Chapter 16

The International Criminal Court and Africa: A Legal Alternative to Implementing International Criminal Justice

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Abstract

The International Criminal Court (ICC) has been criticised for its perceived focus on Africa in addressing war crimes, genocide, and crimes against humanity. This chapter contends that ensuring justice for victims in Africa is crucial, necessitating a complementary relationship between the ICC and regional justice bodies. The chapter examines the regional initiatives established by the African Union and its Member States to provide a legal alternative, supplementing the ICC's efforts. By prosecuting individuals accused of international crimes in regional, national, or hybrid tribunals, such as the African Extraordinary Chambers in Senegal, these initiatives aim to deliver justice to victims while addressing concerns of bias. This paper advocates for a collaborative approach between the ICC and regional mechanisms to combat impunity and promote accountability for grave human rights violations.

Keywords: International Criminal Justice, International Crimes, International Criminal Court, Rome Statute, African Union, African Regional Tribunals

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1. Introduction

The relationship between the International Criminal Court (ICC) and Africa has been complex and multifaceted since the ICC's establishment in 2002, with African countries representing the largest bloc.[1] While the ICC was created with the aim of promoting justice and accountability for the most serious international crimes, including genocide, war crimes, and crimes against humanity, its interactions with African countries have been a subject of both praise and criticism.[2] Currently, out of the 124 countries that are States Parties to the Rome Statute of the ICC, 33 are African States.[3] There were 34 African States; however, Burundi withdrew from the ICC on 27 October 2017. About 30 cases before the ICC involved individuals from African countries such as the Central African Republic (CAR), Ivory Coast, Sudan, the Democratic Republic of Congo, Kenya, Libya, Mali, and Uganda, prompting many authors to recognise the complexity of the ICC-African relationship.[4]

2. Why is international justice needed in Africa?

To answer why international justice is needed in Africa, one should consider the horrific events that have unfolded across the continent in recent decades – from the Rwandan Genocide to the brutal civil wars in Liberia and Sierra Leone – which have laid bare the desperate need for international justice mechanisms. These tragedies, which claimed millions of lives and displaced countless others, stand as stark reminders of the devastating consequences of impunity. Therefore, the ICC can be seen as the international community's answer to hold perpetrators accountable for these atrocities, fostering peace and preventing future crimes.

The Rwandan Genocide of 1994, for instance, brought the international community together in shock and horror as nearly 800,000 people were slaughtered in a campaign of ethnic cleansing within just 100 days. The sheer scale and brutality of this event demanded a global response, emphasising the need for accountability to prevent such crimes from being repeated elsewhere. Although the ICC was not established then, it represents the international community's commitment to ensuring such acts never go unpunished.

Similarly, the devastating Congo Wars, the Sudanese Civil Wars – including the horrific events in Darfur – and the numerous civil wars in Liberia and Sierra Leone have left deep scars on the continent. These conflicts were often characterised by

1 Jalloh, 2010, pp. 395–460.
2 Whitely & Ivanov, 2020.
3 International Criminal Court. (n.d.). The States Parties to the Rome Statute.
4 Rowe, 2021, pp. 51–61.

war crimes and crimes against humanity, with civilians bearing the brunt of the violence. In the absence of a response by a regional justice body to prosecute those responsible for these atrocious acts, the ICC can be viewed as a necessity to hold criminals accountable and offer justice to all while the regional justice bodies are developing and improving. The ICC offers a crucial tool for holding those responsible accountable, deterring future atrocities, and fostering reconciliation within these fractured societies.

Article 13 of the Rome Statute grants the Court the authority to investigate and prosecute crimes committed worldwide, subject to its jurisdiction, or upon request by the United Nations Security Council (UNSC), thereby conferring the Court's universal jurisdiction. The ICC's focus on Africa in its early years reflects the urgent need for justice following these devastating conflicts. Furthermore, African nations themselves have been active participants in the ICC, with several countries referring cases, thus showcasing their support for the Court.[5] This demonstrates African States' recognition of the importance of international justice in addressing these complex issues. For instance, Uganda became the first nation to refer a case to the ICC in 2004, requesting an investigation into the Lord's Resistance Army (LRA) and its leader, Joseph Kony, for war crimes and crimes against humanity. Similarly, the CAR referred a case to the ICC in 2004 regarding ongoing violence within the country. During the 2012-2013 civil unrest, Mali requested an investigation into crimes committed on its territory.

In this framework, it can be understood that international justice mechanisms offered by the presence of the ICC are a crucial step towards a more just and peaceful world. By holding perpetrators accountable for the horrific crimes that have plagued Africa, the ICC can help break cycles of violence, promote reconciliation, and deter future atrocities.[6] The ICC intervenes in situations where a State is unable or unwilling to genuinely conduct investigations and prosecute perpetrators of the most serious crimes. In many cases, particularly in Africa, the lack of adequate justice infrastructure, funds, and expertise poses significant challenges to national authorities in effectively addressing these crimes. Countries that have experienced devastating civil wars or are undergoing reconstruction often struggle to establish functioning judicial systems capable of handling complex international crimes. As a result, the ICC's focus on Africa can be analysed as a response to the prevalent impunity and the need for international assistance in addressing impunity and accountability.

5 García Iommi, 2023, pp. 16–30.
6 Shilaho, 2023.

3. How can joining the ICC benefit countries?

African countries can decide to join the ICC for many reasons, all aiming to strengthen accountability and combat impunity for the most serious international crimes. The ICC serves as a crucial partner in this endeavour. First, by joining the ICC, African States actively participate in the international fight against impunity. This aligns with the Rome Statute of the ICC, the founding treaty of the ICC, which establishes the Court's jurisdiction over these core international crimes. The term "jurisdiction" in the context of international criminal law is often contentious, with its interpretation varying across legal systems globally.[7] Nonetheless, it is essential to underscore that ratification and adherence to the Rome Treaty signify a dedication to upholding international legal norms and seeking redress for victims. Second, the ICC offers vital resources to bolster domestic legal systems. African countries joining the ICC gain access to technical assistance and expertise. This strengthens their capacity to investigate and prosecute complex international crimes, potentially fulfilling their obligations under conventions such as the Geneva Conventions, which outline the treatment of civilians and prisoners of war during armed conflict. Moreover, joining the ICC provides African nations with a platform to address issues of impunity within their borders. The ICC's mandate to hold individuals accountable for serious international crimes, such as genocide, war crimes, and crimes against humanity, aligns with the goals of many African States to promote accountability and ensure justice for victims. Membership in the ICC also serves as a deterrent to potential perpetrators of such crimes, sending a clear message that there will be consequences for their actions. One significant aspect of the ICC is its principle of complementarity, which allows States to take the lead in prosecuting international crimes within their own jurisdictions. This principle ensures that the ICC intervenes only when national authorities are unwilling or unable to prosecute such crimes themselves, thus respecting the sovereignty of Member States while reinforcing the rule of law at the international level. African countries' participation in the ICC reflects a multifaceted approach to achieving justice. It fosters international cooperation, strengthens domestic legal systems, deters future crimes, and promotes accountability for the most severe international offences.

However, while the Court has made strides in promoting accountability and deterring future crimes, it must address criticisms of bias and work collaboratively with African nations to strengthen its legitimacy. The ICC's success in Africa will depend on its ability to adapt, engage with local contexts, and ensure that justice is served impartially and effectively in Africa, Latin America, Asia, or the Middle East.

7 Tatarinov, 2021.

4. The goals and objectives guiding ICC actions in Africa

4.1. Prosecutions and Accountability

Various articles (1, 5, 17, 27, 53.) of the Rome Statute, the treaty that established the ICC, highlight the importance of the mission of promoting accountability and ensuring justice for victims of the most serious international crimes. As a global justice mechanism, the ICC targets people, leaders of armed groups, or political leaders responsible for crimes committed during periods of State incapacity, such as civil wars and conflicts. By prosecuting individuals who bear the greatest responsibility for these crimes, it seeks to provide a measure of justice to the victims and deter future atrocities, contributing to the prevention of such crimes and promoting accountability and the rule of law in Africa and beyond.

4.2. Deterrence and Prevention

Highlighted in Articles 1, 5, 17, 27, 53, and 56, these objectives have arguably helped deter future crimes. The threat of prosecution by an international court has influenced some leaders to reconsider their actions and may have prevented further escalation of conflicts in certain regions.

4.3. Recognition of Victims

Articles 68, 68(3), 75, and 79 enable the ICC to provide a platform for victims to share their stories and seek justice. The Court's acknowledgement of their suffering has given a voice to those who have long been marginalised and ignored, with opportunities to participate in proceedings and receive reparations. While reparations are not considered a standalone principle, they are an integral component of the ICC's mandate to address the needs of victims and provide redress for the harm they have suffered as a result of international crimes. Articles 75 and 79 of the Rome Statute outline this topic, and based on that, the ICC judges have recently assessed the reparations cost in the Ongwen case at €52,429,000. This comprehensive amount comprises €15 million designated for collective community-based reparations, €37,329,000 allocated for individual symbolic awards of €750 to victims, and an additional €100,000 earmarked for various community, symbolic, and satisfaction measures, including acts of apology and monuments. Given Ongwen's indigence and inability to contribute to reparations, the significant number of victims in this case presents a formidable challenge for the Trust Fund for Victims (TFV). The necessity for extensive fundraising efforts involving collaboration with States, organisations, companies, and individuals to meet this unprecedented demand is important to help implement the principle of recognising victims and effective reparations.

4.4. Partnership and Outreach

While not designated as standalone principles, the ICC recognises the importance of cooperation and collaboration with various stakeholders, including States, regional organisations, civil society, and affected communities, to effectively carry out its mandate. Strengthening partnerships with these entities allows the ICC to enhance its credibility, address concerns about bias, and ensure that justice is served while respecting local contexts.

Article 87(1): outlines the cooperation and assistance that States Parties are required to provide to the ICC to investigate and prosecute crimes within its jurisdiction. This cooperation framework can facilitate the strengthening of partnerships with African countries and regional organisations.

