Affective Justice

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PART II

AFFECTS, EMOTIONAL REGIMES, AND THE REATTRIBUTION OF INTERNATIONAL LAW
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The year 2013 marked the Golden Jubilee of the founding of the African Union. At the celebratory event in Addis Ababa, Ethiopia, African leaders adopted the “50th Anniversary Solemn Declaration” in which they acknowledged past challenges and successes while rededicating themselves to Africa’s progress in technological and economic development. Part of the rededication involved a ritual process in which they articulated eight ideals or pillars of progress for the future. The event was deeply symbolic and emotionally charged.

Sentimental reflections on Africa’s unique place as both the cradle of humanity and the locus of dehumanization by slavery, deportation, dispossession, apartheid, and colonialism punctuated the profundity of the moment as the leaders read out the “50th Anniversary Solemn Declaration” in unison:

We, Heads of State and Government of the African Union assembled to celebrate the Golden Jubilee of the oau/AU established in the city of Addis Ababa, Ethiopia on 25 May 1963 . . . Reaffirming our commitment to the ideals of Pan-Africanism and Africa’s aspiration for greater unity, and paying tribute to the Founders of the Organisation of African Unity (oau) as well as the African peoples on the continent and in the Diaspora for their glorious and successful struggles against all forms of oppression, colonialism and apartheid;

Mindful that the oau/AU have been relentlessly championing for the complete decolonization of the African continent and that one of the fundamental objectives is unconditional respect for the sovereignty and territorial integrity of each of its Member States;
Stressing our commitment to build a united and integrated Africa;

Guided by the vision of our Union and affirming our determination to “build an integrated, prosperous and peaceful Africa, driven and managed by its own citizens and representing a dynamic force in the international arena”; 

Determined to take full responsibility for the realization of this vision

... acknowledge that: The Organisation of African Unity (oau) overcame internal and external challenges, persevered in the quest for continental unity and solidarity; contributed actively to the liberation of Africa from colonialism and apartheid; provided a political and diplomatic platform to generations of leaders on continental and international matters; and elaborated frameworks for Africa’s development and integration agenda through programmes such as NEPAD and APRM. ...2

In addition to acknowledging the goal of an integrated and clear vision for their union and a quest for peace, they articulated their declaration of priorities: African identity and renaissance; the struggle against colonialism and the right to self-determination of people still under colonial rule; the integration agenda; the agenda for social and economic development; democratic governance; determining Africa’s destiny and place in the world; and peace and security. The agenda of peace and security was more punctuated than the others, declaring:

On peace and security—Our determination to achieve the goal of a conflict-free Africa, to make peace a reality for all our people and to rid the continent of wars, civil conflicts, human rights violations, humanitarian disasters and violent conflicts, and to prevent genocide. We pledge not to bequeath the burden of conflicts to the next generation of Africans and undertake to end all wars in Africa by 2020.3

They then itemized the steps that they would take to ensure peace and security, from addressing root causes of violence to eradicating emerging sources of conflict to emphasizing conflict prevention. And like all head-of-state events, every part of it was ritualized. But what stood out was the profoundly performative passion that emerged while they read in unison. Bodies moving, words emphasized, but symbolically declarative.

Shortly after this event, and in the spirit of the “50th Anniversary Solemn Declaration,” the African Union Commission (AUC) convened a subsequent event—this time a high-level retreat in Durban, South Africa, on April 29,
in which they discussed one of the core issues that emerged as a priority in the establishment of the AU’s vision of integration, prosperity, and peace. The gathering was called Silencing Guns in Africa: Building a Roadmap to a Conflict-Free Continent. According to an AU press release on the gathering, Chairperson Nkosazana Dlamini Zuma called on experts to engage in frank and open discussions to develop concrete and innovative solutions to violence. As she stated, “Unless we silence the guns and bury the machetes, the AU vision of building an integrated, prosperous and conflict-free Africa will remain an abstract goal.” Attendees dedicated the meeting to reflection on best practices in the realm of good governance and conflict and crisis resolution. They also highlighted emerging trends of concern ranging from Africa’s changing demographics to environmental threats and their potential to either incite violence or catalyze solutions. This gathering and its outcomes should be understood as a continuation of decades of transnational contestation over the architecture of peace and justice in Africa.

With the AU’s fiftieth-anniversary celebration and the related campaign, the AU leadership has mobilized emotional regimes and Pan-African histories to produce juridical, democratic, and economic opportunities on the African continent. They also presented a new platform for African growth, Agenda 2063, a fifty-year strategic plan for Africa’s socioeconomic acceleration, transformation, and progress, following the AU’s vision to “build an integrated, prosperous and peaceful Africa, an Africa driven and managed by its own citizens and representing a dynamic force in the international arena.” To put this fifty-year continental process in place, the AU is working with the New Partnership for Africa’s Development Planning and Coordinating Agency and is being supported by the African Development Bank and the United Nations Economic Commission for Africa. This long-term project is presented as “a program of social, economic and political rejuvenation that links the past, present and the future in order to create a new generation of Pan Africanists that will harness the lessons learnt and use them as building blocks to consolidate the hope and promises of the founding parents for a true renaissance of Africa.”

Though still in development, in Agenda 2063 we can see a deliberate use of the concept of Pan-Africanism, but tied to the more market-oriented language of productivity, growth, entrepreneurship, and transformation. In many ways, Agenda 2063 is part of the African renaissance propelled by Pan-Africanist principles, which calls for changes in attitudes and mind-sets to inculcate particular African values, or what I have been calling emotional re-
regimes driven by various Africanist feeling rules: discipline, honesty, integrity, transparency, hard work, and love for Africa and its people. It provides the opportunity for Africa to break away from the syndrome of “always coming up with new ideas but [having] no significant achievements.” And since the popular trope of the corrupt African leaders is inundated with criticism about selfishness, elitism, and turning a blind eye to Africa’s poor, the fiftieth-anniversary campaign and its various side events were structured as a counter-narrative to such failure-laden imaginaries. Instead, they made clear how Pan-African affects are actually being institutionalized as a counter-response to the ICC indictments, most significantly the campaigns by its anti-impunity movement activists in Africa and elsewhere. They did this by highlighting themes of belonging to a continent long managed by external forces that is now focusing on recovery, regional integration, democracy, and good governance, and Africa’s entitlement to the fruits of its labor.

The following does not attempt to measure their success. Rather, in this chapter I am interested in the way that affective justice techniques are strategically deployed by Pan-Africanists who are working toward Africa’s renewed future. In this case, what we see is the way that Pan-Africanism is not used to reference African unity but instead, through embodied feelings of racial subordination, assigned historically to the black body. In this regard, it is important to recognize how critical these racialized imaginaries are in the navigation of international justice. For the ghosts of subordination—the afterlife of subjection—live in the imaginary and draw on history, materiality, and the manifestation of those interiorities to produce templates for African meaning making. What we see is that the racial imaginary is not simply about skin color—black skin versus whiteness, for example. This racial imaginary is about the construction of difference. It is about the way that distinctions based on construction of the black body, the West, and even conceptions concerning culpability or Africa’s development converge to produce organizing tropes around which various racial imaginaries are made visible and real. In this regard, Pan-Africanist justice attributions are playing out through the invocation of various slogans, the particularities of their application, and the agreed-upon meanings that shape the way we understand contemporary developments. This process of psychic self-making is part of the geosocial landscape in which internal feelings about Africa and its people merge with various exteriorities in the coproduction of African geographies of justice. But affects, as more than internal feelings brought into being by externalities, reflect structures of emotion imbricated along a zone that intersects with the past, the present, and aspirations for the future.
Though these justice goals are not exclusively Pan-African, nor exclusively racial, when taken together they form the component parts of the AU’s new Pan-African assemblage that seeks to overcome histories of exploitation and inequality and reassert Africa’s place in the world. As we shall see, sentiments of recovery, overcoming exploitation and hardship, and taking control of Africa’s future and its membership in global communities are all part of what is being articulated as the Pan-African renaissance. This demonstrates a return to the foundational principles of self-determination that were necessary to extricate African countries from colonial domination, now with sentiments that propel its agency in creating new solutions for its people. It is a move to a more development-focused agenda involved in the shaping of regional integration priorities through principles of Pan-Africanism and African renaissance. These principles are now being deployed in spatially contingent geographies and are creating possibilities for rethinking what justice is from other sites of meaning making. These new AU spheres are reenvisioning justice in the twenty-first century, embedded in a transitional justice framework that considers foundational structural inequalities while also addressing political and juridical solutions endemic to Africa’s histories of violence: structural, psychological, material, economic.

In relation to this strategy, on paper, Agenda 2063’s Pan-Africanist framework seems impressive to its onlookers, and much has been accomplished in the first ten years since its inception—at least in relation to norm setting. However, many of the principles that undergird the institutionalization of Africa’s new frontiers remain aspirational—as I will demonstrate through the Hissène Habré case—the first international justice case managed by the AU to adjudicate international crimes committed by a former head of state on the African continent. This development of African justice, managed within a regionally contextualized transitional justice framework, is as much about desire, hope, and aspirations as it is about the fears that inaction will lead to the eventual demise of Africa’s future. Yet African justice aspirations sit uncomfortably next to the paradox of African development—the realization that the very global capital being sought to build and integrate African economies is also leading to its demise through the displacement of small-scale traders and farmers. With this paradox in the shadow, this chapter is not an evaluation of the AU’s strategic goals or the feasibility of Africa’s growth and peace plans. It is an analysis of the emotional work that goes into producing and inciting strategic action. In particular, it focuses on African governance concerns over injustice and inequality in the global order and the use of Pan-Africanist emo-
tional regimes to address them. These affects reside alongside a particular set of ontologies that are embedded in the shadows of the colonial past, as previous chapters have been illustrating, and African aspirations to determine its own future.

