

SECOND JUDICIAL COLLOQUIUM

THE NEW FACE OF ATROCITY CRIME PROCEEDINGS:

Internationalisation of Standards, Regional Dialogues on Procedural and Cooperation Matters, and Use of New Technologies

28-29 February 2024
Arusha, United Republic of Tanzania

Generously funded by the late Benjamin B. Ferencz and by Donald Ferencz



*President Imani Daud ABOUD,
African Court on Human and Peoples' Rights*

*President Graciela GATTI SANTANA,
International Residual Mechanism for Criminal Tribunals*

*President Nestor KAYOBERA,
East African Court of Justice*



The Second Judicial Colloquium endeavours to enhance capacity-building, while fostering collaboration among various national, regional, and international entities, particularly those with overlapping mandates.

President Graciela GATTI SANTANA



- **31** distinguished speakers
- Approximately **100** international, regional, and national experts in attendance
- **Interactive discussions** among panellists, moderators, and participants
- **Tour** of the Mechanism's Lakilaki premises and state-of-the-art courtroom



Key Takeaways

SHARING THE KNOWLEDGE “FROM THE COURTROOM TO THE CLASSROOM”, AND FROM THE CLASSROOM TO THE GROUND

ENHANCE COOPERATION BETWEEN ALL STAKEHOLDERS

- Essential throughout the justice cycle, and most effective when provided holistically instead of selectively
- Overcome bureaucracy and increase speed by establishing direct contact between on-the-ground investigators and justice professionals across jurisdictions
- Crucial need for African States to build upon their collaboration on justice efforts both regionally and internationally

HARMONISE AND IMPROVE LEGAL STANDARDS TO ENSURE FAIR PROCEEDINGS

- Widespread harmonisation already seen among international and regional courts
- National jurisdictions that have yet to do so would benefit from expressly criminalising genocide and other atrocity crimes, while elaborating expectations to guarantee a fair trial
- International criminal law should develop a more satisfactory procedure when confronted with an accused’s unfitness to stand trial

HARNESS THE POTENTIAL OF NEW TECHNOLOGIES

- Critical sources and tools for investigators of atrocity crimes, which can also be used to bolster genocide-prevention measures and to stay a step ahead of the suspects
- Facilitate cost-effective justice that can mitigate, where appropriate, the impact on witnesses and parties
- Enhance the deployment of electronic case management systems and facilitates for remote participation, while adjusting the legal framework to permit their use

Formal Opening



Hon. Ambassador Dr. Pindi Hazara CHANA

Minister of Constitutional and Legal Affairs, United Republic of Tanzania

Minister Chana underscored the necessity of **having an effective international criminal justice system** to ensure that mass atrocity crimes do not go unpunished, and she highlighted Tanzania's commitment to international justice, human rights, and the rule of law while paying tribute to the groundbreaking work of the Mechanism.

Introductory Panel



Judge Graciela GATTI SANTANA

President, International Residual Mechanism for Criminal Tribunals

President Gatti Santana observed that through the Colloquium, the Mechanism aimed to stimulate **thought-provoking exchanges** and enhance **capacity-building**, while fostering **collaboration** and **cooperation** among entities jointly pursuing justice in East Africa and beyond.

Hon. Justice Nestor KAYOBERA

President, East African Court of Justice (EACJ)



President Kayobera emphasised the **importance of the Colloquium** and noted that although the EACJ is neither a criminal nor a human rights court, its founding treaty conferred responsibility over issues surrounding **the protection of human rights** and **the rule of law**.



Hon. Lady Justice Imani Daud ABOUD

President, African Court on Human and Peoples' Rights (ACtHPR)

President Aboud stressed the crucial platform offered by the Colloquium to **harmonise best practices** and **foster legal convergence**, especially in a world where **new technologies** are emerging that present both challenges and opportunities, particularly given the unequal access to such technologies in different regions of the world.

Keynote Address



Ms. Alice Wairimu NDERITU

United Nations Under-Secretary-General and the Special Adviser on the Prevention of Genocide

In her powerful Keynote Address, Ms. Nderitu explained that **enhancing our collective ability to conduct atrocity crime proceedings** was necessary not only to honour the victims, determine the facts, and bring perpetrators to justice, but also to help **prevent future atrocities**. It is time to move **“from the courtroom to the classroom”**, where it is imperative to have **continuous engagement with the facts** established by the Mechanism and its predecessor tribunals, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), among other institutions.