Article 87(5) emphasises the importance of cooperation agreements among the ICC, the States Parties, and other international organisations to facilitate effective collaboration and support for the Court's work.

4.5. Enhancing Outreach

Article 87(7) encourages the ICC to engage in outreach activities to promote the understanding of its mandate, functions, and activities among the public, particularly in countries where investigations or trials occur. This includes efforts to engage with communities affected by the crimes under the ICC's jurisdiction.

Article 68(3): While not directly related to outreach, this article affirms the rights of victims to participate in ICC proceedings and have their views and concerns considered. Effective outreach efforts can ensure that victims are informed about their rights and the role of the ICC in addressing their grievances.

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5. Selected cases of African nationals before the ICC

The "African" cases brought before the ICC reveal its commitment to justice for victims regardless of nationality and the social status of the perpetrators. The cases of African nationals before the ICC highlight the Court's pursuit of accountability and its potential to support regional justice initiatives, a topic we will widely develop in the following paragraphs.

5.1. The Prosecutor v. Dominic Ongwen (Uganda)

In 2004, Uganda became the first country to refer a case to the ICC, requesting an investigation into the LRA led by Joseph Kony. The LRA was accused of widespread atrocities against civilians in Uganda and neighbouring countries. While

Kony remains at large, arrest warrants issued against several LRA commanders, such as Okot Odhiambo (killed in 2005) and Vincent Otti (died in 2008), were not successfully executed.

Dominic Ongwen, a former child soldier who ascended the ranks within the LRA, made history as the first LRA commander to face trial at the ICC. Charged with 61 counts of crimes against humanity and war crimes allegedly perpetrated after 1 July 2002, in northern Uganda, Ongwen's trial concluded with the Trial Chamber IX sentencing him to 25 years of imprisonment on 6 May 2021. Subsequently, on 15 December 2022, the appeals chamber upheld the decisions of Trial Chamber IX regarding Ongwen's guilt and sentence. Finally, on 18 December 2023, Ongwen was transferred to Norway to serve his prison sentence, and his conviction and sentence are now deemed final, marking a significant milestone in the pursuit of justice for crimes committed in Uganda in the context of the LRA insurgency.

5.2. The Prosecutor v. Thomas Lubanga Dylio (The Democratic Republic of Congo)

The Democratic Republic of Congo (DRC) referred to two situations in the ICC. The first involved crimes committed by various armed groups during brutal civil and international conflicts. The second focused on violence in the Ituri province. The ICC has secured convictions for war crimes and crimes against humanity, including the use of child soldiers against Thomas Lubanga Dylio, charged under the Rome Statute with war crimes, specifically for conscripting and enlisting children under the age of 15 into armed groups and using them to participate actively in hostilities. Additional Protocols to the Geneva Conventions[8] stipulate that the recruitment and use of child soldiers constitute violations of international humanitarian law (Article 77 of Additional Protocol I of the Geneva Conventions and Article 4(3)(c) of Additional Protocol II).

The case's impact extends beyond the specific circumstances of the DRC, a country that has been through multiple wars and whose children have seen their universal rights infringed countless times due to political instabilities. The case has shaped international norms and standards for protecting children in armed conflicts. Efforts to prevent the use of child soldiers, rehabilitate former child soldiers, and prosecute those responsible have gained momentum in various regions, partially due to the precedents set by cases like Lubanga's. On 14 March 2012, he was convicted of committing, as co-perpetrator, war crimes consisting of enlisting and conscripting children under the age of 15 years into the Force Patriotique pour la libération du Congo [Patriotic Force for the Liberation of Congo] (FPLC) and using them to participate actively in armed conflicts (punishable under Article 8(2)(e)(vii) of the Rome Statute).

8 International Committee of the Red Cross. (n.d.). International humanitarian law databases.

5.3. The Prosecutor v. Bosco Ntaganda (The Democratic Republic of Congo)

The background of the case revolves around criminal activities in the Ituri region of the DRC between 2002 and 2003. Similarly, in the case of Prosecutor v. Bosco Ntaganda, a Congolese rebel commander was charged with numerous counts of war crimes and crimes against humanity, including murder, rape, and the use of child soldiers, committed in the Ituri and North Kivu regions of the DRC. Ntaganda was eventually found guilty and sentenced to 30 years in prison by the ICC. These cases demonstrate the ICC's commitment to prosecuting individuals responsible for grave crimes, regardless of their status or position. However, it also highlights the need for African leaders to invest in regional justice systems to ensure that justice is served effectively and efficiently locally.

5.4. The Prosecutor v. Ahmed al-Faqi al-Mahdi (Mali)

Mali referred to the ICC concerning crimes committed during the 2012-2013 conflict. This case demonstrates the willingness of States to utilise the ICC to address war crimes, even during internal conflicts. Ahmed al-Faqi al-Mahdi, a Malian Islamist, was charged with the war crime of intentionally directing attacks against historic monuments and buildings dedicated to religion in Timbuktu, Mali, during the occupation by extremist groups in 2012. He pleaded guilty and was sentenced to nine years in prison.

5.5. The Prosecutor v. Laurent Gbagbo & Charles Blé Goudé (Côte d'Ivoire)

Following the 2010-2011 post-presidential election violence, the ICC opened an investigation into crimes committed by both sides of the conflict. This case underscores the ICC's impartiality in pursuing accountability regardless of political affiliations and social status, as Mr Laurent Gbagbo was the former president of Côte d'Ivoire and was competing for a new mandate. He was charged with crimes against humanity, including murder, rape, and persecution, committed during the post-election violence in 2010-2011. However, he and youth leader Charles Blé Goudé were acquitted of all charges and released from detention, showcasing international justice's impartiality.

5.6. The Prosecutor v. Uhuru Kenyatta (Kenya)

Following the 2007 presidential election violence, the ICC investigated allegations of crimes against humanity against Kenyan political figures. This case highlights the challenges the ICC faces in securing cooperation from national governments. Uhuru Kenyatta, the president of Kenya, was charged with crimes against humanity for his alleged role in the violence following the 2007 Kenyan elections, which resulted in the deaths of over 1,000 people and the displacement of hundreds

of thousands of others. However, the case against Kenyatta was terminated due to insufficient evidence and a lack of cooperation from the Kenyan government.

A similar case regarding a former political leader is that of Omar al-Bashir, the former president of Sudan. The ICC issued arrest warrants for Sudanese government officials, including Omar al-Bashir, for alleged crimes against humanity and genocide in Darfur. However, al-Bashir evaded arrest and extradition despite the indictments, ultimately escaping trial before the ICC due to the lack of State cooperation.[9] This situation underscores the limitations of international justice mechanisms and highlights the necessity for strong and effective regional justice systems capable of holding perpetrators accountable within their own jurisdictions.

Overall, the collaboration between the ICC and regional African justice systems is indispensable for advancing and fortifying the latter. By partnering with the ICC, African nations have the opportunity to bolster their capacity to investigate, prosecute, and adjudicate cases involving severe international crimes. This collaborative endeavour expedites the dispensation of justice and fosters the region's rule of law and accountability. Furthermore, it allows African countries to enhance their knowledge and expertise in navigating intricate legal matters, thereby being pivotal in establishing a robust regional African justice system. The assertion of bias towards the ICC diminishes when regional justice systems engage in cooperative efforts with the ICC, underscoring the vital and imperative nature of such collaboration. While the ICC undeniably fulfils a crucial role in prosecuting serious international crimes, it is incumbent upon African leaders to prioritise the development of resilient regional justice mechanisms. These mechanisms complement the ICC's efforts and ensure accountability and justice for all, ultimately strengthening the fabric of the rule of law across Africa and the world.

6. Examples of the implementation of regional African justice systems to fight impunity

Since the second half of the 20th century, various measures have been taken on the African continent to combat international crimes and other serious violations of international law. When the idea of establishing a regional African system for the protection of human rights was being discussed, proposals were made for establishing mechanisms to hold persons accountable for committing international crimes. Among these mechanisms, this paper highlights three initiatives:

1. The African Extraordinary Chambers – established in 2013 in Senegal.

9 Sakarombe, 2023, pp. 7–19.

2. The Special Court for the CAR (SCCAR) – established in 2015 to prosecute those responsible for international crimes in the CAR since 1 January 2003.[10]

3. The Special Court for Sierra Leone (SCSL) – created on the basis of an agreement concluded between the UN and the government of Sierra Leone.

6.1. The African Extraordinary Chambers

Chronologically, it seems appropriate to first consider the African Extraordinary Chambers for Chad (EAC), which were created as part of the judicial system of the Republic of Senegal as a result of an agreement concluded between the African Union (AU) and Senegal to prosecute those most responsible for international crimes and other serious violations of international law committed on the territory of the Republic of Chad from 7 June 1982, to 1 December 1990.[11] The main suspect convicted by the EAC was the former president of the Republic of Chad, Hissène Habré, who was accused of committing large-scale and serious international crimes in his country.[12] In this case, for the first time, a former president of an African State was prosecuted by another African State based on universal jurisdiction, and for the first time, the AU was involved in establishing an internationalised criminal tribunal in the African continent.[13]

Hissène Habré ruled the Republic of Chad from 1982 to 1990. Serious human rights violations were allegedly committed under his regime.[14] After he was overthrown by Idriss Debi Itno in 1990 in a coup d'état, Senegal granted Hissène Habré asylum in December 1990. Two years later, a Commission of Inquiry, established under the auspices of the Chadian Ministry of Justice, concluded that more than 40,000 political assassinations and systematic torture had been committed under the rule of Hissène Habré.[15]

On 25 January 2000, some citizens of Chad filed an application in the Senegalese courts against Hissène Habré[16] for violation of the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Hissène Habré was indicted in February 2000 by the District Court of Dakar (Senegal) for complicity in the commission of crimes against humanity, particularly torture.[17] Thereafter, Hissène Habré filed a motion to challenge the indictment before the Dakar

10 République Centrafricaine. (2015). Loi organique n° 15-003 portant création, organisation et fonctionnement de la Cour pénale spéciale.

