

# Moral Accountability and International Criminal Law

Holding Agents of Atrocity Accountable to  
the World

Kirsten J. Fisher

# Moral Accountability and International Criminal Law

Holding Agents of Atrocity  
Accountable to the World

Kirsten J. Fisher



First published 2012  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Simultaneously published in the USA and Canada  
by Routledge  
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

© 2012 Kirsten J. Fisher

The right of Kirsten J. Fisher to be identified as author of this work has been asserted by her in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

*Trademark notice:* Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloguing in Publication Data*

Fisher, Kirsten.

Moral issues and international criminal law : accountable to the world /  
Kirsten Fisher.

ISBN 978-0-415-67198-9 (hardback) – ISBN 978-0-203-80337-0 (e-book)

1. International criminal law. 2. Criminal liability (International law)

3. Criminal justice, Administration of. I. Title.

K5015.4.F57 2012

345'.04–dc22

2011011903

ISBN 978-0-415-67198-9 (hbk)

ISBN 978-0-203-80337-0 (ebk)

Typeset in Garamond

by Keystroke, Station Road, Codsall, Wolverhampton



Printed and bound in Great Britain by the MPG Books Group

# Moral Accountability and International Criminal Law

This book examines international criminal law from a normative perspective and lays out how responsible agents, individuals and the collectives they comprise, ought to be held accountable to the world for the commission of atrocity. The author provides criteria for determining the kinds of action that should be addressed through international criminal law. Additionally, she asks, and answers, how individual responsibility can be determined in the context of collectively perpetrated political crimes and whether an international criminal justice system can claim universality in a culturally plural world. The book also examines the function of international criminal law and finally considers how the goals and purposes of international law can best be institutionally supported.

This book is of particular interest to a multidisciplinary academic audience in political science, philosophy and law; however, the book is written in clear jargon-free prose that is intended to render the arguments accessible to the non-specialist reader interested in global justice, human rights and international criminal law.

**Kirsten J. Fisher** is a postdoctoral researcher at the Centre of Excellence in Global Governance Research at the University of Helsinki. Prior to this post, she held a post-doctoral research fellowship in the Department of Political Science at McGill University and a visiting research fellowship at the Centre of Human Rights and Legal Pluralism, Faculty of Law, McGill University. She writes on issues of global justice and international criminal law.

# Acknowledgements

I am grateful to many people whose help, both direct and indirect, made this work possible. I am lucky to have benefited from wonderful colleagues, friends and family who, through their own research, comments, questions, support and encouragement, made writing this book a stimulating and enjoyable process.

I would like to especially thank my doctoral supervisor, Richard Vernon, for his mentorship, invaluable insight, guidance, unfailing commitment, constructive criticism and, of course, for our many conversations that clarified my thinking on the issues addressed in the following pages.

Thanks to Valerie Oosterveld, Charles Jones and Catherine Lu for their support and critical eyes. Their attention to detail and advice helped me work through some difficult theoretical problems. I also owe a debt of thanks to Jens Kremer and, additionally, to Rain Liivoja. Of course, any mistakes are my own.

I need particularly to acknowledge the financial assistance of the Social Sciences and Humanities Research Council of Canada, the Canadian Consortium on Human Security and the Human Security Program of the Department of Foreign Affairs and International Trade. In addition, the support of the Groupe de Recherche en Philosophie Politique in Montreal and the Centre of Excellence in Global Governance Research at the University of Helsinki has been invaluable.

Finally, I want to express my appreciation to my family, my mother Alison and father Brian, and my siblings Dana, Shane and Jarad, who each in their own way supported and encouraged me, especially Jarad who tirelessly helped with citations for this book and to my grandmother, Jean Noble, who is always proud of me.

Earlier versions of portions of this book have been previously published elsewhere. I am grateful to the editors of these publications and to the anonymous reviewers for these publications and to the anonymous reviewers for Routledge who reviewed the manuscript in its entirety and whose comments were extremely helpful.

