

INDEX

- ad hoc tribunals, 22–6, 131
 - clarity of judgments, 23
 - in the context of retributive, deterrent, and restorative justice, 23
 - definition of crimes against humanity, 59
 - and refusal of assistance, 162
- Additional Protocols, 49, 61, 173
- Adolf Eichmann trial, 148
- African Commission on Human and Peoples' Rights, 17
- Al Bashir case, 107
- Algeria, 177
- American Convention on Human Rights, 14
- Apartheid Convention, 45, 52
- apartheid, 50, 52, 76, 78
- Argentina, 65, 106, 154, 164, 176
- Arrest Warrant case, 150
- assistance provision, under ICC, 113–16
- Australia, 150
- Austria, 148
- aut dedere aut prosequi* principle, 184
- aut dedere, aut judicare* principle, 50, 152
- Bankole Thompson judgment, 94–6
- Bassiouni principles, 15, 18
- Belgium, 148
- Bigombe, 164
- Bosnian truth commission, 135
- Brazil, 49
- bystander state prosecutions
 - and coexistence with truth commissions, 195–8
- coordination with truth
 - commissions, 183–6
- exercise and expansion of jurisdiction, 147–52
- and extradition, 172–8
- and *ne bis in idem* principle, 178–82
- and truth seeking investigations, 169–72
- use and protection of truth
 - commission information, 152–7
- Cambodia, 20
- Cambodian Extraordinary Chambers, 22
- Canada, 150
- Central African Republic, 20
- Chadian commission report, 153
- Chapter VII of UN Charter, 58, 113
- Charter for Peace and National Reconciliation, 65
- Chile, 106, 158, 164, 176
- Code of Crimes against International Law 2002, 150
- Commission for Reception, Truth and Reconciliation (CAVR), 86, 87, 89
- Commonwealth Scheme for Mutual Assistance in Criminal Matters, 179
- Community Reconciliation Process, 176
- complementarity regime,
 - of ICC, 7, 62–9
 - implications for truth commissions, 67–9
- conditional information sharing models, 138–9
- confidentiality, 141, 166, 195

- nature and type of relationship, 123–5
- and truth commissions, 118–20
- under ICC Statute, 120–6
- Convention against Torture (CAT), 45, 47
- Cote d'Ivoire, 60
- customary duties, to prosecute human rights violations, 53–8
- and ICC Statute, 56
- jus cogens* norms, 55
- as state practice, 57
- de facto amnesty, 177
- defence counsel, 127–9
- Democratic Republic of Congo, 20, 60
- Denmark, 148
- detainees, access under ICC, 134–7
- deterrence theory, 21
- East Timor, 7, 20, 27, 46, 60, 70, 106, 130, 158
- CAVR, 31, 61, 62, 85–90
- extradition proceedings, 176
- Office of the General Prosecutor (OGP), 85–90
- prosecutorial institutions, 89–90
- Special Panels, 23
- transitional justice programme in, 85–90
- El Salvador, 64, 106
- EU Convention on Mutual Assistance in Criminal Matters 2000, 161, 169
- European Arrest Warrant scheme, 174
- European Convention on Extradition, 173, 174, 180
- European Court of Human Rights (ECHR), 15
- interpretation of right to be free from torture, 16
- right against self-incrimination, 133
- and treaty obligations, 51
- extradition proceedings, 172–8
- First Additional Protocol to the Geneva Conventions of 1949, 16
- forced disappearances, 48–9
- forensic truth, 35
- France, 154
- General Assembly Resolution 3074, 184
- general treaty law, 114
- Geneva Conventions, 45
- investigation of violations of humanitarian law, 49–50
- and war crimes, 60
- Genocide Convention, 45, 173, 174
- Germany, 148
- Ghana, 130
- Goodwin v. UK*, 122
- grave breaches regime, 49, 60
- Guatemala, 64, 106, 153, 154, 174
- Guatemalan Commission, 50
- Habré, Hissène, 153
- Human Rights Committee (HRC), 15, 83
- interpretation of right to truth, 16
- study of trials and truth commissions, 18
- human rights violations
- customary duties to prosecute, 53–8
- and trials, 19–26
- Human Rights Watch, 138, 139
- hybrid courts, 22
- in East Timor, 85–90
- jurisprudence of, 23
- ICTR, 22, 104
- jurisprudence of, 23
- Rules of Procedure and Evidence, 160
- Trial Chamber, 23
- ILC Draft Code of Crimes against the Peace and Security of Mankind (1996), 56
- individualized truth, 35
- information, access by ICC, 114–16, 138–40
- Inter-American Convention on Extradition, 175

