

International Conference on Transitional Justice in Post Conflict Societies in Africa

Proceedings Report

This Report was prepared by:

Ms. Cathy Amenity & Ms. Florence N. Mpaayei



Hekima Institute of Peace Studies
and International Relations

(HIPSIR) 08-09 October 2014



INTERNATIONAL CONFERENCE ON TRANSITIONAL JUSTICE
IN POST CONFLICT SOCIETIES IN AFRICA

Copyright © Hekima University College, Nairobi

Year of publication 2015

Cover design & Layout by John Agutu

Email: agutujo@yahoo.com

Printed by

ACKNOWLEDGEMENT

Organizing a conference of the magnitude that HIPSIR did is no small feat, we would like to appreciate the administration of Hekima University College for their support and prayers. It took the efforts of many individuals to make it happen. These individuals worked tirelessly and sacrificially. We appreciate their commitment, hard work, sense of humour and cheer. These individuals were:

Steering Committee

Rev. Dr. Elias O. Opongo, SJ, HIPSIR

Rev. Dr. Kifle Wansamo, SJ, HIPSIR

Rev. Dr. James Stormes, SJ, HIPSIR

Ms. Florence N. Mpaayei, HIPSIR

Ms. Leonie Sendegeya, ACORD

Ms. Agatha Ndonga, ICTJ

Mr. Christopher Wakube, Saferworld

Mr. Stephen Kadenyo, Peacenet

Mr. Otieno Ombok, COPTRE

Mr. Liban Guyo, NCIC

Ms. Regina Opondo, CRECO

Ms. Martha Okumu, PTN

Mr. Luc Ansobi, PTN

Mr. Hezron Krop, KNCHR

Mr. Lucas Kimathi, KNCHR

Ms. Grainne Kidakwa, CJPC

Mr. Andrew Songa, KHRC

Mr. Christopher Gitari, ICTJ

Secretariat

Ms. Catherine Amenity, HIPSIR

Ms. Karen Muthemba, HIPSIR

Ms. Eddah Wambui Njoroge, HIPSIR

Ms. Anne Naisoi, HIPSIR

Ms. Scovia Masika, PTN

ACRONYMS

ABC	–	Abyei Boundaries Commission
ACJHR	–	African Court of Justice and Human Rights
ACORD	–	Agency for Cooperation and Research in Development
ADR	–	Alternative Dispute Resolution
AFCAST	–	African Institute of International Law
AFRICOG	–	African Centre for Open Governance
AGI	–	African Gender Institute
AGI	–	African Gender Institute
AIIL	–	African Institute of International Law
AU	–	African Union
CCGD	–	Collaborative Centre for Gender and Development
CNS	–	Conférence Nationale Souveraine (National Sovereign Conference)
COPTRE	–	Coalition for Peaceful Transition and Reconciliation
CPA	–	Comprehensive Peace Agreement
CRECO	–	Constitution & Reform Education Consortium
CRN	–	Catholic Radio Network
CSOs	–	Civil Society Organizations
CRS	–	Catholic Relief Services
DDR	–	Disarmament, Demobilization and Reintegration
DMI	–	Directorate of Military Intelligence
DRC	–	Democratic Republic of Congo
EPLF	–	Eritrean People's Liberation Front
EPRDF	–	Ethiopian People's Revolutionary Democratic Front
FRELIMO	–	Frente de Libertacao de Mozambique
GoS	–	Government of Sudan
HHJC	–	Hollis Hills Jewish Centre
HIPSIR	–	Hekima Institute of Peace Studies and International Relations
HRVIC	–	Human Rights Violation Investigation Commission
HURINET-U	–	Human Rights Network – Uganda
ICC	–	International Criminal Court
ICJ	–	International Court of Justice
IDPs	–	Internally Displaced Persons
IGAD	–	Intergovernmental Authority on Development

IYF	–	Informal Youth Formations
JASCNET	–	Jesuit Africa Social Centers Network
JESAM	–	Jesuit Superiors of Africa and Madagascar
JLOS	–	Justice Law and Order Sector
JPC	–	Juba Peace Conference
KEPSA	–	Kenya Private Sector Alliance
NCIC	–	National Cohesion and Integration Commission
NGDP	–	National Gender and Development Policy
NGOs	–	Non-Governmental Organizations
NLM	–	National Liberal Movement
NLP	–	National Land Policy
NPC	–	National Peace Directorate
NPI	–	Nairobi Peace Initiative, Africa
NSC	–	National Steering Committee
OVC	–	Office of Victims of Crime
PCA	–	Permanent Court of Arbitration
PDN	–	Peace and Development Network
PTN	–	Peace Tree Network
RENAMO	–	Resistencia Nacional Moçambicana
RPF	–	Rwandan Patriotic Front
RRG	–	Reconciliation Reference Group
SCBC	–	Sudan Catholic Bishop's Conference
SDLF	–	Sabaot Land Defense Force
SPLM/A	–	Sudan People Liberation Movement/Army
SUNY	–	State University of New York
TJ	–	Transitional Justice
TJRC	–	Truth Justice and Reconciliation Commission
TRC	–	Truth and Reconciliation Commission
TWAIL	–	Third World Approaches to International Law
UAE	–	United Arab Emirates
UK	–	United Kingdom
UN	–	United Nations
UNDP	–	United Nations Development Programme
UNSRC	–	United Nations Staff Recreation Council
USA	–	United States of America
WHO	–	World Health Organization

FOREWORD

Transitional justice in Africa is at a critical juncture given the number of African countries in post-conflict situation, hence emerging out of conflict or struggling to comprehend and address new and existing injustices at the epicentre of such conflicts. The process is complex and requires a delicate balance of perspectives and actions, which include: political stability, justice to the victims and end to impunity, as well as institutional reforms that ensure that such crimes against humanity are not repeated. The common scenario of transitional justice in Africa and elsewhere has, however, often been the tension between protecting strong political and individual interests and fulfilling the justice needs of the poor and marginalized.

Three schools of thought have suggested diverse ways of achieving justice in post-conflict contexts marked by gross human rights violation. The justice proponents who take a maximalist approach put emphasis on prosecution of the perpetrators. On the other hand the political realists appreciate the fact that transitional justice is a political process and has to strike a balance between national stability, meeting the needs of the victims and instituting social accountability. The third, which is a moderate approach that takes into consideration the contextual imperatives, could be a more sustainable option. This approach requires that there be deliberate efforts to end impunity and institute the rule of law that protects the rights of the vulnerable and marginalized, while taking measures to ensure national stability and foster reconciliation and peace. This approach acknowledges the fact that truth telling needs to be emphasised for justice and reconciliation to be realized.

The conference combed through the issues highlighted above while recognizing the strengths and limitations of the transitional justice process. The conference emphasized how transitional justice has shaped and been influenced by various actors and specific historical moments. It clearly emerged that for any transitional justice process to succeed, there has to be political will and a social capital with the national capacity and strong moral drive to realize the general aspirations of the process. In a good number of the African countries, the institutional reforms geared towards a more inclu-

sive constitution through an expanded democratic space demonstrate that there is a strong social awareness on the need for political accountability and respect of human dignity. Of importance too is the role of non-state actors, including religious institutions, human rights groups and women's organisations in monitoring and evaluating the process of transitional justice.

This report highlights a summary of the key points from the papers presented during the conference including recommendations to various actors in the quest for contextually appropriate mechanisms, and approaches and practices to deal with past atrocities and human rights abuses in our societies. It is our hope that our transitional justice processes in Africa and elsewhere will provide hope to those victimized by oppressive regimes.

I am grateful for the financial support of all our partners who made the conference possible. I also appreciate the tireless efforts by the organising committee and academic staff at HIPSIR, administration and staff at Hekima University College, as well individuals and partner institutions that actively participated in the conference.

Dr. Elias Opongo, SJ, Director, HIPSIR

EXECUTIVE SUMMARY

The international conference on transitional justice in post-conflict societies in Africa took place on 8 and 9 October 2014 at the Hekima Institute of Peace Studies and International Relations. The need to organize this conference arose from the fact that a number of African countries that had transitioned from periods of violent conflict to relative peace were grappling with actualizing national healing and reconciliation, which are essential to democratization processes and sustainable peace. The general objective of the conference was to therefore stimulate strategic responses to challenges of national healing and reconciliation in African countries such as Kenya, Liberia, Sierra Leone, South Africa and Rwanda among others while looking at diverse policy formulation and implementation opportunities in addressing the needs around transitional justice.

The expected output and outcomes of the international conference were as follows:

1. To provide an international platform to discuss how different countries in Africa have responded to the challenge of transitional justice and post conflict peace-building
2. To highlight and build on existing transitional justice activities currently taking place initiated by the Kenya Transitional Justice Network members in Kenya. These initiatives address issues on reparations, litigations for victims of torture, healing and reconciliation at national and county levels, etc. The conference would provide a platform to share follow-up experiences and challenges based on a number of meetings that have taken place in this area. One such meeting is the consensus-building forum on the TJRC report held on September 2013 at Serena Hotel, coordinated by ACORD and attended by majority members of the conference steering committee and others.
3. To revisit and generate new ideas and policy recommendations for different key stakeholders in order to realize justice for victims as well as healing and reconciliation for communities and nations as a whole.

4. To carry out advocacy for policy and legal framework on reparations.
5. To come up with a publication from the papers presented at the conference.

Conference Participants

The conference brought together over 350 participants from civil society organizations (CSOs), government, UN agencies, academia, students, religious organizations and the media. The countries represented included Algeria, Angola, Burkina Faso, Burundi, Cameroun, Democratic Republic of Congo, Egypt, Ethiopia, Eritrea, Ghana, Kenya, Madagascar, Moza- mbique, Nigeria, Rwanda, Somalia, S. Sudan, Sudan, Tanzania, Uganda, USA, and the UK.

Key Note Address Speakers and Notable Guests and Scholars

His Excellency Benjamin William Mkapa, former president of Tanzania officially opened the conference. At the opening HIPSIR was honored to have Rev. Fr. Michael Lewis, the President of JESAM Ms. Nardos Bekele-Thomas, Kenya Country Representative UNDP, Hon. Justice Paul Kihara-Kariuki the President of Court of Appeal, Kenya, Her Excellency Dr. Aisha Laraba Abdullahi, Commission for Political Affairs, African Union, Amb. Sani Lawal Mohammed mni, Rector, African Institute of International Law , Prof. Makau Mutua of the SUNY, Law School and Prof. Christopher Clapham formerly of University of Cambridge. The closing ceremony was graced by Hon. Francis Ole Kaparo, the chairperson of the National Cohesion and Integration Commission (NCIC) Kenya.

From the HIPSIR community, we were privileged to have Rev. Dr. Pius Rutechura, the Vice Chancellor of the Catholic University of East Africa, Dr. Rev. Joseph Afulo, the Principal of Hekima College and Dr. Rev. John Ghan-sah, the Rector of Hekima College and Rev. Dr. Emmanuel Foro, the Dean of Hekima College.

The Papers Presented

The conference attracted more than 50 abstracts covering current issues on transitional justice and included topics on truth commissions in Africa,

transitional justice and state/institution building, reparations, international and domestic politics of transitional justice, the role of religious institution in post-conflict reconstruction, peace-building at all levels of societies in post-conflict reconstruction, transitional justice and gender, the International Criminal Court, political accountability and transitions in Africa.

Conference Structure/Format

The conference format included plenary sessions in the mornings where we had key note address speakers and parallel thematic sessions where scholars, practitioners and government agencies presented papers. Two special sessions on Kenya's Truth, Justice and Reconciliation Report and the Mozambique transitional justice process were held. Throughout the conference, interviews with key speakers took place as well as live streaming of the conference on the institute's official web site (i.e.) <http://hipsir.hekima.ac.ke/>

There were a lot of lessons drawn from the various panel presentations. We learnt the dynamism of conflicts in the region.

KEY POLICY RECOMMENDATIONS

Government

1. Rather than the court system, pursue restorative justice. Why?
 - Restorative justice offers victims an opportunity to take an active role in the process while at the same time encouraging the offenders/ perpetrators to take responsibility for their actions.
 - It focuses on both the victim and the perpetrator and their personal needs thus helping the perpetrator to avoid future offences.
 - It is based on the theory of justice that considers crime and wrongdoing to be an offence against and individual or community rather than the state or the political system.
2. Establish rule of law. It is difficult for transitional justice to work in regimes without rule of law.
3. Allocate the necessary resources and personnel to further development and implement national reconciliation
4. Integrate peace and reconciliation studies at primary, secondary, and tertiary levels through ministry of education.
5. Adopt systems that ensure equitable distribution of resources and an all-inclusive political system.
6. External actors have to incorporate the local community interests in their peace efforts.
7. Need to understand the changing dynamics of Informal Youth Formations by the government, peace practitioners and policy makers (IYF have not disbanded and are still hired by politicians).
8. Borrow best practices on conflict resolution and peacekeeping from both continental and international experts. Lessons from countries that have successfully transitioned from conflict situations such as south Africa, Rwanda, Uganda
9. De-structuring the male dominated structural systems and restructure to gender sensitive institutions and Integrate gender justice into our communal systems at the grassroots
10. Need for more political will power/ commitment among African leaders

Civil Society Organizations

1. Civil society organizations should strive to make a strong stand in transitional justice matters
2. Civil societies should formulate the justice process and therefore support the victims.
3. Establish regional CSO networks to facilitate and advocate for regional reconciliation.
4. Generate and disseminate shared knowledge on regional reconciliation.
5. Conduct training programmes on the implementation of regional reconciliation strategies.
6. Build the capacity of local leadership structures to facilitate cross-border reconciliation.
7. Facilitate cultural and religious leaders to spearhead regional reconciliation processes
8. Advocate for women's participation as stakeholders rather than mere victims
9. Ensure women are included in the design and establishment of mechanisms and processes

Academic Institutions

1. Organize forums such as conferences, symposiums, other meetings where persons can converge to discuss emerging issues
2. Conduct training programmes on the implementation of regional reconciliation strategies.
3. Conducting population based research and people engagement that can yield deeper insights into addressing grassroots concerns.
4. Disseminate research findings

Day One

8th October, 2014

THEME:

**TRANSITIONAL JUSTICE, NATIONAL
HEALING AND RECONCILIATION**

Opening Session

Moderator:

Ms. Florence Mpaayei,
Senior Advisor / Coordinator
Peace Practice at HIPSIR



The session began with a word of prayer led by Rev. Dr. Joseph Afulo, SJ, Principal Hekima College, followed by a brief introduction about the College and the continued engagement of the Jesuit Fathers a.k.a Society of Jesus in Peacebuilding. Rev. Fr Michael Lewis, president of the Jesuit Society of Africa and Madagascar (JESAM) shared about the mission of Hekima Institute for Peace Studies and International Relations (HIPSIR), which is to propagate the global mission of the Society of Jesus that seeks to serve by promoting faith and justice rooted in its tradition since the 17th century. He further explained that the Jesuits of Africa and Madagascar give special emphasis to



Rev. Fr. Michael Lewis, SJ, President of the Jesuit Society of Africa and Madagascar (JESAM)

a frontier type of service that aims to promote justice and reconciliation. He urged participants to carry on this tradition, in dealing with the subject of social and judicial justice in Africa. He commended the conference organizers for the choice of the theme of the conference which he said is “a much needed one in the discourse of those concerned with justice in Africa” and “may the words spoken at this conference be transformed into action in establishing thoroughly practical justice for all in transitional situations in Africa.”