Chapter 1, reproduced with permission from Palgrave Macmillan, appeared as: "The Distinct Character of International Crime: Theorizing the Domain", *Contemporary Political Theory* 8: 1 (February 2009) 44–67.

Chapters 4 and 5 are an extended and revised version of another journal publication: "Identifying Liability: Ambiguous Charges in International Criminal Law", *Finnish Yearbook of International Law* (2008, published 2010) 127–155.

Chapter 8 appeared as: "Demanding Accountability: Judgment and Punishment in Ugandan 'Restorative' Mechanisms", in Anita Singh and David McDonough (eds) *Defence to Development: Resolving Threats to Global Security* (Halifax: Centre for Foreign Policy Studies, Dalhousie University, 2007) 163–196.

# Table of cases

## International courts

- Prosecutor v. Alfred Musema*, ICTR, Trial Chamber, Judgment and Sentence, Case No. ICTR-96-13-T, 27/01/2000.
- Prosecutor v. Dario Kordić and Mario Cerkez*, ICTY, Appeals Chamber, Case No. IT-95-14/2, 17/12/2004.
- Prosecutor v. Dario Kordić et al.*, ICTY, Trial Chamber, Indictment, Case No. IT-95-14, 10/11/1995.
- Prosecutor v. Dragoljub Kunarac*, ICTY, Trial Chamber, Judgment, Case No. IT-96-23, 22/02/2001.
- Prosecutor v. Dražen Erdemović*, ICTY, Indictment, Case No. IT-96-22, 22/05/1996.
- Prosecutor v. Duško Tadić*, ICTY, Trial Chamber, Indictment, Case No. IT-94-1-I, 13/02/2005.
- Prosecutor v. Duško Tadić*, ICTY, Trial Chamber, Judgment, Case No. IT-94-1-T, 07/05/1997.
- Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana*, ICTR, Trial Chamber, Judgment, Case No. ICTR-96-10/ICTR-97-17, 21/02/2003.
- Prosecutor v. Jean-Paul Akayesu*, ICTR, Trial Chamber, Judgment and Sentence, Case No. ICTR-96-4-T, 02/09/1998.
- Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL, Trial Chamber, Judgment, Case No. SCSL-04-14-T, 02/08/2007.
- Prosecutor v. Moinina Fofana and Allieu Kondewa*, SCSL, Trial Chamber, Judgment on the Sentence, Case No. SCSL-04-14-T96, 09/10/2007.
- Prosecutor v. Naser Orić*, ICTY, Appeals Chamber, Judgment, Case No. IT-03-68, 03/07/2008.
- Prosecutor v. Naser Orić*, ICTY, Trial Chamber, Judgment, Case No. IT-03-68, 30/06/2006.
- Prosecutor v. Pavle Strugar et al.*, ICTY, Trial Chamber, Indictment, Case No. IT-01-42, 22/02/2001.
- Prosecutor v. Radoslav Brđjanin and Momir Talić*, ICTY, Trial Chamber, Indictment, Case No. IT-99-36-I, 16/12/1999.
- Prosecutor v. Slobodan Milošević*, ICTY, Indictment, Case No. IT-02-54-I, 22/11/2002.

Prosecutor v. Thomas Lubanga Dyilo, ICC, ICC-01/04-01/06.

Prosecutor v. Tihomir Blaškić, ICTY, Trial Chamber, Judgment, Case No. IT-95-14-T, 03/03/2000.

Prosecutor v. Vidoje Blagojević and Dragan Jokić, ICTY, Trial Chamber, Judgment, Case No. IT-02-60-T, 17/01/2005.

S.S. 'Lotus' (France v. Turkey), PCIJ, Ser. A, No. 10, 07/09/1927.

## **National courts**

### *Canada*

Arieh Hollis Waldman v. Canada, UN Human Rights Committee (HRC) CCPR/C/67/D/694/1996, 05/11/1999.

Her Majesty the Queen v. Desire Munyaneza, Superior Court, Criminal Division, Judgement, Case No. 500-73-002500-052, 22/05/20009.

Mugesera v. Canada (Minister of Citizenship and Immigration), Supreme Court of Canada, Case No. 2 SCR 100, 28/06/2005.