What is compelling about the use of Pan-Africanist affects as a way to respond to the West are the inherent contradictions that it juggles. On one hand, these Pan-African affects are shaped by messages that are touted as localized and African; yet, on the other hand, it has been well established in the literature that not only are African traditions inventions of complex social encounters with customs and politics elsewhere, they are constituted by the very domains of power that they disavow, such as the European legal systems and its related educational structures. It is this paradox that makes the emotional work of Pan-Africanism an interesting site for the study of feelings and what they do to compel social action. And it is this puzzle that makes the tensions at the heart of Pan-Africanist responses to the ICC even more challenging because, as we saw with Kenyatta and Ruto’s campaign branding, emotionally driven institutional sensibilities about justice in Africa are being rerouted through reformulated imaginaries. These imaginaries shape Pan-Africanist emotional domains and histories to produce juridical, democratic, and economic possibilities in Africa.

As strategic formations, the feeling domains that are produced in response to the ICC’s anti- impunity approach are not unrelated to the peace and justice strategies in Africa being articulated as an African approach to international law. They are similarly deployed by a cadre of international lawyers, activists, judges, scholars, policy makers, governments, and survivors of violence who are engaged in building strategies to end violence on the African continent and to control the terms through which it is managed. Since its transformation from the OAU, the African Union, a continental intergovernmental body, has demonstrated a renewed energy and growing capacity to resolve conflicts around the continent using particular peace and justice sequencing strategies. Today, the interplay between peace and justice remains one of the most difficult debates concerning international justice in Africa. Some would argue that if peace and a functioning government cannot be achieved, the effort to create a fully functioning state and judiciary will also fail. The range of peace and justice debates in the literature extends from more fundamentalist approaches to justice, ranging from a deep belief that retributive justice prevents impunity to a more conciliatory and gradualist presumption that political settlements for politically based problems are more appropriate. For example,
some have argued that courts, as tools available to political actors (the AU) to intervene in conflict situations, can play but a limited role in contributing to the reestablishment of peace, stability, and reconciliation by prosecuting a small number of perpetrators, while others have insisted that because more basic institutions are likely to emerge in contexts in which the guidance available from institutions in a consolidated democracy is missing, in transitional postwar contexts where the political stakes are higher than in a consolidated democracy, keeping the conflict between peace and justice afloat is important. And yet others insist on the reality that there is no binary choice between peace on one hand and justice on the other. For while the range of approaches is often characterized conceptually as either peace or justice, the two are not mutually exclusive. Peace strategies that end violence can be seen as justice producing, and judicial strategies that punish violence can be seen as advocating peace. That is, the peace-justice tension is more appropriately described as a paradox that is built on two sets of contradictory approaches. These ideological differences and conceptual slippages have contributed to the controversies at hand. The problem is the antinomy of two competing principles. One presumes that in order to establish a legitimate and functioning civil society, one must pursue prosecutions for the crimes of the past. The other assumes that in order to secure stability and a functioning government, it is sometimes necessary (and morally acceptable) to forego the judicial pursuit of past crimes.

Thus, the making of an African court with international criminal jurisdiction offers us a lens through which to explore new cartographies of African justice as a symbolically Pan-African question concerned with the particularities of justice on the African continent. It is also a domain of political-emotional regulation. Here, as in previous chapters, we see how particular feeling regimes are deployed to shape new political projects. In particular, I turn to the Malabo Protocol for the African Court, which extended the jurisdiction of the African Court of Justice and Human Rights (ACJHR) to cover individual criminal liability for serious crimes committed in violation of the international law and matters concerning general jurisdiction. I demonstrate how the drafters of the Malabo Protocol for the ACJHR sought to gain authority over the sequencing of peace and justice interventions by discursively recalling the deep inequalities in Africa’s histories and infrastructures, while innovating new ways for political actors to navigate judicial contexts.

What is compelling about a case study of the Malabo Protocol and the practices involved in its making is that it features various new institutional
formations through the technical construction of legal authority, but it also features what Connal Parsley has called the “afterlife of the imaginary.” The afterlife of the Pan-African imaginary helps us to articulate the way that the new Pan-African renaissance is shaping the authors and the spectators of African social formations. While the making of an African court with criminal jurisdiction is being shaped by a wider institutional campaign around Pan-African histories and struggles, it is also a response to the lack of judicial activity in African jurisdictions for crimes of slavery, imperialism, colonialism, apartheid, and subsequent forms of economic plunder set against the contemporary anti-impunity campaigns that target individual Africans for criminal responsibility for crimes that operate within the afterlife of those spheres of structural inequality.

As I have demonstrated thus far, the anti-impunity campaigns have been driven by the emergence of particular publics whose authority is affirmed through the existence of a victim to be saved and by internationally driven judicial authorities holding the perpetrators of that violence accountable.

As a response to such formations, figure 5.1 highlights the way that the attribution movement symbolized by African geographies of justice reflects the afterlife of the Pan-Africanist imaginary in which conceptualizations of justice require understanding how the colonial past set in place the conditions of underdevelopment that led to the need for its constituents to find new ways to adjudicate the aftereffects of colonialism. What emerges is a particular arrangement of sociopolitical life in which the theater of AU action is not only shaped by the production and institutionalization of new ideas about justice, but temporally driven by an urgency and responsibility to act in a way that is

5.1 Root causes versus individual criminal responsibility.
commensurate with anti-imperial, antiexploitative struggle. As we will see, the introduction of economic crimes and criminal corporate responsibility reflects how contemporary forms of Pan-Africanist reattribution is haunted by histories of extraction and violence that are brought into the biopolitics of international justice in Africa.

**The Afterlife of Pan-African Sentimentality in the New African Union**

The Twenty-Second Summit of the African Union held in Addis Ababa in January 2014, where the AU presented its fiftieth anniversary platform, extended the themes of Pan-Africanism and the African renaissance with themes of African solidarity using the refrain “I am African, I am the African Union.” With posters, T-shirts, and images of Pan-Africanist leaders alongside ordinary Africans, the celebratory campaign took on a life of its own in AU discourse. The campaign launch had taken place back in March 2013 at the Sheraton Hotel in Addis Ababa, where various AU commissioners, representatives from diplomatic missions, African ambassadors, and civil society organizations began work to popularize the AU. The goal was to broaden public awareness of what the AU is and does and to encourage citizens of African countries to get engaged. From the Department of Political Affairs to the chair of the Coalition Governance Team, AU representatives described the campaign as a platform for citizen participation in AU affairs and for interaction between member states, the AU, and African citizens. Central to the message was the importance of advancing from the ratification of various AU instruments to their actual implementation so that citizens could reap the practical benefits that could emerge from the aspirations that inspire treaty making in the first place.

The “I am African” campaign was meant to evoke particular emotional responses by connecting Africa’s histories of oppression and colonial rule with future aspirations of resilience reflected in a new narrative of African leaders taking control by creating a prosperous Africa. Its green imagery is described by its designers as having been characteristically about African freedom. The AU’s governance commitment of African solutions to African problems located its message in the embodiment of its people—commissioners, leaders, helpers, ordinary people—whose images were displayed alongside the “I am African, I am the African Union” declarations.

These declarations were posted in the summit halls, in the town square, on the literature and paraphernalia, and on T-shirts that were distributed and worn by young people throughout Addis Ababa, the capital of Ethiopia. The
Pan-Africanist sentiments of the campaign articulated a reconceived Africa whose mobilizing narrative flowed from Africa’s anticolonial struggles, to its political freedom, to its contemporary road to economic and political integration. Its message of perseverance and survival meant to work not simply through its declarations but through the emotive sentiments it conjured in turning injustice to justice. The campaign focused on visual elements of African participation to establish the identity of the AU.

The opening speech at the January 2013 AU summit by its chairwoman, Dr. Nkosazana Dlamini Zuma, best marks what the “I am African, I am the African Union” campaign would articulate as its vision for the future:19

Africa is increasingly seen as the continent of the future, as a place of enormous possibilities, thanks to a young and growing population, our natural resources, but also because of the improving business climate and opportunities, and the strides made in the consolidation of democracy and governance. . . . We do however still have challenges that need to be overcome urgently and collectively. Our continent still has to contend with huge infrastructure backlogs, backlogs in education, health and other basic services, including responding to rapid urbanization, youth development and the need for food security. At the same time, it is a matter of concern that negotiations on global trade issues and climate change have almost collapsed, with very serious consequences for Africa. It is therefore important that Africa remains resolute and determined to overcome these challenges. Central to this, is the institutional [as well as] other capacities to implement our plans at national, regional and continental levels.20

Following this opening, Dlamini Zuma, dressed in African garb, proceeded to map the various components of critical importance to the continent, such as building human capacity, promoting economic development, building a people-centered AU, and strengthening strategic partnerships. In this statement the past was invoked to reflect on ideological and political movements as uplift discourses to shift the narratives from African suffering to contemporary regional integration strategies. The assumption was that Africa needed to return to the Pan-Africanism of fifty years ago and use those founding principles to invigorate its future. In articulating this history, she paid homage to the great leaders who made tremendous sacrifices and led their nations to independence, ranging from late “Mwalimu” Julius Nyerere and former president Kenneth Kaunda of Zambia, to Nelson Mandela, Sam Nujoma, Samora Machel, Agostinho Neto, and Amilcar Cabral. And as much as these names
mark a particular moment in African independence struggles, they are necessary precursors for setting the moral conditions by which contemporary Africa can join the West in development partnerships.

However, as an ideology, Pan-Africanism was mobilized over the late nineteenth and throughout the twentieth century to encourage the solidarity of Africans in Africa and its diaspora, insisting that the fate of African peoples is intertwined with a common history and shared destiny. Though originated in the African diaspora with an aim to forge a sense of oneness and political belonging between its various communities. Pan-Africanism was dedicated to establishing independence for African nations and cultivating unity among black people throughout the world. There was a sense that “uncritical absorption of Western ideas would destroy the distinctive personality of Africans.”

