Chapter 15

International Criminal Tribunals in Africa

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1 Introduction

This chapter explores the significance of International Criminal Tribunals (tribunals)\(^1\) in Africa within the broader context of the on-going efforts in Africa for improving the respect for the rule of law in general, and for human rights and humanitarian law in particular. As Africa marks thirty years of the African Charter on Human and Peoples’ Rights (African Charter), it is timely to evaluate the role that the Tribunals have played in the African context, as far the protection and promotion of human rights and humanitarian law are concerned. It is also significant to evaluate the performance of International Criminal Tribunals in Africa, to establish how they have interacted with and/or complemented the institutions established under the African Charter, in particular, the African Commission and African Court, in aiding the respect for and promotion of human rights.

Although they are not obligated to do so (because their mandates differ in material respects and they are not formally linked), it is also important to identify how the International Criminal Tribunals and the African Commission have cross-learned or cross-fertilized each other, for instance, through referring to each other’s jurisprudence or practices, or have taken similar or related positions on common issues. Although the Tribunals were established to respond to specific situations of gross human rights violations constituting international crimes that had occurred in specific States, this chapter evaluates their significance to Africa in general as far as enhancing the respect for human rights is concerned. It also evaluates their contribution to the broader values of peace and reconciliation, especially in the African context where many communities have been afflicted by conflict. As

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\(^1\) On these tribunals, see generally, W. Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge, Cambridge University Press, 2006), 6.
the Tribunals are *ad hoc* – and indeed, are currently winding up their work – this chapter also evaluates the legacy of their work both within and beyond Africa.

This chapter focuses on two Tribunals, the United Nations International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.² Like the ICTR, the SCSL is an ‘International Tribunal’ and not a ‘domestic’ court. The SCSL is a creature of international law and not domestic law.³ It was established by the United Nations (UN), although by treaty (between the UN and the Government of Sierra Leone) and not by UN Security Council as the ICTR. Unlike the East Timor special panels of Judges, the SCSL is not part of the national judiciary and stands apart as an international court mandated to apply international law (and some limited parts of domestic law).⁴

In achieving the goals above, this chapter traces and evaluates how African States perceived the establishment by the United Nations, of the Tribunals, especially the ICTR, to respond to African situations. The chapter argues that, although the *ad hoc* International Criminal Tribunals in Africa are more recent than the African Charter on Human and Peoples’ Rights and its principal enforcement institutions, the African Commission and Court, and were not established strictly speaking as oversight mechanisms to verify that States respect human rights (or for that matter, international humanitarian law), they have played a critical role in aiding the protection and promotion of human rights in Africa. The Tribunals’ contributions in addressing impunity for gross human rights violations; their precedent-setting interpretation and application of international humanitarian law; their effort of establishing not only individual guilt or innocence, but to a great extent, the truth; the influence of their operation and jurisprudence on the domestic plane and the African Commission and African Union, among others, are noteworthy. The Tribunals alone, however, cannot address impunity and the broader post-conflict accountability and reconstruction projects. National institutions remain the primary actors. In addition to the Tribunals, which unfortunately are winding up their work, the African regional human rights system, together with the UN and the International Criminal Court (ICC), need to continue playing a role in ensuring, *inter alia*, that States implement their obligation of fighting impunity for mass atrocities by investigating, prosecuting and effectively punishing persons transgressing international humanitarian law.

2 The Establishment of the ICTR, its Mandate and Initial Perceptions of African States

The ICTR was established by the UN Security Council in Resolution 955 of 1994 adopted pursuant to Chapter VII of the UN Charter.⁵ It was thus established as an

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² Hereinafter the ‘ICTR’, and the ‘SCSL’ respectively.
³ Schabas (n 1), 6.