# CONTENTS

Acknowledgements page viii  
Table of cases ix  
List of abbreviations xv  

Introduction 1  

1 Truth commissions and trials within the transitional justice framework 9  
1 Introduction 9  
2 Truth commissions and trials as mechanisms of transitional justice 10  
3 Truth commissions, trials and the rights to truth and justice 13  
4 The purpose of trials in responding to past human rights violations 19  
5 The role of truth commissions in responding to past human rights violations 26  
6 The strengths and weaknesses of truth commissions and trials 33  
7 Conclusion 42  

2 Truth commissions and international jurisdiction to prosecute 44  
1 Introduction 44  
2 International law obligations to prosecute and the overlap with truth commission mandates 45  
3 The jurisdiction of the ICC and its overlap with truth commission mandates 58
# Table of Contents

## 4 Possibilities for coordination: sequencing work, dividing labour? 69

5 Conclusion 71

## 3 Coordinating truth commissions and criminal courts at the national level 74

1 The absence of a common approach 74
2 South Africa’s truth for amnesty model 76
3 Prioritising prosecution in East Timor 85
4 Sierra Leone: an uncoordinated approach 90
5 Lessons from past practice 99
6 Conclusion 102

## 4 Coordinating truth commissions and ICC operations 104

1 Introduction 104
2 The status of truth commissions under the ICC Statute 106
3 Truth commissions and the obligations to cooperate and provide assistance to the ICC 112
4 The status of confidential information 118
5 The status of self-incriminating evidence 129
6 Access to detainees 134
7 Charting a way forward 137
8 Conclusion 143

## 5 Truth commissions and prosecutions in bystander states 146

1 Introduction 146
2 Bystander state prosecutions and the expansion of jurisdiction 147
3 Mutual legal assistance, truth commissions and areas of potential conflict 152
## Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Truth commissions and extradition</td>
<td>172</td>
</tr>
<tr>
<td>5</td>
<td>Judicial cooperation, truth commissions and the principle of <em>ne bis in idem</em></td>
<td>178</td>
</tr>
<tr>
<td>6</td>
<td>Coordinating truth commissions and bystander state prosecutions</td>
<td>183</td>
</tr>
<tr>
<td>7</td>
<td>Conclusion</td>
<td>186</td>
</tr>
<tr>
<td>6</td>
<td><strong>Conclusion: coordinating truth commissions and trials in the ICC era</strong></td>
<td>187</td>
</tr>
<tr>
<td>1</td>
<td>Truth commissions and trials: complementary or incompatible initiatives?</td>
<td>187</td>
</tr>
<tr>
<td>2</td>
<td>Truth commissions and national level trials: coordination in a broad framework</td>
<td>189</td>
</tr>
<tr>
<td>3</td>
<td>Truth commissions and the ICC: coordination through policy development</td>
<td>191</td>
</tr>
<tr>
<td>4</td>
<td>Truth commissions and bystander state prosecutions: coordination through cooperation regime development</td>
<td>195</td>
</tr>
<tr>
<td>5</td>
<td>Final remarks</td>
<td>198</td>
</tr>
</tbody>
</table>

*Index* 200
# Table of Cases

**Extraordinary Chambers in the Courts of Cambodia**

*Kaing Guek Eav, Prosecutor v. (Case No. 001/18–07–2007/ECCC/TC), Judgment, 26 July 2010*  
*p. 24*

**European Court of Human Rights**

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aksay v. Turkey</td>
<td>1997</td>
<td>15</td>
</tr>
<tr>
<td>Al-Adsani v. United Kingdom</td>
<td>2002</td>
<td>11</td>
</tr>
<tr>
<td>Cyprus v. Turkey</td>
<td>2002</td>
<td>3, 17</td>
</tr>
<tr>
<td>Goodwin v. United Kingdom</td>
<td>2002</td>
<td>18</td>
</tr>
<tr>
<td>Hugh Jordan v. United Kingdom</td>
<td>2001</td>
<td>15</td>
</tr>
<tr>
<td>Kurt v. Turkey</td>
<td>1999</td>
<td>15, 16</td>
</tr>
<tr>
<td>M. C. v. Bulgaria</td>
<td>2005</td>
<td>15</td>
</tr>
<tr>
<td>Murray v. United Kingdom</td>
<td>1996</td>
<td>15</td>
</tr>
<tr>
<td>Ould Dah v. France</td>
<td>2009</td>
<td>175</td>
</tr>
<tr>
<td>Saunders v. United Kingdom</td>
<td>1991</td>
<td>168</td>
</tr>
<tr>
<td>Soering v. United Kingdom</td>
<td>1997</td>
<td>11</td>
</tr>
<tr>
<td>Tas v. Turkey</td>
<td>2001</td>
<td>15</td>
</tr>
</tbody>
</table>

