



CalsMUN 2019
Future Technology

Research Report

Forum: Commission on Crime Prevention and Criminal Justice

Issue: Convicting war criminals in Sub-Saharan Africa

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Personal Introduction

Zuzanna Borowska



Hello dearest Delegates!

My name is Zuzanna Borowska, I come from Poland and I am looking forward to coming to CalsMUN and being your Chair! I have already attended 7 MUNs, one of them as a Chair, and I am probably a typical MUN-addict. Besides that, I love dancing (contemporary is my favourite style), singing and reading books. I'm a keen traveller and a warm-hearted dreamer. The biggest of my dreams is to make a difference in the world, so that it could become a better, safer, happier and friendlier place. I believe that my way to achieving this goal begins in such places as MUN conferences.

I hope that we will have a wonderful, both educating and entertaining time together and I cannot wait to come to Nieuwegein and meet all of you!



Introduction

War crime has been a serious issue in Africa for many years and one of the regions that suffer the most is Sub-Saharan Africa. The major problem in the region is impunity, lack of effectiveness of the justice system and the reprehensible fact that most of the criminals are not convicted. Africa is unfortunately the continent where the most war crimes have been recently committed and it is only African cases that have been investigated by the International Criminal Court since its inception more than a decade ago. This led to frequent accusations of bias by the first permanent tribunal set up to prosecute the worst atrocities on earth — war crimes, genocide and crimes against humanity. (1)

Calls for prosecutions, truth-seeking, reparations and institutional reform are increasingly common as countries seek to address human rights abuses. Currently, **at least 12 sub-Saharan African countries** are in some stage of implementing transitional justice measures, yet there has been no comparative analysis of the overwhelming limitations facing these efforts. There are many challenges encountered while trying to enforce justice in Sub-Saharan Africa. For example, in many cases domestic prosecutions are neither systematic nor timely, partly because of the poor judicial capacity. Truth-seeking and reparations measures, often implemented in contexts of political compromise and limited resources, can appear to lack good faith. In the near-absence of trials and reparations, many victims are left without redress and perpetrators remain in positions of power. (2)

The Commission on Crime Prevention and Criminal Justice is a functional commission of the Economic and Social Council (ECOSOC), established in 1992 in order to act as the principal policymaking body of the United Nations in the field of crime prevention and criminal justice. Moreover, the CCPCJ's mission is improving international action to combat national and transnational crime and the efficiency and fairness of criminal justice administration systems. (3) Therefore the Commission on Crime Prevention and Criminal Justice is also concerned with the matter of convicting war criminals in Sub-Saharan Africa and is the most appropriate place, where this issue should be resolved.



Definition of Key Terms

War crime

War crime, in international law, is a serious violation of the laws or customs of war as defined by international customary law and international treaties. (4) A further definition of war crime can be found in the **Rome Statute of the International Criminal Court**.

According to the Statute, the term „war crimes” means „grave breaches of the Geneva Conventions of 12 August 1949”, as well as „other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law”. Examples of such offence can also be found in the Statute. (5) A person who commits a war crime is called a **war criminal**.

Impunity

Impunity - exemption from punishment or freedom from the injurious consequences of an action. (6)

Transitional justice

Transitional justice is defined as a field of activity and inquiry focused on how societies address legacies of past human rights abuses. (7) It also refers to the range of approaches that societies undertake to reckon with the legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law and respect for human rights. (8)

Genocide

The crime of **genocide** is characterised by the specific intent to destroy in whole or in part a national, ethnic, racial or religious group by killing its members or by other means: causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group. (9)

General Overview

Africa has been widely recognized and known as a continent suffering from injustice, impunity, frequent miscarriages of justice and general non-functionality of the judicial system.