It is no surprise that the father of Pan-Africanism, Edward W. Blyden—an educator, politician, and diplomat—insisted on particular approaches to Pan-Africanism, as noted in his 1881 presidential address during the opening of the Liberian College:

The African must advance by methods of his own. He must possess a power distinct from that of the European. It has been proved that he knows how to take advantage of European culture and that he can be benefited by it. Their proof was perhaps necessary, but it is not sufficient. We must show that we are able to go alone, to carve out our own way. . . . We must not be satisfied that, in this nation, European influence shapes our polity, makes our laws, rules in our tribunals and impregnates our social atmosphere.

It was this sense of indignation that provided the organizational impetus around which Pan-Africanism took shape and that ultimately led to the formation of the OAU.

The OAU—a regional Pan-African organization set up to meet the goals of African decolonization—was established in 1963 with these basic principles to ground its work. Its charter reflected many of the key tenets of Pan-Africanism. For instance, the preamble makes mention of “the inalienable right of all people to control their own destiny” and “the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.” In addition, the preamble states that the charter is a response to “the aspirations of our peoples for brotherhood and solidarity, in a larger unity transcending ethnic and national differences.” The OAU saw itself as providing the moral authority for the promotion of self-determination. Thus, as a discourse to harness natural and human cap-
ital on the continent and enhance the progress of all African peoples, the Pan-
Africanism of the 1950s and 1960s took a new turn. From its predominance
outside of Africa and in relation to various diasporic communities, it came to
be popularized by two of Africa’s towering independence leaders: President
Kwame Nkrumah of Ghana and President Julius Nyerere of Tanzania, who
famously emphasized on a number of key occasions, such as the founding
of the OAU in Addis Ababa in May 1963, that “Africa must unite or perish.”
At that time, thirty-one African heads of state signed the charter of the OAU,
formed to create the conditions for African independence by building human
and resource capacity for the general enhancement of African people. And al-
though the Pan-Africanism of Nkrumah and Nyerere represented a moment
of defying the political, economic, and psychological violence of European
colonialism in Africa, truth be told, the new Pan-Africanism today represents
the same impetus for regional integration but in the face of new challenges for
a continent plagued with unresolved land distribution issues and widespread
structural inequalities.

After the Cold War, the security paradigm shifted from a focus on national
security (of the state) to issues such as food and water security, land, and en-
vironmental concerns—in other words, a concern with internal root causes of
conflict. This shift has had a particular impact in Africa, and has led African
leaders to expand the mandate of the AU far beyond that of the OAU to activi-
ties in the realms of peace and security, human rights, democratization, good
governance, and humanitarian assistance. While the OAU was set up in May
1963 to allow independent African states to end the vestiges of colonialism
and apartheid, to intensify development, and to safeguard sovereignty follow-
ing UN principles of international cooperation, the OAU Charter specifically
provided for a policy of noninterference in the internal affairs of states. Sep-
tember 9, 1999, marked the end of the mandate of the OAU and the beginning
of the new mandate of the AU. It was formally established on May 26, 2001, in
Addis Ababa and launched on July 9, 2002, in South Africa.

The AU’s Constitutive Act was used to transform the original OAU and estab-
lish nine organs within the union that would work to ensure the development
of the AU as an engaged body able to ensure the protection of life. The or-
gans include the Assembly; Executive Council; Pan-African Parliament; Court
of Justice; Commission; Permanent Representatives Committee; specialized
technical committees; Economic, Social and Cultural Council; and financial
institutions. Article 6 of the Constitutive Act identifies the Assembly as be-
ing composed of heads of states and government and their representatives, as
the apex decision-making body of the union. The Assembly is seen as the de facto executive of the union and its functions and powers are often identified as making and monitoring the implementation of the common policies of the union. Other functions also involve receiving, considering, and making decisions on reports, considering recommendations from the other organs of the union, and ensuring the compliance of member states and appointing key officeholders to organs of the union. Through relevant organs and institutions, it is also seen as being responsible for overseeing the management of conflicts and emergency situations and the restoration of peace and security.28

A key organizing principle is unity and a common approach to policy areas such as defense; peace and security; economic integration; the free movement of people, goods, and capital; food security; development; and poverty reduction. The new AU marked a shift in promoting both African continental integration and global economic and political membership, and conflict resolution is at the heart of current AU policy concerns.29 This new form of Africanness articulated through African claims to the new world order may be otherwise read by some as un-African, but the new 190-million-dollar building that the Chinese government gifted to the AU, the dependable and ongoing availability of electricity facilitated by the Italians and French, the organizational structure mapped out in the rotunda with all fifty-three states represented and eligible to vote (like a typical UN General Assembly), are all representative of what Jim Ferguson has insisted are not attempts to be what Africa is not, but claims to power and membership in the global community.30

This reconceptualization of the AU represents the complexity of Africa as being as much about the Other as it is about itself; it represents the desire, hope, fear, anger, and joy of modernity that sits neatly next to specters of anti-colonial struggles. These affectivities reside alongside a particular set of ontologies, or ways of conceiving of existence; for while the shadows of the colonial past still structure Africa’s place in the world, so does the aspiration of significance, of potential, of power. The signs of struggle and survival make hope possible, and power is being claimed in the affective geography of justice, for it offers the promise of a new future. But the signs of struggle being deployed by these new Pan-African campaigns draw on a symbolic, historic framework that is very unlike the roots of the AU’s formation. Thus, we must take seriously the ghostly realities of structural violence and how they produce complex political subjects and the actions they take.

The fervor of Pan-Africanism and African geographies of justice in the contemporary period is also shaped by the emotional responses to the failures
of international justice to intervene in Africa long before the ICC was a reality. The idea of an African human rights convention and an African court of human rights modeled on the European and Inter-American Court was first proposed in 1961 at the Lagos Conference on Primacy of Law.31 This proposal resurfaced in 1969 at the UN Seminar on the Creation of Regional Commissions on Human Rights, with specific reference to Africa, held in Cairo. The UN’s recommendation to the OAU went unimplemented.32 Several other initiatives and seminars were held over a period of ten years to discuss and advocate for the establishment of an African commission on human rights or an African court.33 The call for the OAU to adopt a human rights instrument was reiterated on every occasion.34 A symposium convened by the UN in Monrovia, Liberia, in 1979 adopted a strong position on the need to create such a body, which reportedly influenced the decision by the OAU Assembly. A series of political events (particularly human rights violations in several African states, such as Uganda and the Central African Republic, that attracted global attention), as well as a concerted campaign to create an African commission, led to the OAU’s decision at its February 1979 summit to request that the secretary-general convene a meeting of experts to draft an African charter on human rights.35 It was here that they proposed the establishment of relevant bodies for the protection of human rights in Africa.36

By the late 1990s, the histories of various international legal mechanisms that cross-cut state boundaries soon seemed to offer possibilities to many on the African continent seeking redemption through international law. Before becoming the AU, the OAU sought to prosecute the crime of apartheid in South Africa in the 1970s. From 1948 to 1990, apartheid was an international crime without an international criminal court to prosecute it. However, when the UN General Assembly classified it as a crime against humanity in 1966 and then the UN Security Council affirmed it in 1984, the OAU attempted to mobilize around the establishment of an international penal court to prosecute the crime.37 Initially, its stakeholders had hoped that they could establish a criminal chamber through the African Charter of Human Rights, but they abandoned the effort when the possibility of establishing a UN international penal court arose in the 1980s in order to prosecute various apartheid crimes on the basis of universal jurisdiction. However, with the consolidation of the UN court with the International Law Commission’s project to establish a permanent independent criminal court, the apartheid offenses were eventually dropped from the subject matter jurisdiction of the international court project, and instead apartheid was collapsed into crimes against humanity and es-
tablished within a post-2002 time limit. The result was that in order to pursue apartheid as a crime, state actors eventually had to enact legislation to prosecute individuals through universal jurisdiction. Ultimately, it was a political settlement that ended apartheid, not prosecutorial justice.

This political solution had the effect of absolving apartheid’s perpetrators from decades of violence but also provided the terms for sociopolitical rebuilding through legality. The violent histories that were part of South Africa’s nonjudicial settlements were not unlike the histories of Europe’s first and second world wars—exclusion, racism, and brute violence. But the legal solutions were different. In South Africa, as in the rest of Africa, the only forms of violence that became legally actionable by international institutions were those that began after various international criminal courts gained jurisdiction. For example, the fallout with international judicial forms was evident with the International Court of Justice’s South West Africa (now Namibia) case when many on the African continent lost faith in that institution. Following Germany’s loss of territories after World War I, South Africa undertook the administration of South West Africa under Article 22 of the Covenant of the League of Nations. This gave South Africa full power to administer the territory under the League rules. However, when the UN took over the League of Nations in 1946, it worked to grant transitional independence status to Europe’s colonies. South Africa refused to surrender its trusteeship mandate of South West Africa. In 1966, Ethiopia and Liberia brought a complaint against South Africa’s presence in the region, and the UN revoked South Africa’s mandate; but South Africa continued to rule the region. Its attempts to administer racially segregated policies led to the development of black opposition to South African rule and the formation of a Namibian pro-independence movement known as the South West African People’s Organisation.