Ms. Nardos Bekele-Thomas, Resident Representative, UNDP in her address recognized the importance of the conference and the issues to be discussed which had a major bearing on the stability of the continent of Africa. She informed the participants that the United Nations (UN) believes that prevalence of peace is fundamental for a just and equitable society and that conflict affects various dimensions of lives as it curtails the enjoyment of human rights. Many countries in Africa recognize and are party to international legal instruments like the International Human Rights Law, International Humanitarian Law, International Criminal Law and International Refugee Law. This is a clear indication that they have obligations, roles and responsibilities to their citizenry. Based on existing knowledge there is need to seek the truth, carry out institutional reforms and institute judicial mechanisms.



Ms. Nardos Bekele-Thomas, Resident Representative, UNDP

Finding ways of how restorative, redistributive or rehabilitative justice measures can be applied and the voices of vulnerable members of the community especially women and children can be incorporated in finding lasting peace is a necessity. UN sees value in the sustenance of community/grassroots dialogue.

There is need to ensure grassroots reconciliation is promoted through efforts of entrenching accountability and serving justice while at the same time seeking to consolidate lessons learnt through grassroots engagement. Public participation is paramount in the search for justice that brings about healing. In conclusion, she re-emphasized that Transitional Justice is a critical component in strengthening the rule of law and bringing about lasting change in society. Institutional and policy reforms in all sectors of society are necessary if societies are to move forward.

On behalf of the Chief Justice of Kenya, the Hon. Justice Paul Kihara-Kariuki, President, Judiciary, Court of Appeal – Supreme Court, Kenya noted that social justice is fundamental to human freedom and sustainable peace. He informed participants that the search for justice is a vocation. Society can move forward in post conflict restoration by addressing issues of justice and reconciliation. To achieve national justice conflicts can be resolved through legal or non-legal mechanisms. When discussing matters of transitional justice in post conflict societies, there is need to look at the Kenya Constitution-Bill of rights that provides opportunity for protection of human rights from



Hon. Justice Paul Kihara-Kariuki, President, Judiciary, Court of Appeal – Supreme Court, Kenya

political, economic, social and cultural rights—constitutional justice. “*The importance of justice in transitional justice is not to punish offenders but to restore dignity and human rights.*”

In addressing transitional justice, he focused on the following:-

- Legal and non legal systems
- Rights values, ethics and social justice
- Structures relates to constitution
- Separation of power and the need to balance power between government and constitution
- Human rights as protecting integrity of the government

He recommended that there is a need to invest in constitutional justice before transitional justice, and to recognize that transitional justice is only as strong as its weakest link. Despite the challenges faced in ensuring justice happens during political transitions, these periods offer opportunities for change and a new beginning for nation states. The ultimate result of transitional justice is the whole question of restoration and building our communities.

In his keynote was address, address titled “**Role of African leaders in conflict resolution and peacekeeping**”, His Excellency Benjamin William Mkapa, former President of Tanzania, gave an assessment of African conflicts and the role that some elder African statesmen and women have taken to promote conflict resolution and peacebuilding. He highlighted the challenges that have faced African countries and leaders in peacebuilding efforts but also possible solutions to the same.

He drew attention to the fact that in the last 60 years many countries in Africa that included Nigeria, apartheid South Africa, Uganda, Mozambique, the Sudan, Somalia, Kenya, Sierra Leone, Liberia, Rwanda, Burundi, the DRC, Angola, Guinea Bissau, and the Central African Republic had experienced violent conflict. These conflicts have cost the continent enormously in terms of loss of human life, displacement of citizens, destruction of property and the social fiber of communities, untold psychological trauma and stunted socioeconomic development. Fundamental for the implementation of a development and integration agenda are the need to promote peace,



His Excellency Benjamin William Mkapa, former President of Tanzania

security and stability. For conflict resolution and peace building to take root in Africa the leaders need to identify the origins of the problem and ensure there is good governance. Lack of multilateral approaches, indifference and lack of political will among leaders have hampered the achievement of peace building and reconciliation.

He recommended that African leaders should be willing and prepared to participate towards conflict resolution and peacebuilding. Borrow best practices on conflict resolution and peacekeeping from both continental and international experts. Each country should realize that they are unique and require adopting different methods of peacebuilding.

Tree Planting Ceremony

During the health break, H.E. Benjamin Mkapa led conference participants in a tree planting ceremony in commemoration of all those engaged in the work of justice and peace and also as a reminder that there was still much to be done in the continent of Africa and globally to realize just peace.

SESSIONS TWO – PLENARY

Mr. Dickson Magosti of the National Peace Directorate (previously the National Steering Committee) read a paper on behalf of Ambassador Dr. Monica Juma Principal Secretary, Ministry of Interior and Coordination of National Government of Kenya. The paper was entitled “*The role of the national government in constituting infrastructures of peace in post conflict societies*”. Highlighting Kenya’s progress in the implementation of an infrastructure for peace the paper discussed the rapid decline in interstate conflicts and the rise in intrastate conflicts characterized by civil war, ethnic tensions, religious conflicts, election violence, extreme violence and terrorism, territorial secession. To ensure a cohesive and integrated approach to peace, the Kenyan government had:

- Built institutional capacities in conflict prevention
- Engaged in trainings
- Engaged in coordination activities aimed at building peace



Mr. Dickson Magosti, National Peace Directorate, on behalf of Ambassador Dr. Monica Juma, Principal Secretary, Ministry of Interior and Coordination of National Government of Kenya

- Supported and implemented peace process/framework that brought on board all stakeholders
- Developed institutions such as the National Steering Committee on Peacebuilding and Conflict Management (NSC), National Focal Point on Small Arms and Light Weapons, National Drought Management authority, Ministry of Devolution and planning, and the National Cohesion and Integration Commission.
- Implementation of Agenda Four as spelled out in the National Accord Agreement
- Establishment of the Truth Justice and Reconciliation Commission, the Kriegler and Waki commissions, etc.
- Operationalizing Peace committees in all the counties
- Promoting use of Alternative Dispute Resolution (ADR) mechanism and judiciary.
- Development implementation of various policies such as the National Peace Policy, policy on small arms and disarmament Land, etc. Incorporated matters of peace and security in one docket
- Embarked in the resettlement of Internally Displaced Persons (IDPs)
- , policy on
- Established peace dividends projects that bring communities together
- Mainstreamed conflict sensitive planning in national government
- Established community dialogue forums where community peace agreements were signed
- Established a conflict early warning and early response mechanism under IGAD
- Developed and implemented a conflict sensitive reporting tool
- Introduced sports, peace education and psychosocial support amongst communities affected by conflict.

The Kenyan government continues to experience challenges related to the dynamism of conflicts influenced by ethnicity, which is entrenched in the country. Strengthening of peace committees, was one way the government was trying to deal with this vice and also encouraging the participation of

women and youth as peace agents. There is need for interagency coordination as well as maintaining and sustaining partnerships. A Policy and legislative framework would greatly assist in enhancing what the government is doing. It is important to note that the government works in collaboration with UN agencies, the Red Cross, faith-based organizations, civil society actors and the private sector. The role of the media in promoting peace can be enhanced by conflict sensitive coverage.

Her Excellency Amb. Dr. Aisha Laraba Abdullahi, Commissioner for Political Affairs, African Union, made a presentation titled **“The role of the African Union in peacebuilding in Africa”**. In her remarks, she shared on how the African Union and African leaders are dealing with peacebuilding efforts and the challenges the AU has faced in the same regard. By way of introduction, she discussed the causes of conflict on the continent; citing war, poverty and climate change as some of the major causes of conflict.

She then informed the participants that the main role of the AU in peacebuilding is calling upon African leadership to dialogue on issues at the regional, continental and global levels, and to come up with sustainable solu-



Her Excellency Amb. Dr. Aisha Laraba Abdullahi, Commissioner for Political Affairs, African Union

tions that addressed the causes of conflict. She reiterated the importance of setting up infrastructures for peace at national level.

Some of the identified challenges facing the AU were:

- Lack of accountability by the some African leaders on the infringement of human rights, which she said, is an obligation of every African leader.
- Lack of political commitment where leaders are unwilling to take full responsibility on atrocities committed.
- The enormous task of bridging between accountability for past crimes and achieving lasting peace in such fragile nations. There was therefore a need for more political will power/ commitment among African leaders

Afternoon Session

Parallel Thematic Sessions

The afternoon session was divided into parallel thematic panels. Participants could attend at least two panels of their choice in one afternoon. Each panel had a topic to address, a session moderator, and a rapporteur to help guide the participants towards generating solutions.

PANEL ONE:

TRANSITIONAL JUSTICE, PEACEBUILDING AND RECONCILIATION IN AFRICA

Moderator:

Dr. Joseph Nasongo, Commissioner,
National Commission and Integration Commission

Panelists:

Mr. Hyppolyt Pul, Coordinator of the Africa Justice and Peace Working Group for
Catholic Relief Services (CRS), Ghana

Ms. Leonie Abela, Regional Program Coordinator,
Peace Building at Agency for Co-operation and Research in Development
(ACORD), Kenya

Ms. Anne Munene, Transitional Justice Officer,
Human Rights Network-Uganda (HURINET-U)

This session had three presenters looking at the application of transitional justice (TJ) in Africa and its interpretation. The panel moderator introduced the panelists and gave a background of TJ in Africa.

The first presenter was Ms. Leonie Abela, in her presentation was entitled “*Community led peace process: Social Contract for peaceful coexistence*”. The



presentation highlighted the fact that peace agreements are usually formal contracts negotiated at high level by a third party and are intended to end a violent conflict, or to significantly transform a violent conflict, so that it can be more constructively addressed. One of the significant issues many states emerging from conflict situations have to deal with is, how to bring together their citizens torn apart by deep feelings of hatred and mistrust against each other, to peacefully co-exist after months/years of violent conflict. Establishing truth commissions has become a popular model adopted by post conflict states with the aim of achieving justice and reconciliation while setting up mechanisms/measures of redress. However, it remains unclear as to what extent such commissions contribute to re-establishing trust and social cohesion but more importantly true reconciliation among the affected and afflicted communities.

She then shared experiences from community driven initiatives that translate peace accords negotiated by top leadership into meaningful journeys towards peace recovery, social cohesion and development (social contract). Her presentation was supported by testimonies of three elders from the Bukusu, Sabaoat and Teso communities that worked in their communities resulting in peaceful co-existence among them in Bungoma and Trans Nzoia counties of Western Kenya.

The elders led a community dialogue aimed at analyzing and understanding the root cause of conflict, acknowledging the abuses and crimes they had perpetrated as community members against each other, then facilitated healing, and undertook negotiations to secure formal commitments to peaceful co-existence and community-based recovery and development.

The next presenter was Mr. Hippolyt Pul with a presentation entitled "*Transitional Justice – Transition from Where to Where and Whose Justice?*". This presentation that explored the African and philosophical understanding of transitional justice, argued that transitional justice has become the instrument for rebranding African countries that are re-emerging from periods of violent conflicts, dictatorships, or other forms of collective traumatic experiences. To understand what has been achieved, requires the decoupling of the two words that give it form and meaning. Transition connotes a process of moving from one place or state to another. Coupling of justice to it indicates the process provides some form of justice that enables the participants to move from a traumatized past into a new and better future. Key words in

this process are some form of justice, since the idea implies that participants cannot and should not expect full justice; they must forego that right in part in order to move beyond the past. Of all the vehicles of transitional justice, truth commissions (TRCs) presented the most personalized spaces to encounter forgiveness, healing, reconciliation, and restoration of people and communities. However, the structure, modus operandi and outcomes of the TRCs have left many citizens in such countries wondering if any transition took place and whether justice was done. Based on information from Key Informants in Sierra Leone and Liberia, and review of transition outcomes elsewhere on the continent, this paper questions whether ordinary people who bore the brunt of the traumas of war, dictatorships, and other forms of poor governance in countries that have used TRC processes actually experienced any transitions in their lives? Africa, it argues, still has a long way to go to heal to its people.

The third presenter was Ms. Anne Munene. Her paper was entitled "*National Reconciliation and transitional Justice Process in Uganda*". She stated that Since Independence in 1962, Uganda has faced a turbulent history of uprisings and conflict. The democratic process of the country has been shaped in a context of violent power struggle, leaving behind a society profoundly enmeshed in negative ethnic division, regional inequality, militarization of civil life, and flawed institutions that exist beneath a surface of relative peace. Concerted thoughts and efforts for a cohesive country is beginning to be felt, and the transitional justice process is highly thought of as a course of action that can propel and deliver the desired unity.

Her presentation articulated the debates surrounding transitional justice in Uganda noting that there are differing perspectives to the question "transition to what?", some argue that Uganda is not in any transition while others argue that Uganda is a hybrid state and transitioning from poverty to economic welfare, bad governance to good governance, from impunity to accountability, from war to peace and from victimhood to vibrant citizens. She also looked at the transitional justice mechanisms set up by the government and the citizenry to address the turbulent past in order to achieve national reconciliation. Munene highlighted the fact that truth commissions were perceived and criticized for being used as a political strategy to provide legitimacy to the current government., The amnesty act of 2000 aimed at encouraging combatants to come forward and stop violence without fear

of prosecutions has been marred by criticism from the affected communities since it doesn't foster reconciliation, and was also seen as the government's tactic to end conflict rather than foster a genuine desire to end conflict through peaceful means. The Juba Peace Process which began in 2006, and aimed at concluding 22 years of conflict between the LRA and GoU if implemented would be a major step forward in addressing the underlying causes of conflict.

- *Response to the Presentations:* It is the wearer of the shoe who knows where it pinches most and therefore Africa should strive to come up TJ concepts that are relevant to its context.
- It is the responsibility of every community member to realize that the power of peaceful co-existence is in their hands and that when conflicts occur, they are the ones that suffer most. .
- Citizens need to take responsibility and ensure that office bearers are held accountable for any crimes committed while they are in office.
- On matters regarding transitional justice, every person in the society has a duty to ensure that justice is done and peace is maintained. If issues of injustices are not addressed lasting peace will always be elusive.

PANEL TWO:

TRANSITIONAL JUSTICE, PEACEBUILDING AND RECONCILIATION IN KENYA

Moderator:

Rev. Dr. Kifle Wansamo, SJ, HIPSIR

Panelists:

Dr. Peninah Ogada, Lecturer,
University of Nairobi, Kenya

Rev. Dr. Elias Opongo, SJ,
Hekima Institute of Peace Studies & Internationals Relations

Dr. Connie Mumma, Lecturer,
University of Nairobi, Kenya

The session moderator, Dr. Wansamo introduced the panelists, and invited the first speaker Dr. Ogada to make her presentation entitled “*The Kenyan TJRC: Divergence between Public Expectations and the Realities in the Political Environment*”. In this presentation, she gave a contextual analysis of the role of Kenyans in Transitional Justice by looking at the citizens, the academicians and the political elite. She uses her experience to highlight on the weaknesses of the citizens and gives an account of her personal experience during the 2007/2008 post-election violence when she had to travel through hotspots and witnessed the violence first hand. Her presentation narrated how youth were paid KES 100 to “sell their votes” to politicians during the election period and how citizens are gullible and make decisions based on monetary value as opposed to choosing credible leaders . The presentation challenged the academicians who analyze data but do not go beyond analysis to come up with suggestions or recommendations to improve the status quo. Academicians usually are not motivated to interpret, explain and disseminate the information and knowledge they have to the community and therefore are more of what she called an urban-based intelligentsia that can be irrelevant to practitioners. The political class on the other hand she said are often self-serving and are not bothered to come up with policies that tackle issues that lead to conflicts since no one holds them accountable . In concluding her presentation, she asked the question of how Kenyans can be responsible for their protection when they are disgruntled.