11 Union africaine et Gouvernement de la République du Sénégal. (August 2012). Accord entre le Gouvernement de la République du Sénégal et l'Union Africaine sur la création des Chambres africaines extraordinaires au sein des juridictions senegalaises.

12 Cimiotta, 2015, pp. 177–197.

13 Williams, 2013, pp. 113–1160.

14 Marusin, 2019, p. 691.

15 Human Rights Watch. (2005, July).

16 Cour d'appel de Dakar. Procès - verbal d'interrogatoire de première comparution. 13/2000.

17 Cour d'appel de Dakar. Procès - verbal d'interrogatoire de première comparution. 13/2000.

Court of Appeal on 18 February 2000 on the grounds that the Senegalese courts are incompetent to prosecute crimes committed on the territory of another State.[18]

On 4 July 2000, the Dakar Court of Appeal, following the petition by Hissène Habré, decided to overturn the indictment and immediately suspend the proceedings against him due to the lack of court's jurisdiction, stating that the Senegalese courts cannot hear cases of torture committed by a foreign citizen outside the territory of Senegal, regardless of the citizenship of the victims, considering that Article 669 of the then Senegalese Code of Criminal Procedure at the time excluded this jurisdiction.[19] The decision of the Dakar Court of Appeal was appealed but was upheld on 20 March 2001 by Senegal's Court of Cassation, which indicated that the Senegal Code of Criminal Procedure does not recognise that the courts have universal jurisdiction to prosecute foreign nationals living for committing or complicity in the commission of torture if these acts were committed outside Senegal and that the fact that Hissène Habré was in Senegal could not by itself serve a basis for criminal proceedings against him for his alleged commission of crimes in a foreign country.[20]

As a result, on 18 April 2001, the applicants (citizens of Chad), whose complaints remained unaddressed within the courts of Senegal, filed a complaint with the UN Committee against Torture under Articles 5(2) and 7 of the Convention against Torture.[21] In addition, in November 2000, 21 Chadians residing in Belgium complained about Hissène Habré at the District Court of Brussels[22] under Belgium's universal jurisdiction law for crimes against humanity, torture, arbitrary arrests, and abduction.

Accordingly, from February to March 2002, a Belgian Commission of Inquiry carried out an investigation in Chad, and after the waiver of the Hissène Habré immunity by the Chadian government, the Belgian investigative judge Fransen issued an international arrest warrant against Hissène Habré for alleged commission of crimes against humanity, war crimes, torture, and serious violations of international humanitarian law, and sent to Senegal a request for his extradition on 19 September 2005.[23] The Senegalese authorities subsequently arrested Hissène Habré on 15 November 2005; however, the Dakar Court of Appeal reiterated its incompetence to grant the extradition request of the former head of a foreign State, claiming that Hissène Habré enjoyed immunity from foreign criminal jurisdiction. Following this 2005 decision, a communiqué from the Senegalese Foreign Ministry was issued, which noted that the AU summit could decide which court is competent to hear the case.[24]

18 Chambre d'accusation de la Cour d'appel de Dakar, Senegal, Ministere Public et Francois Diouf contre Hissene Habre (2000.) (Arrêt no 135).

19 Spiga, 2011, p. 18.

20 Cour de Cassation, Sénégal (2001). (Arrêt no 14). Souleymane Guengueng et Autres Contre Hissène Habre.

21 Suleymane Guengueng et al. v Senegal, Committee Against Torture, Communication No. 181/2001. (2001).

22 Brody, 2015, p. 211.

23 Spiga, 2011, p. 6.

24 Ministere des Affaires étrangères du Sénégal. (2005). Communiqué.

On 19 May 2006, the UN Committee against Torture, in response to a complaint lodged by the citizens of Chad, decided that Senegal had failed to fulfil its obligations under the Convention against Torture and that it should take the necessary measures, including establishing its jurisdiction over the crimes[25] allegedly committed by Hissène Habré. The Committee stated that Senegal was under obligation, in accordance with Article 7 of the Convention against Torture, to refer the case to its competent authorities for criminal proceedings or, otherwise, extradite Hissène Habré at the request of Belgium or to another State in accordance with the provisions of the Convention.[26]

In this regard, on 24 January 2006, the Assembly of Heads of State and Government of the AU decided to establish a Committee of Eminent African Jurists, which was tasked with examining all aspects and consequences of prosecuting Hissène Habré case, as well as the available options for bringing him to justice in accordance with international fair trial standards while giving priority to African justice mechanisms, and make specific recommendations on ways and means to address such issues in the future.[27]

The Committee of Eminent African Jurists (the Jurists' Committee) concluded, inter alia, that since Hissène Habré was located in Senegal, Senegal should have exercised its jurisdiction over the case. As a State party to the Convention against Torture, the Jurists' Committee indicated that Senegal is bound by its provisions. Consequently, the Jurists' Committee noted that, per its international obligations, Senegal should adopt the necessary amendments to its legislation and prosecute Hissène Habré.[28] Based on these recommendations, the AU Assembly of Heads of State and Government, on 2 July 2006, noted that 'the crimes of which Hissène Habré [was] accused fall within the competence of the African Union' and formally mandated 'the Republic of Senegal to prosecute and ensure that Hissène Habré is tried, on behalf of Africa, by a competent Senegalese court with guarantees for fair trial'.[29]

At the same time, the AU Assembly of Heads of State and Government mandated the Chairperson of the AU, in consultation with the Chairman of the African Commission, to provide any necessary assistance to Senegal to ensure that the process is fair.[30]

25 Decision of the Committee against torture under Article 22, Paragraph 7, of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment Concerning Communication No. 181/2001. 17 May 2006.

26 Committee against Torture. (2006). Decision under Article 22, Paragraph 7, of the Convention against torture and other cruel, inhuman, or degrading treatment or punishment concerning Communication No. 181/2001.

27 African Union. (2006). Decision on the Hissène Habré Case (Doc.Assembly/AU/8 (VI)) Add.9.

28 Committee of Eminent African Jurists. (2005). Report on the Case of Hissene Habre.

29 African Union. (n.d.). Assembly/AU/Dec.127 (VII) Decision on the Hissène Habré Case and the African Union.

30 Ibidem.

Senegal has undertaken several legislative reforms to establish the necessary legal instruments to exercise jurisdiction over Hissène Habré. Thus, on 12 February 2007, Law No. 2007-02 amending the Criminal Code of Senegal was adopted, which significantly expanded the jurisdiction of the Senegalese courts to include war crimes, crimes against humanity, and crimes of genocide,[31] and Law No. 2007-05 amending the Code of Criminal Procedure, which, inter alia, provides for the jurisdiction of the Senegalese courts in relation to a foreign national who is accused of committing crime outside the territory of Senegal or complicity in the commission of war crimes, crimes against humanity and genocide, if he is located in Senegal, the victim lives in the Republic of Senegal, or the government receives a positive response to extradite him to Senegal.[32] These two laws were reflected in the 2008 amendment to Article 29 of the Constitution of Senegal, according to which the principle of non-retroactivity of criminal law in accordance with international law does not apply to genocide, crimes against humanity, and war crimes.[33]

Subsequently, Hissène Habré filed a complaint with the Court of the Economic Community of West African States (ECOWAS) on 1 October 2008,[34] in which he argued that the adopted amendments to Senegalese legislation regarding the granting of jurisdiction to Senegalese courts over international crimes, particularly the inclusion of such crimes in the Senegalese Criminal Code, which were not previously foreseen, are aimed at prosecuting him for the indicated crimes.[35] Thus, in his opinion, Senegal violated the principle of non-retroactivity of criminal law and, therefore, violated his rights provided for in Article 7(2) of the African Charter on Human and Peoples' Rights and Article 11(2) of the Universal Declaration of Human Rights.[36]

In its decision of 18 November 2010, the ECOWAS Court noted that there were indeed grounds for a possible violation of Hissène Habré's rights when the criminal law was applied retroactively. In addition, the Court noted that Senegal's mandate from the AU should be exercised per international law applicable to establishing *ad hoc* tribunals or other specialised international tribunals.[37] The Court also stated that otherwise, any actions of Senegal outside such norms of international law in this area may violate the principle of non-retroactivity of criminal law, enshrined in international human rights treaties as a human right.[38]

31 Loi n° 2007-02 du 12 février 2007 modifiant le Code pénal du Sénégal.
32 Loi n° 2007-05 du 12 février 2007 modifiant le Code de procédure pénale relative à la mise en oeuvre du Traité de Rome instituant la Cour pénale internationale, Senegal // Journal officiel, 2007-03-10, n° 6332 (INFORM)
33 Loi constitutionnelle n° 2008-33 du 7 août 2008 modifiant les articles 9 et 95 et complétant les articles 62 et 92 de la Constitution // Journal officiel, 2008-08-08, n° 6420.
34 Hissein Habre v. Republic of Senegal, Judgment of 18 November 2010, No. ECW/CCJ/JUD/06/10.
35 Ibidem
36 Ibidem
37 Ibidem
38 Ibidem

Belgium, in turn, instituted proceedings before the International Court of Justice on 19 February 2009 with a request to recognise the fact that Senegal could not prosecute Hissène Habré in its national courts and did not extradite him to Belgium, which was a violation by Senegal of its international obligations arising from the Convention against Torture.[39] In 2012, the International Court of Justice unanimously found that Senegal had indeed failed to fulfil its obligations and, therefore, called on Senegal to prosecute Hissène Habré in its competent national courts or extradite him[40] (aut dedere aut judicare).

