 'After the Honeymoon: Reflections on the Current State of International Criminal Justice' *Journal of International Criminal Justice* 505-17.
147. Jain N 'Between the Scylla and Charybdis of Prosecution and Reconciliation: The Khmer Rouge Trials and the Promise of International Criminal Justice' (2010)20 *Duke Journal of Comparative & International Law* 247-91.
148. Jalloh CC 'Special Court For Sierra Leone: Achieving Justice?' (2011) 32 *Michigan Journal of International Law* 395-456.
149. Jalloh CC 'Africa and The International Criminal Court: Collision Course or Cooperation?' (2012) 34 *North Carolina Central Law Review* 203-29.

150. Katzenstein S 'Hybrid Tribunals: Searching for Justice in East Timor' (2003) *Harvard Human Rights Journal* 245-78.
151. Kaufman ZD 'Justice in jeopardy: accountability for the Darfur atrocities' (2005)16 *Criminal Law Forum* 343-60.
152. Kelsall T 'Insufficiently Hybrid: Assessing the Special Court For Sierra Leone' (2009) 27 *1 Law in Context* 132-53.
153. McAuliffe P 'Hybrid Tribunals at Ten: How International Criminal Justice's Golden Child became an Orphan' (2011) 7 *Journal of International Law and International Relations*1-65.
154. McAuliffe P 'Transitional Justice in Transit: Why Transferring a Special Court for Sierra Leone Trial To the Hague Defeats the Purposes of Hybrid Tribunals'2008 *Netherlands International Law Review* 365-93.
155. Megret F 'In Defence of Hybridity: Towards a Representational Theory of International Criminal Justice' (2005)38 *Cornell International Law Journal* 725-53.
156. Moghadam T 'Revitalising Universal Jurisdiction: Lessons From Hybrid Tribunals Applied to the Case of Hissène Habré' (2008) 39 *Columbia Human Rights Law Review* 471-528.
157. Mose E 'Main Achievements of the ICTR' (2005)3 *Journal of International Criminal Justice* 920-43.

158. Nouwen SMH & Wouter GW 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' (2011)21 4 *European Journal of International Law* 941-65.
159. Nouwen SMH 'Hybrid Courts: The Hybrid Category of a New Type of International Crimes Court' (2006) 2 *Utrecht Law Review* 190-214.
160. Novogrodsky NB 'Speaking to Africa: The Early Success of The Special Court For Sierra Leone'(2006) 5 *Santa Clara Journal* 194-216.
161. Okechukwu Oko 'The Challenges of International Criminal Prosecutions in Africa'2008 *Fordham International Law Journal* 343-414.
162. Peskin V 'Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme' (2005) 3 *Journal of International Criminal Justice* 950-62.
163. Ramji-Nogales J 'Designing Bespoke Transitional Justice: A Pluralist Process Approach' (2010)25 1 *Michigan Journal of International Law*1-73.
164. Rapoza P 'Hybrid Criminal Tribunals and the Concept of Ownership: Who Owns the Process?'(2006)21 *American University International Law Review* 527-41.
165. Rau K 'Jurisprudential Innovation or Accountability Avoidance? The International Criminal Court and Proposed Expansion of the African Court Justice and Human Rights'(2012)97 *Minnesota Law Review* 669-708.

166. Raub L 'Positioning Hybrid Tribunals in International Criminal Justice' (2008-2009) 41 *1 New York Journal of International Law and Politics* 1013-052.
167. Roht-Arriaza N 'Perspectives on the Enforcement of International Criminal Law by National Courts' (2013) 11 *Journal of International Criminal Justice* 537-43.
168. Romano CPR 'The Price of International Justice' (2005) 4 *The Law and Practice of International Courts and Tribunals* 281-328.
169. Sawyer E & Kelsall T 'Truth vs. Justice: popular views on the Truth and Reconciliation Commission and Special Court for Sierra Leone' (2007) 7 *Journal of Peace and Conflict Resolution* 36-48.
170. Schabas WA 'The Banality of International Criminal Justice' (2013) 11 *Journal of International Criminal Justice* 545-53.
171. Schabas WA 'A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone' (2004) 15 *Criminal Law Forum* 3-54.
172. Scully S 'Judging The Successes and Failures of The Extraordinary Chambers of The Courts of Cambodia' (2011) 13 *Asian-Pacific Law and Policy Journal* 300-53.
173. Spiga V 'Non-Retroactivity of Criminal Law: A New Chapter in the Hissène Habré Saga' (2011) 9 *Journal of International Criminal Justice* 5-25.