The next presenters were Rev. Dr. Elias Opongo, SJ and Dr. Connie Mumma who jointly presented a research entitled “*The dilemma of truth telling and justice: healing process for the male victims of violence in Mt. Elgon*”. The presentation highlighted the fact that Mt. Elgon witnessed one of the most violent conflicts in history of Kenya. In the early 1970s, the state initiated a resettlement process for squatters in Chepyuk (Soy and Mosop clans of the Sabaot). However, this program was marred with various setbacks and delays over the years due to ethnic polarization and elite fragmentation that dominate national politics in Kenya. The Sabaot Land Defense Force (SDLF), formed in 2005, to resist the government’s attempts to evict squatters already in the area. According to the Human Rights Watch report in 2008 both the SDLF and the Kenya Defense Forces were accused of atrocities against civilians.

After the Kenya Truth Justice and Reconciliation Commission was established to look at past injustices across the country, Mt. Elgon was one of the regions where investigations were carried out due to crimes committed by both the SDLF and the Kenya Defense Forces.

Key findings and emerging issues

Based on the research findings, it was noted that the TJRC mainly used, statement-taking, interviews, private consultations and public hearings to gather information from the victims. Physical violence was the main form of violence the victims experienced as well as sexual violence and psychological torture. The male victims reported to have lost some property during the conflict, and the SDLF was alleged to have extorted money and property from the civilians.

The Truth Commission findings stated that 96% (26 out of 27) of the male victims of violence were inadequately prepared by the TJRC. Participants did not feel part of the process since investigations took place in an insecure environment with young statement takers and fear of public exposure and retaliations. Most of the male victims of violence 89% (24 out of 27) said that truth telling was a very good experience for them although many victims had high expectation on the truth telling process expecting (from the TJRC) sufficient preparation of the victims. The victims recommended that there was need; for psychosocial support to both victims and perpetra-

tors, assurance of security to those who testified before the TJRC, for a safe environment for the perpetrators to come out and confess their actions and seek forgiveness, encourage possible meeting between the perpetrators and victims, creating a period for the truth telling process and allow as many victims as possible to narrate their stories, provide reparations & compensation

Recommendation and way forward

- Identify key recommendations from the truth telling process & suggest implementation
- Use of traditional mechanisms
- Sensitivity to cultural variations
- Encourage cross-cultural dialogue – reparations, compensation, forgiveness & reconciliation
- Physical healing for both men and women who suffered human right violations
- Review of the land questions

The next presenter was Dr. Connie Mumma whose presentation was entitled “*Post TJRC: What’s the way forward for reconciliation?*” Dr Mumma highlighted that victims and survivors of conflict situations frequently remember what happened to them. If their experiences remain unaddressed, they will have catastrophic consequences in the future. Attempts to evade the reality of those who have suffered hideously in the past set the stage for those memories to intensify in violent response to the immediate present; and even worse, the memory of these grotesque realities are passed on to succeeding generations and become a mythology which will support equally hideous reaction in the future.

The TJRC in Kenya was formed to investigate past injustices inflicted upon Kenyans since 1963 and to include:

- The Mau Mau Veterans and Freedom Fighters
- Political arrests, detentions, extra judicial killings, forced disappearances (During the late president Jomo Kenyatta and former president Arap Moi’s eras)
- The Nyayo chambers torture victims and political prisoners

- The Wagalla and Kisumu Massacres
- Minorities and Indigenous People: Nubian and Somalis
- Violence against children, youth and women
- Torture On Individuals and Families

Dr. Mumma observed that the TJRC came up with a structure (the Reconciliation Reference Group [RRG]) to spearhead the reconciliation activities recommended in the report and to come up with the National Reconciliation Agenda for Kenya. The RRG group was to comprise of a wide range of stakeholders and key players in the reconciliation agenda in Kenya.

People who were summoned by TJRC, during the hearings, as victims or perpetrators must be given feedback on the status of their cases and decisions made to address the injustices. Road maps and policies that have been developed and incorporated into the development agenda of the country such as Kenya Vision 2030, the National Youth Policy, the National Land Policy, the National Gender and Development Policy, and the National Education Policy Sessional Paper No. 1 of 2005 should be embraced as mechanisms for enhancing reconciliation since they begin to address some of the historical injustices.

Dr. Mumma recommended that different actors must be given an opportunity to get involved in the process of ensuring justice, healing and reconciliation throughout the country but care should be taken to avoid duplicating the same activities or not doing what is expected of them. Specific recommendations for victims and perpetrators included:

1. Harmonizing traditional and modern mechanisms towards reconciliation
2. Understanding the victims and perpetrators one is working with
3. Identifying both the victims and perpetrators by priorities and influence
4. Developing key messages to different victims and perpetrators
5. Being aware of changing moods and perceptions due to trauma
6. Engaging in dialogue, and consultations at all times and reaching out to as many victims and perpetrators as possible
7. Communicating regularly with all the stakeholders.

PANEL THREE:

GENDER JUSTICE WITHIN TRANSITIONAL JUSTICE

Moderator:

Dr. Susan Mwangi, Lecturer,
Kenyatta University, Kenya

Panelists:

Dr. Helen Scanlon, African Gender Institute,
University of Cape Town

Ms. Aminata Ndiaye, Gender Thematic Manager,
ACORD

Ms. Lina Zedriga, Women Peace and Security Advocate,
ACORD

Dr. Helen Scanlon presented on a paper entitled **“Challenging Invisibility: Promoting Inclusivity and Representation”**.

Dr. Scanlon highlighted that much effort and resources are needed to make a small visible change in the African post-conflict states/societies unlike the developed world which have better structures and institutions plus highly literate populations that makes it a little easier to make a recognizable change.



African states in the past decades have made achievements in addressing issues of gender and transitional justice. Some of the strides made by Africa include:

- Challenging the notion that views gender based violence as non-political
- Visibility of gender based crimes in the international criminal law processes has improved since the 1998 Rome Statute
- Increasing emphasis in truth-seeking, indictments, reparations and security sector reforms
- The adoption of UN resolutions on women, peace and security by African states such as UNSCR 1325
- An increase of policy frameworks such as AU Protocol and the Nairobi declaration of 2007 promotes women's right to peace
- Acknowledgment of a Continuum of Violence
- Promotion of substantive legal reforms that hold perpetrators to account. (these reforms however should be balanced with other Justice issues)

Even though major strides have been realized, some key limitations still drag African post-conflict societies from the desired status. Some of the eye-catching drawbacks include:

- Inaccessibility of institutions of law and justice to many
- Escalation of violent crime and police abuse with little recourse
- Dehumanization of the poor and criminalization of the 'ethnically other' leading to physical attacks
- A retreat of people from the public into private security
- Growing popular support for illegal measures of control

In conclusion Dr. Scanlon recommended that for transitional justice to be successful the process should see beyond civil/political rights and recognize structural conflicts which are always gendered and stop interpreting gender representation as just quotas. It should promote substantive legal and institutional reforms acknowledgement of continuum of violence, insist on context specificities when documenting and addressing gendered issues, highlight limitations and redress traditional justice processes that in-visualize gender based crimes and injustices. It should also avoid subsuming gendered experiences into generic groups such as religious, political, cultural, etc.

Ms. Aminata Ndiaye's made a presentation entitled "**Gender, culture and transitional justice towards a transformational justice**".

Ms. Ndiaye observed that the analysis on the causes and impacts of conflicts in the context of African countries shows that beyond the political dimension of conflicts, the ideological dimension is also very important and underlies the struggle for identity and ethnic rights within traditional and cultural systems. In this case it is not possible to build a sustainable peace building process without attempting to understand the relationship between transitional justice and the culture in which it takes place, especially when considering gender as an essential part in this process.

The relationship between gender, culture and transitional justice is an area not yet explored enough in the process of transitional justice and yet it offers the opportunity to make significant advances for gender justice. One of the major undoing is the fact that transitional Justice has constantly failed to have a gender dimension. Inclusion of women to foster gender as an affirmative action in conflict resolution is always just for a face value and for passive participation.

Gender injustices are treated as mere symptomatic issues rather than as part of the war crimes. Studies have also shown that gender issues, especially during enforcement of transitional justice are over-compartmentalized from other societal matters. Compartmentalization (separation into a different box) of gender issues make them seem to be happening away from other societal issues and hence not viable when trying to have a holistic approach to transitional justice and therefore, Post-conflict societies should adopt a tendency of prioritizing sexual violence and other women issues during humanitarian response and assistance as part of atrocities caused by the perpetrators.

For transitional justice and gender to succeed there has to be a change in the mindset of the societies on power relations between men and women. For instance, the inclusion of all genders at all stages of development such as in commissions and committees is an example of how power relations can be dealt with. Other ways would be to:

- Integrate gender justice into our communal systems at the grass-roots
- De-structure the male dominated structural systems and restructure to gender sensitive institutions, integrate and mainstream

gender into development initiatives early enough to prevent gender injustices as a result of structural injustices

- Avoid fragmentation of gender issues and separation from other societal issues too much; thus avoid putting gender issues into a box as if others are not affected by gender based injustices
- Prioritize sexual violence and other women issues during humanitarian response as part of atrocities caused by the perpetrators
- Consider the different aspects that feed into susceptibility of women to effects of conflicts
- Documentation and research on gender based injustices and best practices
- Collecting gender, age, desegregated data to help improve on response and reducing further gender injustices

The next presenter Ms. Lina Zedriga's who presented a paper on: **“Women’s access to justice in post conflict situation: The bridge between law and justice in practice”**

Ms. Zedriga, analyzed how gender justice for sexual violence has been addressed in the various transitional justice models, and the effectiveness of these justice systems and approaches in delivering justice to victims and affected groups. She noted that sexual and gender based violence has by default tended to cast the spotlight more on female than male victims, although men too are targeted for sexual violence in conflict situations.

Mechanisms have been put in place at community, national, regional and global levels to deal with issues of gender justice. Some of these mechanisms include international criminal tribunals, International Criminal Court (ICC) and Universal jurisdiction, at the international level truth and reconciliation commissions; reparations; Amnesty; lustration; and institutional reforms at national level and traditional systems such as Mato-Oput in Northern Uganda and Gachacha Courts in Rwanda where women played and are still playing very critical roles in establishing and promoting justice that heals in the communities. Other traditional mechanisms include the *'Fambul Tok'* in Sierra Leone; domestic tribunal in Afghanistan and Local community healing meetings in South Africa.

Challenges:

Although there have been various mechanisms in addressing gender violence, there are various challenges faced:

a) *Low Political Will To Prosecute*

Despite strong social, moral and legal imperatives for prosecution of crimes of sexual violence, the number of prosecutions remains dismal. The failure to undertake prosecutions of sexual violence undermines the fight against impunity for gender based violence on the continent, and yet non prosecutorial justice systems may not effectively fill this gap.

b) *Amnesties As Barriers To Justice*

Amnesties are results of transitional justice arrangements. Particularly where conflict occurred in polarized contexts, or when identity based fragmentation or solidarity still pertains, peace building initiatives are often fragile. Uganda has experienced blanket amnesties being granted and therefore denying women protection while in Sierra Leone the citizens view the process as acts of a 'frightened or blackmailed government' and therefore a lack of a comprehensive approach to justice delivery.

c) *Lack of Meaningful Remedies*

Sexual violence affects women individually and where the legal frameworks admit, compensation should be awarded by way of damages to individuals. However, in the countries where reparations programs have been initiated, the execution of such programs has been difficult.

Ms. Zedriga concludes by recommending that:

- Sexual violence should be prosecuted as war crime
- Shaping proceedings through: advocacy, community organized demonstrations, research, petitions, amicus briefs, witness centered actions
- Growing civil society activism
- Advocate for women's participation as stakeholders rather than mere victims

- Ensure women are included in the design and establishment of mechanisms and processes
- Inform the public of women's critical roles and ensure they participate directly in all processes
- Strengthen short-term initiatives with long-term reconciliation
- Reach out to women to provide psychosocial support that also includes the witnesses

PANEL FOUR:

GENDER JUSTICE AT THE GRASSROOTS

Moderator:

Mr. Stephen Kadenyo

Panelists:

Ms. Rebecca Mukyala, Lecturer,
Gulu University, Uganda

Dr. Ngozi Iheanacho & Dr. Caroline Mbonu, HHCJ
University of Port Harcourt, Nigeria

Ms. Kamila Krygier, Advisor,
John Paul II Justice and Peace Centre, Uganda

Ms. Rebecca Mukyala presented on a paper on **“Grassroots Peace building in Post-conflict Societies: A gendered perspectives on Agro-based Experiences”**

Ms. Mukyala noted that the Uganda economy is an agricultural based economy where 70 percent of its population resides in rural areas; with over 80 percent depending on agriculture for their livelihoods. The agricultural sector contributes more than 60% of the gross domestic product. Women



constitute more than 70 percent of the active productive workforce in Uganda, constituting an additional 23 percent in agri-business; and actively contributing to value chains along the way sometimes as traders. This makes women valuable assets in the successful post conflict peace building. In her presentation she argued that the continued underdeveloped agro-sector in post-conflict communities is a recipe for insecurity and civil strife because, the majorities' (women & youths) livelihoods are rendered insecure and, could easily lead to mobilization for negative goals.

In some of her research findings Ms. Mukyala highlighted that gendered knowledge on the nature of conflict is important in agro based communities because it serves as a tool to inform development policy. Culture is dynamic and varies across societies. It also shapes our gender expectations and activities. Conflicts affect our gender role. For example, in Uganda when men went to war women were forced to assume the role of fending for the family which is traditionally viewed as a man's role. Conflict also disorganizes aspects of social relations due to an increase of single headed households and quite a number of children born out of war. The Conflict in Uganda has for instance also opened up new areas for women engagement; women started to do things on their own like running small businesses and the paying of bride price started being abolished.

Gender relations define entitlements through markers. These markers include: marital status and if married the number of children and also the gender of the children. After war or a conflict, both the good and bad experiences are forgotten and the focus is generally on going back to normalcy. The empowerment of women during war is quite short term and they are expected to revert to their initial position before the war. Therefore lack of gender considerations in conflict situations creates unsustainable livelihoods and sets up the ground for recurrent conflict. Women and children are displaced because of monetization of land after the conflicts since, culturally, they cannot not own land and this has increased violence in the urban areas.

The presenter therefore recommended that development workers should not engender conflict by continually promoting blanket programmes that do not address the gender specific issues and concerns.

Ms. Kamila Krygier's presentation was on **"Mental health in post conflict Northern Uganda"**

In her presentation, Ms. Krygier presented her research findings and noted that the aftermath of war goes beyond the physical harm and also brings psychological suffering. Sustainable peace building addresses issues of psychological suffering. Mental health is an integral part of health, and there is therefore no health without mental health (WHO 2000). Mental health policy in Uganda exists though outdated. However there is a new policy that was developed though it still remains a draft. The ratio of psychiatrists to mental patients is unrealistic i.e. there are very many patients for a doctor to handle comfortably.