By 1971, the International Court of Justice issued a legal advisory opinion demanding that South Africa withdraw its interests from Namibia. It still refused and delayed Namibian independence until 1988, when the Brazzaville Protocol was signed and led to the formation of a Joint Monitoring Commission with the Soviet Union and the United States as observers. Given the entrenchment of a racially hierarchicalized region with flagrant uses of state violence with impunity, the potential for deploying international law effectively waned. Here, again, the ICC’s post-2002 jurisdiction prevented such histories of violence from being legally actionable. Instead, European universal jurisdiction requests lingered, with various activists concerned with violence being perpetrated by various African postindependence leaders.
Keeping these tensions in mind as part of the emotional frameworks of expectation that shape AU responses to the ICC, alongside the AU’s refusal to cooperate with growing ICC-Africa indictments, I now seek to clarify the newly unfolding AU structure in relation to the way that emotional, cultural, Pan-Africanist sensibilities are being deployed to propel new AU agendas. By the end of 2013, the AU popularization movement had reached its height, yet it was also mired in contestation. For while Equatorial Guinea’s Press and Information Office reported that the campaign was meant to emphasize the autonomy of Africans and their ability to take charge of their destiny, the irony was that many NGOs complained that the “I am African” campaign was part of a moment of AU retooling in which citizen participation was actually restricted, not expanded. These African civil society advocates complained bitterly about restricted access to the AU; because such civil society groups were often seen as being funded by external donors from the West, their legitimacy as advocates of African interests was constantly under attack.39

I go on to examine two processes that occurred at roughly the same time and influenced each other: first, the development of African governance and transitional justice policies, and second, the effort to expand the criminal jurisdiction of the African Court through the Malabo Protocol—and through it to clarify the larger transitional justice framework through which to operationalize commitments to peace and justice sequencing. In light of the history of failure around international justice in Africa, I look at what type of future is being imagined when the reorientation of African geographies of justice invokes particular Pan-Africanist philosophical principles alongside forms of counterencapsulation. These reattributions bring together legal and political subjects through encounters in which treaties and peace and justice deals are created and negotiated in order to help them imagine new spaces of justice.

**Pan-Africanist Justice Regimes**

In its Strategic Plan of 2009–2012, the AUC committed to help facilitate the “establishment of appropriate architecture for promotion of good governance” as part of its continuing work “to achieve good governance, democracy, human rights and [a] rights-based approach to development including social, economic, cultural and environmental rights.”40 To achieve its core objective, the Assembly and the Executive Council have been engaged through coordinated action with one of its branches, the African Governance Architecture (AGA). Alongside the Assembly, the Executive Council houses African
leaders and key decision making. Both organs—the Assembly and the Executive Council—are served by the commission and constitute the AU’s executive bureaucracy. The AGA is the AU’s institutional framework established to coordinate action undertaken by AU organs, institutions, and the Regional Economic Communities (RECs) to support member states in strengthening democracy, governance, and human rights. The rationale for the AGA was that while there are several governance instruments, frameworks, and institutions at the regional, subregional, and national levels, there is little to no effective synergy, coordination, and harmonization among them. These institutions work mostly in silos and do not benefit adequately from each other, even at the level of sharing information and coordinating their activities for effective performance. As such, it is anticipated that the AGA will provide the process and mechanism for enhancing policy dialogue, convergence, coherence, and harmonization among AU organs, institutions, and member states as a way of speeding up the integration process on the continent.

George Mukundi, at the time the head of the AGA Secretariat, noted, “The AGA complements the African Peace and Security Architecture (APSA), which addresses the AU’s peace-and-security agenda. The AGA and APSA were designed to bring together principles of democratic governance, peace, and security as interrelated and mutually reinforcing.” The ultimate aim of the AGA is to facilitate “the convergence of governance policies, programmes, [and] processes,” such as reinforcing the capacity of AU organs and enhancing coordination among them to support member states to strengthen democracy and governance; undertaking action to enhance popular participation in governance and democratic processes across the continent; researching and disseminating information relating to governance, democracy, and human rights across the continent; and implementing shared African values as well as decisions and recommendations of various AU organs and institutions.

Differently articulated, the AGA processes can be seen as providing preventive diplomacy, peacemaking, peacekeeping, peace building, sanctions, transitional justice mechanisms, protection of human rights (commissions of inquiry and fact-finding missions), and humanitarian intervention. The AGA is an evolving mechanism composed of three principal pillars: a vision and agenda; organs and institutions; and mechanisms or processes of interaction among AU organs and institutions with a formal mandate in governance, democracy, and human rights. The African Court on Human and Peoples’ Rights is one of the institutions critical to the second pillar, which will give operational expression to the vision for African governance.
similarly, the ACJHR can be viewed as a key institution charged with promoting democracy, governance, and human rights in Africa at a regional and continental level. These components are expected to lead to fully functioning political action.48

In May 2009, the AU-commissioned Panel of the Wise presented a report titled “Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight against Impunity.” The panel is a diplomatic instrument for dealing with violence in Africa, consisting of five members chosen from western, eastern, northern, southern, and central regions of Africa—two former presidents of African countries, a president of a national constitutional court, a former secretary of the OAU, and a head of an independent electoral commission. The detailed report recommended the formation of a Transitional Justice Policy Framework for Africa, which included a range of strategies for dealing with mass violence in Africa. The goal was for AU member states to work toward the establishment of measures that would ensure the protection of those victimized by violence throughout the African continent. As stated in the report, “Justice, peace, good governance, and reconciliation . . . thrive where sturdy and stable democratic values and impulses prevail, and where there is a culture of constitutionalism to constrain arbitrariness and abuse of power.”49 The report stressed that the approach taken in Africa should involve the articulation of common values around the protection of human rights and the development of an institutional architecture with transitional justice at its core. Transitional justice consists of both judicial and nonjudicial measures address the afterlife of human rights violence.

As noted in chapter 1, central to the Panel of the Wise’s recommended strategies is the balancing of various forms of judicial accountability with transitional justice goals, as well as sequencing diplomatic, nonjudicial approaches with judicial ones. Recommended strategies included (1) transitional justice and various forms of judicial accountability; (2) balancing of transitional justice goals; and (3) sequencing of these strategies with the presumption that the AU and various political and legal actors should play leadership roles in the articulation of an African transitional justice framework. What is critical here is that sequencing as a core strategy speaks to the place of temporality in how justice is conceived by its stakeholders. It works contrary to the principles of the anti-impunity movement’s temporality of the now and its singular concern with judicial accountability. From the violence of traditional empires to colonial imperial rule to contemporary postcolonial struggles, the recommendations of the Panel of the Wise highlighted the history of violence in Af-
rica and its resolve to use politically relevant solutions to address it, even as transnational institutions seek to carve out new domains of territorial, legal, and social reordering.

**African-Led Transitional Justice: Peace and Justice Sequencing**

Best seen through a set of radically shifting frameworks through which to re-think our approaches to justice, the AU Transitional Justice Policy Framework presumes the importance of an interrelated justice architecture that includes economic justice, political justice (entailed in constitutional and other legal reforms), and justice for crimes committed from the perspective of criminal and reparative justice. Today, the AU Transitional Justice Framework under development is seen as a viable approach to applying sequencing strategies, with several options for determining which AU organs can take action to protect human rights. Its actors see the framework not only as a mechanism for establishing the norms and modalities for state responsibility to its citizens, but also for assisting state actors in recognizing and implementing their obligations. These obligations are not simply to protect those victimized by violence using judicial accountability mechanisms after the fact; they exist to address societies traumatized by various inequalities, such as what we saw in chapters 1 and 2 in Kenya, or chapter 3 in Nigeria with Boko Haram.

New international judicial mechanisms, such as the African Court on Human and Peoples’ Rights, have also been designed to implement practices that can help to manage violence strategically. Such forms of action might, at times, exceed judicial accountability but involve other modes of action that are seen as involving preventive diplomacy, peacemaking, peacekeeping, peace building, sanctions, transitional justice mechanisms, protection of human rights (commissions of inquiry and fact-finding missions), and humanitarian intervention. These strategies include a range of biopolitical approaches that include redistributive politics, the building of respect for institutions and rules that constrain leaders and make them accountable to their constituencies, and relevant steps deployed for domesticating, monitoring, implementing, and pursuing judicial mechanisms.

Since its transformation from the OAU, the AU (and its components described above) has demonstrated a growing capacity to resolve conflicts around the continent using particular peace and justice sequencing strategies. In 2002 the AU implemented its first peacekeeping mission in Burundi with the African Mission in Burundi. Since then, it has tried to establish itself as the intracontinental governing body that will attempt to de-escalate conflicts,

From the violence of traditional empires, to colonial imperial rule, to contemporary postcolonial struggles, the recommendations of the Panel of the Wise highlighted a resolve to continue using politically relevant solutions to address violence in Africa even as transnational institutions seek to carve out new domains of territorial, legal, and social reordering. Since the report’s release, there have been a series of consultations to create a comprehensive strategy to go beyond the establishment of norms and address problems of inequality in Africa. The African Union has innovated a strategy of peace and justice sequencing that accommodates a limited function for the ICC while asserting the primacy of African states and institutions in the larger project of creating justice and peace. This approach allows for significant nationally driven, postviolence closure toward the establishment of peace. Courts, as tools available to political actors such as the AU, can be used to intervene in conflict situations by prosecuting a small number of perpetrators, but they play only a limited role in contributing to the reestablishment of peace, stability, and reconciliation. Key here is the implementation of various strategies that do not involve immediately pursuing judicial action before the end of hostilities. One might consider the strategy of using a commission of inquiry as one of a range of sequenced strategies for brokering peace.

The response to violence committed in the ongoing conflict in South Sudan is one example that highlights how the AU’s attempts differ from the ICC’s approach to the case, as I discussed in chapter 1. Instead, for the first time in its history, in 2013, the AU formed a Commission of Inquiry on South Sudan that was charged with investigating, documenting, reporting, and recommending solutions for peace through diplomacy and negotiations.53 Some five years later, in 2018, the AU, with the financial support of the US government, began to set up the Hybrid Court of South Sudan. This court is provided for under chapter V(3) of the agreement reached by the South Sudanese parties as an
African-led and African-owned legal mechanism to investigate and prosecute individuals bearing responsibility for violations of international law and applicable South Sudanese law committed between December 15, 2013, and the end of the transitional period. It is to be expected that the Assembly and the Peace and Security Council (psc) will establish such commissions of inquiry in the future before triggering the jurisdiction of the African Criminal Court.