Since gaining independence **in the late 1950s and early 1960s**, most African governments have been undemocratic, repressive and authoritarian. This has often resulted in serious violations of human rights. The attempts to move away from this dark era of dictatorship with the advent of the so-called “third wave” of **democratization in the 1990s** has been accompanied by numerous challenges, one of which is ensuring that past human rights violations are accounted for in a manner that respects and protects the dignity of survivors and their relatives without threatening future peace and security. The democratization process has therefore also posed the problem of transitional justice. (10)

Generally, a transitional justice program usually aims to achieve **the following goals**:

- halt ongoing human rights abuses;
- investigate past crimes;
- identify those responsible for human rights violations;
- impose sanctions for some of those responsible for serious human rights violations;
- provide reparations to victims;
- prevent future abuses;
- preserve and enhance sustainable peace;
- promote individual and national reconciliation. (10)

Unlike countries such as Chile and Argentina, in which transitional justice measures were administered following relatively clear instances of regime change, most of the cases under examination in Africa implement these measures following negotiated transitions, without a clear break with the past and/or with ongoing conflicts. **The Lomé Accord of 1999 for Sierra Leone** was the third peace agreement aimed at ending the conflict and establishing democracy. Similarly, **the Ghana National Reconciliation Commission (NRC)** was the latest in a succession of accountability measures implemented by various governments starting from the coup that overthrew Kwame Nkrumah in 1966. The DRC and Uganda currently have different degrees of ongoing conflict while they are in the process of implementing various transitional justice measures. (2)

Truth-seeking mechanisms can operate alongside trials by providing an opportunity for society to gain a broader understanding of past atrocities. With a long history in Latin America and made popular in Africa by the South Africa Truth and Reconciliation Commission (TRC), truth commissions can give victims an opportunity to talk about their experiences, and allow perpetrators to acknowledge responsibility. Truth-seeking efforts can



acknowledge that victims have a right to know the truth about the abuses they suffered, and that the government has a duty to facilitate a process for establishing a historical record. Government-sanctioned truth commissions have become fairly common mechanisms for establishing a socially acceptable version of history, validating the experiences of many victims. There can also exist unofficial, civil society-run commissions or projects with similar goals, which can act as "replacements, complements, or precursors" to official commissions. (2)

One of the most problematic regions is the region of Sub-Saharan Africa. This region is known for widespread occurrences of war crime and human rights violations. One of the most recent cases is the one of a war crimes suspect wanted for alleged murder, deportation and torture of Muslims in the Central African Republic. His name is Alfred Yekatom, however he is most popularly known under his nickname „Rambo“. He has now been transferred to the International Criminal Court, which is going to investigate his case (11).

Major Parties Involved

Organisations

International Criminal Court

The International Criminal Court (ICC) is an intergovernmental organization and international tribunal that sits in **The Hague in the Netherlands**. The ICC has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes. African leaders were among the court's strongest advocates when it was created, in part because of the horrific crimes perpetrated during the 1994 Rwanda genocide. As of October 2016, the region accounted for 34 of the 124 countries that ratified the Rome Statute. Nevertheless, the support of African countries for this institution has recently decreased, with **South Africa and Burundi's decisions to leave the Court**. Some people have labeled the ICC an instrument of neocolonialism, noting that countries that did not ratify the Rome Statute are among those exerting the greatest pressure on African leaders to submit to the court. (1)

The ICC has opened many cases against individuals in African countries, including Uganda, the Democratic Republic of Congo, the Central African Republic, and the Darfur region of



Sudan. (12) ICC prosecutions have been praised by human rights advocates. At the same time, the ICC Prosecutor's choice of cases and the perception that the Court has disproportionately focused on Africa have been controversial. The Prosecutor's attempts to prosecute two sitting African heads of state, Sudan's Omar Hassan al Bashir and Libya's Muammar al Qadhafi, have been particularly contested, and the African Union has decided not to enforce ICC arrest warrants for either leader. Neither Sudan nor Libya is a party to the ICC; in both cases, jurisdiction was granted through a United Nations Security Council resolution. (13)

United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

The United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) is an inter-governmental organization which aims at promoting an active cooperation of governments, academic institutions, non-governmental organizations, and experts in the area of crime prevention and criminal justice. It is mandated by African States to help mobilizing human, material and administrative potential to promote sustainable development, and strengthen crime prevention and control capacity. It undertakes research for policy development, trainings, documentation and information dissemination programmes, as well as advisory services to governments.

