

What Next for International Justice?

Efforts of the International Criminal Court (ICC) have highlighted prosecutions as a response to mass human rights abuses. At the same time, international justice is facing enormous challenges, including victims' lack of knowledge of the court and opposition by some national leaders. So what is next for international justice?

BACKGROUND AND CHALLENGES

By late 2008, the ICC had five defendants in custody: four Congolese defendants, one of whom is a former vice president of the Democratic Republic of Congo (DRC) charged with crimes committed in the Central African Republic. The court also was seeking the arrest of leaders of the rebel Lord's Resistance Army (LRA) in the midst of peace negotiations between the LRA and Uganda. It also was grappling with significant security and logistical problems in the DRC, and continuing a very difficult investigation in Darfur.

Events in recent months have highlighted the tremendous challenges that international justice continues to face. The ICC's first trial, of DRC militia leader Thomas Lubanga, nearly ground to a halt over the prosecutor's failure to obtain consent from the UN to release confidential information to the defense. At the same time, enormous controversy surrounded the prosecutor's request for an arrest warrant for Sudanese President Omar al-Bashir for genocide.

Some of the ICC's challenges stem from insufficient outreach. In a recent survey ICTJ carried out, only 27 percent of people surveyed in the eastern part of the DRC were aware of the ICC. The court still lacks legitimacy in Africa, a problem exacerbated by a sense that the ICC—while supposedly global—focuses solely on African conflicts and employs relatively few Africans in senior positions. The court has had some positive effects, however. In Kenya and Uganda, its power has given domestic justice systems the incentive to pursue prosecutions.

LEGACIES OF ACCOUNTABILITY

The ICC's first proceedings are taking place as older international justice institutions wind down. For the International Criminal Tribunal for the former Yugoslavia (ICTY), the arrest of former Bosnian Serb leader Radovan Karadzic in July 2008 was a significant victory. Yet the ICTY remains under strong pressure from the UN Security Council to complete its work by the end of 2011. The International Criminal Tribunal for Rwanda (ICTR), based in Tanzania, faces similar pressure, as well as calls for it to transfer cases back to Rwanda. Any rush to close these tribunals could jeopardize the positive examples they set for local prosecutors and courts, and could weaken their legacy of accountability and justice.

Hybrid courts—tribunals that combine international technical expertise with in-depth domestic knowledge and local legitimacy—are a developing trend. Although such courts offer many advantages, significant tensions between international and domestic counterparts can still arise, as has happened with the Extraordinary Chambers in the Courts of Cambodia, the tribunal preparing to try senior Khmer Rouge leaders. Tensions can arise over legal issues and rules of procedure, or financing and administration. These courts also risk becoming substitutes for national judicial systems rather than serving as sources of support and professionalism for them. The practice of effective international-local partnerships needs further refinement.

The latest hybrid tribunal, the Special Tribunal for Lebanon (STL), plans to try people charged with terrorism and murder, as defined by Lebanese law. This risks politicization of international justice, the legitimacy of which has so far been based on trying defendants for genocide, war crimes and crimes against humanity. At the same time, the tribunal may stimulate debate on the role of justice in Lebanese society.

THE FUTURE

While international justice faces challenges, the growing number of international courts and the increasing number of states ratifying the Rome Statute (the basis of the ICC) are contributing to the fight against impunity in significant, unexpected ways. New trends signal a more complex interplay between the international and domestic realms.

For instance, the Inter-American Court for Human Rights has played a crucial role in the Americas and the Caribbean in overturning amnesties and promoting investigation and prosecution as part of victims' rights to an effective remedy. This in turn has emboldened domestic justice systems. At the moment, prosecutions for mass crimes of the past are taking place in Argentina, Chile, Peru and Colombia. Particularly notable is the trial of the former president of Peru, Alberto Fujimori, before a domestic court. While the pressures on the court are considerable, this case potentially sets important precedents for consolidating the rule of law in Peru.

The hand of justice has also been strengthened in the "peace versus justice" debate. In Colombia, criminal proceedings are taking place to demobilize paramilitaries under that country's 2005 Justice and Peace Law. These complex criminal proceedings seek to give demobilizing paramilitaries incentives to tell the truth about past crimes while safeguarding the rights of victims to truth and reparations. While not without problems, these proceedings represent a step forward from the simple "amnesty for truth" formula.

Before the ICC came into being, these situations probably would have resulted in full-fledged amnesties. The main value of international justice may now be to bolster national accountability efforts.

ICTJ PROSECUTIONS PROGRAM

Recent projects include the following:

- Participation in two extensive surveys on justice options in the DRC and Uganda (*When the War Ends*, December 2007, and *Living with Fear*, September 2008)
- Co-hosting a major conference on legacy and residual issues for the ICTY and ICTR, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia
- Co-authoring a seminal policy tool on the legacy of hybrid tribunals for the UN's Office of the High Commissioner for Human Rights Rule of Law series
- Monitoring key trials, including those of Alberto Fujimori and Charles Taylor
- Technical work to assist the Khmer Rouge trials with reparations issues
- Trainings for journalists and lawyers on the Special Tribunal for Lebanon
- Extensive technical assistance to develop strategies and practices for prosecuting mass crimes in Colombia
- Intervention at the Juba peace talks on options for justice in Uganda

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