### *Israel*

Attorney General of the Government of Israel v. Adolf Eichmann, District Court of Jerusalem, Case No. CC40/61, 11/04/1961.

### *United States*

United States v. William L. Calley, United States Court of Military Appeals, Case No. 26,875, 1973 WL 14894 (CMA), 48 CMR 19, 22 USCMA 534, 21/12/1973.

United States of America v. Friedrich Flick et al., Military Tribunals under Control Council Law No. 10 (Nuremberg), Case No. 5, 1947.



# Table of statutes

- Charter of the United Nations, 1 UNTS XVI, 26 June 1945, entered into force 24 October 1945.
- Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, International Committee of the Red Cross (ICRC), 75 UNTS 85, 12 August 1949, entered into force 21 October 1950.
- Convention (III) Relative to the Treatment of Prisoners of War, International Committee of the Red Cross (ICRC), 75 UNTS 135, 12 August 1949, entered into force 21 October 1950.
- Convention (IV) Relative to the Protection of Civilian Persons in Time of War, International Committee of the Red Cross (ICRC), 75 UNTS 287, 12 August 1949, entered into force 21 October 1950.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly, Treaty Series, vol. 1465, p. 85, 10 December 1984, entered into force 26 June 1987.
- Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (ser. 1) 607, 129 Consol. TS 361, Geneva, 22 August 1864, entered into force 22 June 1865.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, UN Secretary General, 754 UNTS 73/18 ILM 68 (1979)/GA Res. 2391 (XXIII), UN Doc. A/7218 (1968) 26 November 1968, New York, entered into force 11 November 1970.
- Convention on the Prevention and Punishment of Genocide, 78 UNTS 277 (1951), adopted by Resolution 260 (III) A of the United Nations General Assembly, 9 December 1948.
- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, International Committee of the Red Cross (ICRC), 75 UNTS 31, 12 August 1949, entered into force 21 October 1950.
- International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

- London Charter, Charter of the International Military Tribunal. 82 UNTS 279; 59 Stat. 1544; 3 Bevans 1238; 39 AJILs 258, 8 August 1945.
- Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 13th Plenary Meeting, 31 May–11 June 2010 (ICC-RC/9/11). Resolution RC/Res. 6, adopted 11 June 2010.
- Rome Statute of the International Criminal Court, A/CONF.183/9, 17 July 1998, entered into force 1 July 2002.
- Statute of the ICTY, Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, SC res. 827, UN SCOR 48th sess., 3217th mtg. at 1-2 (1993); 32 ILM 1159 (1993).
- Statute of the International Court of Justice, established by UN Charter 1995, entry into force 18 April 1946.
- Statute of the Special Tribunal for the Lebanon, S/RES/1757 (2007).
- Universal Declaration of Human Rights, GA res. 217A (III), UN Doc A/810 at 71, 1948.
- US Constitution.

# List of abbreviations

|       |                                                                   |
|-------|-------------------------------------------------------------------|
| AFRC  | Armed Forces Revolutionary Council (Sierra Leone)                 |
| ASPA  | American Servicemembers' Protection Act (USA)                     |
| AU    | African Union                                                     |
| CAR   | Central African Republic                                          |
| CDF   | Civil Defense Force (Sierra Leone)                                |
| DOJ   | Department of Justice (USA)                                       |
| DRC   | Democratic Republic of the Congo                                  |
| ECCC  | Extraordinary Chambers in the Courts of Cambodia                  |
| ECHR  | European Court of Human Rights                                    |
| GA    | General Assembly (United Nations)                                 |
| GoU   | Government of Uganda                                              |
| ICC   | International Criminal Court                                      |
| ICISS | International Commission on Intervention and State<br>Sovereignty |
| ICJ   | International Court of Justice                                    |
| ICL   | International Criminal Law                                        |
| ICTR  | International Criminal Tribunal for Rwanda                        |
| ICTY  | International Criminal Tribunal for the former Yugoslavia         |
| IHP   | International Harm Principle (Larry May)                          |
| LC    | Local Council (Uganda)                                            |
| LRA   | Lord's Resistance Army (Uganda)                                   |
| LRA/M | Lord's Resistance Army/Movement (Uganda)                          |
| NATO  | North Atlantic Treaty Organization                                |
| NDJ   | Natural Duty of Justice (Allen Buchanan)                          |
| NGO   | Non-Governmental Organization                                     |
| PCIJ  | Permanent Court of International Justice                          |
| R2P   | Responsibility to Protect                                         |
| RLP   | Refugee Law Project (Uganda)                                      |
| RPF   | Rwandan Patriotic Front                                           |
| RUF   | Revolutionary United Front (Sierra Leone)                         |
| SCSL  | Special Court for Sierra Leone                                    |
| SICT  | Supreme Iraqi Criminal Tribunal                                   |
| SP    | Security Principle (Larry May)                                    |