Negligence of mental health is a silent pandemic. Mental illness is a serious concern and should be accorded the seriousness it deserves. Mental patients are stigmatized mistreated and discriminated against. Additionally they face physical, verbal and sexual abuse yet there is no follow up on crimes against them. They feel worthless and have low self-esteem. Supporting and taking care of mentally ill patients has been a challenge as the family members and relatives get overwhelmed. There is also very little knowledge on mental illness in the communities in terms of causes treatment and management. A lot of myths and misconceptions surround this. Improving service delivery will go a great way in improving mental health e.g. increasing the number of psychiatrists and caregivers. A lot of suicides have been linked to mental illness.

In conclusion Ms. Krygier stressed on the need to improve education and sensitization in the area of mental health as an essential for knowledge expansion on issues around mental illness and more family involvement.

Dr. Caroline Mbonu, HH CJ presented a paper co-authored with Dr. Ngozi Iheanacho, entitled **"Peace to this household..." (Luke 10:5-6): Role of Women in Inspiring Peace at the Grassroots"**

The paper drew from the International Women's Day 2014 theme: "Inspiring Change," to investigate women's role in peace-building in African homes and villages. Almost every African has deep roots in one village or another. A peaceful village assures harmonious existence in a clan, which further translates to a peaceful nation. As the backbone of the African fam-

ily, the women's activities cannot be separated from securing viable peace at the grassroots. Thus women function culturally as the building blocks for a sustainable peace co-existence.

Findings from the Study

- Peace building is a multi-level exercise that goes beyond the household level to regional, national and even international levels.
- Peace building touches on women because they are the majority at the grassroots.
- Peace building systems are present in our villages though some do not work because of modernity.
- Women are agents of peace in the African society.
- Women are immobile members of the household thus making them crucial in peace building.
- Women are the de facto heads of the households because men are usually mobile. They are ever present and therefore enhance and share peace with the children and larger extended family.
- The crucial role of African women in safeguarding societal cultures also gives them key role in peace building.
- The maternal instincts of women make them crucial in peace building because they always remain mothers at heart.
- It is on the women's shoulder to make her home safe for her children and the entire family even when the outside is at war.
- Women act as agents of socialization and so by socializing their children to the culture of peace they can transform communities.
- The African woman inspires change using her womanhood. Through negotiations and dialogue the woman uses her tongue to achieve peace.
- There cannot be peace without justice because peace is joined to justice and truth. Justice and peace have embraced and when justice is done peace is achieved and truth attained.

PANEL FIVE:

THE ROLE OF RELIGION IN TRANSITIONAL JUSTICE

Moderator:

Rev. Dr. Emmanuel Foro, SJ, Hekima College

Panelists:

Dr. Anna Floerke Scheid, Assistant Professor, Dept. of Theology,
Duquesne University, USA

Rev. Dr. Laurenti Magesa, Professor,
Hekima College of Theology, Kenya

Prof. Jesse Mugambi, Professor, Dept. of Religious Studies,
University of Nairobi, Kenya

Dr. Anna Floerke Scheid's presentation was entitled "**After the revolution: Acculturated reconciliation in North Africa**". The essay explored post conflict reconciliation, as an aspect of transitional justice that had been salient for many African states, in North Africa post revolutions. It further explored how reconciliation might be enculturated, in post-revolution North African and Islamic contexts using Islamic virtues of *sabr* or patience, forgiveness, and rituals of *Suhl* and *musalaha* (settlement and reconciliation)

Key findings

Islamic understandings of forgiveness may be similarly salient for promoting reconciliation in contexts shaped by Islam. The following underpins this assertion:

- Islam understands mercy and forgiveness as key attributes of God. Islamic theology holds that genuine forgiveness from one who is injured demands and only comes following repentance and reparation on the part of those who have done the injury.
- Sabr, or patience, is a concept that is perhaps even more promising than forgiveness for promoting reconciliation in post-revolutionary North Africa and other Islamic contexts. It conveys the virtues of thoroughness, perseverance, and a "firmness of purpose" that direct the person toward systematic and intentional action in the face

of difficult situations.

- Nations emerging from revolutionary conflicts in North Africa can also adapt and employ local, indigenous rituals to assist in social transitions and build peace and reconciliation in their communities.
- North Africa nations emerging from revolution may find it helpful to adapt the rituals of *sulh* and *musalaha* for supporting a process of repentance, reparation, and reconciliation in local communities.

The lessons of the TRC in South Africa illustrated that religious and cultural insights can be combined to effectively forward and support efforts toward justice and social reconciliation. In the paper, the writer suggested that Islamic notions of forgiveness and patience, as well as the indigenous practices of *sulh* and *musalaha* may be key components of post-revolutionary reconciliation in North Africa.

Prof. Jesse Mugambi's presentation was on **"The Cultural Factor in the Sustenance of Justice and Peace"**

In his presentation, the panelist highlighted that culture is the main challenge in Africa's quest for peace and stability. As Africans we remember and embrace the saying, "I am because we are and because we are therefore I am". European enlightenment was based on individual pursuit. The imperial subdivision of people completely disoriented three generations of Africans to the extent that even the fourth generation finds it hard to reconnect with this communal understanding. The presenter cited the example of the burial of a common lawyer/politician of Kenya Prof. S. M. Otieno. At the time of his burial, there was a battle between the English common law and the African Luo traditional law on matters of where to lay the body for its final rest.

Looking at democracy through one man one vote begs the question whether it has worked for Africans? Elections in Africa have been seen as routine events to satisfy the international community. This Paper explores the theme of Culture as the main challenge in Africa's quest for stability and prosperity. Culture is defined here as the multi-faceted manifestation of a people's collective identity, expressed in cumulative achievements across generations. Professor John S. Mbiti summarizes African cultural identity in the maxim "I am because we are, and because we are, therefore I am". The

European “Enlightenment” was based on individualistic pursuits, and the entire European culture glorified individual prowess much more than communal identity. In contrast, the emphasis on community in African self-understanding implies that the individual finds his own identity in communal belonging. Imperial subjugation of African peoples between 1890 and 1990 completely disoriented three generations of Africans, to the extent that the fourth generation in every part of this continent finds it very challenging to re-connect with this communal self-understanding. Individualistic indoctrination in Christian mission churches and schools did not manage to obliterate the communal basis for African identity, even among the African elite.

In politics, the African elite has in the name of “modernity” adopted (but not adapted) the Euro-American model of individualistic multi-party “democracy”, based on ideological competition rather than communal cooperation. The ides of “one-man-one-vote” has not worked in Africa, where identity is not individualistic. In practice, political parties in Africa have become vehicles for access to political power rather than ideological organs- irrespective of the labels that these political parties bear.

To achieve durable peaceful, co-existence, stability and prosperity in Africa, a thorough re-assessment of cultural self-understanding is necessary, taking stock of the individualistic indoctrination that contradicts and clashes with communal identity. In Kenya, there are signs of success in this direction, as illustrated in all the pillars of culture-polity, economy, morality, family, beauty and religiosity. Social stability, peaceful co-existence and economic prosperity can be achieved and sustained only if the socialization and education processes resonate with the cultural self-understanding of African peoples within and across nations. This insight is vital for the pursuit of Transitional Justice in post-conflict contexts

Dr. Laurenti Magesa presented a paper on **“Insights into the Dynamics of Transitional Justice from the Fathers of the Church”**

The purpose of the paper in the form of a reflection was to share thoughts of the Church Fathers, insights on the question of true reconciliation that can contribute, from a Christian faith perspective, to the understanding and practice of justice in post-conflict situations facing us in our own day. The contention is that Patristic thought, if well understood and appreciated, can help to establish a firm foundation for practical programmes and structures

of dealing with situations that concern grave transgressions of human dignity and rights in a given society so as to return it to “normalcy.” As the ancient Letter to Diognetus explained, Christians as human beings share everything with other human beings: country, customs, and language. But within common human societies, Christians are called to a radically different way of life, one that is fundamentally oriented towards a just society. “The course of conduct they [Christians] follow has not been devised by the speculation and deliberation of inquisitive men. They do not, like some, proclaim themselves the advocates of merely human doctrines.” By their solidarity with and compassion for others, Christians, “scattered through all the cities of the world, should be the “soul” of the world by their fair-minded conduct, ceaselessly helping to construct a just world (Letter to Diognetus, Ch.5 and 6).

For the Fathers, inequality is the source of social conflict. The ideal society is one that does not harbour excessive disparity, which necessarily leads to injustice and oppression. The position of the Fathers is that, genuine and lasting peace is not brought about merely by external structures and institutions, however efficient but if they are to serve enduring justice and peace, structures, must be founded on internal transformation of the heart.

An essential component of transitional justice is reconciliation founded on truth. Admittedly, this is a slow process; it is why the Fathers insist on forming something like a culture or civilization of love. Forgiveness, apology and thanksgiving are not legal terms but moral terms. Apology and regret are different. Ethical and religious terms are not fit in legal terms and must therefore be acquired morally and ethically through a change of heart.

PANEL SIX:

VICTIM VOICES IN TRANSITIONAL JUSTICE

Moderator:

Ms. Regina Utita Opondo, Executive Director, CRECO

Panelists:

Mr. Andrew Songa, Programme Officer,
Kenya Human Rights Commission, Kenya

Mr. Christopher Gitari, Executive Director,
International Centre for Transitional Justice, Kenya

Dr. Eric Ndushabandi, Lecturer,
'Universite Nationale de Butare', Rwanda

Mr. Andrew Songa and Mr. Christopher Gitari co-presented a paper on **“Options for Reparations in Kenya following the Issuance of the TJRC Report”**

The Kenyan Truth Justice and Reconciliation Agreement came into existence following the the Kenya National Dialogue and Reconciliation talks after the post-election violence. The agreement was, adopted by Parliament and led to its passage as the Truth Justice and Reconciliation Act that formed the Truth Justice and Reconciliation Commission to investigate historical injustices from 1963 to 2008.



Key highlights

- Victims did not understand their rights well
- Majority of the victims emphasized the issue of livelihood
- In contrast, discussion on transitional justice generally targets civil and political rights.

Recommendations

- There is a need for urgent reparative program for most vulnerable victims such as widows, elderly, persons with disability, etc.
- Establishment of a more comprehensive reparation program on civil and political rights which are more complex.
- Reparation should be gender specific and transformative in impact with well thought administrative policy that improves the lives of victims and survivors.
- Be clear about timing and sequencing in policy making and implementation.
- Target priorities of victims and survivors.
- Community participation is paramount
- Do not look for quick fix
- Provide assessment and oversight
- Funding is critical complimenting with development programs and oversight to ensure transparency and fairness.

Dr. Eric Ndushabandi presented a paper on **“Memorialization in Rwanda through ‘Ingando’ or the integration of memory in the Rwanda’s post-genocide reconstruction”**

The Ingando framework constitutes one of major mechanisms through which the post genocide Rwandan government has attempted to create one “common interpretation of the past” as part of the nation building agenda.

After extreme human atrocities and violent conflicts, social representations of the past happen to converge with the official memory; but on the other hand there are also noticeable divergences between the two and significant resistance from different groups. It is not always the case that the of-

ficial memory converges with “national collective memory” and the “official memory” is often conflicting with individual memories”. The presentation looked at how Rwanda was handling this phenomenon? How the beneficiaries of ingando training – most of who are university students- perceive this program and what impact it was having on them; and whether there are conceptual and practical challenges to this agenda as a public policy?

“Ingando” is a Kinyarwanda word meaning a military encampment or assembly area where the troops traditionally received their final briefing while readying for a military expedition abroad. The briefing included, among others, re-organization of the troops. Ingando has two main objectives: re-education and recreating a new Rwandan citizen, on one side, and on the other to re-integrate former soldiers and prisoners. Its concept in the post-genocide Rwanda has changed to mean a place where young Rwandan particularly after high school are taken to learn discipline (a place where they are re-educated, and re-integrated) before they continue with their studies.

Recommendations

- This civic education program should be coherent and with the general perspective of a reconstruction process to avoid any discontinuity and incoherence.
- Civic education should be continuously re-evaluated with other values like equity-freedom of expression
- The semblance to a military structure might inhibit the intended objectives of contributing to discipline while allowing open debate
- Self-projections of speakers and their own experience influence the way they conduct their lessons. How can this be avoided especially in teaching history? How can the truth about history be told?
- There is a need to have clear vision characterized by common values of unity and reconciliation.

PANEL SEVEN:

TRUTH JUSTICE AND RECONCILIATION COMMISSIONS IN AFRICA: LESSONS LEARNED

Moderator:

Mr. Liban Guyo Dadacha, Assistant Director,
Reconciliation and Integration, NCIC

Panelists:

Dr. Scholastica Omondi, Assistant Professor, Criminal Justice Studies,
United States International University, Kenya

Ms. Jasmina Brankovic, Associate Editor,
International Journal of Transitional Justice & Researcher and Editor,
Centre for the Study of Violence and Reconciliation, Johannesburg, S.A.

Prof. Agbo Madaki, Lecturer,
Catholic University of East Africa, Nairobi-Kenya

The first presentation by Dr. Scholastica Omondi was on “**The role of the judiciary in transitional justice and reconciliation following the post election violence 2007/2008 in Kenya**”.

General elections in Kenya have been characterized by impunity and chaos. However, the period following the 2007 general election remains one



of the darkest moments in Kenya's history. The 2007 election were the most contested in Kenya's electoral history. Unfortunately, the disputed presidential elections led to approximately two months of violence, with over 1,000 people died, widespread destruction of property and over 350,000 people were displaced.

Rigging of the presidential elections was cited as one of the main causes of the violence. Aggrieved parties stated that they could not go to court to resolve this issue because they did not trust the judiciary as an institution. During this time, impunity was rife in the country – not because of the lack of legislation, but because of an unwillingness to enforce the law and take action against law breakers.

The Constitution of Kenya was amended in 2008 to provide for a legal framework to try those suspected of being responsible for the post-election violence. At the time, Kenyan law did not provide for the offences of genocide, war crimes and crimes against humanity. A new Constitution for Kenya was adopted in 2010 giving the Kenyan courts ability to deliver justice to the victims of post-election violence. Chapter Ten of the constitution also served to strengthen the institution of the Judiciary and that this is being done under the wider framework of Judiciary transformation.

Recommendations

- Formation of a special tribunal to investigate the cases
- Put in place mechanisms to protect the victims
- Proper investigations on sexual abuse cases
- The concerns of the victims must be addressed e.g. widows, psychological issues
- Reparation programs must be put in place
- Community resolutions must be undertaken
- The constitution must be amended to include the clause on transitional justice

The next presenter was Ms. Jasmina Brankovic, Her paper was entitled **“Looking beyond the TRC: Government and civil society action in South Africa’s ongoing transition”**

The paper builds on the extensive literature on the South African transition to argue that an evaluation of its success cannot end with an analysis of the Truth and Reconciliation Commission (TRC). While the TRC was an important mechanism, and has been the focus of scholarly work to date, the paper suggests that transitions are long-term processes that require ongoing critical engagement and advocacy on the part of transitional justice practitioners and scholars. An examination of the public discourse developed by the TRC also requires an examination of how this discourse was built on the new South African government, the independent state institutions established by the 1996 constitution and, in particular, civil society organizations that contributed to shaping the transitional justice process. The paper argues that limitations in the accountability and reconciliation arrived at over the past two decades have more to do with the actions, or inactions, of government and civil society actors, particularly regarding legacies and ongoing forms of socioeconomic exclusion, than with the failures of the TRC. It seeks to draw out lessons for other contexts from South Africa’s frustrated but continuing transition.