Being a member of the United Nations Crime Prevention and Criminal Justice

Programme Network UNAFRI took part in its activities along with other PNI institutes. In Collaboration with UNODC and ICCLR & CJP, the Institute has developed and carried out workshops on Probation, Parole and Community Corrections for prisons and probation services officials in Nairobi (Kenya), Kampala (Uganda) and Lusaka (Zambia). UNAFRI puts efforts in dissemination and implementation of the United Nations Conventions Against Corruption and on Transnational Organized Crime (UNCAC and UNTOC) by organizing intergovernmental regional meetings for experts from related state agencies and civil society members. (14)



Countries

South Africa

South Africa is one of the most influential African countries, which makes it possible for this state's decisions to have a great impact on other neighbouring countries. Furthermore, it is a place known for spectacular examples of crime, such as the famous case of the champion paraplegic athlete Oscar Pistorius, who allegedly murdered his partner of four months, Reeva Steenkamp, in his home in Pretoria, Gauteng, on 14 February 2013. (15) Some problems concerning the functioning of the justice system may be seen in South Africa as well.

For instance, in August 2011 the president of South Africa, Jacob Zuma participated in the decision of the SADC Heads of State Summit to suspend the operations of the SADC Tribunal. The judges of the tribunal were relieved of their duties and the SADC Tribunal ceased to operate. Then in August 2014, the president together with the other SADC heads of states and government adopted a new protocol on the SADC Tribunal which limits the jurisdiction of the tribunal to inter-state disputes only. From a human rights perspective, this is a devastating blow to accountability in southern Africa. (16)

Furthermore, in October 2016 South Africa resigned from its membership in the International Criminal Court. The country had expressed its displeasure a year earlier, when it was accused of ignoring its treaty obligations because it allowed Sudan's President Omar Bashir — accused of genocide and other crimes in his country's Darfur region — to attend an African Union summit without arresting him. South African officials contended that the Rome Statute was at odds with their efforts to promote a peaceful resolution of conflicts on the continent. (1)

Democratic Republic of the Congo (DRC),

In the DRC, the recent abuses committed in Bukavu are an example of what results when past crimes committed by some of the same commanders are tolerated and go unpunished. In August 2002, Human Rights Watch reported on the massacres that took place in Kisangani in May 2002 when RCD-Goma soldiers brutally suppressed an attempted mutiny in their ranks. One of the commanding officers involved in these war crimes was Brigadier General Laurent Nkunda, who was never investigated nor charged for his role in these killings. To the contrary, he was proposed by the RCD-Goma as one of its officers to join the



unified army. This sent the wrong message; that perpetrators of crimes and human rights abuses would be rewarded with government positions and could continue to commit atrocities with complete impunity, which he and his forces did in Bukavu in May and June of this year. As Nkunda's soldiers marched from Goma to Bukavu, they attacked numerous villages and civilians. In Bukavu, international and local organizations documented numerous cases of killing and rape, including the brutal rape by Nkunda's soldiers of at least six cases of children under five. (17)

The first challenge in many post-conflict situations is that truth-seeking processes are increasingly designed during a negotiation for peace, marginalizing the voice of victims and civil society organizations, and possibly reducing ownership and credibility. In the DRC, a truth commission was proposed as part of the peace negotiations. The proposed institution, with all its far-reaching aspirations, was born out of an elite (and perhaps morally questionable) consultation in which victims did not participate broadly, with potential consequences of disconnecting parts of the country from the embryonic process. (2)