- Inter-American Convention on Mutual Assistance in Criminal Matters, 179
- Inter-American Convention on the Forced Disappearance of Persons, 45, 49
- Inter-American Court of Human Rights, 14, 17
- International Committee of the Red Cross (ICRC), 123–5, 194
- International Convention for the Protection of All Persons from Enforced Disappearances, 16, 45, 48
- International Criminal Court (ICC), 3. *See also* Rule 73(2) of the ICC Rules of Procedure and Evidence
 - access to information, 114–16
 - Article 16, 107
 - Article 17, 66, 107, 109
 - Article 20, 108–9
 - Article 53, 109–10, 111
 - Article 55 (1) (a), 132
 - Article 67 (1) (g), 132
 - Article 72, 116
 - Article 88, 116
 - Article 93 (1), 113
 - Article 93 (1) (i), 114
 - Article 93 (3), 117
 - Article 93 (4), 116
 - and complementarity criteria, 4, 62–7
 - complementarity regime functions, 5
 - and cooperation by state parties, 113–14
 - and customary duty to prosecute, 56
 - crimes against humanity, definitions, 59
 - criminal justice, 111
 - forms of assistance, 113–16
 - interviewing of detainees, 134–7
 - jurisdiction of, 58
 - operational difficulties in transitional states, 63
 - and overlap with truth commission mandates, 58–69
 - participation of victims in proceedings, 37
 - Policy Paper on the Interests of Justice, 111–12, 192
 - preamble, 24
 - primary function, 25
 - privacy and non-disclosure, 121–3
 - proceedings against human rights crimes, 20
 - prosecution of war crimes, 61
 - refusal of assistance to, 116–17
 - and Rome Statute, 5
 - significance of statutes, 44
 - testimony confidentiality, 120–6
 - transitional justice practice, 4
 - truth commissions under, 3, 7, 45–53, 106–12, 130
 - war crimes, definition, 60
- International Criminal Tribunal for the former Yugoslavia (ICTY), 34, 104, 135
 - Appeals Chamber, 56, 162
 - definition of crimes against humanity, 59
 - jurisprudence of, 126
 - jurisprudence on confidentiality, 121
 - non-disclosure and confidentiality, 124
 - on self-incrimination, 132
- international law obligations, 7
- Iraqi High Tribunal, 46
- Italy, 154
- Joinet principles, 15, 18
- jus cogens* rule, 47, 56, 175
- justice reforms, 12
- Kenya, 20, 60, 130, 154
 - truth commission, 62, 66, 70, 111
- Kony, 165
- legislative instrument, 29
- Liberia, 60, 65, 70, 130, 136, 176
 - TRC, 62
- Libya, 20

- Lomé Peace Accord, 64
 Lord's Resistance Army, 65
- macro truth, 35
 micro truth, 36
 Moroccan commission, 31
 mutual legal assistance
 national law incompatibility and
 refusal of assistance, 166–8
 national security and refusal of
 assistance, 161–6
 political offence exception, to refuse
 assistance, 158–61
 public order and refusal of
 assistance, 161–6
 sovereignty and refusal of
 assistance, 161–6
- narrative truth, 35
 national amnesty laws, 26, 64–5, 175–8
 national level trials, 189–91
ne bis in idem principle, 108–9, 178–82,
 186
 Netherlands, the, 148, 150, 181
 New Zealand's International Crimes
 and International Criminal Court
 Act (2000), 149
 Norgaard principles, 160
 Norman case, 94, 132, 135
 Nuremberg Charter, 59
 Nuremberg Tribunal, 21
- Office of the General Prosecutor
 (OGP), 86
 Office of the Prosecutor (OTP), 37,
 111–12, 152, 192
 judicial mandate, 126
 Policy Paper on the Interests of
 Justice, 105, 111–12, 192, 193
- peace accord, 29
 Peruvian commission, 50
 Peruvian TRC, 155–6
 Pinochet litigation, 149, 153, 155
 Policy Paper on the Interests of Justice,
 of OTP, 105, 111–12, 192, 193
 presidential decree, 29
- Principles and Guidelines on the
 Right to a Fair Trial and Legal
 Assistance in Africa, 17
 Promotion of National Unity and
 Reconciliation Act (1995), 129
*Prosecutor v. Brdjanin and
 Talic*, 122–3
Prosecutor v. Ruggiu, 23
Prosecutor v. Simic et al., 123
 prosecutorial institutions
 objectives of, 20
 retributive and deterrent
 framework, 21
- refusal of assistance, to ICC, 116–17
 reparations, 12
res judicata effect, 181, 182
 retributive justice and ad hoc
 tribunals, 23
 Revolutionary United Front
 (RUF), 64
 right against self-incrimination in
 criminal investigations and
 proceedings, 129–34
 right to be free from torture, 16
 right to justice, under truth
 commissions, 13–19
 right to truth
 interpretations, 16
 resolutions related to, 17
 UN Commission on Human Rights
 study, 18, 36
- Robertson, Justice, 94
 Robertson's judgment, 94–6
 Rome Conference, 106
 Rome Statute of the International
 Criminal Court, 3, 4, 107
 definition of genocide, 59
 implications, 5
 Rule 73(2) of the ICC Rules of
 Procedure and Evidence,
 120, 123
 objectives, 125
 protections under, 142–3
 rule of law, 11, 40
 Rwanda, 19, 104
gacaca trials, 46