In his separate opinion, Judge Cançado Trindade noted that the ECOWAS Court's decision cannot justify this violation, as it was made only in 2010, and Senegal had not fulfilled its obligations earlier.[41]

Following the ECOWAS Court's decision on the need for compliance with the principle of non-retroactivity of criminal law, the AU Assembly of Heads of State and Government convened a meeting in January 2011 at its 16th ordinary session. As a result of that session, the Assembly requested the AU Commission to consult with the government of Senegal to finalise the conditions for the establishment of an International Specialised Court for the Hissène Habré case, taking into account the ECOWAS Court's decision.[42] Following consultations, the government of Senegal and the AU Commission have concluded that it is necessary to agree on the establishment of African Extraordinary Chambers in Senegal.[43] Article 1(2) of this Agreement provides that the government of Senegal had to take legislative and administrative measures as soon as possible to establish African Extraordinary Chambers within Senegal's judicial system.[44] Following this, the National Assembly of Senegal passed a law on 28 December 2012 providing for the inclusion of the African Extraordinary Chambers in the Courts of Senegal.[45] The African Extraordinary Chambers officially became operational on 8 February 2013.[46]

On 30 June 2013, Hissène Habré was arrested by the Senegalese police[47] and a criminal investigation was launched. In the meantime, Hissène Habré filed another application with the ECOWAS Court requesting to take provisional measures and

39 International Court of Justice (2013). Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), Judgment of 20 July 2012. In Reports of Judgments, Advisory Opinions and Orders (pp. 53–60). [Memorial of the Kingdom of Belgium].

40 Ibidem

41 Cançado Trindade, 2013.

42 African Union (AU). (31 January 2011). Assembly/AU/Dec.340(XVI). Décision on the Hissène Habré Case. AU Doc. Assembly/AU/9(XVI).

43 Gouvernement de la République du Sénégal & Union Africaine (2012). Accord entre le Gouvernement de la République du Sénégal et l'Union Africaine sur la création des Chambres africaines extraordinaires au sein des juridictions sénégalaises.

44 Ibidem

45 République du Sénégal (2012). Loi n° 2012-29 du 28 décembre 2012 modifiant l'article premier de la loi n° 84-19 du 2 février 1984 fixant l'organisation judiciaire. Journal officiel de la République du Sénégal, n° 6654.

46 See: Human Rights Watch, 2016.

47 See: Human Rigths Watch, 2013.

the cessation of all actions by the Republic of Senegal prosecuting him under the African Extraordinary Chambers Act on the grounds that, in his opinion, the African Extraordinary Chambers were not lawfully created and did not comply with the previous decision of the ECOWAS Court, which contained a need to respect the rights of the accused, particularly the principle of non-retroactivity of the criminal law.[48]

The ECOWAS Court, in its decision of 5 November 2013, indicated that it had no competence to assess the legality of international agreements concluded by the Member States or to suspend proceedings before them.[49] The Court also pointed out that there is no need or reason to prescribe interim measures in such a case.[50]

The Extraordinary African Chambers include the Extraordinary African Investigative Chamber, the Extraordinary African Indicting Chamber, the Extraordinary African Trial Chamber, and the Extraordinary African Appeals Chamber.[51]

The Extraordinary African Investigative Chamber, which was dissolved after the indictment was issued on 13 February 2015, consisted of three judges of Senegalese nationality and one alternate judge of Senegalese nationality, who were nominated by the Senegalese Minister of Justice and appointed by the Chairperson of the AU Commission.[52]

The Extraordinary African Indicting Chamber within the Dakar Court of Appeals was dissolved on 13 February 2015 and consisted of three judges of Senegalese citizenship and one deputy judge, also a Senegalese citizen, appointed by the Chairperson of the AU Commission on the proposal of the Minister of Justice of Senegal.

The African Extraordinary Trial Chamber with the Dakar Court of Appeals is composed of a president, two judges of Senegalese citizenship, and two deputy judges, also of Senegalese citizenship, appointed by the Chairperson of the AU Commission on the proposal of the Minister of Justice of Senegal. The President of the Chamber is a citizen of another AU Member State.[53]

The Extraordinary African Appeals Chamber consists of a president, who is a national of a Member State of the AU other than Senegal, two judges, and two alternate judges who are citizens of Senegal, appointed by the Chairperson of the AU Commission on the proposal of the Minister of Justice of Senegal.[54]

In the beginning, there was a question regarding which judicial body should be created: a special international tribunal (as in the case of the International Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia) or a

48 Human Rights Watch, 2013.

49 CEDEAO (2013) Arrêt N° ECW/CCJ/RUL/05/13 de la Cour de justice de la Communaute Economique des Etats de l'Afrique de l'Ouest.

50 Ibidem

51 Gouvernement de la République du Sénégal & Union Africaine (2012). Accord entre le Gouvernement de la République du Sénégal et l'Union Africaine sur la création des Chambres africaines extraordinaires au sein des juridictions sénégalaises.

52 Ibidem

53 Ibidem

54 Ibidem

hybrid tribunal similar to the Extraordinary Chambers for Cambodia, the SCSL, the Special Tribunal for Lebanon, the Special Panels for Serious Crimes in East Timor, or a purely national court with special jurisdiction?

The 2012 Agreement between Senegal and the AU (Article 1(4)) provides that the African Extraordinary Chambers 'of an international character shall apply their Statute, international criminal law, the Senegal Penal Code, the Senegal Code of Criminal Procedure and other relevant laws of Senegal'.[55]

Considering the listed legal documents applied by the Chambers in their activities, it can be argued that the African Extraordinary Chambers are closer to internationalised criminal courts.

Some scholars consider the African Extraordinary Chambers to be a new type of judicial organ and do not classify it as an international or hybrid judicial institution,[56] while others equate it with a court of a foreign State that prosecutes crimes based on universal jurisdiction. Kersten and Ainley note that the concepts of hybrid courts, internationalised courts, and mixed tribunals are often used interchangeably, and they consider the African Extraordinary Chambers to be a hybrid court.[57]

The Defence of Hissène Habré, in its memorandum to the ECOWAS Court, pointed out that contrary to a previous decision calling on Senegal to take action to establish a special tribunal of an international character, the African Extraordinary Chambers in their current format are rather a sui generis judicial institution. The Defence argued that the grounds for the establishment of the EAC and the procedure were the prerogative of Senegal and that it was because of it that some violations were committed in the process of determining EAC sui generis jurisdiction, which, in the Defence's view, did not meet the criteria and standards governing the activities of special international tribunals, and violated the rights of the accused (Arrêt N° ECW/CCJ/RUL/05/13, 2013, para. 8).[58]

In its decision of 5 November 2013, the ECOWAS Court of Justice indicated that, although the African Extraordinary Chambers were established within the national courts of Senegal, they are international in nature, taking into account, on the one hand, the fact that they were created on the basis of international agreement and applicable law contained in their Statute, which differs from the provisions of national legislation of Senegal, and, on the other hand, due to the fact that their location on the territory of Senegal and the sitting of national judges in the Chambers does not deprive them of their international character. The ECOWAS Court has found that the international agreement by which the African Extraordinary Chambers were created and the rules of procedure established in their Statute endow them with an international character (Arrêt N° ECW/CCJ/RUL/05/13, 2013, para. 47).[59]

55 Ibidem
56 Cimiotta, 2015, pp. 177–197.
57 Ainley & Kersten, 2020, pp. 969–974.
58 CEDEAO. (2013). Arrêt N° ECW/CCJ/RUL/05/13 de la Cour de justice de la Communaute Economique des Etats de l'Afrique de l'Ouest.
59 Ibidem - para. 47.

It should be noted that there is no generally accepted definition of internationalised or hybrid criminal courts (tribunals). The doctrine has developed several common features that allow one or another judicial body to be classified as an internationalised criminal tribunal.

Tolstykh notes, Damgaard identifies the following criteria to determine the international nature of a court: 1) the legal basis of an international criminal court is either an international treaty between two or more states, or a Security Council resolution adopted in accordance with Chapter VII of the UN Charter, or an agreement between the UN and one or more States; 2) the international criminal court is not part of the judicial system of one State; 3) the court applies international criminal law; 4) its jurisdiction ratione materiae and ratione personae is international; 5) its decisions are legally binding.[60]

Therefore, given these criteria, it can be argued that the African Extraordinary Chambers are an internationalised judicial institution, meaning that the court operates within the national judicial system but has an international character (created in accordance with international agreement, international funding, and international staff).

The Statute of the African Extraordinary Chambers provides that the Chambers have the power to prosecute and try the person or persons most responsible for crimes and serious violations of international law, customary international law and international conventions ratified by Chad, committed in the territory of Chad during the period from 7 June 1982 to 1 December 1990[61] (Article 3(1) Statute of the Chambers).

Article 24(1) of the Statute provides that the Chambers may sentence a convicted person to imprisonment for a term not exceeding 30 years or life imprisonment.[62]

It follows from these two provisions that the African Extraordinary Chambers have a judicial function of a criminal nature. With regard to the temporary nature of the institution, the African Extraordinary Chambers, pursuant to Article 37(1) of the Statute, 'shall be dissolved in their own right once all judgments are final'.[63]

Concerning the EAC funding, the establishment and operation of the African Extraordinary Chambers are funded by a budget composed of contributions from Senegal and other international donors. It is worth noting that the trial financing over Hissène Habré was carried out mainly through contributions from Chad, the European Union, the AU, the United States, the Netherlands, Germany, France, and other States.[64] Therefore, we can say that there was international financial support.

60 Tolstykh, 2011, pp. 111–123.

61 Gouvernement de la République du Sénégal & Union Africaine. (2012). Accord entre le Gouvernement de la République du Sénégal et l'Union Africaine sur la création des Chambres africaines extraordinaires au sein des juridictions sénégalaises.

62 Ibidem

63 Ibidem

64 International Federation for Human Rights. (2013). Senegal: Hissène Habré court opens extraordinary African Chambers to try former Chadian dictator.

With regard to jurisdiction *ratione temporis* and *ratione loci*, the Chambers prosecuted international crimes committed from 7 June 1982 to 31 December 1990 in Chad, with an aim to hold accountable those most responsible (jurisdiction *ratione personae*).

Regarding material jurisdiction, the Chambers have the right to prosecute war crimes, crimes against humanity, and the crime of genocide and torture.[65] All these crimes under the Chambers' jurisdiction are considered the most serious crimes of concern to the entire international community.