Gambia

When it comes to the horrific numbers of crimes committed in a majority of African countries, the Gambia is not an exception. One of the most famous examples is the case of the former president of the country: Yahya Jammeh. On 31 May, three victims of Jammeh's bogus HIV/AIDS cure filed a legal action in the High Court of Gambia. Fatou Jatta, Ousman Sowe, and Lamin "Moko" Ceesay are suing the former president for financial damages for harm suffered when they became members of his AIDS treatment programme. In 2007, Jammeh made the outlandish claim that he had found a cure for the virus. Forced to live in a state facility along with other patients, the three plaintiffs were told to stop taking anti-retroviral drugs and replace them with Jammeh's "miracle cure", a worthless herbal concoction which made them ill. (18)

Moreover, in October 2016, the Gambia was the third country to withdraw its membership from the International Criminal Court. The claim that the ICC unfairly targets Africans is consequently gaining significant traction.

The move followed similar announcements from Burundi and South Africa, who informed the then UN Secretary-General, Ban Ki-moon, of their decision to quit the court, making them the first countries to begin the year-long exit process in the court's 18-year history. (19)



Rwanda

Rwanda is certainly most easily recognized for the Rwandan genocide, also known as the genocide against the Tutsi - a mass slaughter of Tutsi in Rwanda during the Rwandan Civil War, which had started in 1990. It was directed by members of the Hutu majority government during the 100-day period from 7 April to mid-July 1994. An estimated 500,000 to 1,000,000 Rwandans were killed during this massacre, constituting an estimated 70% of the Tutsi population. (20)

On the 8 November 1994 the International Criminal Tribunal for Rwanda was established and then it was dissolved on the 31 December 2015.

Post-genocide Rwanda found many legal professionals dead or in exile, as well as a vacuum in the judicial structures. The court's incapacity to carry out prosecutions was (and continues to be) further compounded by the sheer number of perpetrators. In 2000, Rwanda is said to

have had more than 125,000 persons in detention—a number that would be overwhelming to any judiciary, even in the developed world. Many of these individuals may have served de facto jail terms without ever being convicted, an issue that raises great concern about the state of justice. In an effort to speed the court processes regarding to the tens of thousands of detainees who are awaiting trial, traditional Gacaca courts have been set up to hear cases from various categories of perpetrators, and apportion punishment appropriately. However, many standards of international justice consider the system to be flawed and ill equipped to address international crimes of genocide. (2)

Sierra Leone,

In Sierra Leone, the post-war domestic judiciary was very weak and partisan. According to one report, following the civil war the judiciary had "collapsed and institutions for the administration of justice, both civil and criminal, were barely functional... administration of justice outside Freetown was almost non-existent". The establishment of the Special Court for Sierra Leone was partly a response to this disintegration of the domestic judicial system. (2) The Court was created in 2002 as the result of a request to the United Nations in 2000 by



the Government of Sierra Leone for "a special court" to address serious crimes against civilians and UN peacekeepers committed during the country's decade-long (1991-2002) civil war. (21) It was dissolved on the 2 December 2013.

An example of a serious miscarriage of justice occurred in Sierra Leone in 1999, when Foday Sankoh, allegedly responsible for some of the most brutal crimes committed against civilians, received not only an amnesty for previous violations, but was rewarded. In exchange for signing the Lomé peace accord he was given control of the ministry in charge of the nation's vast natural resources. Months later he went on to attack both the government and United Nations peacekeepers, taking hundreds hostage. (17)

Timeline of Key Events

Date	Description of Event
1996	Establishment of the Truth and Reconciliation Commission (TRC) in South Africa (replaced in 2000 by the Institute for Justice and Reconciliation)
1 July 2002	The beginning of the functioning of the International Criminal Court - the Rome Statute enters into force
October 2016	Resignation of South Africa, Burundi and Gambia from membership in the ICC

Previous Attempts to Resolve the Issue

The governments of different African countries have undertaken a variety of actions in order to resolve the issue of impunity and finally convict the war criminals.