Key findings

- Lack of accountability- over 5000 people did not met the criteria for amnesty hearing
- Little overlap between amnesty application and victim statements
- Over 300 members were from apartheid
- A lot of files were distorted
- The government was dismissive on reparation process
- Lack of social transformation

Recommendations and way forward

- Have a strong constitution
- Have a strong civil society
- Civil societies should formulate the justice process and therefore support the victims.

The last presenter was Prof Agbo Madaki. His paper was on **“The failure of the Oputa Panel in Nigeria: Lessons in the Applications of Transitional Justice in Africa”**.

The Human Rights Violation Investigation Commission (HRVIC) otherwise known as the Oputa Panel was established on 14th of June 1999 to investigate incidents of gross violation of human rights committed between January 1966 and May 1999, and to achieve reconciliation based on truth and knowledge of the truth. Other African countries should look hard at the failure of the application of transitional justice in Nigeria and learn from it.

Key findings

Failure of the commission was due to:

- Poor funding as the government had made no serious funding plans for the Commission from the beginning thus jeopardizing the independence and neutrality of the commission.
- Constitutionality of the Commission which the Supreme Court finally decided on 3rd February 2003 that the 1999 constitution made no provision for tribunal of enquiry.
- Public opinion on the summoning of the three generals became polarized along ethnics and religious lines. There were some voices in the north who began to accuse the Commission of being a tool set by President Obasanjo to settle personal scores with his old enemies
- Non appearance of the Generals to testify on the commission

Recommendations

The professor also added that the HRVIC made profound and far reaching recommendations which because of its historical significance are set out below verbatim:

- A broad-based series of national seminars to discuss the country’s political and constitutional structure should be held as a matter of urgency.
- Human Rights Education should be integrated into the curricula

of our schools, with an urgent return to civic and moral education from nursery through secondary schools.

- There should be harmonization of all education initiatives in the country, especially the Universal Basic Education Programme to achieve higher national standards anchored on sound moral values.
- The National Assembly should, as a matter of topmost urgency, harmonize, in collaboration with the state legislatures, the findings of the various constitution review initiatives, so as to bring into existence an acceptable constitution.
- The federal government should take action to make Sharia conform with all the international legal obligations Nigeria has subscribed to, as pointed out in Volumes Two and Five of this Report.
- The Armed Forces should be pruned down to a manageable size, while they should also review their method of internal discipline.
- The Directorate of Military Intelligence (DMI) should be overhauled and professionalized, with its powers and functions limited strictly to military intelligence gathering.
- As a matter of great urgency, steps should be taken to restore its lost dignity to the Nigeria Police, through proper funding, training and the rehabilitation of its collapsed infrastructures.
- There should be an overhaul of the country's prison system, with priority given to the rebuilding and refurbishing of prison facilities.

PANEL EIGHT:

TRANSITIONAL JUSTICE AND CURRENT CONFLICT

Moderator:

Mr. Stephen Kirimi, Chief Executive Officer,
Peace and Development Network (Trust)

Panelists:

Dr. Fred Jonyo, Dept. of Political Science and Public administration,
University of Nairobi

Dr. Richard Ochanda, Senior local development consultant,
Kards Development consultants, Nairobi, Kenya

Mr. Victor Odubah, PhD candidate,
University of Siegen, Germany

The first presenter was Dr. Fred Jonyo. His paper was on **“Do peace treaties work? The case of conflict resolution in Somalia”**.

Dr. Jonyo analyzes the peace efforts made in resolving the Somalia conflict. Somalia has witnessed a series of peace treaties over the years aimed at building peace and stability. From the first conference in Djibouti in June



1991 to the fourth conference in Djibouti in 2009, the theme of peace has been the common goal albeit with different results.

The central question is thus; do peace agreements work? The underlying assumptions that undergird conflicts are that there are risks of unsatisfied needs which people fear in their relationships. By agreeing to come together to dialogue, adversaries commit to specific actions that are intended to open doors for peaceful resolution and address their fears.

Conflicts have been witnessed throughout history thus make them not a unique occurrence. There are limitations to what human beings desire thus social contracts. It is therefore impossible to end conflicts in totality but manage them. The Somalis for instance have so many things in common but are ever in conflict because of competition over scarce resources. The Somali crisis is comprised of three paradoxes:

- a) Tension between governance systems of ancient pastoral cultures and modern statehood.
- b) Tension between tyranny and anarchy.
- c) Tension between high emotions of nationalism and low sense of nationhood.

Unequal distribution of resources worsens the conflict situation in Somalia. The Somalis have run away from nationhood to their clans as reference points which makes clan identity fundamental in the struggle for resources. Other factors that worsen it include colonialism, political clanism, resource scarcity and proliferation of arms. Despite numerous peace efforts and reconciliation there has been little progress with some cases achieving only temporary ceasefire that is not sustainable.

The study concludes, inter alia, the establishment of a framework for strengthening national and sub-regional institutional capacity for conflict mediation and long term peace-building through reinforced governance and development programmes that support reconciliation. The capacity of the Somali people to continue with Somalia's reconstruction process beyond the peace conferences and humanitarian agencies has to be enhanced as a way of sustaining a self-reliant country. Any meaningful and sustainable peace in Somalia would have to be anchored on a solid community base and involve the population throughout the process.

Recommendations and way forward

- Peace efforts that appease the clan leaders but do not resonate with the local have minimum impact.
- External actors have to incorporate the local community interests in their peace efforts.
- It is better to focus on regional and local challenges than nationwide solutions to peace. This is so because national government has never worked for Somalia.
- It is crucial to approach peace building through enhancement of the development aspect and building institutional capacities.
- Adopt systems that ensure equitable distribution of resources and an all-inclusive political system.

The next presenter was Dr Richard Ochanda with a paper entitled **“Transitional justice Elusiveness: case study of Ngok Dinka in Abyei Sudan.”**

On 26th May 2006, Government of Sudan and Sudan People Liberation Movement/Army (SPLM/A) signed a protocol to resolve the Abyei Conflict, which dates back to 1905. The resolution bestowed Abyei a special administrative status allowing its citizens to belong both to Bahr el Ghazal in South Sudan and Kordofan in Sudan. Section 1 of the protocol defined Abyei territory as the area of Nine Ngok Dinka Chiefdoms transferred to Kordofan in 1905 (1.1.2) while Section 6 mentioned specifically the Ngok Dinka as residents of Abyei (6.1 (a)). The Misseriya and other communities retained rights to graze and move around the territory of Abyei. Today however the conflict in Abyei is escalating with the Misseriya claiming equal residence rights as the Ngok Dinka, the UN deploying special forces to provide a temporary solution to Abyei problem while the voices of the Ngok Dinka is being suppressed and their annexation to Sudan is becoming imminent. Though solutions to solve this situation were already provided in the 2006 protocol that provided for a referendum to be carried simultaneously with that of South Sudan to decide whether Abyei would maintain its special administrative status or join Bahr el Ghazal; by 2013 however, neither the 2006 protocol or others seemed to provide a solution leading the Ngok Dinka to conduct a unilateral referendum to join Bahr el Ghazal. The presenter explores the challenges of the Ngok Dinka in accessing justice through assessing the role

played by various stakeholders such as Sudan, South Sudan, IGAD, African Union and the international community

Key Findings

The Abyei conflict started with the transfer of the area by British from Bahr-al Ghazal to Kordofan. The area was never known or agreed upon and no maps were left behind showing this. Discovery of commercial quantities of oil also added to the complexity. The north and south war in 1955 and 1972 allied Dinka Ngok and Misseriya differently.

There have been efforts to address the Abyei situation as follows:

- a) The Abyei Protocol of Naivasha in May 26th 2004.
- b) The Constitution of ABC in 2005
- c) The Creation of PCA in 2007
- d) The AU intervention in 2012 with a proposal for Abyei to go for a referendum

Abyei has a lack of national reconciliation programs and continual abuse and denial of rights. Additionally, there is a high level of impunity under the watch of international community. The presenter therefore recommends the establishment of the rule of law. It is difficult for transitional justice to work in regimes without rule of law.

The last presenter was Mr. Victor Odubah whose paper was on **“Arguing Justice: The African Perspective on Transitional Justice and Peace”**.

The phenomenon of state failure and international intervention has recently provided fodder for debate amongst analysts and scholars on what ought to be done. One camp suggests the need to overlook the historical inviolability of sovereignty and set up comprehensive UN trusteeship-like state building mechanisms. Critical opponents to this proposal claim sovereignty, illegality and infeasibility of such measures. The profound human tragedy as a result of African state failures, inadequacies of current assistance mechanisms and the wide schism in proposals about appropriate action highlight the need for a close review of these debates. The presenter proposed the necessity for and implications of instituting UN trusteeship arrangements.

Key findings

- Impunity plays a big role in exacerbating conflict situations.
- Courts are inadequate because they separate and create a safe haven for victims and survivors at the expense of the perpetrators.
- Criminal courts like ICC risk prolonging conflicts.
- Courts are a creation of colonial rules and have tensions or other forms of civil strife.
- Courts and justice are essential for peace. Without justice conflict is postponed and this leads to cycle of violence.
- Peace is more than an end to war. Peace building activities there go beyond the end of war.

The speaker concluded by saying that although advocates of international law often insist on punishing the perpetrator of violence the task of enforcing the rule of law may lead to new violence. More so if the indicated leadership stands to gain little in the new dispensation and calculates that involvement in political violence guarantees future relevance. Major Powers of the international community have shunned the international criminal laws. Restorative justice rather than the court system should be pursued to achieve justice.

PANEL NINE:

RELIGIOUS INSTITUTIONS IN TRANSITIONAL JUSTICE

Moderator:

Ms. Shamsia Ramadhan, CRS

Panelists:

Ms. Caroline Ackley, Research Assistant, New York University, Abu Dhabi;
PhD candidate, University College of London

Dr. Rahma Abdulkadir, New York University, Abu Dhabi

Sr. Elena Balatti, Comboni Missionary Sisters Institute & Director,
Radio Saut al-Mahabba, South Sudan

Ms. Caroline Ackley presented a paper co-authored with Dr. Abdulkadir Rahma entitled **“The Role of Sharia Based Restorative Justice in the Process of the Transition from Armed Conflict to Peacebuilding in Somalia”**.

The civil war in Somalia has been ongoing for over twenty years. While many studies have investigated possible conflict resolution mechanisms and peace



building processes for Somalia (Abdulkadir & Abdulkadir, 2013 & 2014; Bradbury & Healy, 2010; Zuin, 2008; Gundel 2006; Le Sage, 2005; Le Sage, 2005; Menkhaus, 2000; & Bradbury, 1994), there are not many scholarly works that consider specific instances of mass violence through the eyes of the public.

Ms. Ackley presented findings from ethnographic research among Somalis living in the United Arab Emirates (UAE). The data presented focused on public opinion of transitional conflict resolution approaches in Somalia that potentially address incidents of mass violence that have taken place over the last two and half decades. More specifically, this non-probabilistic sample highlights the views of Somalis living in the UAE on events of mass violence throughout Somalia. The findings of this study suggest there is significant support among respondents for a model of transitional justice based on Islamic jurisprudence in Somalia. In particular, the participants agree that certain elements of Islamic jurisprudence (e.g. restorative justice aspects of *qisas*) can be important tools for addressing instances of mass violence. However, it is imperative to note that many participants in this study have expressed concerns about some of the distortions in the interpretation and application of *qisas* by extreme-mists such as Al Shabaab in Somalia.

Key Findings

- Strong support for transitional justice mechanisms that are based on Islam as well as support for the reconciliation oriented provisions within *qisas*, namely, forgiveness and compensation, or *diyya*; there was emphasis on Islamic values as a guide for peace within one's social environment; the inclusivity and participatory nature of Islamic values in the pursuit of justice. The esteem in which the respondents hold Islamic values as guides to peace education and justice illustrates the importance of including Islamic values and jurisprudence in mechanisms of transitional justice in Somalia although there are important concerns in regard to forgiveness illuminate the care and precision that must be used when determining the intricacies of forgiveness in *qisas*.
- Concerns about the possible misuse and/or abuse of Shari'a in attempts to implement such mechanisms or provisions: Although

many courts appeared where security needs existed, they were rarely sustainable; the courts were widely perceived as serving the interests of the clans that had established them; the courts were seen as persistently divided according to clan allegiance and political leadership

The next presenter Sr. Elena Balatti's, paper was on: **The Role of Religious Institutions in Post Conflict Reconstruction in Sudan**

The civil war in Sudan has been the longest in Africa. Besides the high-level IGAD mediation, which brokered the power-sharing agreement between the Government of Sudan (GoS) and SPLM/A, churches have demonstrated special concern in reaching out to the 85% illiterate population of Southern Sudan and involve them in a people-to-people long term transformation of relationships. This paper explores the efforts of the Catholic Church to promote peace and integrate the society, far beyond the CPA.

The Catholic Radio Network (CRN), with its community-based radio stations, was set up to sustain trust-building and reconciliation in post-conflict Sudan. This paper reviews its contribution from 2006 to 2013.

Key findings

- The Catholic Radio Network (CRN) started in 2006 as a joint initiative of the Comboni Institutes and the Sudan Catholic Bishops' Conference (SCBC).
- It derived from the moral authority gained by the Catholic Church and the missionaries during the devastating times of war.
- Synergy between peace meetings and peace radio was explored, local narratives of peaceful coexistence before the war were gathered from elders, and traditional peace songs widely disseminated.
- The experience of CRN suggests that radio can be used to promote peace, especially if programs are aired consistently over a long period of time with adequate involvement of the listening communities. Radio has proven powerful in Africa to spark ethnic violence, but it can also promote peace.

PANEL TEN:

YOUTH IN POST CONFLICT SOCIETIES

Moderator:

Mr. Christopher Wakube, Programme Manager, Kenya, Safeworld

Panelists:

Mr. Masheti Masinjila , Executive Director,
Collaborative Centre for Gender and Development (CCGD), Nairobi, Kenya

Dr. Ceasar Mwangi,
Kenya Private Sector Alliance (KEPSA) & Lecturer, Strathmore University, Kenya

Rev. Dr. James Stormes, SJ,
Hekima Institute of Peace Studies and International Relations

Rev. Dr. James Stormes, SJ, the first panelist presented a paper on **“Transition from Violence to Justice: Integration of Economically Marginalized Youth in Kenya.”**



Rev. Dr. James Stormes, SJ, Hekima Institute of Peace Studies and International Relations

In 2008, thousands of Kenyan youth were drawn into the violence that followed the disputed presidential results of December 2007. Many of them had long felt marginalized and resentful of a government that had made them promises for a better life, but yet unfulfilled. Ironically, joining the organized conflict was an opportunity for a 'job', precisely what they had been denied by society. They were it seems both perpetrators but also victims of that political conflict. As post conflict Kenya now seeks to transition from violence to justice, the role of this youthful population seems crucial.

The maturing field of transitional justice has focused on accountability, truth seeking, reparations, etc., but not on the fourth process in its standard list, institutional reform. Yet, without such reforms, the transition to justice remains incomplete. Contemporary movements in the transitional justice community including the UN are developing a more holistic approach which includes addressing root causes of human rights abuses, more broadly understood. Integration of previously marginalized youth, especially through meaningful employment, is one of those necessary institutional reforms addressing a long standing root cause of violent conflict.