In a previous situation called an unconstitutional change of government in Guinea, the psc had endorsed an earlier call by the Economic Community of West African States (ecowas) for the establishment of an international commission of inquiry to probe the killing of civilians on October 28, 2009. Following ecowas’s request, the un subsequently established such a commission, which rendered its report on January 13, 2010, in which it concluded that there were reasonable grounds to believe that crimes against humanity had been committed. Guinea has since been under preliminary examination by the OTP at the ICC.

Humanitarian intervention is seen as another option on the continuum ranging from diplomacy to military intervention in response to human rights violations. The conflict in Libya provides a different example. On March 17, 2011, the un authorized military intervention in Libya to protect the country’s civilians as a result of violence between Libyan government forces and domestic opponents that had erupted the previous month. Two days after the authorization, NATO initiated the intervention, including establishing a no-fly zone and launching aerial attacks on government forces. In October 2011, after seven months, Libyan rebel forces conquered the country and killed the former authoritarian ruler, Muammar al-Qaddafi. Western media and politicians praised the intervention as a humanitarian success for averting a bloodbath in Libya’s second largest city, Benghazi, and replacing Qaddafi’s dictatorial regime with a transitional council pledged to democracy.

Some would say that NATO succeeded in Libya. They say it almost certainly saved tens of thousands of lives. It conducted an air campaign of unparalleled precision, which, though not perfect, was seen by some as greatly minimizing collateral damage. It enabled the Libyan opposition to overthrow one of the world’s longest-ruling dictators. And it accomplished all of this without a single allied casualty and at a cost—$1.1 billion for the United States and several billion dollars overall—that was a fraction of that spent on previous interventions in the Balkans, Afghanistan, and Iraq. Indeed, many experts now cite Libya as a model for implementing the humanitarian principle of responsibility to protect. However, such arguments are also seen by some African lead-
ers as not providing a full and accurate account of events. There are convincing arguments that the violence was actually initiated by protesters and that Qaddafi’s government responded to the rebels militarily but never intentionally targeted civilians or resorted to indiscriminate force, as Western media claimed. Scholars like Alan Kuperman argue that the conventional wisdom is wrong in asserting that NATO’s main goal in Libya was to protect civilians. Rather, evidence shows that NATO’s primary aim was to overthrow Qaddafi’s regime, even at the expense of increasing the harm to Libyans. The biggest misconception about NATO’s intervention, according to Kuperman, is that it saved lives and benefited Libya and its neighbors. In reality, when NATO intervened in mid-March 2011, Qaddafi already had regained control of most of Libya, while the rebels were retreating rapidly toward Egypt. Thus, the conflict was about to end, barely six weeks after it started, at a toll of about a thousand dead, including soldiers, rebels, and civilians caught in the crossfire. By intervening, NATO enabled the rebels to resume their attack, which prolonged the war for another seven months and caused at least seven thousand more deaths.

In considering these complex political dynamics in relation to disagreements over how African violence is to be managed, it should not be a surprise that affects and emotional manifestations have been operative in shaping how people position themselves and in what regimes of expression they engage. In reflecting on constituencies who were against NATO intervention in Libya, they argue that in the midst of the civil war, in June 2011, the ICC prosecutor brought an indictment against Muammar Qaddafi and two top deputies and that this action reflected the usual Western imperialist interventions. In supporting such claims, Robert Mnookin argued that the indictment of Qaddafi in the middle of a civil war was a mistake because it precluded diplomatic options that might have ended the bloodshed earlier, and it hampered the West’s ability to offer Qaddafi exile in order to end the conflict. In contrast, human rights organizations applauded the prosecutor’s actions for underscoring, in their opinion, that dictators could now be held legally accountable under the Rome Statute, and the indictments bolstered the rebels’ morale.

People’s emotionally charged pushback against the NATO intervention insisted that the indictments may have cut off certain routes to a negotiated solution and an earlier end to the conflict. As early as March 3, 2011, two weeks into the violence, Qaddafi embraced Venezuela’s offer of mediation, and on April 11, Qaddafi accepted the AU proposal for an immediate ceasefire to be followed by a national dialogue. The rebels refused to consider a ceasefire until Qaddafi left power. In this regard, scholars like Kuperman maintain that
it is impossible to know if Qaddafi would have honored a ceasefire or the promise to negotiate a political transition; however, if NATO had sought primarily to protect civilians, it would have conditioned its aid to the rebels on their sincerely exploring the regime’s offers. There is no evidence that NATO ever sought to use its leverage in this manner.68

There is evidence to suggest, however, that NATO’s approach to the situation in Libya further strained the relationship between the AU and institutions perceived as Western, such as NATO and the ICC. Yet, although the NATO operation in Libya was legalized by the UNSC resolutions, the organization’s previous involvement in other conflicts in Africa, such as Darfur and Somalia, had been predicated on requests made by the AU.69 Since the Darfur crisis in 2005, the principle of AU request has become the norm in AU-NATO cooperation on Africa’s peace and security issues, and for the first time, NATO’s intervention in Libya was not based on an AU request.70 The different approaches adopted by the AU and NATO with regard to the Libyan crisis created a clash of positions. This was the first time that NATO had engaged in actual combat in Africa, and yet it excluded African decision making because the AU preferred mediation to military intervention and took a strong position on the need to use diplomacy to resolve the conflict.71

Of course, the Constitutive Act of the AU provides for “the right of the Union to intervene in a Member State . . . in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, if it is determined necessary by the Assembly of Heads of State and Government.”72 The AU PSC is to be guided by, among other principles, humanitarian intervention in the circumstances mentioned above.73 However, there is lack of precision on the scope of the principle of humanitarian intervention, and African state agents have wanted to claim responsibility for the management of violence on their own terms.

These sociopolitical dynamics highlight more instances in which contemporary interventions are seen as resembling colonial and imperialist action and are not unrelated to the form that embodied responses to ICC indictments take. For example, the chair of the AUC, Jean Ping, argued, “Some international players seem to be denying Africa any significant role in the search for a solution to the Libya conflict” and vowed that “Africa is not going to be reduced to the status of an observer of its own calamities.”74 Even if the AU and NATO could not have reached consensus, some argue that a middle-ground approach relying on limited use of force and intensive diplomacy may have fostered a closer collaboration between the AU and NATO.75
As the above example illustrates, emotionally propelled forms of retribution emerged from a sense that reliance on criminal prosecution as the main or sole response to conflict is at best inadequate. Such conflict-laden responses led African states to take action against prosecutorial indictments in the midst of AU peace talks. In 2013, the AU proposed an amendment to Article 54 of the Rome Statute, which refers to the duties and powers of the prosecutor as it relates to investigations, so that certain OTP decisions could be subjected to a decision-making process. This led to disagreements between ICC and AU agents, particularly in relation to the situation in Sudan. These contexts on the African continent clearly point to how various AU stakeholders felt a need to pursue action beyond the prosecution of crimes to address economic justice and political justice, and to approach individual perpetrators with an eye toward reparative as well as criminal justice, when sequenced appropriately.

The official report from the AU High-Level Panel on Darfur has stated that “an outcome which would promote national justice and reconciliation proceedings is . . . required. . . . Criminal justice will play an important role, but not an exclusive one, and must be underpinned by procedures that allow for meaningful participation of victims, as well as reparations and other acts of conciliation. Within the criminal justice system, the investigations, prosecutions, defence and judiciary must work in tandem, or in smooth sequence. Weaknesses in any one element of the criminal justice process would undermine the prospects of a successful outcome.”

This report goes on to propose a hybrid court that fuses domestic and international criminal justice procedures and that works in collaboration with complementary domestic alternative justice mechanisms that may function in tandem with various prosecutions—including the ICC when necessary. This approach acknowledges that different institutions and processes have their own distinct roles to play, but need to coordinate and cooperate to achieve the best overall results for peace and justice. Various transitional justice measures underway that have involved truth and reconciliation commissions or institutional reform, including bottom-up traditional or “ethno-justice” approaches, have provided scaffolding for the way that AU and other transitional justice actors are pursuing strategies in the face of anti-impunity constraints. The strategy includes a compilation of transitional justice goals that are embedded in a sequenced temporality relevant to the political foundations of African violence. These strategies speak to the realization that addressing the deep roots of violence in Africa requires more than just judicial accountability. It empha-
sizes the need for institutional restructuring as key to the foundations of inequality in Africa.

Now, the passage of the Malabo Protocol in 2014—and the effort to extend the criminal jurisdiction of the African Court and bring it into force—has raised a new set of issues related to how to address the interplay between various peace and justice dilemmas in postviolence contexts. This involves conceptualizing the African Court as one aspect of a wider institutional framework for enhancing human rights, accountability, democracy, and access to justice on the continent as whole. One way to conceptualize this is through the recognition that AU actors are deploying Pan-African discourses strategically to put in place a differentiated approach to justice that involves the creation of an institutional framework designed to strengthen coordination and collaboration among existing institutions at regional, subregional, and national levels. This differentiated approach involves the shaping of several transitional justice principles relevant to the African context. These include the urgency to pursue peace through inclusive negotiations, rather than through force or military struggles; the suspension of hostilities and protection of civilians to provide enabling conditions for participation in dialogue and the search for meaningful peace and justice; and, importantly from the perspective of the African Court, a broader understanding of justice to encompass processes of achieving healing, equality, reconciliation, obtaining compensation and restitution, and establishing the rule of law.