xiv *List of abbreviations*

|      |                                       |
|------|---------------------------------------|
| STL  | Special Tribunal for Lebanon          |
| UDHR | Universal Declaration of Human Rights |
| UN   | United Nations                        |
| UPDF | Uganda People's Defence Force         |

# Contents

|                                                                    |      |
|--------------------------------------------------------------------|------|
| <i>Acknowledgements</i>                                            | vii  |
| <i>Table of cases</i>                                              | ix   |
| <i>Table of statutes</i>                                           | xi   |
| <i>List of abbreviations</i>                                       | xiii |
| <br>                                                               |      |
| Introduction                                                       | 1    |
| 1 The distinct domain of international criminal law                | 8    |
| 2 International crimes                                             | 30   |
| 3 The expressive value of judgment and punishment                  | 49   |
| 4 Challenges of individual responsibility within collective wrongs | 68   |
| 5 Identifying liability, fair labelling and limited offenses       | 83   |
| 6 Complementarity and the detriments of universal jurisdiction     | 103  |
| 7 Evaluating judicial mechanisms                                   | 121  |
| 8 Retributive justice as culturally insensitive?                   | 144  |
| 9 Collective responsibility and collective punishment              | 168  |
| Conclusion                                                         | 186  |
| <br>                                                               |      |
| <i>Bibliography</i>                                                | 190  |
| <i>Interviews cited</i>                                            | 201  |
| <i>Index</i>                                                       |      |

# Introduction

The twentieth century was an era of great atrocity, and unprecedented awareness of distant acts of violence, around the world. The century witnessed two global wars. It saw the Armenian massacre during the First World War, the Holocaust during the Second, the brutal reign of the Khmer Rouge regime in Cambodia, the more than 20 years of violence in northern Uganda, the incredibly quick slaughter of at least 500,000 innocents in Rwanda over 100 days in 1994. It witnessed the indiscriminate use of force against civilian populations during the violent conflict in the former Yugoslavia and ethnic strife and civil war in the Democratic Republic of the Congo (DRC) and Sudan. The twentieth century also saw many, many other acts of brutal and unwarranted violence and gross human rights violations throughout the world. In the twentieth century lived Adolf Hitler, Joseph Stalin, Mao Zedong, Saloth Sar (Pol Pot), Augusto Pinochet, Slobodan Milošević, Joseph Kony, Charles Taylor, Saddam Hussein and many other architects of atrocity. The twentieth century also tolerated 'unexceptional political mass murderers', otherwise normal individuals whose deplorable actions contributed to the atrocity of which they found themselves to be a part (Simpson 2007: 75).