Kenyan youth have the highest rates of un- and under-employment in the labor force. Politicians and government are certainly aware of the concern and there are any number of programs in Kenya to address youth unemployment, from training programs to credit availability for entrepreneurs. However, these programs have been severely criticized as ineffective, and indeed the problem seems to persist and even worsen. If that is so, then youth unemployment may well continue to be one of the threats to a full transition to justice in Kenya.

Recommendations

- Implementation – various researchers have looked at history of Kenyan policies as well as detailing the successes and failures. The ministry of labour in 2008 noted that internal, administrative challenges in addressing the ambitious plans noting the lack of adequate staff and resources to carry out the programs. Implementation is a major challenge. A recommendation then is to make focus on the concrete structures needed for implementation a higher priority than creating new exciting sounding programs.

- Formal vs. Informal Sector Employment – Most analysts feel that the formal sector in Kenya and other African countries cannot grow quickly enough to absorb the massive number of youth entering the labour market. Recommendation is to rethink the roles of the informal sector, encouraging initiatives there instead of seeing it as a problem and security threat.
- Reaching the most vulnerable – Need to explore and implement ways to provide basic support for families dependent on youth who seek to continue their studies or engage in serious employment search. Expanding the Cash Transfer- OVC program might be one approach. Other programs including flexible education arrangements for youth may also address the needs of the vulnerable more directly.
- Improved data – Needs better information for policy makers and practitioners than what is currently available. In particular, better data about the more vulnerable youth living in informal settlements is both the most difficult to obtain but the most important in addressing the transition to justice that Kenya desires.

The next speaker was Mr. Masheti Masinjila presenting on **“Changing Faces of Informal Youth Formations in Kenya”**

Research findings have consistently demonstrated that the rise of Informal Youth Formations (IYFs) have a symbiotic relationship with elective (transition) politics in Kenya as they arise from historical injustices that are not addressed by the political elite. Ironically, IYFs gain muscle and impetus from the same political elite putting on an ethnic cloak who use them to secure the political power status quo. They defy most structural law enforcement measures in part because their existence is a subversion of the rule of law- they endeavor to create their own order/power and to operate outside of the legal structures. Their violence is facilitated by sections of powerful political elite and their formations are increasing in number and socio-political sophistication to suit emerging situations of the un-ravelling of transition politics (Franchising/branding). They are widening their concerns to the more socially appealing causes and presenting themselves as open to dialogue in an attempt to shade off the general public perception of IYFs as violent and anarchical. There are notable trends such as intensification of

secrecy among some sections of the IYFs as well as a rise in sporadic violence of a criminal nature that may be attributed to them but they deny.

Recommendations

- Need to understand the changing dynamics of Informal Youth Formations by the government, peace practitioners and policy makers IYF have not disbanded and are still hired by politicians.
- Need to involve youth who are the perpetrators in transitional justice process because without them, the Kenyan transitional justice is incomplete.
- We are faced with a vice for not paying attention in the recent violence in counties attention to the youth in the transitional process. The formations are just evolving and not transiting and therefore we are getting back instead of moving forward.

The last presenter was Dr. Caesar Mwangi whose paper was on **“The Role of the Private Sector in Youth Employment after Conflict”**

He posed the following question in his presentation: Does the private sector have a role to play in post-conflict? The Kenya Private Sector Alliance (KEPSA) believes in the private sector being involved in post conflict reconstruction because business needs to operate in a peaceful environment.

The Kenya Private Sector Alliance has come up with a three pronged approach:

- Direct approach – offers skills and trainings including internships. Initiated the Kenya Youth Empowerment Project together with the Ministry of Devolution.
- Direct job creation – encouraging producers to avoid mechanizations and focus on manual to create more job opportunities to the youth.
- Policymaking and advocacy – information dissemination and mobilizing support.
- Need for a private sector that is:
 - ◆ Committed to achieving results.
 - ◆ Concerned about the country, politics among others.

PANEL ELEVEN

TRANSITIONAL JUSTICE AND CONTEXTUAL IMPERATIVES

Moderator:

Ms. Linah Zedriga, ACORD

Panelist:

Dr. Timothy Murithi, Head of programmes,
Institute of Justice and Reconciliation, South Africa

Ms. Clara Ramirez-Barat, Senior Research Associate,
International Centre for Transitional Justice, New York

Prof Jennifer Moore, Professor of law,
University of New Mexico School of law, USA

The first presenter was Dr. Timothy Murithi. His paper was entitled “**The challenges of implementing cross border transitional justice in Africa**”.

The African governments need to; adopt regional reconciliation as a strategic objective of foreign policy; mandate regional institutions to function as the infrastructure or mechanisms for regional reconciliation; allocate the necessary resources and personnel to further develop and implement regional reconciliation; undertake a baseline and mapping of regional rec-



onciliation initiatives with the aim of avoiding duplication of activities; integrate a regional approach in the work of government institutions with reconciliation mandates (e.g. the Ugandan justice, Law and Order Sector- JLOS; the South Sudan National Committee for Healing, Peace and Reconciliation; the Kenya National Cohesion and Integration Commission); integrate peace and reconciliation studies at primary, secondary, and tertiary levels through ministry of education; adopt legislation to encourage cross-border media interaction on reconciliation issues

The African Union (AU) and Inter-governmental Organizations need to; ensure that the AU Commission incorporates a focus on regional reconciliation in its Draft Transitional Justice Policy Framework; coordinate mandates to contribute towards regional reconciliation; ensure that the notion of regional reconciliation is adopted as a key pillar of peace agreements, reflect the interdependence of countries; mainstream gender considerations in designing and implementing AU and member state regional reconciliation initiatives; establish an AU coordinating mechanism to oversee interventions to address trauma. In addition, designate and appoint advisors on trauma and reconciliation for all regional sub-bodies, who will generate policy initiatives to be implemented on the ground; develop specific programmes for youth within regional reconciliation processes (e.g. cross-border radio programmes); coordinate regional exchange of experience and skills to play a reconciling role and strengthen bonds across borders; adopt policies to promote the free movement of people between regions in order to encourage regional economic development.

Civil Society Organizations should; establish regional CSO networks to facilitate and advocate for regional reconciliation; generate and disseminate shared knowledge on regional reconciliation; conduct training programmes on the implementation of regional reconciliation strategies; build the capacity of local leadership structures to facilitate cross-border reconciliation; facilitate cultural and religious leaders to spearhead regional reconciliation processes.

The next presenter was Ms. Clara Ramirez-Barat. Her paper was on “**Contextualizing Transitional Justice: From Post-Authoritarianism to Post- Conflict**”.

Post-conflict contexts can be very different than post-authoritarian settings, which should prevent transitional justice scholars and practition-

ers from automatically transferring a model from one context to another. Although transitional justice interventions are grounded, or aspire to be grounded, in universal justice-based principles, their actual implementation should be extremely context sensitive.

Transitional justice in different conflict-related contexts has to deal with additional challenges that suggest the need for more comprehensive approaches, particularly given that in most cases peace has to be built alongside the (re)construction of the state and its democratic institutions. In such situations, there is not only a question about whether the objectives and functionality of transitional justice should be revised, but also one about how transitional justice policies should be linked and coordinated with broader issues such as post-war security, development, and institution and state-building (issues that, to a certain extent, may facilitate or impede the successful implementation of transitional justice measures). Moreover, to the extent that transitional justice policies may contribute to addressing the root causes of conflict, issues of social justice and redistribution, even for those who were not victims of the conflict, should be considered as well. The risks of such an approach are, needless to say, high, and not only because the transitional justice agenda may become overly expanded, but also because we may demand that transitional justice measures accomplish things beyond their capacity.

Variables related to the nature of conflict and the resulting post-conflict environment that will have (significant) effects on the design and implementation of transitional justice measures include:

- Vertical and Horizontal Violence
- The Actors Involved in the Conflict
- Type and Scope of Violations
- Geographical Considerations
- A double transition to peace and democracy
- Security
- Development deficits—the conflict trap
- Legitimacy and effectiveness of governance (capacity to provide services)
- Legacies of abuse and social fragmentation
- The role of the international community

Transitional Justice in Uganda, Burundi and Sierra Leone: Criminal Justice, social justice and Historical Justice Framework

Prof. Moore explores the interrelationships between criminal justice which seeks individual accountability through war crimes prosecutions of serious offenders; historical justice which entails truth-telling endeavors at the national and local levels to help survivors collectively reckon with the past and build a deeper capacity for co-existence; and social justice which promotes structural reforms to alleviate the material inequalities that generate conflict; with insights from civil society organizations in Uganda, Burundi and Sierra Leone to illuminate the ways in which accountability mechanisms, truth-telling, and community welfare programs can be integrated in meaningful ways to facilitate transitional justice. Prof. Moore analyses their distinct approaches to transitional justice, and the differing degrees of attention they devote to the various strands of justice. The three countries are quite distinct in their colonial and post-colonial experiences, their ethnopolitical heritages and their legal and governmental systems; but all three countries have experienced more than a decade of armed conflict characterized by widespread attacks on civilians, and they share a rhetorical and operational commitment to “transitional justice,” particularly in the long term.

In Uganda, the criminal justice strand has dominated, although fraught with tensions and charges of partiality, one-sidedness and victors’ justice. The Refugee Law Project and other civil society organizations (CSOs) have called for equal punitive justice for both LRA militants and UPDF soldiers for outrages against civilians during the war. The CSOs are also grappling with ongoing social tensions and structural violence in Northern Uganda and throughout Uganda

In Sierra Leone, the criminal and historical justice institutions have been integrated although they have exposed deeper problems of social inequality, entrenched poverty and enduring violence. Fambul Tok has developed a process of dialogue, preparation for reconciliation, and public cleansing rituals that has been utilized in kindred forms in other post-conflict countries and regions throughout the world. Although it has been criticized by feminists citing the long-term value of forgiveness ceremonies for women who may remain in a subservient status within their community. there may be some concern that cleansing ceremonies not overly focus on the sexual violence that occurred in the past, to the exclusion of other forms of physical

and structural violence and deprivation that women and their families continue to experience in the present and throughout the post-conflict period.

In Burundi, talk of national reconciliation or historical justice in the form of national reconciliation between ethnic communities does not mitigate ongoing corruption and political infighting within the largest ethnic community and social injustice for the vast majority of the population. Le Centre d'Alerte et Prévention de Conflit (CENAP) engaged in a multi-phased peacebuilding project, convening a series of local "town hall" meetings attended by broad sectors of Burundian society, including representatives of youth, women's and labor organizations, social service NGOs, former combatants, peace activists, academics, religious leaders and government officials. These meetings culminated in a national "big-tent" peacebuilding conference, at which the meaning of sustainable peace was discussed, tailored to the needs of Burundians. Absent in CENAP's articulation of transitional justice, and peacebuilding overall, is the criminal justice strand.

The work of the Refugee Law Project, Fambul Tok, and le Centre d'Alerte collectively illustrate that transitional justice is deeply embedded in the cultural and geographical landscapes of the particular societies emerging from conflict and violence.

Address social Miseries (enhance livelihood conditions, basic health-care, social welfare of communities among other initiatives) Looking at the informal forms of transitional justice and basic forms of survival

Improve trauma healing of community members

Bring about relationship healing (recognition of victims and accountability of perpetrators)

Institutional healing thus, constitutional reforms, police reforms, prison reforms among others

PANEL TWELVE:

CATHOLIC PEACEBUILDING IN TRANSITIONAL JUSTICE

Moderator:

Mrs. Grace Ndugu, Catholic Relief Services (CRS)

Panelists:

Mr. John Katunga,
Catholic Relief Services, East Africa Region

Fr. Peter John Pearson, SJ,
African forum for Catholic Social teaching (AFCAST), South Africa

The first panelist, Mr. John Katunga made a presentation on “**The conflict in Democratic Republic of Congo (DRC). Exploring Reconciliation Opportunities**”.

Fr. Peter John Pearson, SJ’s presentation was on “**The Role of the church in Justice and reconciliation in South Africa in the post TRC process**”.



Peacebuilding in Transitional Justice can be achieved in four main pillars that is: Truth, Justice Reconciliation and Mercy. None of these pillars can be independent and they work in support of one another. Truth on its own cannot stand since it is an honest account of the past that comes with experience. It needs the aspect of justice. Justice must be done and seen to be done internally, regionally and international. Justice is a duty of all human kind and should not be left alone for any particular people. We all need a hand and role to play towards achieving justice in our society. The church should be supported in its work of peace building and reconciliation towards transitional justice.

Mercy is geared towards reconciliation and should be allowed to take its place in the process of peace building. It should then be understood that the execution of mercy comes after the accepting and harmonization of the true insight from both the victim and the perpetrator. Bearing in mind that the victims have been disempowered a great deal, the faith community have a duty in social welfare and giving in charity. However, “Charity is not a substitute to justice” and so the four pillars of peace building must be meditated upon for a better society.

Religion or faith has invested in ensuring the voices of the vulnerable in policy and authority places are heard where decisions are being made, for instance in parliament, judiciary and the government in general. This needs to be stimulated by the implementation and realization of the peace building in transitional justice process. The faith/religions have been supported by the civil societies in helping the vulnerable and instructing the hearts.

Day Two

October 9, 2014

THEME:

**POLITICAL ACCOUNTABILITY
IN TRANSITIONAL JUSTICE**

Overall Moderator

Rev. Dr. Jim Stormes, SJ, HIPSIR

PLENARY SESSION V:

TRANSITIONAL JUSTICE IN POST-CONFLICT SOCIETIES IN AFRICA

Moderator:

Dr. Timothy Murithi, Head of Programme, IJR

Key Note Speaker:

Prof. Makau Mutua: The ICC and Transitional Justice in Africa

Respondent:

Amb. Sani Lawal Mohammed mni, Rector,
African Institute of International Law, Arusha-Tanzania

Prof. Makua in his presentation noted that transitional justice is important in Africa and that Africa had entered an era of war and hence the need for



Prof Makau Mutua, SUNY Buffalo Law School , USA

ICC and TJ as a representation of an enigma of hope.

Post conflict society cannot prosper without justice which is a fact that cannot be negotiated. ICC was created to deal with impunity and in particular crimes against humanity and war crimes. It is considered as a last resort when a country is unable to act/ or deal with these issues internally. It therefore helps states recover. ICC is one of the tools/mechanism that is necessary to implement transitional justice.

African countries form the bulk of cases at ICC. At the time of the conference eight cases had been opened, and all of them in Africa. They included Kenya, DRC, Uganda, Sudan, Ivory Coast/Cote de voire, Libya, Central Africa Republic and Mali. Some of these cases had deeply traumatized societies with no political will and legal instruments to prosecute those behind the war crimes.

The relationship between the African Union with ICC was strained due to conflicting actions where on the one hand the AU referred Ivory Coast to ICC, while on the other hand it was reluctant to arrest El Bashir of Sudan. Referring to Kenya, Prof. Makau explained that the Kenya case was of self-referral as was evident by the fact that the Kenyan political class rejected formation of local tribunal. He further stated that Kenya invited ICC and that Kenya voluntarily signed the Rome Statue. Most recently Kenya had mobilized support of AU member states to adopt a resolution that no sitting head of states should be tried/prosecuted by ICC. This is a clear indication that the clause is in contradiction with ICC Statutes that most of the AU members are signatory too.

Kenya shuttle diplomacy and advocacy of the matter shows leverage of social and political power in which elected leaders are using in attempt to drop the case against the head of state and his deputy. The Kenya Human Rights Commission and other Civil Society Organizations members supported ICC based on chapter 6 of the Constitution, but in vain. However, ICC vindicated them.