**European Court of Justice**

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case 374/87, Orkem SA v. Commission of the European Communities</td>
<td>1989</td>
<td>168</td>
</tr>
</tbody>
</table>

**Human Rights Committee**

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bautista de Arellana v. Colombia</td>
<td>1993</td>
<td>15</td>
</tr>
<tr>
<td>Lyashkevich v. Belarus</td>
<td>1999</td>
<td>16</td>
</tr>
<tr>
<td>R. A. V. N. et al. v. Argentina</td>
<td>1988</td>
<td>16</td>
</tr>
<tr>
<td>Rodriguez v. Uruguay</td>
<td>1998</td>
<td>15</td>
</tr>
<tr>
<td>Sarma v. Sri Lanka</td>
<td>2000</td>
<td>16</td>
</tr>
<tr>
<td>S. E. v. Argentina</td>
<td>1988</td>
<td>16</td>
</tr>
<tr>
<td>Tshiongo v. Zaire</td>
<td>1989</td>
<td>15</td>
</tr>
<tr>
<td>Vincente et al. v. Colombia</td>
<td>1995</td>
<td>15</td>
</tr>
</tbody>
</table>

ix
# Table of Cases

## Inter-American Court of Human Rights

- **Almonacid Arellano et al. v. Chile** (Preliminary Objections, Merits, Reparations and Costs), IACHR, Series C, No. 154, 26 September 2006  p. 14
- **Bamaca Velasquez v. Guatemala** (Merits), IACHR, Series C, No. 70, 25 November 2000  p. 17
- **Barrio Altos Case (Chumbipuma Aguiere et al. v. Peru)**, IACHR, Series C, No. 75, 14 March 2001  p. 175
- **Caesar v. Trinidad and Tobago** (Merits, Reparations and Costs), IACHR, Series C, No. 123, 13 March 2005  p. 47
- **Carpio Nicolle et al. v. Guatemala** (Merits, Reparations and Costs), IACHR, Series C, No. 117, 22 November 2004  p. 14
- **Lopez-Alvarez v. Honduras** (Merits, Reparations and Costs), IACHR, Series C, No. 141, 1 February 2006  p. 14
- **Moiwana Community v. Suriname** (Preliminary Objections, Merits, Reparations and Costs), IACHR, Series C, No. 124, 15 June 2005  p. 14
- **Paniagua Morales v. Guatemala** (Merits), IACHR, Series C, No. 37, 8 March 1998  p. 15
- **Pueblo Bello Massacre v. Colombia** (Merits), IACHR, Series C, No. 140, 31 January 2006  p. 14
- **Ximenes-Lopes v. Brazil** (Merits, Reparations and Costs), IACHR, Series C, No. 149, 4 July 2006  p. 14

## International Criminal Court

- **Central African Republic, Situation in (Case No. ICC-01/05)**
  - **Bemba Gombo, Prosecutor v.** (Case No. ICC-01/05–01/08)  p. 20

- **Democratic Republic of Congo, Situation in (Case No. ICC-01/04)**
  - **Katanga and Ngudjolo Chui, Prosecutor v.** (Case No. ICC-01/04–01/07)  p. 20
  13 May 2008, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, ICC-01/04–01/07–474  p. 37
  - **Lubanga Dyilo, Prosecutor v.** (Case No. ICC-01/04–01/06)  p. 20
  10 February 2006, Decision on the Prosecutor’s Application for a Warrant of Arrest, ICC-01/04–01/06–08  p. 63
TABLE OF CASES