Twice during this century our vocabulary was expanded to better represent horrific mass violence in which the international community should be interested. In the aftermath of the First World War, Raphael Lemkin struggled to formulate a word that would cover the Nazi atrocities committed against the Jewish people. Genocide, '[t]he word that Lemkin settled upon [,] was a hybrid that combined the Greek derivation *geno*, meaning "race" or "tribe", together with the Latin derivative *cide*, from *caedere*, meaning "killing"' (Power 2002: 42). Later that century, Rummel coined the term 'democide' to cover the various forms of 'murder of any person or people by a government, including genocide, politicide, and mass murder' (Rummel 1997). However, as Lemkin recognized, a word is merely a word and what is needed is law to provide force behind these words which represent the acts we condemn. To this end, the twentieth century also witnessed the political will to introduce international laws and institutions to deal with the perpetrators of atrocity. International criminal law (ICL) developed slowly, and came to a halt before regaining

## 2 *Moral accountability and international criminal law*

momentum; it faced charges of partiality and injustice, but it is a bright light in a fight to end impunity for perpetrators of pervasive and purposeful mass political violence.<sup>1</sup>

ICL has developed as a response to atrocities that 'shock the conscience of humanity' (Rome Statute: Preamble). Prior to the end of the Second World War, only states were subjects of international law; international law was concerned only with the relationships between sovereign states and the laws reflected multilateral conventions or customs that regulated interactions between states and protected good relationships. However, by the end of the Second World War, events began to influence conceptions about what was needed to keep the world safe and what justice entailed. The Nuremberg trials set a remarkable precedent for the direction that international law was, in theory, to follow in the second half of the twentieth century. A dramatic shift in thinking about international law seemed necessary to adapt to the apparent demand to respond to shocking actions committed by governments against their own citizens and the ordinary citizens of other states. The move to hold individuals criminally accountable under ICL for international crimes was a radical departure from centuries of state-centric conduct.

What is considered the first application of ICL, the Nuremberg Tribunal, is a system of trials established by the Allies to prosecute Nazi leaders for war crimes and crimes against humanity. This approach was not initially presumed to be the best course of action by all Allied forces' decision-makers when weighed against the alternative suggested response, which was to summarily shoot the Nazi perpetrators (Bass 2000: Chapter 5). During the war, the Allies met to discuss post-war treatment of Nazi leaders; initially most of the Allies considered Nazi acts of violence to require a political rather than a legal response. The British, French and Russians originally supported summary execution, the traditional war response of the victors. The American Secretary of the Treasury, Henry Morgenthau, also desired a harsh and swift ending to the Nazis and their Germany. Other Americans, though, including Henry Stimson who opposed the Morgenthau Plan and submitted a proposal for a large international tribunal, pushed for a legal approach (Bass 2000: Chapter 5). In the end, the trials were established under the London Charter of the International Military Tribunal of 1945.

The Nuremberg trials were extraordinary in that they were the first instance in which individuals were held responsible to the world for their violations of international norms and natural, if not strictly positive, law. Nuremberg prosecuted crimes against humanity, a charge expressed for the very first time in 1915 by Britain, France and Russia against Turkey for the deliberate and systematic destruction of the Armenian population of the Ottoman Empire during (and just after) the First World War.<sup>2</sup> But the prosecution of perpetrators of atrocity at Nuremberg was not neutral or all-encompassing. The London Charter specified that only acts committed by European Axis Powers could be tried as war crimes, crimes against peace and crimes against humanity (London Charter: Article 6). As well, 'the court treated aggressive war ("crimes against

peace”), or the violation of another state’s sovereignty, as the cardinal sin and prosecuted only those crimes against humanity and war crimes committed *after* Hitler crossed an internationally recognized border. Nazi defendants were thus tried for atrocities they committed during but not before World War II’ (Power 2002: 49, emphasis in original).

After the adjournment of the Nuremberg and Tokyo trials before the mid-point of the century, however, ICL lay dormant for over 40 years. Senseless destruction and mass loss of life as the result of monstrous conflict was supposed to end with the conclusion of the Second World War and the words ‘never again’, and although the world’s population has not been revisited by another world-encompassing battle, neither has it escaped mass atrocities the world over. Nevertheless, as William Schabas writes, ‘A four-decade long hiatus interrupted the march of international justice,’ and only very recently has ICL re-emerged in an effort to hold individuals accountable to the world for their most heinous offenses against humans (Schabas 2006: 422).