PANEL THIRTEEN:

INTERNATIONAL LAW AND ICC IN AFRICA – LESSONS FOR KENYA

Moderator:

Prof Jennifer Moore

Panelists:

Mr. Humphrey Sipalla, Freelance consultant

Mr. James Nyawo, PhD candidate, Middlesex University, London

Mr. Mbapale Shivachi, Postgraduate student,
Masinde Muliro University of Science and Technology, Kakamega, Kenya

The irreconcilability of international law and politics: TWAIL and transitional justice in Africa – Humphrey Sipalla

Law and politics are strange bed-fellows. While it is political processes that make law, once any law is made, it acts as a limit to political discretion. The influence of politics on law is more pronounced in international law than municipal law, so much so that international law recognises political influence, through reservations, understandings and post-ratification state practice, as a source of law. As such, one can say that the very purpose of law, itself a child of politics, is to limit political discretion. This forms the principal theoretical basis for the conference paper.



In no area is this problematic nexus of law and politics as explosive as in transitional justice. The presenter sought to interrogate the current African objections to international criminal law from the above premise. If the premise is right, then African political discretion should expect limitations based on the law it has established. How then can it be that African states, after having supported the creation of a permanent international criminal court, are now the most politically active in seeking to re-establish wide political discretion over matters under the jurisdiction of international criminal accountability structures? Can these two interrelated but distinct disciplines of law and politics ever reconcile on this point? The paper proceeded in three parts.

The first part aimed to demonstrate that the history of international judicial practice since 1945 highlights two important aspects: first that in their principal aim to eliminate the use of war in international relations, states have progressively ceded discretion to international judicial organs; and second, that this same period of international judicial practice indicates that, in certain critical questions, international law has developed quite differently from what states may have initially legislated in treaties. The creation of courts by international politics aims to remove weighty decisions from vagaries of politics and that is why 16 African states have referred 12 territorial disputes to the International Court of Justice (1982-2014).

Having established this character of international law, the second part sought to take cognizance of the claims of Third World Approaches to International Law (TWAIL), which posit that the very structure of international law creates imbalances designed to disenfranchise the Third World. By TWAIL, within the benign and seemingly neutral rules of international law are embedded a Eurocentric cultural hegemony. The presenter however demonstrates that whereas this is true, there are examples where Third World states, using the fundamental principle of international law of sovereign equality, have managed, albeit sporadically, to legislate and claim favourable legal victories against Western interests.

Finally, the presenter's analysis then turns to the current controversy over international criminal accountability for African leaders. Could it be validly claimed that, by applying TWAIL analysis, international criminal accountability structures are, by their very design, biased against Africa? The point investigated here is whether African official demands for wider political discretion over established law is consistent, either with the history of international law, or justified by TWAIL analysis, especially in light of the

self declared purposes of TWAIL, which is to speak for the vulnerable and disenfranchised. The conclusions from the scholarly and public debates reviewed is that current African objections to international criminal accountability are inconsistent, both with the political discretion limiting character of international law, and TWAIL aims of fighting for the downtrodden Third World subaltern, established in the first and second parts of the paper respectively. On this score, law and politics remain irreconcilable.

Mr. Mbapale Shivachi was the next panelist and presented a paper entitled **“Interplay between the AU and the ICC: Implications for Kenya and International Politics”**.

The debate around the relationship between African Union (AU) with the International Criminal Court (ICC) has tended to over-emphasize the case of Sudan’s Darfur region and the court’s decision to issue an arrest warrant for the country’s President Omar al-Bashir. , One can conclude that the AU’s objection to the execution of the arrest warrant against al-Bashir is based on the fear that such action would threaten the peace process underway in the Sudan but an underlying reason is the notion that the ICC, as a Western institution, should not exercise jurisdiction over African leaders. In the current situation, the case of Kenya’s President Uhuru Kenyatta at the ICC has given a new impetus to the efforts of International Justice in Africa. The presenter notes with concern that recent African Union summits had advised the Kenyan President to ignore ICC summons.

Although Africa has contributed greatly to global ideas that have fully informed international practices to end impunity while promoting justice very little has been realized in domesticating, management and implementation of these ideas due to lack of political will power and individual interests of the political elites in Africa. Due to Africa’s numerical advantage at the ICC’s Assembly of State Parties there is need for Africa to translate quantity into quality support for ICC and in retrospect, the ICC should demonstrate that its efforts are just and not racist as claimed by AU.

It is necessary for the African Union to be realistic in its support of transitional justice while at the same time improving perceptions that indicate it is against the ICC. Of great importance comes the resolution of the conflict between the ICC and the AU in the system of communication between the two sides giving an opportunity that can enhance constructive discussions

on the challenges and resolutions to the fight against impunity without politicizing the issue.

There is need to strengthen African judicial systems, through the established African Court of Justice and human rights and the East African Court of Justice. Africa lacks the capacity to provide transitional justice due to mainly lack of political will power in the enforcement of judicial decisions because African political elites have been accused in some of the crimes. An entrenched and improved democracy underpinned by, the rule of law, an end to corruption with efforts to develop and enforce workable reforms in Africa is needed. The continued resistance to administration of international justice by African governments therefore, makes it difficult to realize an enforced African court and East African court of justice with jurisdiction to try international crimes. Domestic legal systems are better able to deal with critical issues, such as peace and reconciliation while safeguarding the rights and needs of victims of crime. Traditional mechanisms for conflict resolution can also be effective in handling justice matters in times of transitions.

The next presenter Mr. James Nyawo gave a presentation on “**Understanding the Dynamic Relationship between the AU and the ICC**”. The ICC Court has demonstrated considerable enduring power since its establishment in 2002. However, African states continue to be a part of an international criminal justice system that they allege to have been hick-jacked by neo-imperial forces. During the debate at the AU Assembly held in May 2013, many expressed the view that the continuation of the ICC cases against President Kenyatta and his deputy William Ruto undermines the sovereignty of the people of Kenya who expressed their will in a vote to represent them as their leaders and threatens the process of reconciliation in the country. The summit of the AU Assembly accordingly adopted a decision requesting the ICC to refer back to Kenya its cases against the President and his deputy. The AU threatened a mass withdrawal from the Rome statute .The failure of several counter hegemonic movements to successfully stop the ICC’s advance as a key player in the fight against impunity is due to the fact that like any hegemony from Gramsci’s perspective, the Court is grounded on states consent. This consent was achieved when states ratified the Rome Statute. Perhaps this explains why those states that referred situations to the Court have not taken steps to challenge the admissibility of the cases at the Court as provided for in the Rome Statute. Opposition to the Court surfaced when its jurisdiction was im-

posed in a state by either the United Nations Security Council referrals as was the case with Sudan and Libya, both which are non-state parties, or by the Prosecutor exercising *proprio motu* powers as with the situation in Kenya.

The African Union has tried to take leadership in confronting the ICC, yet its effectiveness in doing so seems diluted by the fact that as a continental body it is not and cannot be a state party to the Rome Statute. This means legally the Court does not have any legal obligations towards the African Union nor does the African Union have any rights within the Rome Statute. The ICC has benefited from the hard work of African and internationally based civil society. Apart from campaigning during and after the Rome Conference for States to accept and ratify the Rome Statute, the civil society ensured that they shaped the discourse on international criminal justice to promote the ICC. They ensured that the reassignment of guilt under international criminal justice is from the collective to the individual. This discourse counters the arguments propelled by ‘organic intellectuals’ such as Professor Mamdani and President Mbeki who argue that courts cannot solve civil wars, and that there should be no ‘permanent victim and perpetrator identities.’

The ICC also attempted to avoid radical revolution by adopting some internal adjustments to reassure those critical of its performance. In November 2013, at the peak of tension between the ICC and the African Union within the context of the proceedings against President Uhuru Kenyatta, the Assembly of States Parties which is the primary administrative body for the Court, agreed to a series of amendments including the possibility for the accused who is subject to summons to appear to be excused from presence at trial due to extraordinary public duties. Such limited reforms sought and somehow managed to reassure African leaders that if they are subject to summons from the Court they could continue with their constitutional duties while their trial is ongoing.

Lastly, coercive diplomacy from the European Union’s role in the dynamic relationship between the African Union and the ICC cannot be underestimated. The European Union has always been issuing political statements in support of the ICC. There are reports that the European Union and its member states played a crucial role in securing the referral of the situation in Darfur against the initial opposition from the United States. The United States had proposed the establishment of an African Tribunal for Sudan, which was to be owned and run by the United Nations in partnership with the African Union.

PANEL FOURTEEN:

THE AFRICAN ALTERNATIVE TO THE ICC?

Moderator:

Nahashon Kariuki,
Programme Coordinator, NPI-Africa

Panelists:

Mr. James Gondi,
African Centre for Open Governance (AFRICOG)

Dr. Marek Jan Wasiński, Assistant professor,
University of Łódź, Poland

Dr. Marek Jan Wasiński the first panelist presented a paper on **“Distant Sound of Thunder – International Criminal Jurisdiction of the African Court”**.

The idea to create an autonomous, regional system of international criminal justice in Africa inevitably appears as an undesired progeny of ICC case selection during its formative twelve years period. Although the legal environment of the first permanent international criminal court was designed in a way limiting to some extent its prosecution system against extra-judicial bias and resulting criticism, it could not escape an undermin-



ing political opportunism. As a consequence the ICC's agenda, displaying particular "African affection", does not necessarily reflect a representative spectrum of worldwide most egregious conflicts but – as evidenced by situations in Iraq, Palestine and Syria - only helps to decode basic parameters of influence exerted by international powers (UN Security Council's permanent members in particular). This, in turn, leads to a revival of conventional sentiments against international criminal justice as interfering with vital competences of sovereign states (territorial and personal jurisdiction). The ensuing idea to equip the African Court of Justice and Human Rights (ACJHR) with international criminal competence appears as a viable option under public international law, although a detailed analysis of the Protocol reveals its striking weaknesses as follows:

1. Legality of amending a treaty not yet in force and not ratified
2. Worrying slow pace of ratification
3. Fragmentation would significantly impair everyday practice of the international court, for instance different terms for judges in the same judicial entity.
4. The cost of maintaining a regional court is a major challenge since the AU is still struggling with resource shortcomings that undermine its ability to undertake an effective conflict resolution stance or to promote human rights and democracy
5. Guarantees given for serving state officials may significantly diminish credibility of the institution

In the light of the foregoing, the existence of ACJHR with the proposed extended criminal jurisdiction resembles the Penrose star - one of those impossible geometrical objects being a type of optical illusion: it does exist on paper, but on the paper only. The Protocol on the same seems only as a bearer of an unspoken, implied political protest, beaconing only possible future attempts of torpedoing ICC system. At the moment, it is nothing more than a "smart mob", a performance undertaken only to attract attention to AU critical attitude towards ICC activities. The sound of thunder, heralding the storm to come for the universal international system of criminal justice, is still distant then.

The next presenter was Mr. James Gondi and his paper was entitled **“War Crime Tribunal, Mass Atrocities and the role of Humanitarian law in**

Transitional Justice", which was a review of the following three books;

1. *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals*, William Schabas. Oxford University Press, February 2012, 240pp. ISBN: **9780199653072** – hardcover (\$63).
2. *The Rise and Fall of War Crimes Trials: From Charles I to Bush II*, Charles Anthony Smith. Cambridge University Press, June 2012, 328pp. ISBN: **9781107023543** – hardcover (\$60).
3. *Humanity's Law*, Ruti G. Teitel. Oxford University Press, October 2011, 320pp. ISBN: **9780195370911** – hardcover (\$35).

Certain key issues arise from the three books that will help shape future discourse on international criminal law, particularly with regard to relations between states in the global South and the predominantly western conceptual frameworks of international law. First, the influence of political factors has created a form of selective justice or justice governed by political machinations rather than legality. These inconsistencies are increasingly being recognized by 'victims' of these political motives, whether or not they are in violation of established universal tenets. Interventions of questionable justification have led to increased opposition to and scrutiny of the practice of this law, manifested in the AU's opposition to the ICC. Second, those opposed to this political influence, as well as the perpetrators of violations who have faced consequences at least partly due to politics, have been calling for an international legal regime governed by humanitarian principles. Such a shift, it is assumed, would lead to a consistent application of law wherever violations occur – in essence a change from violations being political problems to violations being legal problems.

However, it is important to note that perpetrators of mass atrocities in the global South take advantage of previous inconsistencies in the application of the international legal order to shield themselves from prosecution and to justify impunity.

This brings to mind the ICC's case concerning Kenya's president and deputy president. Before the two were elected, Kenya as a state made vigorous diplomatic moves to have the ICC cases either terminated or deferred to a local court. This is despite the fact that Kenya's own parliament had previously rejected such an initiative, which serves to encourage impunity. Kenya,

with African Union (AU) support, is pushing to withdraw from the Rome Statute altogether, rather than reforming its underlying tenets.

Therefore, even where it is clear that countries like Kenya were afforded multiple opportunities to deal with crimes against humanity at the domestic level before the ICC prosecutor exercised his *proprio motu* powers, political elites and accused persons have been able to hide behind the AU and claim that they are being unfairly targeted. This is attributable to the perception of powerful states' double standards in dealings between themselves and other stakeholders.

PANEL FIFTEEN:

MEDIA AND TRANSITIONAL JUSTICE IN AFRICA

Moderator:

Mr. Wallace Kantai, Nation media Group

Panelists:

Ms. Maryanne Nguyo, Lecturer,
Daystar University, Nairobi, Kenya

Mr. Macharia Gaitho, Managing Editor, Special projects,
Nation Media Group, Kenya

Dr. Fredrick Golooba Mutebi,
Independent Researcher and political analyst, Uganda

Ms. Maryanne Nguyo the first panelist presented on **“The influence of the ICC reportage of 2013 Kenyan elections”**. In her presentation, Ms. Nguyo said the Kenya election violence in 2007 was attributed to disputed presidential elections while the media was accused of inflammatory reporting by witnesses. The study sought to explore the following:

1. The effect of ICC on post-election violence
2. The role of the media
3. The freedom and fairness of the coverage



4. The difference between local and international coverage
5. Alternative ways of going about it

It merged that the media had abandoned its informer and watchdog role to preach peace during post-election violence. The paper argued that media reporting should be free and fair without taking any sides as that would fuel violence. The media should not give ethnic identities in its reporting to avoid anything that might whip up ethnic tensions. Media should also avoid political interference although reporting the truth should remain supreme. The media should also invite experts to such coverage e.g. people who have expertise knowledge on the tallying system. Journalists should be trained on emerging issues while civic education should be done to the voters to empower them to ask questions e.g. on the tallying systems. The media should do a lot of audience research.

The next presenter Mr. Macharia Gaitho presented on **“Media and the Truth Justice and Reconciliation Commission Process”**. The speaker highlighted that Media in Kenya has the competence and skills to cover TJRC and the whole transitional justice process although experts who have experience from other countries should be brought in and our journalists taken to other countries to learn. The TJRC got reduced coverage since it was covered by the local correspondents who happened to be untrained in covering the same. The report was taken like any other report yet a report of its nature should be taken seriously. It was not interrogated fully, not fully digested and was forgotten.