Regarding the participation of an entity other than the State affected by the tribunal, it should be noted that the establishment of the African Extraordinary Chambers results from negotiations between Senegal and the AU. Regarding the presence of international judges in Chambers, it should be noted that two of the twenty judges are citizens of other AU Member States.[66] Therefore, it can be concluded that the African Extraordinary Chambers can be classified as an internationalised court.

As a result of its activities, on 30 May 2016, the Extraordinary African Chambers sentenced Hissène Habré to life imprisonment for torture, war crimes, and crimes against humanity committed during his rule.[67] Besides Hissène Habré, several other individuals were suspected of committing international crimes in Chad, falling under the jurisdiction of the Chambers, but subsequently, these persons did not appear before the African Extraordinary Chambers[68] because the Republic of Chad did not transfer some of them to the Chambers (indicating, that they were prosecuted in the national courts of Chad) and the whereabouts of the others were not known.

The African Extraordinary Chambers can serve as a good example for the creation and functioning of regional criminal mechanisms in Africa, taking into account regional specificities.[69]

Kayumova rightly notes that the establishment in 2013 of the African Extraordinary Chambers with the participation of the African Union opens up new prospects for hybrid criminal justice since it creates a precedent for a regional approach to the internationalisation of national justice, ensures relative independence from the decisions of the UN Security Council and demonstrates the possibility of international criminal justice alternatives to the International criminal court.[70]

The effective activities of the African Extraordinary Chambers demonstrate that African States can, when there is a political will, through regional organisations or

65 Gouvernement de la République du Sénégal & Union Africaine. (2012). Accord entre le Gouvernement de la République du Sénégal et l'Union Africaine sur la création des Chambres africaines extraordinaires au sein des juridictions sénégalaises.

66 Ibidem

67 See: Chambres Africaines Extraordinaires (Ministere public c. Hissein Habre). Jugement. 30 mai 2016.

68 Ibidem

69 Adu, 2016, p. 4.

70 Kayumova, 2016, p. 441.

independently by implementing universal jurisdiction, prosecute those responsible for serious, large-scale crimes in line with international standards of fair trial, since the necessary international legal framework already exists for these purposes. In this regard, it can be confidently asserted that regional initiatives and mechanisms can fill the gaps that may arise in connection with the exacerbation of tension between States and international judicial institutions (for example, between African States and the ICC) in the field of international criminal justice.

6.2. The Special Court for the Central African Republic

The recently established SCCAR is one of the international criminal justice mechanisms established in Africa to deal with international crimes.

In December 2004, the CAR referred the situation on its territory to the ICC, and, for the second time, the situation in the CAR was referred to the ICC in March 2014. It should be noted that in February 2014, the ICC prosecutor announced that she intended to start a preliminary investigation of the situation in the CAR. In April 2014, Samba-Panza (former President of the CAR) established special chambers of inquiry with the mandate to investigate serious violations of international human rights and humanitarian law that had occurred since 2004.[71]

At that time, the UN proposed to create a specialised tribunal in the CAR with jurisdiction over international crimes. In August 2014, the UN and the CAR government signed a Memorandum of Understanding on the Special Criminal Court.[72]

On 5 June 2015, the CAR adopted an organic law on the establishment, organisation, and functioning of the Special Court[73] to prosecute persons guilty of serious crimes in the CAR during ongoing armed conflicts.

The SCCAR, by its legal nature, differs from other international and internationalised tribunals, which have been created in the past on the basis of international agreements between States and the UN. It differs, for example, from the SCSL, the Special Tribunal for Lebanon, and the Extraordinary African Chambers, which were established through agreements between States and international organisations (UN, AU), whereas the SCCAR was established by a national law. The SCCAR is part of the national judicial system of the CAR.

The SCCAR mainly applies the national law of the CAR, particularly the Criminal Code and the Code of Criminal Procedure, and international law can be applied only in the case of a gap in the domestic law. This is another feature of the SCCAR compared to hybrid criminal institutions regarding applicable law.

71 The New Humanitarian. (2014). La République centrafricaine en quête de justice.

72 MINUSCA. (2014). Memorandum of Understanding between the Central African Government and the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic.

73 See Loi Organique N°15.003 Du 03 Juin 2015, Portant Creation, Organisation Et Fonctionnement De La Cour Penale Speciale.

It should be mentioned that the International Commission of Inquiry on the CAR in 2015 recommended the creation of an international criminal tribunal for the CAR, or that the majority of the judges must be international.[74] Eventually, it turned out that among judges and prosecutors of the SSCAR, 13 are CAR citizens, and 12 are citizens of foreign countries.

The SCCAR consists of four organs: the Court, the Secretariat, the Office of the Special Prosecutor, and the Special Unit of the Judicial Police. The SCCAR has four chambers: a pre-trial investigative chamber, a special indictment chamber, a trial chamber, and an appeals chamber. In addition, it is provided for creating a special chamber of defence and the possibility of providing legal assistance to suspects, accused, and victims.

Article 9 of the Organic Law states that, with the exception of the Special Judicial Police Unit and the Secretariat of the Special Prosecutor, all the main organs of the Court include at least one international staff member who is appointed by the UN Mission in CAR (MINUSCA) but approved by the CAR authorities.

The investigative chamber consists of three divisions. Each division includes two judges, that is, one national judge and one international judge. The president of the investigative chamber is a national judge elected by a simple majority of the judges. The investigative chamber and its constituent divisions are built by analogy with the investigative chambers within the higher tribunals of the CAR.[75]

The special indictment chamber is composed of two international judges and one national judge. It has the competence to review the decisions of the investigative chamber.

The trial chamber hears criminal cases on the merits, referred to by the investigative chamber and the special indictment chamber (in the case when there is an appeal against the decision of the investigative chamber). Consequently, complaints against the decisions of the investigative chamber are submitted to the special indictment chamber, which, in turn, transfers its decisions to the trial chamber for further trial of the cases, if necessary. The trial chamber consists of six national judges and three international judges.

The appeals chamber consists of three judges (one national and two international). It hears appeals against the decisions of the trial chamber and the special indictment chamber. The national judges of the CAR chair all these chambers.

The SCCAR Prosecutor's Office comprises a special international prosecutor, his deputy (citizen of the CAR), and two deputy prosecutors.

The SCCAR officially began its activities on 22 October 2018, when the president and his deputy were appointed, and the Rules of Procedure of the Court were

74 United Nations. (2015). Central African Republic: UN investigators urge establishment of war crimes tribunal.

75 See Loi Organique N°15.003 Du 03 Juin 2015, Portant Creation, Organisation Et Fonctionnement De La Cour Penale Speciale.

adopted.[76] The SCCAR has a term of five years and is renewable. On 5 December 2018, the SCCAR adopted and published a prosecution strategy, which sets out the procedure for selecting cases to be investigated.[77] It can be assumed that this was done with the intention to ensure the objectivity and impartiality of the prosecutor in choosing the persons or crimes for which investigations can be carried out.

It should be noted that, unlike other hybrid and international criminal justice institutions, the SCCAR's jurisdiction *ratione materiae* is not limited to the core four international crimes (genocide, war crimes, crimes against humanity, crime of aggression). According to Article 3 of the Organic Law establishing the SCCAR, it has jurisdiction over 'serious violations of human rights and international humanitarian law, in particular genocide, crimes against humanity and war crimes'. In this regard, it should be noted that not all serious violations of human rights qualify as international crimes (genocide, crimes against humanity, war crimes, aggression) that the SCCAR can prosecute.

With regard to the jurisdiction *ratione temporis* and *ratione loci*, the SCCAR has jurisdiction over crimes committed from 1 January 2003 to present in the territory of the CAR and other States with which the CAR has agreements on mutual legal assistance in criminal matters in the case of complicity of foreign citizens in the commission of crimes within the jurisdiction of the Special Court.

One of the important features of the SCCAR is the fact that its jurisdiction *ratione personae* extends not only to individuals but also to legal entities involved in the commission of crimes falling under its jurisdiction. This is because the Special Court applies the national law of the CAR, and Articles 10, 159, and 160 of the Criminal Code of the CAR provide for the criminal responsibility of legal entities.[78] Article 10 indicates that the category of legal entities does not include the State, and that the liability of legal entities does not exclude the liability of individuals in the event that they somehow took part in the commission of the relevant crimes.[79] It must be emphasised that corporate criminal liability is also provided for in the Malabo Protocol on the African Court.

There are currently three judicial mechanisms operating simultaneously in the CAR to hold accountable those guilty of committing international crimes: the SCCAR, the ICC, and national courts. In accordance with the principle of complementarity, the SCCAR and the national courts have priority in investigating and prosecuting crimes, and the ICC can intervene when the said courts are unable or unwilling to bring those responsible to justice. Moreover, Article 37 of the Organic Law on the SCCAR stipulates that in the event that it is known that the ICC is investigating a case falling within the competence of the SCCAR, preference is given to the ICC. In

76 United Nations. (2018). RCA: l'inauguration de la Cour pénale spéciale marque la fin de l'impunité (MINUSCA).

77 See: Stratégie d'enquêtes de poursuites et d'instructions du 04 décembre 2018.

78 Ibidem

79 République centrafricaine. (2010). Loi n° 10.001 portant Code pénal centrafricain.

this case, the principle of complementarity within the meaning of the Rome Statute is not respected; however, given that, despite the SCCAR being a hybrid court, it is a part of the CAR's national judicial system and the principle of complementarity should be observed.

Although the ICC conducts investigations in African States, the creation of hybrid courts can contribute to the best realisation of international criminal justice, given the complicated work to collect evidence, facilitate the participation of all interested actors (witnesses, victims, etc.), as well as the process of reconciliation.

It should be noted that the activities of special hybrid courts in Africa are effective and can, in certain cases, be useful alternatives for the ICC.