- Second Additional Protocol, 174
 self-incriminating testimony,
 disclosure of, 88–9, 129–34, 141,
 167, 171
 Serious Crimes Unit (SCU), 86
 Sierra Leone, 7, 20, 27, 41, 46, 60, 70,
 106, 130, 153, 156
 access to detainees, 135–6
 and information sharing, 138–9
 Norman case, 94–7
 relationship between TRC and
 Special Court, 90–9
 Sierra Leonean Truth and
 Reconciliation Commission
 (SLTRC), 61, 90–9, 138–9
 Special Court for, 22, 90–9, 127, 135
 transitional justice mechanisms and
 judgments, 94–6
 South African Defence Force (SADF),
 170
 South African TRC, 27, 30, 76–85, 155,
 158, 170
 adversarial trial features, 82–3
 amnesty process, 83–5
 benefits of grant of amnesty, 76
 complementarity principle, impact
 of, 79–80
 conviction of Eugene de Kock, 77
 creation of judicialised truth
 commission, 81–5
 on crime of apartheid, 50
 features, 76
 inadequacies of prosecutorial
 programme, 78–80
 investigative powers, 32
 notions of truth, 35
 outcome of Malan trial, 78
 Pedain's analysis of, 78
 power of subpoena, 130
 powers of search seizure of
 documents, 115
 in promoting national
 reconciliation, 41
 self-incriminating testimony, 129
 truth seeking and prosecution in
 practice, 77–80
 victim's perception about, 81–2
 Spain, 154, 174
 structural truth, 35
 Sudan, 20
 Switzerland, 148
 Taylor, Charles, 136, 153, 164
 testimony confidentiality
 and truth commissions, 118–20
 under ICC Statute, 120–6
 torture, prohibition of, 47–8
 transitional justice, 1, 3, 187
 correlation between objectives and
 mechanisms, 12
 criminal trials under, 14–15
 definition of reconciliation, 41
 in East Timor, 85–90
 lessons from South Africa, Sierra
 Leone and East Timor, 99–102
 main mechanisms, 12
 meaning of term, 10
 objectives of, 11
 prosecution element, 11
 purpose of trials in the context of
 human rights violations, 19–26
 right to justice, 13–19
 trials as mechanism of, 10–13
 treaty obligations and truth
 commission, 45–53
 trials, under transitional justice, 12
 in the context of human rights
 violation, 19–26
 at national level, 189–91
 strengths and weaknesses
 of, 33–42
 truth commissions, 1
 See also bystander state
 prosecutions
 International Criminal Court
 (ICC), 1
 access to detainees, 134–7
 access to information, 114–16
 accountable models of, 4, 7
 acknowledgement of sufferings, 12
 amnesty laws and, 64–6
 community reconciliation process, 62
 complementarity principle and, 62–9
 confidentiality issues, 118–20
 contributions to healing of victims,
 36
 defence applications for witness
 testimony, 127–9

- dilemmas in relationship with ICC, 130
- disclosure of self-incriminating testimony, 129–34
- establishment of truth, role in, 13
- and extradition, 172–8
- features, 27
- forced disappearances, involvement in, 48–9
- Freeman's definition, 28
- grounds for refusing assistance, 157–68
- institutional responsibility, role in establishing, 39–41
- investigation of violations of humanitarian law, 49–51
- mandates of, 29
- muti-faceted approach, 4
- at national level, 189–91
- national reconciliation, role in establishing, 30, 41–2
- national transitional justice programmes of, 60–1
- objectives under Rule 73(2)(c), 125
- obligations to cooperate with ICC, 112–17
- prosecutorial proceedings and, 5, 67, 178
- quasi-judicial powers of, 3
- response to past human rights violations, 26–33
- right to prosecute violations, 51
- Rwandan experience, 52
- sequencing of operations, 69–71
- Sierra Leone experience, 90–9
- status under ICC, 3, 7, 106–12, 193–4
- strengths and weaknesses, 33–42
- subject-matter overlap, impact of, 58–62
- Timorese experience, 85–90
- treaty obligations and, 45–53
- trials and rights to truth and justice, 13–19, 187–9
- truth-seeking function of, 31, 140–2
- use and protection of information, 152–7
- victim testimony, significance of, 37
- within transitional justice framework, 6, *See also* transitional justice
- truth-seeking investigations, 12, 140–2
- and bystander state prosecutions, 169–72
- Uganda, 20, 60, 164, 177
- United Nations (UN), 2
- UN Charter, 162
- UN Model Treaty on Extradition, 175, 180
- UN Model Treaty on Mutual Assistance in Criminal Matters, 179
- UN Rule of Law Toolkit for Post-Conflict States, 18
- UN Study on the Right to Truth, 36
- UN Transitional Administration in East Timor (UNTAET), 85
- weak judicial systems, 26
- Yugoslavia, 19, 148