13 June 2008, Decision on the Consequences of Non-disclosure of Exculpatory Materials Covered by Article 54(3)(e) Agreements and the Application to Stay the Prosecution of the Accused, ICC-01/04–01/06–1401  p. 127
Ntaganda, Prosecutor v. (Case No. ICC-01/04–02/06)  p. 20

Kenya, Situation in (Case No. ICC-01/09)
Muthaura, Kenyatta and Ali, Prosecutor v. (Case No. ICC-01/09–02/11)  p. 20
Ruto, Kosgey and Sang, Prosecutor v. (Case No. ICC-01/09–01/11)  p. 20

Libyan Arab Jamahiriya, Situation in (Case No. ICC-01/11)
Darfur, Sudan, Situation in (Case No. ICC-02/05)  p. 20
Abu Garda, Prosecutor v. (Case No. ICC-02/05–02/09)  p. 20
Al Bashir, Prosecutor v. (Case No. ICC-02/05–01/09)  p. 20
Banda and Jerbo, Prosecutor v. (Case No. ICC-02/05–03/09)  p. 20
Harun and Ali Abd-Al-Rahman, Prosecutor v. (Case No. ICC-02/05–01/07)  p. 20

Uganda, Situation in (Case No. ICC-02/04–01/05)
Kony et al., The Prosecutor v. (Case No. ICC-02/04–01/05), 8 June 2010  pp. 20, 65

ICJ
Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), International Court of Justice, General List, Judgment of 14 February 2002  pp. 54, 150, 151

International Criminal Tribunal for Rwanda
Kanyahashi, Prosecutor v. (Case No. ICTR-96–15)  p. 162
18 June 1997, Judgment on the Defence Motion on Jurisdiction, ICTR-96–15-T
Karemera, Prosecutor v. (Case No. ICTR 98–44)  p. 53
11 December 2006, Decision on Appeals Chamber Remand of Judicial Notice, ICTR 98–44-T
Kayishema, Prosecutor v. (Case No. ICTR-95–1)  p. 24
21 May 1999, Judgment and Sentencing, ICTR-95–1-T
Nahimana, Prosecutor v. (Case No. ICTR-99–52)  p. 24
3 December 2003, Judgment and Sentencing, ICTR-99–52-T
Ntagerura, Prosecutor v. (Case No. ICTR-99–46)  p. 24
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Case No.</th>
<th>Date/Decision/Proceeding</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>International Criminal Tribunal for the former Yugoslavia</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Aleksovski, Prosecutor v. (Case No. IT-95–14/1)</strong></td>
<td>24 March 2000, Judgment of the Appeals Chamber, IT-95–14/1-A</td>
<td>pp. 23, 24</td>
<td></td>
</tr>
<tr>
<td><strong>Blaskic, Prosecutor v. (Case No. IT-95–14/1)</strong></td>
<td>29 October 1997, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, IT-95–14-AR</td>
<td>pp. 56, 121, 162, 163</td>
<td></td>
</tr>
<tr>
<td><strong>Brdjanin and Talic, Prosecutor v. (Case No. IT-99–36)</strong></td>
<td>7 June 2002, Decision on Motion to Set Aside Confidential Subpoena to Give Evidence, IT-99–36-T</td>
<td>pp. 122, 123</td>
<td></td>
</tr>
<tr>
<td><strong>Delalic et al., Prosecutor v. (Case No IT-96–21)</strong></td>
<td>8 July 1997, Decision on the Motion <em>Ex Parte</em> by the Defence of Zdravko Mucic Concerning the Issue of a Subpoena to an Interpreter, IT-96–21-T</td>
<td>pp. 121, 122</td>
<td></td>
</tr>
<tr>
<td><strong>Erdemovic, Prosecutor v. (Case No. IT-96–22),</strong></td>
<td>19 January 1998, Decision on the Prosecution's Oral Requests for the Admission of Exhibit 155 into Evidence and for an Order to Compel the Accused, Zdravko Mucic, to Provide a Handwriting Sample, IT-96–21-T</td>
<td>p. 132</td>
<td></td>
</tr>
<tr>
<td><strong>Furundzija, Prosecutor v. (Case No. IT-95–17/1)</strong></td>
<td>16 November 1998, Judgment of the Trial Chamber, IT-96–21-T</td>
<td>p. 23</td>
<td></td>
</tr>
<tr>
<td><strong>Halilovic, Prosecutor v. (Case No. IT-01–48)</strong></td>
<td>8 July 2005, Decision on Motion for Exclusion of Statement of Accused, IT-01–48-T</td>
<td>p. 132</td>
<td></td>
</tr>
<tr>
<td><strong>Nikolic, Prosecutor v. (Case No. IT-02–60/1)</strong></td>
<td>2 December 2003, Judgment of the Trial Chamber, IT-02–60/1-S</td>
<td>p. 23</td>
<td></td>
</tr>
<tr>
<td><strong>Simic et al., Prosecutor v. (Case No IT-95–9)</strong></td>
<td>27 July 1999, <em>Ex Parte</em> Confidential Decision on the Prosecution's Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness, IT-95–9-PT</td>
<td>pp. 121, 123, 124</td>
<td></td>
</tr>
<tr>
<td><strong>Tadic, Prosecutor v. (Case No. IT-94–1)</strong></td>
<td>7 June 2000, Decision Denying Request for Assistance in Securing Documents and Witnesses from the International Committee of the Red Cross, Appeal Chamber, IT-95–9-A</td>
<td>p. 124</td>
<td></td>
</tr>
</tbody>
</table>
# Table of Cases

