



ACCOUNTABILITY MECHANISMS – REGIONAL, DOMESTIC, HYBRID

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HYBRID/MIXED COURTS

PREVIOUS

- SPECIAL COURT FOR SIERRA LEONE
- EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

RECENTLY ESTABLISHED:

- SPECIAL CRIMINAL COURT – CENTRAL AFRICAN REPUBLIC

PROPOSED:

- HYBRID COURT FOR SOUTH SUDAN

AD HOCS – CREATED BY UN SECURITY COUNCIL



SPECIAL COURT FOR SIERRA LEONE



Freetown, SIERRA LEONE: A soldier of the United Nations mission to Sierra Leone stands guard 31 March 2006 in front the Special Court for Sierra Leone in Freetown, where former Liberian President Charles Taylor, extradited from Nigeria to Monrovia 29 March 2006, has been indicted for crimes committed during the civil war that ravaged his country from 1991 to 2001, killing up to 200,000 people. © ISSOUF SANOGO/AFP/Getty Images

FACTS & FIGURES

- Established by an agreement between the UN and the Government of Sierra Leone, became operational in 2003.
- Mandated to try "those bearing the greatest responsibility" for crimes committed in Sierra Leone after 1996, including crimes under Sierra Leonean and international law.
- Located in Freetown where all trials were held except the trial of Charles Taylor which took place in The Hague.
- National and international judges (nominated by government and the UN respectively) and staff members.
- Nine people were convicted and sentenced to prison terms ranging from 15 to 52 years.
- Completed its functions and transferred to a residual mechanism in 2013.

SUCCESES & GOOD PRACTICES

- Accessible as located within country where crimes took place but had flexibility to hold trials elsewhere for security reasons.
- Some key roles, such as that of Deputy Prosecutor, allocated to Sierra Leonean nationals.
- First Defence office established at a hybrid tribunal to support defence teams. The office maintained a list of qualified counsel, undertook legal research to assist defence teams and administered legal aid programme.
- Successful outreach programme.
- Establishment of victim and witness protection unit, and transfer of capacity for witness and victim protection to national police.

CHALLENGES & LESSONS LEARNED

- Insufficient national staff and judges resulted in limited skills and capacity transfer and limited local ownership.
- Funding through voluntary contributions resulted in considerable insecurity regarding the continuity of the court, as well as for personnel, including judges.
- While there was some complementarity and exchange of information with the Truth and Reconciliation Commission also established after the conflict, the absence of a clear agreement led to tension between the two bodies.
- No provision for victims' participation in proceedings or for reparations.
- The Defence Office was under the Registry rather than an independent organ of the court.

SPECIAL CRIMINAL COURT – CAR

COUR PENALE SPECIALE – RCA

- Loi Organique – June 2015
- Court within national justice system
- Based in Bangui
- Majority of magistrates from CAR
- Nationals of CAR in other critical positions
- 5-year mandate, renewable



SPECIAL CRIMINAL COURT – CAR

COUR PENALE SPECIALE - RCA

- Jurisdiction over grave human rights violations and violations of international humanitarian law, including genocide, war crimes and crimes against humanity
- Applicable law – law of CAR
- Rules of Procedure and Evidence
- Investigative branch prioritized + development of prosecutorial strategy
- Reverse complementarity with ICC – three layers of justice
- Civil society advocacy and involvement

SPECIAL CRIMINAL COURT – CAR COUR PENALE SPECIALE - RCA

- Nomination of Special Prosecutor – Toussaint Muntazini of DRC
- Inaugural session held – October 2018
- Investigations underway



CHALLENGES

- Witness protection
- Outreach
- Involvement of civil society
- Difficulties in locating/arresting suspects
- Sustainable funding
- Ongoing conflict and instability



HYBRID COURT FOR SOUTH SUDAN

- Framework set out in 2015 Peace Agreement
- To be set up by AU with Government of South Sudan
- AU – draft statute + MOU
- Little progress



HYBRID COURT FOR SOUTH SUDAN

- Mandate – to investigate and prosecute individuals bearing criminal responsibility for violations of international law and/or applicable South Sudanese law committed from 15 December 2013 through the end of the transitional period.
- Chairperson of AU Commission to decide location
 - Security risks to locating it in Juba
- Majority of judges from African states other than South Sudan
- Most critical positions (including prosecutor, registrar, duty counsel) – non-South Sudanese

HYBRID COURT FOR SOUTH SUDAN - CHALLENGES

- Ongoing conflict and instability
- Lack of possibility for national staff members and potentially judges
- Evidence collection and preservation
- Relationship with Truth, Reconciliation and Healing Commission and Compensation and Reparations Authority
- Lack of consultation with civil society
- Witness protection and outreach

EXTRAORDINARY AFRICAN CHAMBERS

- Established by agreement between AU and Senegal
- Senegalese and other judges from AU
- Convicted Hissene Habre in 2016 + appeal in 2017 – crimes against humanity, war crimes and torture
- Reparations/Trust Fund
- First universal jurisdiction case in Africa



DEMOCRATIC REPUBLIC OF CONGO

DOMESTIC PROSECUTION OF INTERNATIONAL CRIMES

- Initially direct application of Rome Statute, now crimes incorporated
- Many high profile cases: Sheka trial ongoing, Col. 106, Kavumu
- Innovative witness protection measures
- Mobile courts in location where crimes committed



MOBILE COURT HEARING – MINOVA, SHEKA, COL. 106



PROTECTION MEASURES FOR VICTIMS – COL. 106 TRIAL (KALEHE, S. KIVU)





THANKS

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