

The International Criminal Court and Transitional Justice

Dr. Tonny Kirabira
Senior Lecturer in Law
t.Kirabira@uel.ac.uk



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What is Transitional Justice

- TJ- how societies respond to the legacies of massive and serious human rights violations.
 - Strong foundations in IL, IHL, IHRL, ICL
 - UN guidance- Truth, Justice, Reparation and Non-Repetition
 - Amnesty
 - Memorialization
 - Transformative turn-towards socio-economic justice and structural change
- McAuliffe (2021) Transitional Justice, Institutions and Temporality: Towards a Dynamic Understanding, International Criminal Law Review
- In practice, what is TJ all about? What is the relationship between judicial and non-judicial forms of justice?

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Truth Commissions

- Right to Truth
- In theory, a literature review points towards a recognition of the need to establish a historical record, while implementing other remedial approaches.
- The efficiency of Truth Commissions in transitional justice is still a subject of scholarly debate.

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Victims' Reparations

- UN General Assembly under its Basic Principles of 2005, where Basic Principle IX requires States to
 'provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law'
- International Law Commission under article 34 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILO draft articles)-may take the form of restitution, compensation, and satisfaction.
- a victimological approach towards TJ invites critical concerns about reparations- collective reparations, arguing that individual reparations delegitimise the victims

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Criminal Prosecutions and Transitional Justice

- In response to genocidal conflicts in Rwanda and the Balkans, the TJ regime was expanded to include ad hoc International Criminal Tribunals
- From the discipline of ICL- important conceptual and normative developments - for example in the prosecution of sexual violence and related crimes
- Contribution of the ICL discipline to TJ -the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC)
- The mode and scope of victims' participation in these TJ initiatives
- the relevance of criminal trials- impact on victims- important symbolic value

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International criminal prosecutions-points of criticism

- criticised as not being relevant when applied during the course of active human rights violations or armed conflict
- ICL based on a liberal model of Western justice
- ICL is selective-several factors outside the traditional legal arguments, that determine who is prosecuted
- Blurriness between the lines of victims and perpetrators -victimologists like Drumbl
- Similarly, the use of ICL as a deterrent measure

e.g Whether the fifty-five sentences delivered by the ad hoc tribunal for Rwanda can be considered sufficient punishment for the 800,000 deaths?

Archibugi, Pease (2018) Crime and Global Justice: The Dynamics of International Punishment,

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The International Criminal Court and Victims

- Victim participation- crucial dimension of TJ
- Who speaks for the victims? Victimologists have mixed perceptions
Killean & Moffett(2017)Victim Legal Representation before the ICC and ECCC. J of Int Criminal Justice 15
- conceptualisation of victims-those who are participating in ongoing proceedings, but also, those who applied for participation in proceedings
- Rule 85 of the ICC Rules of Procedure and Evidence.
See ICC, Representing Victims before the International Criminal Court: A Manual for Legal Representatives (2018).
- Victims' reparations- reparative and restorative justice
- Trust Fund For Victims

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Transnational networks

- Different sites of justice- Connections to the Hague
- Intermediaries
- Local and international NGOs
- Coalition for the International Criminal Court