By defining transitional justice to include a range of processes and mechanisms associated with mitigating conflict, ensuring accountability, and promoting justice, the framework proposes a definition that goes beyond current understandings of transitional justice. This broadening includes the consolidation of peace, reconciliation, and justice in Africa. The list is voluminous, ranging from activities involving the preventing of impunity, helping end repressive rule and conflicts, nurturing sustainable peace with development, social justice, human and peoples’ rights, democratic rule, and good governance. Other activities involve drawing lessons from various experiences across Africa in articulating a set of common concepts and principles to constitute a reference point for developing and strengthening peace agreements and transitional justice institutions and initiatives in Africa, as well as developing AU benchmarks for assessing compliance with the need to combat impunity. With these priorities in mind, it is possible to situate mechanisms such as the African Court and the AGA within the framework of African solutions to African problems, and to see these structures not simply as an example of
the spread and expansion of prosecutorial justice norms but as integral to a continent-wide transitional justice approach and process aimed at dealing with past conflicts and securing sustainable forms of justice going forward.

Mobilizing Institutional Values: The Malabo Protocol for the African Court

The Pan-Africanist “Silencing the Guns” and the “I am African, I am the African Union” campaigns were both launched during and after the African Union’s fiftieth anniversary, at the same time as the African Court’s Malabo Protocol was being debated and negotiated. The strategies around the celebration of the fiftieth anniversary of the OAU point to the way that the message of an African renaissance is mobilizing present action. This celebration provided its stakeholders with the opportunity to reflect on Africa’s history and its struggles against decolonization in order to create the terms for a new political, social, economic, and legal platform in a changing world. As noted in the “Report on the Preparations for the Commemoration of the 50th Anniversary of the OAU”:

The OAU has served its time with distinction and tribute is hereby paid to the founders and the vision they pursued with unity. Its greatest success was in relation to decolonization. . . . The most important achievement of the OAU is definitely the liberation of several of its Member States from the yoke of colonialism. At its foundation, only 32 countries were independent and many others were still under foreign domination. Through its Liberation Committee operating from Dar es Salaam since its creation, the OAU has rendered decisive support to Liberation Movements from countries that were still dominated by foreign powers and helped in the attainment of their independence.84

The shadows of past Pan-Africanist movements were embodied in the AU’s slogans and invoked principles. Remnants of past anticolonial Pan-Africanist movements are uneasily present, always disappearing and reappearing in AU declarations and slogans. While the Pan-Africanism of the past was centrally concerned with resistance against the European enemy, today, the fight against this articulated yoke of imperial power is less evident. In its struggle to consolidate Africa’s diverse past, the new AU Pan-Africanism being mobilized in the twenty-first century is desperately committed to economic and political power in African terms, but represents the afterlife of struggle against an obvious colonial oppression.
As noted in the words and speeches of African leaders pushing back against ICC indictments, today the enemy is seen in the very international system in which African states are embedded. Thus, the campaigns that are launched to highlight membership in Africa’s past and a shared reorientation of its future demonstrate how African political decision makers engage discursive strategies that account for this presence and absence of power. And where there is a force constructed as non-African and external, such as the ICC court indictments, the politics of Pan-Africanism are mobilized to turn inward to facilitate the management of some of the most extreme forms of Africa’s violence on its own terms—within African geographies. The AU’s proposal to extend the criminal jurisdiction of the African Court represents an example of this.

As I have been arguing throughout this book, the rise in prosecutorial justice is unfolding within international rule of law assemblages fueled by embodied affects and, therefore, the affective work that produces or unravels these justice projects matters. The journey to establishing the Malabo Protocol for the African Court of Justice and Human and Peoples’ Rights is part of a long, complex journey that has taken and continues to take many years; and each of the three sections of the court—general jurisdiction, human rights, and international criminal law—has a separate history that predates the process of vesting the court with both general and international criminal law jurisdiction. As I recounted in the previous section, with the transition from the OAU to the AU in 2000, several organs were created by the AU Constitutive Act, among them the African Court of Human and Peoples’ Rights (ACHPR) and the African Court of Justice, both precursors to the African Court of Justice and Human and Peoples’ Rights.

The African Court of Justice (ACJ) was envisioned in the constitutive act to be the principal judicial organ of the AU. It was seen as a body with jurisdiction over general international law disputes. The protocol establishing the ACJ was adopted in 2003, and eighteen African states subsequently ratified the protocol, with the effect of bringing the protocol into force. However, its formation was superseded by a decision to merge the ACJ with the African Court on Human and Peoples’ Rights.

The African Court on Human and Peoples’ Rights was established in 2004 and became operational in 2008. At the time of this writing, the court sits in Arusha, Tanzania, and has jurisdiction over the African Charter on Human and Peoples’ Rights and other human rights instruments that were ratified by the relevant states. Since 2008, twenty-three applications for hearings have been brought before the ACHPR with only two judgments being delivered,
which continued to raise questions about its effectiveness. This led to the push to establish an African Court of Justice and Human and Peoples’ Rights which was motivated, in part, by the desire to establish a judicial mechanism in Africa with not only the ability to function with authority with binding effect, but with international criminal jurisdiction. The eventual proposal to merge the African Court of Justice with the human rights court was propelled by the need to strengthen the African human rights system by enhancing its capacity to engender positive responses from states through binding decisions, given that the decisions of the ACHPR are mere recommendations. This was driven by the eruption of the contentious debate in 2008 on universal jurisdiction following the indictment of Rwandese officials by courts in France and Spain, coupled with the controversy over the ICC’s indictment of President al-Bashir in 2009. These developments complicated the path to ratification of the African Court of Justice, and the application of technocratic lawmaking was redirected to the expansion of its jurisdiction.

By this time, the African Court on Human Rights that had been inaugurated in 2006 was engaged in setting up its structures and negotiating a working relationship with the African Commission. During the meeting of experts, ministers of justice, and attorneys general held at the AU headquarters in Addis Ababa in April 2008, the merger protocol known as the Protocol on the African Court of Justice and Human Rights was considered and approved—also taking into account the need for cost-cutting measures. Then the AU Assembly adopted the Protocol of the Merged Court at its Sixth Ordinary Session in Sharm El Sheikh, Egypt, in July 2008 and urged member states to proceed with speedy ratification.

Within months of the adoption of the protocol establishing the merged court, and certainly before the merged court could come into force, the Assembly of Heads of State and Government, during its Twelfth Ordinary Session, held February 1–3, 2009, in Addis Ababa, requested the AUC (Secretariat), in consultation with the African Commission on Human and Peoples’ Rights, and the African Court on Human and Peoples’ Rights, to examine the implications of the court being empowered to adjudicate international crimes. Thus, at the close of its Thirteenth Ordinary Session in Sirte, Libya, in July 2009, various African leaders urged the AU Assembly to speed up the process and to aim for “early implementation” of its February decision.

However, in late 2009, the Office of the AU Legal Counsel commissioned the Pan African Lawyers Union (PALU) to prepare a draft protocol on the African Court of Justice, Human Rights, and Criminal Justice. The draft was subject to
a series of reviews and discussions over the next five years, culminating in the July 2014 adoption of what is often called the “Malabo Protocol for the African Court” (because it was adopted in Malabo, Equatorial Guinea). As a move following the AU’s renewed commitment to Pan-Africanism and a more African-centered dispensation of judicial decisions, the protocol amends the merger protocol to add a third jurisdictional chamber—the international criminal law chamber—and also proposes other substantive changes, including renaming the court the African Court of Justice and Human and Peoples’ Rights.91

As I noted above, these developments unfolded alongside the AU’s assessment of the deeply political nature of violence in Africa and the need to hone a range of tools not only to address them but to gain legal authority to manage them. And the development of an African court that includes criminal jurisdiction is one prong of the strategy, for it attempts to shift the understanding of the nature of violence by broadening the crimes of concern to Africa to include economic crimes and the modes of liability for perpetrators of such violence to include corporations.

In 2009, the PALU submitted the first draft to allow the African Court to adjudicate international crimes committed in Africa or against Africans. Well aware of the play of international politics, and in response to Africa’s realities, the PALU, under the leadership of Donald Deya, drafted the protocol for the criminal jurisdiction of the African Court, including fifteen crimes in the first draft because they were seen as key drivers of violence that reflect the core challenges of African social realities.92 The protocol also considered forms of conduct and modes of liability as well as corporate criminal responsibility for international crimes, introduced following the perceived failure of the ICC to address it in the Rome Statute for the ICC.

As the story is often told in the ICC context, France was credited for proposing that the definition of responsibility for the crimes under its jurisdiction should also include responsibility over “juridical persons,” defined as the “corporation whose concrete, real or dominant objective is seeking private profit or benefit.”93 Accordingly, there were significant disagreements in Rome over this proposal and inadequate time during the negotiations to secure its inclusion. That the drafters of the Malabo Protocol for the African Court returned to matters of criminal corporate responsibility highlights their interest in making the connection between the commission of economic crimes and the responsibility of corporate actors who are seen as also contributing to or enabling some of the most violent crimes of our times. In reflecting on this issue, one of the key drafters shared with me the following reflections:
Frankly, this was simply about developing a legal strategy. We wanted to figure out how to return to some of the basic principles agreed to already in treaties and agreements previously signed by African states. This involved figuring out how to capture all of the relevant crimes. We asked ourselves, what are the various modalities on the continent? And the answer we kept on coming up with was that there should be many enforcement mechanisms operative. . . . We needed to make those buggers [take] responsibility for their part in Africa's violence.

When I asked him whether this was a revolutionary intervention, he answered,

It's not about sixteenth-to-eighteenth-century colonialism, no. But I guess you can say that this is [a] Pan-Africanist vision that is tied to who we are. I see it as creating possibilities in modern Africa. . . . We did have the sense of how we are going to contribute to creating an Africa that can build itself and take care of itself. I know about the international system and it has a role. But if you look strictly at the constitutional issues in Africa and the need to rebuild state and juridical capacities, the mission connected to this work is all the more important. We saw ourselves as enabling Africa and Africans with a strong legal instrument relevant to the continent.