**Permanent Court of International Justice**


**Special Court for Sierra Leone**

- *Brima, Kamara and Kanu, Prosecutor v. (Case No. SCSL-04–16)*
  19 July 2007, Sentencing Judgment, SCSL-04–16-T  pp. 23, 24, 26

- *Fofana and Kondewa, Prosecutor v. (Case No. SCSL-04–14)*

- *Kallon and Kamara, Prosecutor v. (Case No. SCSL-04–15)*

- *Norman, Prosecutor v. (Case No. SCSL-03–08)*
  29 October 2003, Decision on the Request of the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, SCSL-03–08-PT-101  pp. 94, 133
  28 November 2003, Decision on Appeal by the Truth and Reconciliation Commission of Sierra Leone and Chief Samuel Hinga Norman JP against the Decision of His Lordship Justice Bankole Thompson to Deny the TRC’s Request to Hold a Public Hearing with Chief Norman, SCSL-03–08-PT-122-I and II  pp. 93, 94, 95, 97, 133

- *Taylor, Prosecutor v. (Case No. SCSL-03–1)*
  19 February 2009, Decision on Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone, SCSL-03–1-T  p. 153
  20 October 2010, Decision on Public with Confidential Annexes A–D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, SCSL-03–1-T  p. 127

**Special Panels for Serious Crimes (East Timor)**

*Franca da Silva, Prosecutor v. (Case No. 04a/2001), Judgment, 5 December 2002*  p. 23

**National Cases**

**Israel**

*Attorney General of Israel v. Eichmann*, District Court, (1968)
  36 ILR 5  p. 148

*Attorney General of Israel v. Eichmann*, Supreme Court, (1968)
  36 ILR 227  p. 148
# Table of Cases

## South Africa

**Azanian People’s Organisation (AZAPO) and Others v. President of the Republic of South Africa** 1996 (4) SALR 671  p. 81

**Du Preez and Van Rensburg v. Chairman, South African Truth and Reconciliation Commission, Case No. 4443/96** (unreported decision of Cape of Good Hope Provisional Division, 30 April 1996)  p. 82

**Du Preez and Van Rensburg v. Chairman, South African Truth and Reconciliation Commission, 1996 (3) SA 997 (C).**  p. 82

**Du Preez and Van Rensburg v. Chairman, South African Truth and Reconciliation Commission, 1997 (3) SA 204 (SCA)**  p. 82

**Ferreira v. Levin and Others [1995] ZACC 13** pp. 89, 168

**Nieuwoudt v. Chairman, South African Truth and Reconciliation Commission (1996) 2 All SA 660 (SE)**  p. 82

## United Kingdom

**Re Pinochet Ugarte [1998] 3 All ER (D) 629**  p. 153

## United States


**Quinn v. Robinson 783 F.2d 776, (9th Circuit), 1986, 800.**  p. 160

## Denmark

**The Prosecutor v. Saric, Eastern Division of the High Court (Third Chamber), 25 November 1994**  p. 148