International Law and the Global South
Perspectives from the Rest of the World

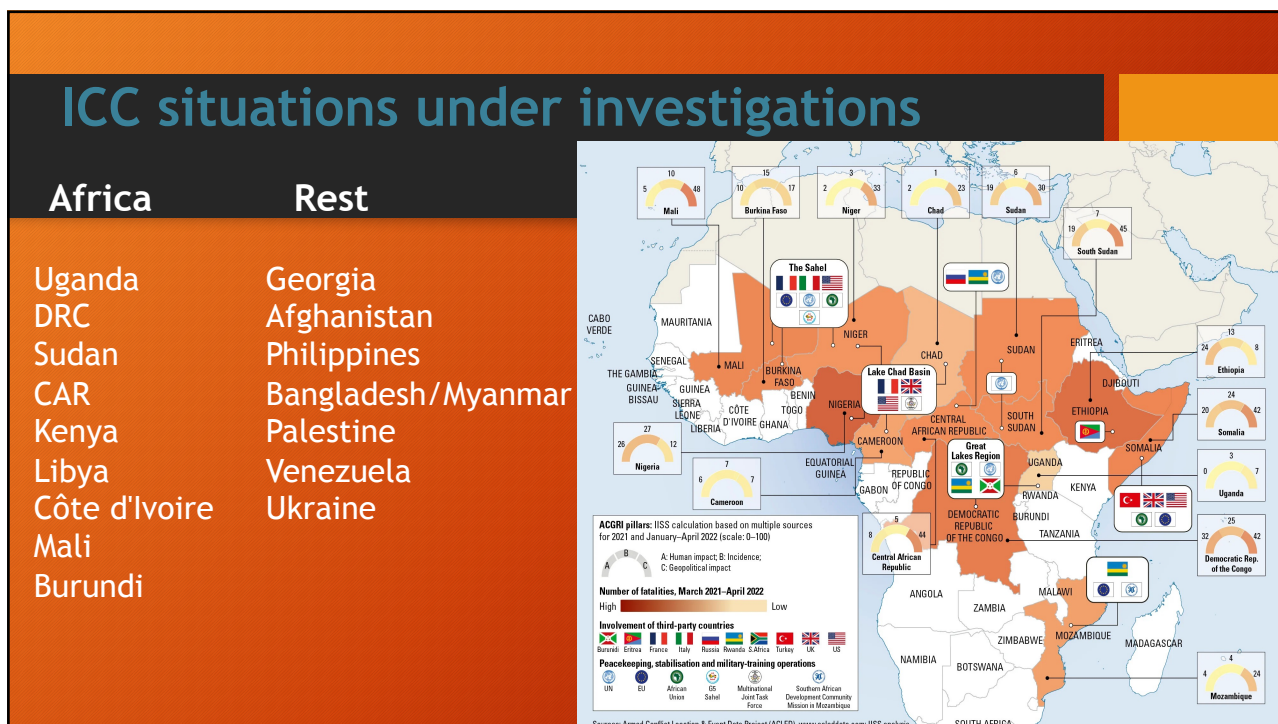
Tonny Raymond Kirabira

Transnational Networks and Justice in the Global South

Comparative Examination of African and
Asian Contexts

 Springer

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ICC and TJ in Kenya

- ❖ 2007-2008 Post election violence
- ❖ failure to set up domestic tribunal
- ❖ Prosecutor’s *proprio motu* powers -Investigation opened in 2010
- “Don’t be vague. Go to the Hague”
- ❖ President Kenyatta and Deputy William Ruto among 6 indicated by ICC
- ❖ 2013 presidential elections-“a vote for us is a vote of no confidence in the ICC”

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ICC and TJ in Kenya

2013 presidential elections-“a vote for us is a vote of no confidence in the ICC”

8 October 2014- President Uhuru Kenyatta appeared before the ICC

Pushback-the limits of TJ

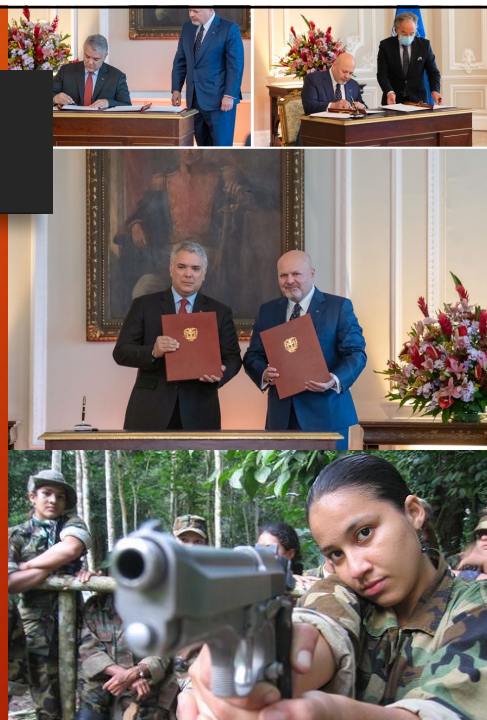
Cases collapsed-witness interference, lack of cooperation from the government



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ICC and TJ in Colombia

- 2016 peace agreements between the government and the Revolutionary Armed Forces of Colombia (FARC).
- A range of TJ mechanisms implemented
- preliminary examination since June 2004
- Closed in 2021-Cooperation Agreement
- complementarity and victim-centered justice



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ICC and TJ in Colombia

- direct engagement with civil society and victims' representatives
- Over 280.000 people registered as victims
- Colombia's Special Jurisdiction for Peace (JEP)

ICC-OTP, The Role of the ICC in the Transitional Justice Process in Colombia, 30-31 May 2018, paras. 96-122



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ICC and TJ in Philippines

- Duterte- national “war on drugs” launched in 2016- estimated 30,000 deaths according to the International Criminal Court (Reuters Citation2025).
- 2018-Chief Prosecutor Bensouda opened a preliminary examination of the situation in relation to the drug war in the Philippines
- President Rodrigo Duterte announced withdrawal from the Rome Statute
- Legacy of impunity and lack of accountability- since Ferdinand E. Marcos



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ICC and TJ in Philippines

- September 2021- Pre-Trial Chamber authorized an investigation into the War on Drugs and the alleged human rights abuses from 2011 to 2019.
- Implementation- Marcos administration (signal of TJ)
- March 2025- Rodrigo Duterte arrested in Manila
- Article 17 of Rome Statute-unwilling or unable standard
- 2026- confirmation of charges
- 539 victims authorised to participate in the proceedings.
- May 2026-EJK Truth Commission formed



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ICC and TJ in Uganda

- LRA insurgency from 1986-2008
- War crimes and crimes against humanity
- Referred to the ICC by the Government in 2004



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Dilemma of ICC in Uganda

- altered the parameters of peace and justice in Uganda
- Warrants of arrest
- Juba Peace talks 2008
- Amnesty laws
- conflicted with local priorities
- Political manipulation



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ICC and TJ in Uganda

- Ongwen case- 2021- Convicted, sentenced, Reparations Process
- ICC investigations closed in 2023
- Kony Case-confirmation of charges hearing in the suspect's absence
- Catalyst for domestic prosecution- International Criminal Division- Thomas Kwoyelo case

Kirabira, Looking Beyond Ongwen: What Next for Transitional Justice in Northern Uganda? 22(5) Journal of International Criminal Justice (2024)pp. 693-699

- Incomplete and narrow Transitional Justice

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