174. Ssenyonjo M 'The Rise of the African Union Opposition to the International Criminal Court's Investigations and Prosecutions of African Leaders' (2013)13 *International Criminal Law Review* 385-429.
175. Stromseth JE 'The International Criminal Court and Justice on the Ground' (2011) 23 *Arizona State Law Journal* 427-45.
176. Stromseth JE 'Pursuing Accountability for Atrocities after Conflict: What Impact on Building the Rule of Law?'(2007) 38 2 *Georgetown Journal of International Law* 251-323.
177. Swift R 'Occupational Jurisdiction: A critical Analysis of the Iraqi Special Tribunal' (2006)19 *New York International Law Review* 99-139.
178. Weldehaimanot SM 'Arresting Al-Bashir: the African Union's opposition and the legalities'(2011) 19 *African Journal of International and Comparative Law* 208-35.
179. Westberg MM 'Rwanda's Use of Transitional Justice After the Genocide: The Gacaca Courts and the ICTR' (2011)59 *Kansas Law Review* 331-67.
180. Witsch MC 'Legitimacy on Trial at the Extraordinary Chambers'(2012)26 *Temple International and Comparative Law Journal* 143-80.

Internet Sources

181. Amnesty International USA ‘Special Court for Sierra Leone: Issues for Consideration Regarding the Location of the Trial of Charles Taylor’ 2005 available at <http://www.amnestyusa.org/document.php?id=ENGAFR510052006&lang=e> (accessed 26 October 2013).
182. Description of the ICTR Outreach Program available at <http://www.ictr.org/commemoration/faq/faq-4.asp> (accessed 26 October 2013).
183. Du Plessis M, Maluwa T & O’Reilly A ‘Africa and the International Criminal Court’ available at http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/0713pp_iccafrica.pdf (accessed 26 October 2013).
184. Wormington J & Khan T ‘Mobile Courts in the DRC: Lessons from Development for International Criminal Justice’ available at <http://otjr.csls.ox.ac.uk/materials/papers/178/mobile%20courts%20DRC.pdf> (accessed 26 October 2013).
185. ICC Situations and Cases available at http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx (accessed 26 October 2013).

186. International Crisis Group Africa Briefing ‘The Special Court for Sierra Leone: promises and pitfalls of a new model’ *International Crisis Group* (2003) 19-20 available at <http://www.crisisgroup.org/en/regions/africa/west-africa/sierra-leone/B016-the-special-court-for-sierra-leone-promises-and-pitfalls-of-a-new-model.aspx>(accessed 26 October 2013).
187. Balkan Investigative Reporting Network ‘In Pursuit of Justice: Guide to the War Crimes Chamber of the Court of BiH’ available at <http://www.birn.eu.com> (accessed 26 October 2013).
188. Pratt D ‘Sierra Leone: The Forgotten Crisis’ 1999, available at <http://www.globalsecurity.org/military/library/report/1999/crisis-e.htm> (accessed 26 October 2013).
189. United Nations ‘Background and Information on the Justice and Reconciliation Process in Rwanda’ available at <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml> (accessed 26 October 2013).

News Reports and Opinion pieces.

190. BBC ‘Did the ICC help Uhuru Kenyatta win Kenyan election?’ *BBC News Africa* 11 March 2013 available at www.bbc.co.uk/news/world-africa-21739347(accessed 26 October 2013).
191. Fofana U ‘Did Sierra Leone Get War Crimes Justice?’ *BBC News* 6 November 2009 available at <http://news.bbc.co.uk/2/hi/africa/8345618.stm> (accessed 26 October 2013).