Later, in reflecting on how it might be done in terms relevant to African realities, he added, “We needed an African governance architecture for the treaty just like we need other international provisions, or various annual democracy assessments that could be used to make this instrument relevant to our needs. We were committed to that—making sure that the vision matched the African architecture underway. . . . This is important because of how much the continent has suffered and how much we have misunderstood its suffering.”

Here we see the drafter’s vision of the African Court’s Malabo Protocol for the new court as being both a response to African inequalities and an expression of the ambitions to make a difference on the African continent in ways that international law has been ineffective. The structure and logic of the crimes replicate the logic of those seen in the Rome Statute for the ICC, but what is important is that the geographical location is in Africa and not Europe and that the aspirations reflect the inclusion of crimes that are seen as enabling violence as well as the culpability of corporate actors in contributing to Africa’s violence. As such, the PALU draft of the Malabo Protocol and the resultant design of an African Court should be understood in relation to the affective terrain that was also unfolding at that time and that eventually led to the in-
stitutionalization of particular emotional sensibilities about the ICC as a neo-colonial institution that was targeting Africans and not necessarily addressing the core foundations of violence. As noted in earlier chapters, the controversy revolved around the ICC prosecutor’s indictment of President al-Bashir of Sudan on two charges of war crimes and three charges of crimes against humanity in May 2008. The first arrest warrant was issued on March 4, 2009, while the second, relating to the crime of genocide, was issued on July 12, 2010. It was connected to AU actors’ emotional responses to the refusal of the ICC to succumb to AU pressure not to proceed in issuing arrest warrants that have the potential to result in regime change. In its February 2009 decision, the AU had argued for an “accommodation” to allow the continental body more time to find a negotiated solution to the armed conflict in Darfur, cautioning that these efforts could be undermined by the indictment of President al-Bashir. In this regard, the AU Assembly at its summit in Sirte, July 1–3, 2009, “expressed its deep concern at the indictment issued by the Pre-Trial Chamber of the ICC” against al-Bashir. In its view, the indictment had prejudiced its efforts to find peace in Darfur. It noted, with grave concern, “the unfortunate consequences that the indictment has had on the delicate peace processes underway in The Sudan and the fact that it continues to undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur.”

It is also clear from the Sirte decision that the AU’s concerns over the al-Bashir indictment directly influenced its decision to call on relevant AU organs to speed up work on its request made in February 2009 to investigate the prospects of vesting the ACJHR with a criminal mandate. This is when experts were asked to construct a draft proposal to merge the African Court on Human and Peoples’ Rights with the African Court of Justice (in Arusha, Tanzania), thereby expanding the jurisdiction of the African Court to include criminal matters. But, as the trial of Hissène Habré illustrates, anti-impunity frameworks are taking shaping in African geographies of justice as well; emotional regimes that make prosecutorial justice viable are operating alongside a range of other complexities related to the management of violence in Africa.

**A Broader Bid for African Justice**

Human rights organizations have popularly dubbed Hissène Habré Africa’s Pinochet because of the widespread human rights abuses that he committed from 1982 to 1990. When the European Parliament demanded that Senegal, where Habré had been in exile for seventeen years, extradite him to
Belgium for trial, Senegal refused.98 The realization that former heads of state and high-ranking leaders could be tried by a domestic court in Europe ignited feelings of anger throughout predominantly African diplomatic circles. By 2006, the AU’s institutional affects led to a united call on Senegal to prosecute Habré. There was a profound insistence that it was not just the “victims” of violence in need of justice but additionally, Africa’s reputation that was in need of Habré’s extradition and adjudication. In response to the expressed European interests, the AU began to take action to address Habré’s order of extradition by establishing a court at the Palais de Justice de Dakar to adjudicate the case against him. This example of an African international trial led by the African Union highlights the working of institutional affects in the shaping of political actions. But it also illustrates the limits of an approach that focuses on individual culpability, even when carried out on African soil.

The Directorate of Documentation and Security (DDS), which was directly attached to the Office of the President, was a principal organ of repression and terror in Chad, and this institutional monster was a product of a widespread mechanism of dictatorial governance that Western states also created.99 The
court found that Habré used the DDS, which distinguished itself through its cruel deployments of all kinds of torture, to manage state security after he seized power. With the reality of oil and prospects of a pipeline at the heart of Chad’s development, Habré’s dominance in the region was enabled through Western attempts to stave off Libyan interests in Chad’s oil. Testimony during the trial revealed that the DDS was propped up by a range of countries—Zaire, Iraq, France, and Egypt, with the United States in the lead. The United States is known to have contributed to the training, support, and growth of the DDS. With additional support from the other states, they all provided cooperation and training for the DDS up until Habré’s departure in 1990. The DDS was trained to arrest, terrorize, and squash all those who either threatened Habré’s military regime or refused to participate in the National Union for Independence and Revolution—the state party created in 1984 to promote Habré’s rule. Through the direction of the president and the party, the DDS spread fear in the Chadian people by arresting, interrogating, and torturing large numbers of the population.

These techniques of governance reflected the vulnerabilities of the post-colonial African state. But, as my interlocutors made clear, it also reflected something far more insidious about the problem with the individualization of criminal responsibility and celebration of the indictment of a single former leader. What they expressed is that while the Habré trial makes a statement about Africa’s willingness to fight brutality by making one man criminally responsible, it says very little about how to address impunity through its widespread institutional forms. This example shows us about the feeling regimes that are operative is that the anti-impunity sentiments within the international criminal law assemblage operates within domains that are seen as negating the relevance of history and politics in shaping how we attribute culpability.

However, another arena of action that both responds to these erasures and reflects these African geographies of justice is the expansion of the criminal jurisdiction of the African Court to include a range of political and economic crimes that are seen as enablers of violence. Of course, the Malabo Protocol includes familiar provisions. The subject matter jurisdiction includes all of the Rome Statute crimes; the logic and organization of the court is to be complementary to national courts; it is imagined as coexisting with other international courts; and rather than having mandates and jurisdictions similar to African national courts, it will take effect if states are unable and unwilling to act. The drafters saw the maintenance of the corpus of the current structure
of international legal norms as a way to ease any problems with intelligibility that may emerge. But what is explicit and distinctly different is that the Mabobo Protocol for the ACHPR is seen as a mechanism for facilitating the end of violence in Africa using a Pan-African vision and an expansion of the crimes and modes of liability specifically relevant to the region.

Working alongside multiple legal and political actors and in concert with those engaged in transitional justice, the PALU drafters indicated that they saw this as an opportunity for African states to contribute to the making of a legally binding instrument. Others said that they felt that it was necessary to produce strong African judiciaries that allow Africans to try their own cases. All saw their mission as groundbreaking, as articulated by Donald Deya, the lead drafter, who asserted that they see the project as “creating possibilities in modern Africa.” This idea, which Deya expressed forcefully with conviction and fist waving, was followed by the statement that this is what they felt would contribute to “creating an Africa that can build itself and take care of itself.” These affective expressions reinforce the mantra of “African solutions for African problems” that shaped the terrain within which the African Court’s own version of attribution is occurring. During the many meetings that I attended and the interviews that I conducted, these claims were punctuated by the affirmation that the AU and African Court project are responding to the need to “rebuild state and juridical capacities” and the conclusion that the PALU saw themselves as “enabling Africa and Africans with a strong legal instrument relevant to the continent.”

This articulation clearly highlights legality as one of many options for dealing with the unique predicaments in Africa. When asked whether he felt it was an opportunity for leaders to evade impunity, Deya responded emphatically:

Various heads of state may have been motivated by other incentives and I cannot speak for them. But what I know is that this will take years to be operationalized. So if al-Bashir wants to use it to avoid the ICC, he’ll have to use another route. If the Gbagbos want to use it to save their situation, they’ll have to look for another route. If Habré is hoping it will be used for his case, he’ll have to continue looking. . . . Just the fact that this was adopted in principle signals something and will force African leaders, international corporations, and others to change the way they do business in Africa.

The court was not designed as an escape route for current indictees by the ICC. It was seen as a space of alternatives for the application of solutions to
Africa’s complex histories of structural violence—including imperial plunder and subsequent inequalities that demand innovative solutions. This is innovative in the same way that the African Charter on Human and Peoples’ Rights, in 1981, was seen as a space for the incorporation of concepts such as “the right to development, peoples’ rights, [and] the duties of individuals,” which were introduced to distinguish issues relevant to African peoples from other European legal principles. My interlocutors constantly reiterated that there was very little that was radical or revolutionary about the request to include crimes relevant to Africa’s violence. They pointed out that the subject matter crimes were already codified in the treaties and protocols of the AU and of the REC, and were similarly central to basic crimes in international law. As one told me, if there was anything radical, it was the recuperative move to include African-specific crimes that were omitted from the Rome Statute for the ICC because they were seen as too controversial to form the basis for widespread agreement among states.

After a range of meetings, delays, and amendments, in May 2014 a draft was submitted before a ministerial session of a meeting of the Specialized Technical Committee on Justice and Legal Affairs in Addis Ababa. The draft protocol had remained unchanged for two years until that 2014 meeting, when it was revisited and adopted at the Twenty-Third Ordinary Session summit in Malabo, Equatorial Guinea, in July 2014. There, the Heads of State and Government Assembly of the AU adopted a Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (the Malabo Protocol), which suggested the addition of a third section to the proposed African Court, which would have jurisdiction over fourteen international crimes.