6.3. The Special Court for Sierra Leone

The SCSL was the first hybrid court created in Africa on the basis of an agreement between the UN and an African State (Sierra Leone) at the request of the latter. In 2000, the government of Sierra Leone requested the UN for assistance in establishing a special criminal court to take responsibility for those responsible for committing serious crimes during its civil war.[80] The UNSC, in its Resolution 1315(2000),[81] subsequently requested the UN Secretary-General to negotiate an agreement with the government of Sierra Leone to create such a Special Court to try those most responsible for international crimes and other serious crimes under Sierra Leonean law.[82] The UNSC Resolution 1315 stated that 'a credible system of justice and accountability for the very serious crimes committed [in Sierra Leone] would end impunity and would contribute to the process of national reconciliation and the restoration and maintenance of peace'.[83]

On 16 January 2002, an agreement was signed between the UN and the government of Sierra Leone to establish the SCSL.[84] The Statute of the Court was annexed to the Agreement, which entered into force on 12 April 2002.

With regard to jurisdiction *ratione materiae*, according to the Statute, the SCSL has jurisdiction over war crimes (Article 3), crimes against humanity (Article 2) and other gross violations of international humanitarian law (Article 4), as well as various crimes provided for by the national legislation of Sierra Leone (Article 5).

Article 2 of the Statute stipulates that the Special Court has the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The agreement in force between the United Nations and the Government of Sierra Leone or agreements between Sierra Leone and other

80 Cryer, Warbrick & McGoldrick, 2001, pp. 435–446.
81 United Nations Security Council. (2000). Resolution 1315(2000).
82 Frulli, 2000, pp. 857–869.
83 United Nations Security Council. (2000). Resolution 1315(2000).
84 United Nations. (2002). Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone.

Governments or regional organisations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Government of Sierra Leone, shall be within the primary jurisdiction of the sending State (par. 2). In the event the sending State is unwilling or unable genuinely to carry out an investigation or prosecution, the Court may if authorised by the Security Council on the proposal of any State, exercise jurisdiction over such persons.[85]

This means that the Court could prosecute not only those directly involved in the conflict (as parties to the conflict) but also peacekeepers who committed the crimes under its jurisdiction.

Article 2 of the Statute provides that the Court has jurisdiction over the following crimes against humanity committed as part of a widespread or systematic attack against any civilian population: murder; extermination; enslavement; deportation; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence; persecution on political, racial, ethnic, or religious grounds, and other inhumane acts.[86] The Court also has jurisdiction over serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977 (violence to life, health, and physical or mental well-being of persons, particularly murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity, particularly humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault; pillage; the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees that are recognised as indispensable by civilised peoples; threats to commit any of the foregoing acts);[87] and other serious violations of international humanitarian law, including intentional attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; intentional attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the UN Charter, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; and conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.[88] The following crimes under Sierra Leonean law were also put under the jurisdiction of the Court: the abuse of girls under the 1926 Prevention of Cruelty to Children Act and the wanton destruction of property under the 1861 Malicious Damage Act (such as setting fire to dwelling – houses with any person in – and

85 See: Statute of the Special Court for Sierra Leone.
86 Ibidem
87 Ibidem
88 Ibidem, Article 4.

setting fire to public and other buildings).[89] As C. Jalloh notes, the Special Court's jurisdiction over crimes under national Sierra Leonean law was included at the request of the then Sierra Leone president Kabbah to help foster a sense of local ownership of the SCSL and its processes; to allow greater flexibility to the Prosecutor to pick and choose which of national and or international offences to charge suspects with; and finally, to cast a wider net to ensure that the leaders responsible for the atrocities would not escape punishment.[90]

Regarding personal jurisdiction, the Court had jurisdiction over physical persons who allegedly committed one of the crimes falling under its jurisdiction, including persons between the ages of 15 and 18 years (at the time of the commission of the crimes). This means that minors could be prosecuted and bear criminal responsibility before the SCSL. International human rights organisations and groups protecting child rights have actively contested the measure. Some scholars argue that the Statute of the SCSL introduced comprehensive guarantees to protect juvenile offenders, including creating juvenile chambers and taking measures to protect the privacy of juveniles.[91]

The jurisdiction *ratione temporis* covered crimes committed after 30 November 1996, although this was strongly opposed by representatives of the government of Sierra Leone, who wanted the Court to also deal with crimes committed since the beginning of the conflict, that is, since March 1991. The jurisdiction *ratione loci* has been reduced to crimes within Sierra Leone's territory.

In March 2003, the prosecutor issued 13 separate indictments against leaders of the main armed groups involved in the armed conflict: the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), and the Civil Defence Forces (CDF). These indictments were later combined into three main trials. The prosecutor also issued an indictment against the then-President of Liberia, Charles Taylor.[92]

In March 2003, the first indictments in the RUF case were issued against the RUF leader Foday Saybana Sankoh and some high-ranking officers, namely Sam Bockarie, Issa Hassan Sesay, Morris Kallon, and in April 2003, Augustine Gbao was indicted. The indictments against Sankoh and Bockarie were dropped following their death.[93]

Sesay, Kallon, and Gbao were charged with crimes against humanity, war crimes, and other serious violations of international humanitarian law, which included murder, rape, sexual slavery, other inhumane acts, violence to life, terrorising the civil population, collective punishments, mutilation, pillage, use of child soldiers,

89 Ibidem
90 Jalloh, 2010, pp. 395–460.
91 Frulli, 2000, pp. 857–869.
92 Jalloh, 2010, pp. 395–460.
93 Ibidem

and attacks on UN peacekeeping personnel.[94] They were sentenced to fifty-two, forty, and twenty-five years in prison, respectively.[95]

Regarding the AFRC case, indictments were issued against Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu. The trials of Brima, Kamara, and Kanu were combined into one case in 2004. The joint indictment contained fourteen counts, including war crimes and crimes against humanity of murder, extermination, rape, acts of terrorism, collective punishments, unlawful killings, sexual violence, use of child soldiers, enslavement, and other inhumane acts. In 2006, they were guilty of war crimes and crimes against humanity. The SCSL sentenced Brima and Kanu to fifty years in prison each, whereas Kamara was sentenced to forty-five years of imprisonment.[96]

In the CDF case, three members of CDF, namely Moinina Fofana, Allieu Kondewa, and Sam Hinga Norman, were charged with war crimes, crimes against humanity, and other serious violations of international humanitarian law. Their trials were combined in January 2004, and the SCSL terminated proceedings against Norman because he died in custody before the sentence was issued. The Court found Fofana and Kondewa guilty of war crimes and crimes against humanity that included murder, child recruitment, collective punishments, violence to life, health, and physical or mental well-being of persons, and pillaging.[97] They were sentenced to fifteen and twenty years in prison, respectively. All RUF, AFRC, and CDF members who were sentenced to imprisonment were transferred to Mpanga prison in Rwanda.[98]

In September 2020, the Residual SCSL issued a press release according to which the former RUF commander Augustine Gbao was granted conditional early release to serve the remainder of his sentence in his native community, with the following additional conditions: There is a requirement that Gbao apologises on radio and television to the victims of his crimes and the people of Sierra Leone. His apology must include accepting responsibility for his crimes and harm to the peace process. He must also express remorse, commit to reconciliation and maintenance of peace in Sierra Leone, and not associate with any ex-combatants or other persons convicted by the Special Court. These conditions require Gbao to cooperate with a Monitoring Authority, obey all orders of the Court, refrain from committing any crime, and pose no threat to former witnesses, among others.[99]

94 Special Court for Sierra Leone (2009) The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF Accused) (Trial Judgment), Case No. SCSL-04-15-T.

95 Ibidem

96 Special Court for Sierra Leone. (2007). The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu (the AFRC Accused), SCSL-04-16-T.

97 Special Court for Sierra Leone. (2008). The Prosecutor v. Moinina Fofana, Allieu Kondewa (the CDF Accused) (Appeal Judgment), SCSL-04-14-A.

98 Jalloh, 2010, pp. 395–460.

99 Residual Special Court for Sierra Leone's Press Release. (2020). RUF convict Augustine Gbao granted conditional early release, with a three month delay.

In December 2020, Augustine Gbao was transferred from Mpanga Prison to Sierra Leone.[100]

It should be mentioned that Moinina Fofana and Alieu Kondewa were granted conditional early release and returned to Sierra Leone in March 2015 and July 2018, respectively. Both of them were conditionally released after serving two-thirds of their sentences.[101]

7. Charles Taylor's case

The former President of Liberia, Charles Taylor, was the only non-Sierra Leonean person indicted by the SCSL. From 1989 to 1997, Taylor led a rebel group, the National Patriotic Front of Liberia (NPFL), which was fighting to remove the then-president of Liberia, Samuel K. Doe, and take control of the country. The conflict ended on 2 August 1997, when Taylor became president.[102] He ruled Liberia from 1997 to 2003.

It is alleged that some forces under Taylor's command have been involved in supporting and participating in armed conflicts and human rights abuses in neighbouring countries, including Sierra Leone, Guinea, and Côte d'Ivoire.[103]

Taylor relinquished power in August 2003 following a peace deal in Liberia and the indictment against him by the SCSL for crimes committed in Sierra Leone and supporting and cooperating with armed groups, namely RUF, AFRC, and CDF, involved in the armed conflict in Sierra Leone (some of the members of these armed groups were indicted by the SCSL as discussed above). Taylor fled to Nigeria, where he was granted asylum but was transferred to the SCSL in March 2006.[104]

On 16 June 2006, the UNSC issued Resolution 1688, which it stated that the presence of Taylor in the sub-region impeded stability and posed a threat to peace.[105] On 20 June 2006, he was transferred to The Hague. The trial was held by the SCSL, initially in an ICC courtroom and later in a courtroom at the Special Tribunal for Lebanon. Jalloh asserts that the decision to transfer Taylor to The Hague caused a 'serious blow to the legitimacy of the SCSL among Sierra Leoneans, as many wished to have closer and easier access to the trial'.[106]

100 Residual Special Court for Sierra Leone's Press release. (2020). SCSL convict Augustine Gbao is first member of the rebel Revolutionary United Front to benefit from conditional early release.
101 Ibidem
102 Human Rights Watch. (2012). Charles Taylor: Questions et réponses sur l'affaire du procureur contre Charles Ghankay Taylor au Tribunal spécial pour la Sierra Leone (TSSL).
103 Ibidem
104 Ibidem
105 United Nations (2006) Security Council Resolution 1688, U.N. Doc. S/RES/1688.
106 Jalloh, 2010, pp. 395–460.