In recent decades this autonomous system of law has aggressively developed to deal with individual criminal responsibility for the most heinous of crimes. But the development and application of the international criminal system have been mired in criticism and concern. The International Criminal Tribunal for the former Yugoslavia (ICTY) prosecution of Slobodan Milošević, which began in 2002, was hailed as the ‘trial of the century’ at the same time as it was accused of being politicized and unfair. The employment of ICL in Uganda in 2004 has been criticized as being insensitive to the needs of the local society, and the International Criminal Court (ICC) has been accused of imposing Western conceptions of justice on the entire world.

Of significant note is that while ICL is playing an increasingly important role in global politics and issues of global security, normative theory has not kept pace with the advancements in this area of law. This book examines, from a normative perspective, ICL and lays out how responsible agents, individuals and the collectives they comprise, ought to be held accountable to the world for the commission of atrocity. This inquiry into ICL requires an examination of traditional questions in political philosophy in a new context. In examining the history of political thought, we find a notable literature defending state sovereignty and justifying holding individuals accountable to the state. We can also find a lot of work dedicated purely to war theory, addressing the justness of war and the justness of the manner in which the war is fought, but much less has been said about what happens after a conflict, especially one deemed unjust or fought unjustly (Bass 2004: 384). There is little literature to be found within the field of political philosophy regarding holding individuals accountable to the world. This book addresses this under-explored issue in the current legal, philosophical and political literature. It investigates the concepts of authority and obligation, domestically and internationally, and evaluates international prosecution as the right response to crimes such as crimes against humanity, war crimes and genocide. It questions the limits of state sovereignty, and if and under what conditions individuals ought to be able to enforce claims against



#### 4 *Moral accountability and international criminal law*

their own governments at the international level. Ultimately, this work aims to enhance our current understanding of ICL. It investigates what is special about criminal law and asks what the focus on crime adds to traditional debates about possible limits to sovereignty. It examines the function of ICL and finally considers how best the goals and purpose of international law can be institutionally supported.

Chapter 1 examines the conditions under which it is appropriate for states to lose, or delegate, sovereign authority to judge and deal with wrongdoing, and it examines the domain of ICL. It questions why it is that the objective of international law must be to prosecute specific international crimes, crimes that are not seen merely as domestic crimes that happen to be prosecuted internationally. This chapter explores the theoretical obstacles that make defining clearly the domain of ICL a serious challenge. Chapter 2 examines international crimes themselves and questions why it is that these particular acts are rightly considered the domain of the international community. It also investigates whether terrorist acts might rightly be considered to demonstrate the characteristics of an international crime. Chapter 3 questions the function of ICL, the prosecution and punishment of wrongdoers, as a response to these unique transgressions. It explores theories employed to justify punishment of domestic crimes and evaluates their suitability for justifying international prosecution and punishment, and offers a hybrid retributive-expressive theory. Chapter 4 explores the collective vs. individual responsibility debate and questions the rightness of holding individuals criminally accountable in certain social contexts. Chapter 5 examines environmental influences and collective responsibility contributing to atrocity contexts and asks whether the current list of criminal offenses available under ICL adequately reflects the crimes. Chapter 6 examines the effect this discussion of the domain of international law, and its conclusions, has on the state in terms of how crimes in its territory can be prosecuted. It explores the concepts of universal jurisdiction and complementarity. This chapter criticizes the international legal acceptance of universal jurisdiction that allows any state in the world to prosecute any person from anywhere in the world for crimes against humanity, genocide and war crimes, as long as the accused is present in the country that is prosecuting. Chapter 7 evaluates international judicial mechanisms based on their ability to overcome serious challenges that international prosecutions face: problems of authority, selectiveness, perceived legitimacy, and with the validity of *ex post facto* or retrospective law. Chapter 8 responds to the critique that ICL is not necessarily the right response for societies trying to deal with mass atrocity because it is culturally insensitive to non-Western societies. This chapter, focusing on the case of Uganda, argues that retributive justice is appropriate and relevant globally but that difficult decisions must be made in light of the context of the established peace. Finally, Chapter 9 deals with the concept of collective punishment for mass atrocity, arguing that some form of response that takes seriously the collective nature of the wrongdoing is necessary to complement individual prosecutions in transitional justice situations.