

紛争、正義、記憶と癒し

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Promises and Pitfalls of the International Criminal Court : Lessons from Africa¹⁾

Atrocity has been widespread on the post-colonial African continent. Impunity, amnesties, and politicized commissions of inquiry have shielded perpetrators from any form of accountability for decades. However, much changed in the 1990s when criminal trials for genocide, crimes against humanity, and war crimes opened in Ethiopia (1992) and Rwanda (1994). In countries like South Africa and Sierra Leone truth commissions guided complex political transitions from repression to democracy or from civil war to peace.

The modern field of transitional justice (TJ) evolved mainly in Africa. At the advent of the 21st century, TJ reached another milestone: the establishment of the International Criminal Court (ICC), the world's first and only permanent legal transitional justice institution. Since 2003, the ICC has exclusively dealt with mass atrocity in African countries. The court is the offspring of the post-World War II Military Tribunals in Nuremberg and Tokyo.

By examining the ICC's most prominent cases to date, this presentation analyzes the promises, challenges, successes, limitations, and criticism of its work in relation to the general problem of transitional justice. It also discusses the lessons for possible future cases outside Africa.

Most episodes of violence in Africa were unaddressed. Often there were no initiatives to remember the past or collect relevant documents. Amnesty reigned supreme across the continent. Those in power would go unpunished while those who have committed crimes left untouched. Commissions of Inquiry only emerged slowly, and even then most of them only served to whitewash. In fact, Idi Amin, the notorious butcher of Uganda, set up the first ever truth commission. The absence of any transitional justice and a widespread culture of impunity have so far let those who had committed serious crimes off lightly. Perpetrators knew that they did have to account for the violence they incited.

All that began to change at the end of the Cold War with the international community paying greater attention to human rights. Reconciliation, national unity, and peaceful coexistence, particularly after South Africa, became the tropes of post-conflict justice. (A recent study shows that in Sierra Leone, reconciliation initiatives and truth telling have led to an increase in post-traumatic stress syndrome.) Similarly, redress, apology, recognition, and compensation are also movements on the rise. For example, the large scale abuses in colonial Kenya. Moreover, traditional or customary Justice may serve as an alternative to western-style transitional justice.

The end of the Cold War heralded a period of heightened human rights concerns, a development that also extended to new democracies in Eastern Europe and Latin America. The key concepts were framed within the framework of international humanitarian law: the genocide

1) Timothy Y. Tsu prepared this summary relying on the speaker's PowerPoint presentation.

convention, the Geneva conventions, and the crimes against humanity. From mass violence evolved the ideas of mass crimes and the broader lexicon of what we term today International Crimes. The latter typically includes the crimes enshrined in the statutes of the tribunals. These crimes are matters of humanity or *ius cogens or universal laws that no one can breach*.

Then it took over 50 years since the post-World War II war crime trials, for more to follow. Presently, the strongest currents are seen in the application of universal jurisdiction. Africa is the lab of atrocity trials, e.g., Ethiopia 1992-2010 ; Rwanda 1994-2014 ; Rwanda 2001-2012 ; Sierra Leone 2002-2013 ; Chad 2013-present ; and Congo and Central African Republic. In theory, the ICC is global in jurisdiction, but in practice, the cases before the court so far only concern African.

Transitional justice faces major difficulties. Since the biggest powers, including USA, Russia, and China, are not members of the ICC, the court lacks legitimacy. What is more, since the same three countries are permanent members of the UN's Security Council, they can block investigations, for instance, in the case of Syria. There are also problems of political opportunism and dependency. Some governments used the court to oust rebel forces or political opponents. Meanwhile, the ICC has no police powers, which means it is dependent on the willingness of the states involved to help with investigation. In the case of Kenya, government non-cooperation led effectively to the closure of the cases. Finally, the court is located in the Hague, far away from the crime scenes. That means the victims have no opportunity to see what is going on.

Overall, the ICC has much to learn and to improve. The court can benefit from having more complementarity and less political restraints. It also needs more experienced judges and lawyers. It would be best, if the court was unnecessary.