Taylor was charged with eleven counts of war crimes, crimes against humanity, and other serious violations of international humanitarian law, including murder; acts of terrorism; the use of child soldiers; pillage; violence to life, health, and physical or mental well-being of persons, particularly cruel treatment, sexual slavery, rape, and other forms of sexual violence; and outrages against personal dignity.[107]

On 26 April 2012, the SCSL Trial Chamber found Charles Taylor guilty of all eleven counts of planning crimes and of aiding and abetting crimes committed by rebel forces in Sierra Leone and sentenced him to 50 years in prison.[108] This sentence of 50 years was upheld by the appeals chamber.[109] He was transferred to the United Kingdom (UK) to serve his 50-year sentence.

In 2020 Charles Taylor asked the Residual SCSL to allow him to be transferred to a third safe country, arguing that, 'due to the "massive outbreak of COVID-19 in the UK", his continued detention in that country posed a substantial risk to his right to life'; however, the Residual SCSL dismissed Taylor's request.[110]

8. Conclusion

In conclusion, recent years have witnessed a growing interest in establishing international criminal courts at the regional level, aimed at prosecuting individuals responsible for international and transnational crimes. This growing interest reflects the recognition that combating certain crimes is significant for specific regions, considering their unique characteristics and needs.

The concept of complementarity, as outlined in the Rome Statute of the ICC, suggests that the Court should intervene only when national jurisdictions are unwilling or unable to prosecute crimes falling under their jurisdiction. With the establishment of regional judicial bodies in the field of international criminal law, particularly in Africa, questions will definitely arise regarding the allocation of jurisdiction and the coordination of efforts between these bodies and the ICC. It can be argued that prioritising the jurisdiction of a future regional African Criminal Court over the ICC within the African region aligns with the principles of sovereignty and regional autonomy. Such an approach would ensure that regional bodies take the lead in administering justice while respecting the international framework established by the ICC.

107 Residual Special Court for Sierra Leone. (2007). Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Amended Indictment.

108 Residual Special Court for Sierra Leone. (2012). Prosecutor v. Charles Ghankay Taylor (Judgement Summary), SCSL-03-1-T, Special Court for Sierra Leone, 26 April 2012.

109 Residual Special Court for Sierra Leone. (2013) The Prosecutor v. Charles Ghankay Taylor. SCSL Appeals Chamber, 26 September 2013.

110 Residual Special Court for Sierra Leone's Press Release. (2020). Charles Taylor's application to be transferred from the UK due to COVID-19 dismissed.

However, to address these complexities, it is essential to establish a framework for cooperation and coordination between the ICC and regional courts. A formal agreement among the ICC, the AU, and African regional organisations could serve as a mechanism for resolving jurisdictional issues and ensuring a balanced approach to prosecuting serious crimes. Such an agreement would clarify the roles and responsibilities of each entity, thereby promoting synergy and avoiding the duplication of efforts.

Based on the aforementioned cases that were successfully dealt with by African judicial bodies, to avoid or end speculation on whether the ICC is biased regarding African nationals, the creation of an African regional criminal court would represent a positive step towards combating serious crimes in Africa and achieving Sustainable Development Goal 16, which aims to promote peace, justice, and strong institutions. These courts can potentially address the unique challenges African nations face in addressing impunity and ensuring accountability for grave human rights violations.

Moreover, establishing hybrid tribunals in Africa has demonstrated its effectiveness in delivering justice. The trial of Hissène Habré in the African Extraordinary Chambers stands as a landmark example of universal jurisdiction being applied in Africa. Through an agreement between the AU and the host State, Senegal, Habré, Chad's former Head of State, was brought to trial for crimes and gross violations of human rights committed in his country. This case showcases regional and international actors' collaborative efforts to seek justice for victims and hold perpetrators accountable.

Overall, establishing national criminal courts and hybrid tribunals in Africa signifies a significant step towards achieving justice for victims of serious crimes. However, the effective coordination and cooperation between these regional bodies and the ICC are essential to ensure a cohesive approach to combating impunity and promoting accountability across the African continent. Through dialogue and collaboration, African nations can work towards building a stronger and more effective justice system that serves the interests of all stakeholders and contributes to the realisation of a more just and peaceful world.

References

Cases

The Prosecutor v. Dominic Ongwen (Case No. ICC-02/04-01/15). International Criminal Court. [Online] Available at: https://www.icc-cpi.int/uganda/ongwen

The Prosecutor v. Thomas Lubanga Dyilo (ICC-01/04-01/06). International Criminal Court. [Online] Available at: https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf

The Prosecutor v. Ahmad Al Faqi Al Mahdi (ICC-01/12-01/15) International Criminal Court website. [Online] Available at: https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/Al-MahdiEng.pdf

The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé (ICC-02/11-01/15). International Criminal Court. [Online] Available at: https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/gbagbo-goudeEng.pdf

The Prosecutor v. Uhuru Muigai Kenyatta (ICC-01/09-02/11) International Criminal Court. [Online] Available at: https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/KenyattaEng.pdf

Prosecutor v. Taylor, Case No. SCSL-03-01-A, Special Court for Sierra Leone. [Online] Available at: https://rscsl.org/the-scsl/cases/charles-taylor/

Books, Articles, Reports, Websites

Adu, Y. N. (2016). The Legality of the Extraordinary African Chambers on the Light of the International Criminal Tribunals: The Case of Hussein Habre.Indian Journal of Science and Technology 9(42) DOI:10.17485/ijst/2016/v9i42/104258

Ainley, K., & Kersten, M. (2020). Resilience and the impacts of hybrid courts. Leiden Journal of International Law, 33(4), 969–974. doi:10.1017/S0922156520000394.

Brody, R. (2015). Bringing a dictator to justice: The case of Hissène Habré. Journal of International Criminal Justice, 13(2), 211.

Cançado Trindade, P. (2013). Separate opinion of Judge Cançado Trindade [Separate opinion to Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)]. In International Court of Justice (ICJ), Reports of Judgments, Advisory Opinions and Orders (pp. para. 155).

Cimiotta, E. (2015). The First Steps of the Extraordinary African Chambers: A New Mixed Criminal Tribunal? Journal of International Criminal Justice, 13(1), pp. 177–197.

Cryer, R., Warbrick, C., & McGoldrick, D. (2001). A" Special Court" for Sierra Leone? The International and Comparative Law Quarterly, 50(2), pp. 435–446.

Frulli, M. (2000). The special court for Sierra Leone: some preliminary comments. European journal of international law, 11(4), pp. 857–869.

García Iommi, L. (2023). Nothing changed after Rome: Continuity in state support for the International Criminal Court. *Journal of Human Rights*, *22*(1), pp. 16–30.

Human Rights Watch (2012) Charles Taylor : Questions et réponses sur l'affaire du procureur contre Charles Ghankay Taylor au Tribunal spécial pour la Sierra Leone (TSSL). [Online] Available at: https://www.hrw.org/fr/news/2012/04/26/charles-taylor-questions-et-reponses-sur-laffaire-du-procureur-contre-charles# (Accessed 18 January 2024)

Human Rights Watch (2013). Senegal: Case against Habré set to continue: ECOWAS Court rejects Chad ex-dictator's bid to halt proceedings [Press release]. [Online] Available at https://www.hrw.org/news/2013/11/05/senegal-case-against-habre-set-continue (Accessed: January 16th, 2024).

Human Rights Watch. (2005, July). Tchad: Les victimes de Hissène Habré toujours en attente de justice. (Vol. 17, No. 10(A)). [Online] Available at: https://www.hrw.org/reports/chad0705fr.pdf (Accessed: January 15th, 2024).

Human Rights Watch. (2016, May 3). Q&A: The case of Hissène Habré before the Extraordinary African Chambers in Senegal. [Online] Available at: https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal (Accessed: January 15th, 2024).

International Committee of the Red Cross. (n.d.). *International humanitarian law databases*. [Online] Available at: https://ihl-databases.icrc.org/en/ (Accessed April 7, 2025)

International Court of Justice (2013). Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal), Judgment of 20 July 2012. In Reports of Judgments, Advisory Opinions and Orders (pp. 53-60). [Memorial of the Kingdom of Belgium].

International Criminal Court. (n.d.). The States Parties to the Rome Statute. [Online] Available at: https://www.icc-cpi.int/asp. (Accessed: January 15th, 2024).

International Federation for Human Rights. (2013). Senegal: Hissène Habré court opens extraordinary African Chambers to try former Chadian dictator. [Online] Available at https://www.fidh.org/en/issues/litigation/litigation-against-individuals/hissene-habre-case/Senegal-Hissene-Habre-Court-Opens-12873 (Accessed: January 17th, 2024).

Jalloh, C. C., & Bantekas, I. (Eds.). (2017). *The International Criminal Court and Africa*. Oxford University Press.

Kayumova, A. R. (2016). *Criminal jurisdiction in international law: Theory and practice* (Doctoral dissertation). Kazan.

Marusin, I. S. (2019). Bringing the former president of Chad H. Habré to justice and the Extraordinary African Chambers. Vestnik Saint Petersburg UL, 691.