Panel I

“Safeguarding Human Rights in Criminal Proceedings for Atrocity Crimes: Fair Trial Rights and Harmonising Standards of Justice”



Judge Solomy Balungi BOSSA

Judge, International Criminal Court (ICC)

Judge Bossa affirmed that international criminal tribunals and African regional courts follow parallel approaches to **guaranteeing fair trial rights**, as they are guided by similar legal provisions in their founding statutes, and she highlighted the role of consistent appellate jurisprudence in **maintaining uniformity in each court**.



Judge Margaret M. deGUZMAN

Judge, International Residual Mechanism for Criminal Tribunals

Judge deGuzman addressed the **evolution towards victims’ participation** among international jurisdictions, notably the ICC, and described the difficulties and progress in **balancing the victims’ role** with the rights of the accused in the same proceedings.



Ms. Thembile SEGOETE

Officer-in-Charge, Office of the Prosecutor, Arusha branch, International Residual Mechanism for Criminal Tribunals

Ms. Segoeete discussed the **development of fair trial guarantees** at the international level, such as the elaboration of rules concerning the prosecution’s obligation to disclose exculpatory material and preparation of its witnesses, which are **not yet reflected in all national systems**.

Moderated by:



Ms. Emiliya VIKTOROVA

Senior Legal Officer, Chambers,
International Residual Mechanism for Criminal Tribunals

Panel II

“Safeguarding Human Rights in Criminal Proceedings for Atrocity Crimes: Fitness to Stand Trial and Counsel’s Representation”



Judge Aminatta Lois Runeni N'GUM

Judge, International Residual Mechanism for Criminal Tribunals

Judge N'gum set out the standard concerning fitness to stand trial as developed in the ICTY and as applied in the Mechanism, while observing that the **quality of defence counsel** is regulated through **rigorous vetting** by the Registry.



Judge Iain BONOMY

Judge, International Residual Mechanism for Criminal Tribunals

Judge Bonomy noted the challenges that can arise in atrocity cases before international tribunals, and considered it necessary to **devise special measures** to ensure the effective participation of accused persons regardless of their individual circumstances, after which he addressed **tensions that arose in ICTY cases** when an accused wished to represent himself.



Ms. Kate GIBSON

Counsel before the International Residual Mechanism for Criminal Tribunals and the International Criminal Court

Ms. Gibson explained the **challenges facing defence counsel** when their client is deemed unfit to stand trial or when counsel may need to withdraw their representation, and she elaborated upon the need for States to **offer more holistic support** to international justice mechanisms regardless of their pronouncements in specific cases.



Professor Simeon S. SUNGI

Associate Professor of Criminal Justice, United States International University-Africa

Professor Sungi discussed the profound questions for international justice when an accused can **evade justice for decades** only to later be declared unfit for trial, and he referred to the relationship between **indigenous systems** and the objectives of **advancing community reconciliation**.

Moderated by:



Mr. Iain EDWARDS

Counsel before the International Residual Mechanism for Criminal Tribunals,
International Criminal Court, and Kosovo Specialist Chambers

Panel III

“Transnational and International Cooperation: State Cooperation and Practical Challenges in Securing Justice for Atrocity Crimes”



Mr. Aimable HAVUGIYAREMYE

Prosecutor General, Republic of Rwanda

Prosecutor Havugiyaremye observed that everyone has an interest in cooperating because **no country is immune from atrocity crimes**, and he highlighted that new technologies should be used to coordinate efforts to **locate fugitives**. He also expanded on Ms. Nderitu’s plea, calling for knowledge to be moved not only **from the courtroom to the classroom but also to the ground**.

Mr. Serge BRAMMERTZ

Prosecutor, International Residual Mechanism for Criminal Tribunals



Prosecutor Brammertz confirmed that **cooperation is essential** for both national and international prosecutors, and he encouraged **direct communication** between relevant offices instead of the lengthy process inherent in formal requests for assistance.



Ms. Christine MUTIMURA

Deputy Registrar, East African Court of Justice

Ms. Mutimura advised that **States are occasionally reticent** to implement binding EACJ decisions and that, without a mechanism to compel compliance, it has been useful to enhance an **understanding of the Court’s role** through a variety of tailored efforts.

Ambassador Stephen J. RAPP

Former United States Ambassador-at-Large for Global Criminal Justice and former Chief of Prosecutions, International Criminal Tribunal for Rwanda



Ambassador Rapp discussed the impact of **cooperation on the gathering of evidence** and shared his insights from **securing State and individual cooperation** leading to the arrest of ICTR and ICTY fugitives.