One of the frequently adopted solutions was the creation of **Truth Commissions** in numerous African countries. The first one was established in **South Africa** and it was called the **Truth and Reconciliation Commission (TRC)**. It was a court-like restorative justice



body assembled in South Africa after the end of apartheid. Witnesses who were identified as victims of gross human rights violations were invited to give statements about their experiences, and some were selected for public hearings. Perpetrators of violence could also give testimony and request amnesty from both civil and criminal prosecution. (21) In 2000, the Commission was replaced by the **Institute for Justice and Reconciliation (IJR)**. Other African countries which have established truth commissions on their territories include: **Chad, Gambia, Ghana, Kenya, Liberia, Nigeria, Rwanda, Sierra Leone, Togo, Tunisia and Uganda.** (23)

Under international law, there also exists an obligation for states to give "prompt reparation" to victims of violations of international human rights proportional to the harm suffered. Reparations serve at least three aims: to recognize victims as citizens who are owed specific rights, communicating a message that a violation of such rights deserves action from the state; to contribute to establishment of civic trust among citizens and between citizens and state institutions; and to build social solidarity where the society empathizes with the victims. (2) The ICC has proposed the creation of a **Trust Fund for Victims** that would benefit victims and their families. It was officially established in 2004 and it now acts for the sake of the mission of supporting and implementing programmes that address harms resulting from genocide, crimes of humanity and war crimes. (9)

The most important action undertaken was certainly the creation of the International Criminal Court. **The ICC's mission is to judge the most serious cases of:**

- war crime,
- genocide
- crimes against humanity, which are violations committed as part of a large-scale attack against any civilian population. The 15 forms of crimes against humanity listed in the Rome Statute include offences such as murder, rape, imprisonment, enforced disappearances, enslavement – particularly of women and children, sexual slavery, torture, apartheid and deportation
- crime of aggression, which is the use of armed force by a State against the sovereignty, integrity or independence of another State. (9)

The most important document of the ICC is **the Rome Statute**, which came into force on the 1 July 2002.



The ICC has offices in several of the countries in which investigations are being conducted, including **Central African Republic, Democratic Republic of the Congo, Kenya or Uganda.** (9)

Possible Solutions

Resolving the issue of convicting war criminals in Sub-Saharan Africa is certainly not an easy task, as the problem is very complex and requires fundamental changes in the justice system in order to be solved. The previous cases show how difficult it may be to execute justice, especially in developing, poor and not highly civilized countries. Following the words of **Corinne Dufka** (a senior researcher and the West Africa team leader for the Africa Division of Human Rights Watch): „To combat war crimes in Africa, two key and indeed related components are urgently necessary - the first is ensuring accountability for serious human rights crimes, and the second is implementing preventive strategies to detect, stop and/or mitigate situations with the potential to develop into systematic war crimes.” (17)

Corinne Dufka has also suggested the following **solutions** of the problem:

1) **Control of Arms Flows** - as Africa is a sad showcase of the human rights and humanitarian costs of the uncontrolled proliferation of small arms and light weapons. The easy availability of small arms, conflict and human rights abuses in West Africa are interwoven. The spread and misuse of small arms helps fuel conflict, and conflict generates a market for more weapons. These weapons, in the hands of combatants who have a history of indifference for the principle of civilian immunity, lead to grave violations against innocent people.

2) **Combating corruption** - which is widespread in many countries, for instance Sierra Leone, where the guns are silent, however, the deep rooted issues that gave rise to the conflict - endemic corruption, weak rule of law, crushing poverty, and the inequitable distribution of the country's vast natural resources - remain largely unaddressed by the government and the international community.

3) **Monitoring and Control of Hate Speech Causing Incitement** - as African politicians who should be working to create societies based on tolerance, equality and the rule of law,



have often instead openly engaged in the political exploitation of ethnicity to both eliminate political rivals and, in time of war, to claim military victory in conflict. (17)

Besides the aforementioned suggestions, there is a number of other solutions which could be implemented in order to resolve the issue. Probably some of them have not even been thought of yet. This is where your task starts, dear Delegate! Good luck with your research and preparations!

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