Matvey Tatarinov (2021) To the Question of Use of the „Jurisdiction" Concept in the International Criminal Law Discourse. SSRN Electronic Journal. DOI:10.2139/ssrn.3862768

Residual Special Court for Sierra Leone. (2007) Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Amended Indictment. [Online] Available at: https://www.rscsl.org/Documents/Decisions/Taylor/1283/SCSL-03-01-T-1283.pdf (Accessed 18 January 2024)

Residual Special Court for Sierra Leone. (2012) Prosecutor v. Charles Ghankay Taylor (Judgement Summary), SCSL-03-1-T, Special Court for Sierra Leone, 26 April 2012 [Online] Available at: https://www.refworld.org/cases,SCSL,4f9a4c762.html (Accessed 18 January 2024)

Residual Special Court for Sierra Leone. (2013) The Prosecutor v. Charles Ghankay Taylor. SCSL Appeals chamber, 26 September 2013. [Online] Available at: http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf (Accessed 18 January 2024)

Residual Special Court for Sierra Leone's Press release. (2020) Charles Taylor's Application to be Transferred From the UK Due to COVID-19 Dismissed. [Online] Available at: http://www.rscsl.org/Documents/Press/2020/pressrelease-090720.pdf (Accessed 18 January 2024)

Residual Special Court for Sierra Leone's Press release. (2020) RUF Convict Augustine Gbao Granted Conditional Early Release, With a Three Month Delay. [Online] Available at: http://www.rscsl.org/Documents/Press/2020/pressrelease-090820.pdf (Accessed 18 January 2024)

Residual Special Court for Sierra Leone's Press release. (2020) SCSL convict Augustine Gbao is first member of the rebel Revolutionary United Front to benefit from Conditional Early Release. [Online] Available at: http://www.rscsl.org/Documents/Press/2020/pressrelease-122220.pdf (Accessed 18 January 2024)

Rowe, E. (2021). The ICC-African Relationship: More Complex Than a Simplistic Dichotomy. Flux: International Relations Review, 11(2), pp. 51–61.

Sakarombe, E. (2023). Challenges Facing the International Criminal in Trying to Accomplish its Mission Focusing on Omar Al Bashir's Prosecution. *International Journal of Law and Public Policy (IJLAPP)*, *5*(1), pp. 7–19.

Shilaho, W. K. (2023). Africa and the International Criminal Court. In *Oxford Research Encyclopedia of International Studies*.

Spiga, V. (2011). Non-retroactivity of criminal law: a new chapter in the Hissène Habré Saga. Journal of International Criminal Justice, 9(1), Pages pp. 5–23, https://doi.org/10.1093/jicj/mqq081

The New Humanitarian(2014)La République centrafricaine en quête de justice.[Online] Available at: https://www.thenewhumanitarian.org/fr/analyses/2014/10/30/la-republique-centrafricaine-en-quete-de-justice.(Accessed: January 16th, 2024).

Tolstykh, V. L. (2011). Issues of process in decisions of international courts in the first decade of the 21st century. Russian legal journal, No. 3, pp. 111–123.

United Nations (2015) Central African Republic: UN investigators urge establishment of war crimes tribunal. [Online] Available at: https://news.un.org/en/story/2015/01/488872 (Accessed: January 16th, 2024)

United Nations (2018) RCA : l'inauguration de la Cour pénale spéciale marque la fin de l'impunité (MINUSCA). [Online] Available at: https://news.un.org/fr/story/2018/10/1027272 (Accessed: January 16th, 2024)

Whitely, T., & Ivanov, I. (2020). The International Criminal Court, Elite Theory, and African States Withdrawal Notifications: South Africa, The Gambia, and Burundi. Undergraduate Scholarly Showcase, 2(1).

Williams, S. (2013). The Extraordinary African Chambers in the Senegalese Courts: An African Solution to an African Problem? Journal of International Criminal Justice, 11(5), pp. 1139–1160.

Legal Framework in order of use

African Union (AU). (2011, January 31). Assembly/AU/Dec.340(XVI). Décision on the Hissène Habré Case. AU Doc. Assembly/AU/9(XVI).

African Union. (2006). Decision on the Hissene Habre case (Doc.Assembly/AU/8 (VI)) Add.9. [Online] Available at: https://archives.au.int/handle/123456789/925. (Accessed: January 16th, 2024).

CEDEAO (2013) Arrêt N° ECW/CCJ/RUL/05/13 de la Cour de justice de la Communaute Economique des Etats de l'Afrique de l'Ouest. [Online] Available at https://caselaw.ihrda.org/en/entity/92h4hkzgzbr?page=3(Accessed: January 16th, 2024).

Chambre d'accusation de la Cour d'appel de Dakar, Senegal, Ministere Public et Francois Diouf contre Hissene Habre (2000.) (arret no 135). [Online] Available at: https://www.hrw.org/legacy/french/themes/habre-decision.html (Accessed: January 15th, 2024).

Chambres Africaines Extraordinaires (Ministère public c. Hissein Habré). (2016). Jugement. [Online] Available at http://www.chambresafricaines.org/pdf/Jugement_complet.pdf

Committee against Torture. (2006). Decision under Article 22, paragraph 7, of the Convention against torture and other cruel, inhuman or degrading treatment or punishment concerning Communication No. 181/2001. [Online] Available at: http://juris.ohchr.org/Search/Details/116 (Accessed: January 16th, 2024).

Committee of Eminent African Jurists. (2005). Report on the case of Hissene Habre.[Online] Available at: https://thehagueinstituteforglobaljustice.org/files/legacy/justice/habre/ceja_repor0506.pdf. (Accessed: January 16th, 2024).

Cour d'appel de Dakar. (n.d.). Procès - verbal d'interrogatoire de première comparution. 13/2000 // [Online] Available at: URL: https://www.hrw.org/legacy/french/themes/habre-inculpation.html (Accessed January 15th, 2024)

Cour de Cassation, Sénégal (2001). (Arrêt no 14). Souleymane Guengueng et Autres Contre Hissène Habre. [Online] Available at: https://www.hrw.org/legacy/french/themes/habre-cour_de_cass.html (Accessed: January 16th, 2024).

Hissein Habre v. Republic of Senegal, judgment of 18 November 2010, No. ECW/CCJ/JUD/06/10. [Online] Available at: http://www.courtecowas.org/site2012/pdf_files/decisions/judgements/2010/HISSEIN_HABRE_v_REPUBLIQUE_DU_SENEGAL.pdf (Accessed: January 16th, 2024).

Loi constitutionnelle n° 2008-33 du 7 août 2008 modifiant les articles 9 et 95 et complétant les articles 62 et 92 de la Constitution // Journal officiel, 2008-08-08, n° 6420.

Loi n° 2007-02 du 12 février 2007 modifiant le Code pénal du Sénégal

Loi n° 2007-05 du 12 février 2007 modifiant le Code de procédure pénale relative à la mise en oeuvre du Traité de Rome instituant la Cour pénale internationale, Senegal // Journal officiel, 2007-03-10, n° 6332 (INFORM)

Loi Organique N°15.003 Du 03 Juin 2015, Portant Creation, Organisation Et Fonctionnement De La Cour Penale Speciale. [Online] Available at : https://www.fidh.org/IMG/pdf/loi_organique_portant_cre_ation_organisation_et_fonctionnement_de_la_cps.pdf (Accessed: January 16th, 2024).

Ministère des Affaires étrangères du Sénégal. (2005). Communiqué. [Online] Available at: https://www.hrw.org/legacy/french/docs/2005/11/27/chad12130.htm (Accessed: January 16th, 2024).

MINUSCA (2014) Memorandum of Understanding between the Central African Government and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic. [Online] Available at: https://www.fidh.org/IMG/pdf/mou_minusca_-_rca_concernant_la_cps.pdf.(Accessed: January 16th, 2024)

République centrafricaine (2010) Loi n° 10.001 portant Code pénal centrafricain [Online] Available at: https://sherloc.unodc.org/cld/fr/document/caf/2010/loi_n_10.001_portant_code_penal_centrafricain.html(Accessed: January 16th, 2024)

République Centrafricaine. (2015, June 3). Loi organique n° 15-003 portant création, organisation et fonctionnement de la Cour pénale spéciale. [Online] Available at: https://www.fidh.org/IMG/pdf/loi_organique_portant_cre_ation_organisation_et_fonctionnement_de_la_cps.pdf (Accessed: January 15th, 2024).

République du Sénégal (2012). Loi n° 2012-29 du 28 décembre 2012 modifiant l'article premier de la loi n° 84-19 du 2 février 1984 fixant l'organisation judiciaire. Journal officiel de la République du Sénégal, n° 6654. [Online] Available at http://https://www.legal-tools.org/doc/0e1a59/pdf/ (Accessed: January 16th, 2024).

Special Court for Sierra Leone (2007) The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused), SCSL-04-16-T, [Online] Available at: https://www.refworld.org/cases,SCSL,467fba742.html (Accessed 18 January 2024)

Special Court for Sierra Leone (2008) The Prosecutor v. Moinina Fofana, Allieu Kondewa (the CDF Accused) (Appeal Judgment), SCSL-04-14-A, [Online] Available at: https://www.refworld.org/cases,SCSL,484417252.html (Accessed 18 January 2024)

Special Court for Sierra Leone (2009) Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF accused) (Trial judgment), Case No. SCSL-04-15-T, [Online] Available at: https://www.refworld.org/cases,SCSL,49b102762.html (Accessed 18 January 2024)

Statute of the Special Court for Sierra Leone. [Online] Available at: http://sierraleonetrc.org/downloads/legalresources/specialcourtstatute.pdf (Accessed: January 16th, 2024)

Suleymane Guengueng et al. v Senegal, Committee Against Torture, Communication No. 181/2001. (2001). [Online] Available at: https://digitallibrary.un.org/record/575800 (Accessed: January 16th, 2024).

Union africaine et Gouvernement de la République du Sénégal. (2012, August). Accord entre le Gouvernement de la République du Sénégal et l'Union Africaine sur la création des Chambres africaines extraordinaires au sein des juridictions senegalaises. [Online] Available at: http://www.chambresafricaines.org/pdf/Accord%20UA-Senegal%20Chambres%20africaines%20extra%20Aout%202012.pdf (Accessed: January 15th, 2024).

United Nations (2002). Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone. [Online] Available at: https://treaties.un.org/pages/showDetails.aspx?objid=08000002800860ff (Accessed: January 16th, 2024)

United Nations (2006) Security Council Resolution 1688, U.N. Doc. S/RES/1688.

United Nations Security Council. (2000). Resolution 1315(2000).