

Conflict and Transitional Justice in Africa

Since the early 1990s, several dozen Sub-Saharan African countries have attempted to address past human rights abuses by relying on a varied mix of transitional justice mechanisms, such as prosecutions, truth-seeking and reconciliation efforts, reparations, or reform of their justice and security systems. But a lack of political will and the weakness of state institutions have undermined virtually all of these efforts. For Africans wanting accountability, reconciliation and lasting peace, the promises of transitional justice remain to be fulfilled.

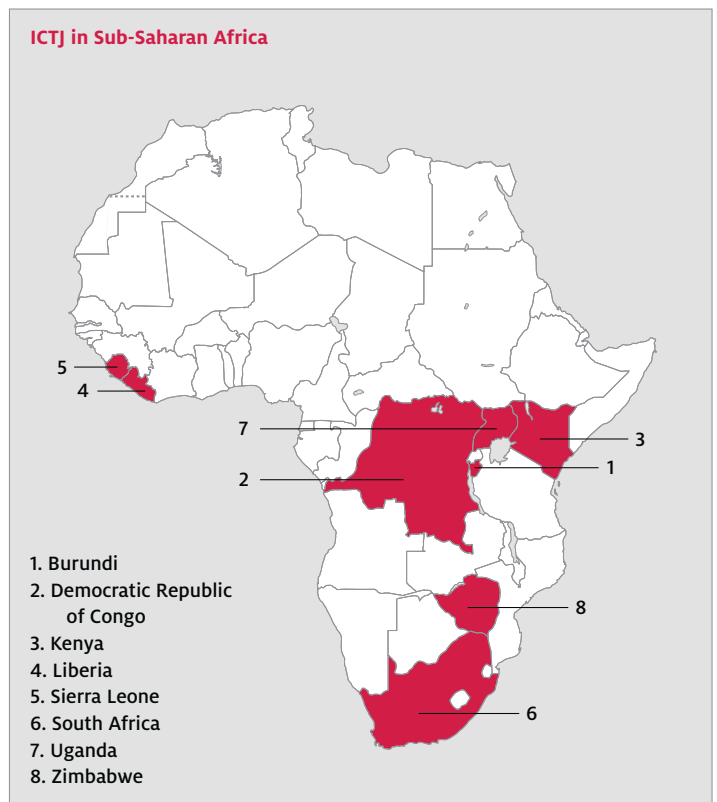
COMPLEX LEGACIES

African countries face a particular challenge when addressing their past. Neither independence nor the end of the Cold War brought effective democratic change, peace or prosperity. Rather, brutal colonial domination followed by post-independence authoritarianism and more recent repression of peaceful political opposition contribute to complex legacies of successive episodes of massive human rights abuse. Such are the experiences of Uganda, Ethiopia and Eritrea in the 1990s—when former liberation movements created virtual one-party states that committed large-scale human rights abuse with impunity; Sierra Leone and Liberia—where warlords became corrupt presidents competing for rich natural resources that fueled civil and regional wars; and Kenya and Zimbabwe—where a semblance of political stability relied on the repression of opposition, masking resentments destined to lead to violence.

Most African countries that endured domestic or regional wars are now undergoing some form of political transition. Yet many remain the scene of conflicts targeting unarmed civilians. Such has been the case of Burundi, the Democratic Republic of Congo (DRC), Liberia, Sierra Leone and Sudan. To restore peace and create enough stability for elections, the international community has endorsed power-sharing arrangements among former belligerents and dealt with them as legitimate parties, despite obvious links to war crimes and economic plunder. Transitions in this context lack legitimacy and have little chance of producing lasting democracy or peace.

OPPORTUNITIES AND CHALLENGES

The complex web of abusive human rights legacies in Africa presents unique opportunities and challenges for promoting transitional justice on the continent. In the context of peace negotiations in Sierra Leone (1999), Liberia (2003) and Sudan (2005), for example, the international community's increased attention to human rights in diplomacy bolstered domestic civil-society support for peace and accountability, creating significant opportunities for victims and national human rights groups to press for truth and justice.



The most violent conflicts that shook the continent—the collapse of Somalia, Sierra Leone and Liberia, the Rwandan genocide of 1994, and the subsequent eruption of war and foreign occupation in neighboring DRC—prompted African leaders to seek African solutions to the problems of impunity and corruption that fueled much of the violence. In its 2000 Constitutive Act, the African Union (AU) committed itself to intervene in member states to protect civilians from war crimes and other mass atrocities, even at the hands of their own governments—an African commitment to the “responsibility to protect” doctrine even before this concept was endorsed by the broader international community.

African states have made strong commitments to international justice in order to end impunity for mass atrocity. The Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda have sought to make accountability mandatory for the worst perpetrators of human rights abuses. Drawing on support for these tribunals, 30 African states ratified the Rome Statute establishing the International Criminal Court (ICC). Three African states—Uganda, the DRC and the Central African Republic—were the first to refer alleged criminal situations to the court. However, ICC investigations in the DRC and Sudan have increased tensions between the court and the AU.

As enthusiasm for justice through international courts begins to temper, transitional justice experts are considering the potential role of traditional, ethnic- or tribal-based conflict resolution. Activists in Uganda and the Darfur region of Sudan argue in favor of recognizing traditional practices such as inter-communal compensation and conciliation mechanisms—a development likely to gain traction in other countries.

Two characteristics of Africa's recent conflicts present particular challenges to developing effective transitional justice responses: regional conflict dynamics and corruption. Africa's conflicts are rarely confined within national boundaries. As a result, peace and accountability efforts must address neighboring countries' responsibility in past conflicts. Three international tribunals have successfully denounced regional complicity in massive human rights atrocities: the International Court of Justice's 2005 judgment holding Uganda liable for massive humanitarian law violations during its occupation of eastern DRC; the Permanent Court of Arbitration's ruling that Eritrea committed the crime of aggression in its 1998–2000 war against Ethiopia; and the Special Court for Sierra Leone's extraterritorial indictment and prosecution of former Liberian president Charles Taylor for his role in fueling Sierra Leone's civil war. Future transitional justice mechanisms must continue to seek justice and accountability for regional dynamics of African conflicts. For its part, endemic corruption in African states presents a significant challenge to justice and peace. Some African human rights advocates consider that corruption and economic crimes constitute foundational human rights violations, since the poverty they produce fuels indiscriminate violence.

ICTJ IN AFRICA

ICTJ is engaged in African societies struggling with post-conflict issues, even as human rights abuses continue in many of those settings. Its work focuses on four main strategic aims:

Empowering civil society. ICTJ works with local civil society to raise awareness of transitional justice mechanisms and promote national dialogue and advocacy for justice and accountability mechanisms. ICTJ helps make the voices of victims heard through population surveys and analysis of ongoing transitional justice processes.

Support for transitional justice mechanisms. ICTJ advises on principles for establishing and mandating truth and reconciliation commissions, and provides ongoing technical assistance to such commissions, special courts or other mechanisms once established. ICTJ draws on international experts with a wealth of comparative experience from other continents to advise African institutions.

Strengthening justice and rule of law.

ICTJ promotes institutional reform, primarily of the justice sector but also of related security sectors, as an essential step to break the cycle of impunity in post-conflict societies. ICTJ trains lawyers and judges in partnership with peer organizations and donor agencies and advises on rule-of-law reform. It strengthens civil society and the media to promote external accountability for such government reforms.

Gender justice. ICTJ supports the role of women's rights groups and encourages networking among them to participate actively in transitional justice processes. In particular, ICTJ assists national women's groups to address the legacy of endemic sexual and gender-based violence targeting women and girls during and after conflict.

2009