Moderated by:



Ms. Ana Cristina RODRÍGUEZ PINEDA

Chef de Cabinet and Principal Legal Advisor,
International Residual Mechanism for Criminal Tribunals



Panel IV

“Transnational and International Cooperation: Judicial Dialogue on Cooperation in Atrocity Cases at the Regional and National Levels”



Judge Vagn Prüse JOENSEN

Judge, International Residual Mechanism for Criminal Tribunals

Judge Joensen contrasted the primacy of the ICTR, ICTY, and Mechanism with the ICC’s complementarity principle, which provides for the latter to exercise jurisdiction only if the national, or potentially regional, judiciary is **unable or unwilling to do so**.

Hon. Lady Justice Susan OKALANY

Judge of the High Court, Republic of Uganda



Judge Okalany discussed Uganda’s **fruitful partnership with the ICC** resulting in the successful prosecution of one person, and called for the **harmonisation of laws** to overcome procedural impediments and permit efficient cooperation that is in the interests of national prosecutors, judiciaries, and victims.



Mr. Abubacarr M. TAMBADOU

Registrar, International Residual Mechanism for Criminal Tribunals

Registrar Tambadou explained that State cooperation lies at the **heart of an international justice system** and that regional State cooperation must be viewed in its proper political and historical context.

Hon. Justice Dr. Fauz TWAIB

President, East African Law Society



Dr. Twaib described the **Malabo Protocol as a reaction** to African States’ uneasiness with the ICC, while noting that the necessary ratifications have yet to take place at the regional level and that some national jurisdictions do not have **necessary legislation implementing** the crime of genocide.

Moderated by:



Mr. Matthew CARLSON

Senior Legal Officer, Chambers,
International Residual Mechanism for Criminal Tribunals

Panel V

“The Use of New Technologies before National, Regional, and International Courts: Delivering Justice during a Pandemic”



Hon. Justice François Régis RUKUNDAKUVUGA

President of the Court of Appeal, Republic of Rwanda

Judge Rukundakuvuga explained that the Rwandan judiciary had already been using an integrated **electronic case management system** for some years and that, as a result, it transitioned seamlessly to remote operations during the COVID-19 lockdown, ensuring that **citizens had access to justice** and their complaints were addressed as before.

Hon. Lady Justice Anita MUGENI

Vice-President, East African Court of Justice



Vice-President Mugeni spoke of how the EACJ was already transitioning to **remote court sessions**, through amendments to the Rules of Procedure and the installation of smart cameras in the courtroom, which permitted the judges to participate in hearings on-site with applicants attending online via Microsoft Teams, tools that **continue to be useful today**.



Hon. Justice Sir Dennis Dominic ADJEI

Judge, African Court on Human and Peoples' Rights

Judge Adjei first addressed his judicial experience in the Republic of Ghana and noted the **inherent disparities** based on the availability of electricity and internet services, before turning to the ACtHPR and explaining the changes to the courtroom and amendments to the legal framework that **permitted greater use of electronic methods**.

Mr. Jesse LEFF

Legal Officer, Chambers, International Residual Mechanism for Criminal Tribunals



Mr. Leff highlighted the **Mechanism's experience** in accommodating judges, parties, and witnesses who are located across multiple continents, and observed that, in using technology to hold remote proceedings, **fair trial issues are most likely to arise** in relation to the presentation of evidence but less so for procedural or argumentative phases of the case.

Moderated by:



Judge Carmel AGIUS

Judge, International Residual Mechanism for Criminal Tribunals



Closing Segment



Judge Nicolas GUILLOU

Pre-Trial Judge, Kosovo Specialist Chambers and Judge-elect, International Criminal Court

Judge Guillou described judicial institutions as the potential antidote to polarisation and fragmentation, and observed that achieving this goal requires an **inclusive architecture of judicial hubs** driven by **efficiency and pragmatism**, and that challenges be addressed through a **bottom-up harmonisation** in a way that **avoids double standards**.

Judge William H. SEKULE

Judge, International Residual Mechanism for Criminal Tribunals



Judge Sekule reflected on his nearly 30 years as an international Judge, including the monumental achievements realised by the ICTR and the ICTY in developing core legal principles as well as **fostering accountability** for atrocity crimes at the national level, before expressing his considered view that **African States should reaffirm their commitment to the ICC** and could serve as a peacemaker in regional and global affairs.



Judge Graciela GATTI SANTANA

President, International Residual Mechanism for Criminal Tribunals

Judge Gatti Santana expressed her **gratitude to the many partners who contributed to** the IRMCT Second Judicial Colloquium – including the distinguished panellists and audience members, as well as the Ferencz family – and she affirmed that the **Mechanism will continue to strengthen ties** with judges and other actors seeking accountability, particularly in East Africa.

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