The Malabo Protocol thus created the African Court of Justice and Human and Peoples’ Rights, which has three sections: general affairs, human rights, and international criminal law. The approved protocol extended the jurisdiction of the ACJHR to cover individual criminal liability for serious crimes committed in violation of international law. It also expanded the terrain of punishable crimes to include new transnational offenses. This was done by including crimes whose subject matter jurisdiction exceeded that of the Rome Statute—genocide, crimes against humanity, war crimes, and the crime of aggression—to address other more pointed political-economic crimes, such as piracy, mercenarism, terrorism, corruption, illicit exploitation of natural resources, money laundering, and the trafficking of drugs and hazardous waste. The inclusion of these crimes has implications for going beyond the
ICC framework, often seen as insufficient for addressing criminal responsibility for Africa’s violence. It represents the rectification of concessions made during the negotiations of the Rome Statute for the ICC to eliminate those crimes that were seen as too controversial to include, yet for many were key to addressing Africa’s violence.¹⁰⁷

In this sense, the PALU’s draft protocol to expand the criminal jurisdiction of the African Court should be seen as an affective Pan-African project, borne of colonial subjugation and contemporary inequalities tied to Africa’s place in the world, but structured to redefine the nature of violence in Africa as embedded in multiple forces of plunder and economic inequalities and multiple actors ranging from individual perpetrators to leaders of multinational corporations and terrorist and gang networks. And though it seems that there is something substantively different about the African Court, the reality is that it is envisioned as operating within a legal realm that is quite similar to other courts elsewhere. Even so, the African Court’s Malabo Protocol should be understood in relation to what Deya has called an “African ecosystem,” and what I articulate as within particular sociocultural and political ecologies of justice in the context of a range of other mechanisms through which African solutions to African problems are implemented. This approach—which spans judicial and nonjudicial options, alongside sequencing considerations for when such strategies are applied—is an affective form of attribution that highlights the relevance of geographical place in legal decision making.

Various AU peace and security representatives reported to us in a press conference in 2013 that they had a growing disillusionment with the efficacy of the global security architecture and the ICC. They described these disappointments as contributing factors in shaping their efforts to develop a new peace and security framework driven by the need to find appropriate and speedy responses to African security challenges. As Deya clarified for me during one of our many discussions—this time in a room with a number of colleagues who were engaged in the drafting process:

We see courts, especially those within the continent, as part of an ecosystem of African institutions with which African citizens and their governments are pursuing various goals of mutual interest, including faster economic, social, and political development, and greater unity and integration that is based on a set of shared values. These shared values include a constant and consistent fight against impunity in all its manifestations; development of democracy, good governance, and a just rule of law; and
promotion and protection of human and people’s rights. These courts and tribunals ought to be looked at in the context of a number of mechanisms ranging from the African Governance Architecture, the African Human Rights Strategy, the African Peace and Security Architecture, and the Protocol on Relations between the African Union, and the Regional Economic Communities.108

Yet, currently, the African Commission on Human and People’s Rights is the only functioning tribunal. The criminal chamber is not yet active because not enough ratifications have been made to establish either the African Court of Justice or the merged court.109 The protocol will come into force thirty days after its ratification by fifteen member states. However, this process takes time, and as of April 2019 only twelve states have signed the Malabo Protocol, and none have ratified it.110 If it enters into force, the new protocol is expected to work as part of the overall African human rights system and protective sphere, developed over the last two decades, in which the current human rights organs exist. This system is expected to operate alongside the aga and the apsa. The current and future court has been conceptualized as operating within a system that includes several other institutions, which collectively ensure the protection and promotion of human rights and an end to impunity in Africa.111

The passage of the Malabo Protocol—and the ensuing effort to extend the criminal jurisdiction of the African Court and bring it into force—has raised a new set of issues of how to address the interplay between various dilemmas of peace and justice in postviolence contexts. Despite the move to expand the criminal jurisdiction of the African Court, the reality is that in drafting the protocol, au actors were more focused on the substantive crimes themselves and on ensuring that the prosecutor was not given too much political power than on centering deliberations concerning how legal provisions might guarantee fairness. The actual process by which this unfolded precluded open, public deliberations. Instead, the Malabo Protocol was expedited following the indictments of President al-Bashir and Kenyatta and Ruto before him. This is, of course, unlike the process by which the ad hoc tribunal that adjudicated the Habré trial unfolded. In many ways, the success of the Habré trial being adjudicated in Africa and, as Kristiana Powell has argued, the un’s failures in the face of some of Africa’s most profound security challenges—the Rwandan genocide, the genocide in Darfur, the crimes in Sierra Leone, and child soldiering in the Democratic Republic of the Congo—have reinforced
a desire for greater autonomy and an internal approach to peace and security on the continent.\textsuperscript{112} Similarly, Bruce Jones has written, “It is not entirely un-coincidental that the two places where we have seen the most development of regional options—Europe and Africa—have been the site of the UN’s greatest failures in the 1990s.”\textsuperscript{113}

As the controversy surrounding the indictment of African leaders demonstrated, it appears that the push to create an African criminal jurisdiction is explained by this perceived failure on the part of the ICC as much as it is a search for a mechanism by which African states would exert more control over Africa’s future—however that might look. In this regard, Palu was contracted to adopt a broad and long-term approach regarding the development of international courts and tribunals in Africa, whether these courts function at a bilateral, regional, continental, or global level. Stakeholders in the AU see the advent of the African Court with criminal jurisdiction as critical to Africa’s future. Yet what is important to note is that the deliberations that led to the production of the Malabo Protocol for the ACJHR arose from innovations that prioritized diplomacy and other political action before prosecutorial action. It is useful to consider these constructed institutional and political components as ecologies of the broader bid for African justice. The idea of a new African Court with criminal jurisdiction represents the AU’s attempts to craft new modalities of justice according to contemporary needs for Africa’s future. In this case, the new Pan-Africanist struggle is a central component of the affective life of an African Court with criminal jurisdiction, envisioned as a way to remake justice within Africa through particular Pan-Africanist histories of struggle.

\textbf{African Court as a Sentimentally Pan-African Project}

The existence of a treaty to erect an African Court with criminal jurisdiction represents a counterjudicial narrative that encompasses political concerns at the heart of African inequalities. The affective work related to extending the criminal jurisdiction of the African Court highlights the way that African political decision makers engage strategies that account for both the presence and seeming absence of power. As shown, the presence is in its sovereign possibility—the assertion that power is also about its exercise, its ability to mobilize in one’s image. It is the potential to mobilize power and affectively attribute it in particular ways. Its absence is in the feelings of inequality and racial oppression that remain illegible before the law. The reality of former
Rwandan president Paul Kagame’s anger that the ICC “has been put in place only for African countries, only for poor countries,” and that “Rwanda cannot be part of colonialism, slavery and imperialism,” quoted in the introduction, points to the problem of inequality and its ability to define new futures. As an uplift strategy, the contemporary approaches to AU justice are deeply tied to the afterlife of colonialism around which new transitional justice mechanisms—relevant to African geographies—are being shaped in ways that reflect conceptualizations of justice writ large. The conundrum of contemporary AU Pan-Africanism is that alongside deep-seated conceptions of the Pan-African liberatory past is actually a deep desire to participate in contemporary neoliberal power, in global power. The resistance to extradition and the anti-ICC mobilizations are expressions of this and are connected to what many psychologists have been known to dismiss as externalities, or what political scientists have dismissed as internalities, but when the affectivities that shape those are combined, they are actually central to new Pan-African sentiments as they are imagined on the African continent. These affective geographies create ambivalences that cannot be simply understood genealogically and mapped out with precision. The recognition of the violence of marginalization operates like ghosts in the present, even as there is a dueling struggle to become part of that which it marginalizes.

For a time in the post-1980s period, Pan-Africanism was seen as either passé or too politicized to be relevant, but as an emotively propelled discourse with significant political power it is being revived today with great moral fortitude. It has come to be revived through the specter of deep-seated African unity, referencing old and new ways, and as a way to make claims to global membership and global capitalism. With free-market capitalism and the entrenchment of international economic interests throughout African economies, political contests are seen as explicitly internal. The AU—as a supranational institution committed to ensuring the maintenance of African democracy, peace, and security—is now claiming to be just as committed to economic development. Yet the shadow of colonialism is useful for understanding affective justice practices as ontological and as informed by the past alongside the present. The call for an African renaissance is a call to reckon with the spirit around which Pan-Africanism became a survival strategy for African states. And today, the struggle being indexed is one in which African worldviews, and Africa, are seen as being eclipsed by external agendas, including those that are often deployed through international human rights principles. This is leading to a gap between imposed structures and actual
lived realities transformed through their own structures of logic, and in terms of their own situated struggles and points of tension. In the case of African leaders making decisions about which crimes, when, why, who, and under what conditions the ICC has the power to indict, Pan-Africanist frameworks of expectations are shaping the basis on which African states engage with ICC anti-impunity justice formations.

The Africa being invoked by lawyers, leaders, civil society, and everyday people is an Africa with long-standing and deep patronage commitments to discourses of anticolonial struggle, suffering, and senses of self-determination. What we are seeing today through AU change makers’ actions, such as the development of transitional justice and sequencing, is actually the playing out of a reattributive politics working toward the management of Africa’s violence on their own terms—albeit not always effectively, given the enmeshment of violence within other component parts of the international justice assemblage. When various AU stakeholders invoke Pan-Africanism as a new Africanist strategy, they are also pointing to domains of affective spatialized control in which neoliberal participation in new globalizing orders is being framed in Pan-African terms. It is through such articulations of African justice that we see how the African Court, as a symbol of African geographies (or ecologies) of justice, constitutes new feeling rules in which the prestige of the past is couched in Pan-Africanist historical domains through which inequality, racial subordination, and structural violence are being rectified. In this way, justice operates through emotional frameworks of expectation and is institutionalized through an assemblage of agents who function with particular forms of authority, desire, dispositions, and imaginaries. Through these assemblages, political actors function, on one hand, as what Hannah Appel calls individuals with unitary will, but it is through their practices through and in relation to the management of violence in African contexts that particular conceptions of justice are affectively articulated. Chapter 6 explores these articulations through various emotionally laden reattributions by the AU: the refusal to arrest and surrender African heads of state, and the refusal to comply with particular renditions of international law that are seen as not being in keeping with Pan-African aspirations.