192. 'Habre Faces War Crimes Charge' *iol news* 2 July 2013 available at <http://www.iol.co.za/news/africa/habre-faces-war-crimes-charges-1.1540536#.Um-khVNj-18> (accessed 26 October 2013).
193. ICTY Press Release PR/P.I.S./437-E 29 September 1999 available at <http://www.un.org/icty/latest/index.htm> (accessed 26 October 2013).
194. Lee R 'Plans for a Hybrid Court in Congo-Pascale Kambale' 6 March 2012 Open Society Initiative for Southern Africa available at <http://www.osisa.org/openspace/drc/plans-hybrid-court-congo-pascale-kambale> (accessed 26 October 2013).
195. Luft A 'Canada's First War-Crimes Trial Closes' *UNCHR Global Press Review* 18 December 2008 available at www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass1/4463ef21123&id1/4494b45258 (accessed 26 October 2013).
196. Mamdani M 'What Does Gaddafi's Fall Mean for Africa?' *Aljazeera* 26 October 2011 available at www.aljazeera.com/indepth/opinion/2011/08/201182812377546414.html (accessed 26 October 2013).
197. Maseruka M 'The ICC Should Let Uganda Try Kony-Kadaga' *The Red Pepper* 13 December 2012 available at <http://www.redpepper.co.ug/icc-should-let-uganda-try-kony-kadaga/> (accessed 26 October 2013).
198. Mehari TM 'The Future of the ICC and Africa: the good, the bad and the ugly' *Aljazeera* 11 October 2013 available at

<http://www.aljazeera.com/indepth/opinion/2013/10/future-icc-africa-good-bad-ugly-20131011143130881924.html>(accessed 26 October 2013).

199. Motlogelwa M 'ICC President Praises Botswana' *Mmegionline* 5 June 2009 available at <http://www.mmegi.bw/index.php?sid=6&aid=27&dir=2009/June/Friday5> (accessed 26 October 2013).
200. Muramira G 'Rwanda: Mucyo Blames ICTR Prosecutors for Priest's Release' *The New Times* 18 November 2009 available at <http://allafrica.com/stories/200911180050.html> (accessed 26 October 2013).
201. Musoni E 'ICTR betrayed Rwanda, justice Minister tells UN' *The New Times* 12 April 2013 available at <http://www.newtimes.co.rw/news/index.php?i=15325&a=65870> (accessed 26 October 2013).
202. Niyonshuti I 'Rwanda: Ibuka Stages Demo Against ICTR' *The New Times* 21 November 2009 available at <http://allafrica.com/stories/200911230084.html> (accessed 26 October 2013).
203. Pritchard BE 'Congolese War Lord Gets 14 Years for Using Child Soldiers' *Institute for War and Peace Reporting* 10 July 2012 available at <http://iwpr.net/report-news/congolese-warlord-gets-14-years-using-child-soldiers> (accessed 26 October 2013).



204. Press Release Special Court for Sierra Leone Outreach and Public Affairs Office ‘Special Court Prisoners Transferred to Rwanda to Serve Their Sentence 31 October 2009 available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=YiPY3dNd%2fiI%3d&tabid=214>(accessed 26 October 2013).
205. Press Release ‘Special Court for Sierra Leone, Special Court President Requests Charles Taylor be Tried in The Hague’ 30 March 2006 available at www.sc-sl.org/LinkClick.aspx?fileticket=gR%2bYCtzTfKg%3d&tabid=111 (accessed 26 October 2013).
206. Press Release Special Court for Sierra Leone Office of the Prosecutor, Chief Prosecutor Announces the Arrival of Charles Taylor at the Special Court 29 March 2006) available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=hWEjA9OZgI0%3d&tabid=196> (accessed 26 October 2013).
207. Smith D ‘International Criminal Court to Deliver its First Judgment’ *The Guardian* 13 March 2012
www.guardian.co.uk/law/2012/mar/13/international-criminal-court-first-judgment (accessed 26 October 2013).
208. Townsend W ‘Lubanga guilty verdict will go beyond Ituri’ *African Arguments* available at <http://africanarguments.org/2012/03/14/lubanga-guilty-verdict-sends-message-that-will-be-heard-beyond-ituri-drc-by-william-townsend/> (accessed 26 October 2013).

209. Yazdani S ‘Victims Critique Rwanda’ *Human Rights Brief* 20 January 2010 available at <http://hrbrief.org/2010/01/victims-critique-the-ict-2/>(accessed 26 October 2013).