In 2012 media was accused of preaching peace for the fear of a repeat of the 2007 occurrences because the media had been blamed for inflaming the situation. This was because they failed to raise the alarm, downplayed politicians who were using violent language and failed to let Kenyans know that something was brewing. The media therefore needs to redefine how they cover issues. There is a need to recognize and work towards de-escalation of violent conflicts. To this end, it is important that events be covered accurately. The media should raise alarm and expose possible eruption of conflicts. The media should practice responsible reporting all the time even beyond elections.

Media houses should look beyond profits. There should also be equality in media coverage. Media should not give too much focus on big towns while

covering very little of marginalized or small towns. There should be rethinking in terms of coverage and fair representation of all counties in the new devolved government administration units. Broadcasting should reflect the face of Kenya. The speaker concluded by saying that guidelines that govern media reporting should be followed.

The final presenter was Dr Fredrick Golooba Mutebi whose paper was on **“Transitional Justice the Role of Media and Its Limitations”**. The speaker specifically focused on print media and noted that the print media industry in Africa is young and underdeveloped in comparison to international media. However it is important to note that media has a crucial role of national reconciliation and social repair. Media plays an outreach role. It should generate debate and let the public know how and why certain things should be done. Media regulates and should regulate the behavior of the actors through advocacy. Professionalism and non-partisanship should govern journalism if at all conflict situations are to be avoided. The media should be motivated to serve the public other than the individual or the interest of the media house represented by the journalist.

The speaker concluded by saying that while media can be an asset in transitional justice it faces challenges. One problem that media faces is ownership. For instance we have state and private owned media. The state media takes the position that reflects the views of the sitting government which may not be helpful in transitional justice. On the other hand private media focuses on profits at the expense of covering issues .e.g. in Uganda most private media will invest in playing the most popular music.

Responses from participants

- There was a recommendation that there should be coordinated peace messaging where deliberate coordinated efforts to send a similar message by all media houses e.g. during Election Day. However competition between media houses makes coordinated peace messaging a challenge.
- Because of media, civil society were able to highlight important issues in society. The media provided a platform to engage in debate and analysis of issues affecting the country.

- Some issues would have been possibly addressed if media coverage was consistent for instance in the case of the Kenya TJRC. Minimum coverage by the media gave the important process less significance.
- The fact that Media is a profit-making entity compromises what gets attention in coverage and for how long.
- There is a serious limitation on how the ordinary citizens can participate in influencing how media works
- In the case of promoting peace during elections the media should not be criticized for playing a role in pacifying the country. However, there needs to be a balance between justice and peace. This is because there are two sides to every coin, with different opinions and attitudes being informed by our different ethnic political loyalties.
- The quest for justice is a process. We therefore need to focus on what media is doing for transitional justice. We are developing the media and consequently manuals for some situations are being developed
- Media should take cognizant of its critical role of educating the public.
- The big question and reflection in this panel was on which identity takes priority for media—the national identity or professional identity? Either way, each identity has implications on how media responds to issues.

PANEL SIXTEEN:

DEVELOPMENT FACTORS IN TRANSITIONAL JUSTICE

Moderator:

Rev. Dr. James Stormes, SJ
Hekima Institute of Peace Studies and International Relations (HIPSIR)

Panelists:

Dr. Solomon Mebrie Gofie, Assistant Professor,
Addis Ababa University, Ethiopia

Mr. Babiiha Sulayman, Deputy Dean,
Faculty of Business and Development studies, Gulu University, Uganda

Bishop Cornelius Korir, Bishop,
Eldoret Diocese

The first presenter was Dr. Solomon Mebrie Gofie. His paper was entitled **“The Dynamics of Conflict, Peace building and the Role of NGOs: Experience from the Borana region of Ethiopia”**. The relations between the state and the CSOs especially in matters relating to advocacy including conflict resolution have become political hence issues outside the scope and



mandate of CSOs. Understanding the nature and dynamic of state-society relations in which CSOs or NGOs are supposed to play a healthy intermediary role is a lesson worth learning, and a lot is desired to be done in this regard.

The Borana community offers a fascinating setting for peace studies mainly because of the tradition and heritage of its people in the area of peace. Working to build resilient societies and communities requires among other things the survival of long standing societal institutions and their conflict resolution mechanisms with a view to strengthen their autonomy. Irrespective of the problems and the constraints the institutions helping to strengthen them and the communities to tackle the problems means a better prospect for durable peace and security.

The presenter's research is of the opinion that understanding conflicts by identifying 'just known causes' such as 'resources' and climate change etc., are found to be inadequate in the face of the challenges on the ground. Moreover there are compelling reasons to recognize the research participants' concern that conflicts in Borana have become more and more frequent. And this is the case since this relates to conflicts in the context of the political dynamics since the 1990s. There is a need to thoroughly reflect on these concerns and assess the broader implication of such conflicts for the future of political community in Ethiopia.

The next presenter was Mr. Babiha Sulayman from Gulu University, Uganda. His paper was on **“International Capital and the Post Conflict Recovery in Northern Uganda: To who's Benefit?”** He pointed out that although the need for foreign direct investment in post conflict recovery of northern Uganda was apparent, testimonies from the eastern region where the Madhvanis first established a sugar project since the 1950s, had made people in the north to believe they would not benefit from the sugar production in Amuru district, either. Their mistrust of the government intensions; which had its roots in the political history of the region, had been practically demonstrated when they took Amuru District Land Board to court in 2007. For them, if the government and its institutions could not defend their birth right (the right to land), then it ceaseds to be relevant. Herein lay the seeds of future conflict.

In view of the mistrust exhibited by local people about the government and its institutions regarding large scale investments involving land, the researcher recommended that the government needed to strengthen local participatory governance structures so that the system reflects homogeneity of purpose between central government, local governments, and the local communities. The other reason why government needed to engage local communities of northern region in its proposed post conflict recovery interventions stems from their unique socio-cultural land ownership and management systems. He stressed that although some of the systems such as communal land ownership were currently being seriously undermined by liberalism ideologies and were likely to fade with time, there was still need for state institutions to respect the existing constitutional provisions. Respect for customary land tenure, for example, was one of them and would mean that lack of a land certificate by elders who represented Lakang community in the court case against Madhvani's company in Amuru would not have been used by courts of law as an excuse to deprive grassroots people their right to the land.

The last presenter was Bishop Cornelius Korir who presented on **“Experience in peace building among the Traditional Rural Communities and Peri - Urban communities in North Rift”**. The first step in opening up community dialogue is a one on one encounter, where the peace actor and one member of each side of the conflict meet and talk. The process is continuous until when the whole warring communities make arrangements to address the problems that caused the war.

Peace in the bible represents fullness of life. It is God's greatest gift to human kind. However, peace is a fruit of justice and is threatened when man is not given all that is due to him as a human person. The defense and promotion of human rights is essential for the building up of a peaceful society and the integral development of individuals, people's and nation, message of Pope Paul VI on world day of peace 1969.

While engaging the warring communities in a dialogue process the memories of the past are not wished away but they become an integral part of a peace agenda in the dialogue process. Human rights promote human dignity and it is therefore important for peace building and transitional justice. It is important to restore confidence in the local mechanism of peace

building. The warring communities may provide answers to the questions of prosecuting those responsible for the suffering of the victims.

Pokot and Marakwet in Lelan highlands are examples of warring communities that have experienced peace for 14 years because peacebuilding prepared the way for transitional justice. The people chose not to use prosecution as a tool for peacebuilding but took community responsibility to enforce community law to punish the wrong doers. The experience of the Pokot and Marakwet in Lelan is a good example of community peacebuilding in which solutions to the problems that caused the conflicts are resolved by the people themselves. They know who did what, when and what else needs to be done to bring lasting peace.

PANEL SEVENTEEN:

DEVELOPMENT FACTORS IN TRANSITIONAL JUSTICE IN THE GREAT LAKES REGION

Moderator:

Fr. Rigobert Minani, SJ, Jesuit Africa Social Centers Network

Panelists:

Fr. Jean Baptiste Ganza, President,
St. Ignatius School, Kigali

Mr. Oliver Kambala wa Kambala, County director & Transitional Justice advisor,
American Bar Association, Rule of Law Initiative, South Africa

Fr. Emmanuel Ntakuritimana, Director,
Centre Ubuntu Initiative, Burundi

Ms. Martha Nalubega, Academic Director,
Post-conflict transformation program, School for International training, Uganda

The first presenter was Ms. Martha Nalubega who presented on **“Transitional Justice: A case of northern Uganda”**. The presentation focused on the strengths and weaknesses of Transitional Justice in Northern Uganda in the areas of criminal prosecution; amnesty; reparations; and Acholi traditional mechanisms.



The government of Uganda is in the process of developing a transitional justice policy and it's in the 3rd draft stage in Cabinet. While it is a great effort towards the reconciliation processes in the country, it leaves key issues unaddressed. These are as follows:

- The victim reparations are not clearly articulated in the policy
- There is scanty provision to foster acknowledgement and truth seeking
- It does not call for a proper process for national healing and reconciliation
- It is a government led with no broader participation or inclusion of civil society and victims
- Recommendations
- Despite ongoing efforts towards sustainable peace, meaningful justice and reconciliation remain elusive due to a lot of challenges
- There is no unanimity on appropriate strategies for accountability, justice and reconciliation
- Forgiving and acceptance of perpetrators of crimes remains difficult
- Misuse of recovery and reconstruction funds has further polarized the north – south divide
- A hybrid of both the retributive and restorative justice mechanisms should be employed to bring about meaningful justice and reconciliation in northern Uganda
- There is a need for collective and systematic reparations such as psychosocial support, livelihood programs, skills training, physical rehabilitation of victims and gender sensitive programs
- It is important to distinguish between regular state programs from specific reparation programs to deal with the perceived economic marginalization
- For long-term reconciliation and lasting peace to be achieved in Uganda, the proposed National Transitional Justice policy should aim at being a comprehensive, citizen-led, all inclusive bottom up approach that draws from the local and international justice mechanisms.

The next panelist was Rev. Jean Baptiste Ganza, SJ. His paper was on **“The Principle of Integral Reconciliation: Beyond Political Arrangements in Rwanda”**. The presenter highlights that the Gachacha tribunals in Rwanda helped to prevent revenge against the Hutu as well as dealing with the process of truth, justice and reconciliation. Gachacha is a perfect example of Transitional Justice. Some of the achievements of Gachacha are:

- Recreated conditions for encounter between the offenders and victims
- Details about the genocide became available such as graves, the motives, the people etc.
- Perpetrators were given an opportunity to stand before the victims and express public apologies.
- Those found innocent went to rebuild the state while those who said the truth and found guilty were given less sentence.

Lessons and Recommendations

- Gachacha should go further to a more inclusive way of addressing issues of transitional justice which he referred as missing steps such as:
- Economic Justice – some people during the genocide apart from losing their loved ones, also lost property. The Tutsi for example occupied some houses of the fleeing Hutus but after the Hutus came back during the reconciliation process, reposed their houses back as the government told the Tutsis occupying the houses to vacate but were not given an alternative.
- Cultural conversion – There are still proverbs and jokes in Kinyarwanda that reduces both the Hutus and Tutsis saying that Hutus are inferior and that Tutsis are wicked.
- Ecological rehabilitation – more need to be done in terms of exhuming dead bodies from mass graves and reburying them in homes for bodies that are still missing.
- There is also need for a conversation on religion.
- Commemoration for all - Reconciliation in Rwanda needs to allow Hutus also to tell their stories. April of every year is meant for mourning in Rwanda but Hutus do not fully participate in the event

as they are always seen as perpetrators of the genocide forgetting that they too suffered and died from military bullets, revenge, hunger and cholera attacks in DRC Congo. The government fears a double genocide if they recognize these sufferings.

The next presenter Fr. Emmanuel Ntakarutimana presented a paper on **“The Case of Burundi”**. In his presentation on Burundi’s reconstruction he recommended that:

- Transitional justice in Burundi needs to focus beyond just truth and justice.
- There is need for political will of transitional justice from leaders.
- Need for ownership of the transitional justice process by people of Burundi and not just the UN Security Council and the international community. Perhaps because transitional justice is an alien term in Kirundi.
- There is need for proper handling of trauma to address the historical wounds.

The last presenter was Mr. John Katunga whose paper was on the **“Challenges of Truth and Reconciliation Commission in the Democratic Republic of Congo (DRC)”**. In his presentation, he highlighted the challenges that the TRC in DRC had faced as follows:

1. Delays:
 - Article 160 stipulates that the specificities of the truth commission would be determined by an organic law.
 - Until more than a year after the establishment of the commission, it was operating without such a law. On July 30, 2004, the mandate (law no. 04/018) was enacted by President Kabila.
2. Commissioners and Structure:
 - The commission had twenty-one members, and eight of them were “Members of the Bureau”. These eight members were selected to represent each of the parties of the Inter-Congolese Dialogue and were approved by the National Assembly.
 - Paralysis in Action.

3. Lack of Resources
 - The commission's work was confined in Kinshasa and few towns. Even there the coverage was extremely limited.
 - The necessary infrastructure were glaringly lacking.
4. Lack of Publicity and larger participation
 - Unlike the CNS, the work of TRC was a non-event.
 - Victims and the larger society did not participate.

Recommendations

- Given the limited involvement of victims, witnesses, and perpetrators, the commission recommended a public awareness campaign to pave the floor for a future truth commission initiative.
- There is a need for more financial support to enhance transitional justice in the DRC.

PANEL EIGHTEEN:

THE EXPERIENCE OF MOZAMBIQUE

Moderator:

Dr. João Lazáro Abilio,
Catholic University of Mozambique

Panelists:

Dr. Paulo João Mamunambozi,
Catholic University of Beira, Mozambique

Pe. Rafael Baciano Sapato,
Catholic University of Beira, Mozambique

Pe. Ciprisio Salazar Del Muro,
Catholic University of Beira, Mozambique

Dra. Felicidade dos Anjos Munahire Segundo Banze,
Catholic University of Beira, Mozambique

Dra. Margarete Heidemann Vida,
Catholic University of Beira, Mozambique

The first presenter was Fr. Rafael Sapato whose paper was on “**The Peace Process and Grassroots Peace-Building in Mozambique**”. The presenter highlights that during the 16 years of war, social ties lost grip and the two warring pacts did not have enough trust on the intentions of the other.



However, the church was seen as the impartial institution and thus President Chisano initiated the use of religion as a platform for peace building. The Church was given three major tasks:

- Educate the nation on peace and reconciliation
- Dialogue with the government on peace
- Negotiate with RENAMO on peace

Though the negotiations took long due to adverse hatred, RENAMO finally recognized FRELIMO as a government (ruling party) and FRELIMO recognized RENAMO as a party. RENAMO were also allowed to keep their army till the next elections when they would then be integrated into the state army. After the signing of the peace agreement accord in 1992, there were a few recommended steps to be taken:

1. The nation was advised to form a commission to look into the grievances and injustices. Since significant atrocities had been committed on both sides Mozambique as a nation decided to move on “forgive and forget” and this approach helped them.
2. The nation was advised to form a social-integration commission and this helped in the resettlement and integration of the geographically displaced people back into their communities.
3. RENAMO was also to have an army for protection purposes during the first term after the peace accord then later be integrated into the state security apparatus.

Challenges experienced:

- Difference in the interpretation of the accord caused frictions between the parties
- RENAMO claimed that integration of its army into the national security apparatus was not 50-50- as was stipulated in the accord.
- The government refused to absorb RENAMO soldier claiming that they could not accept armed guys into their government
- One of the major challenges is that since independence, FRELIMO has been the ruling party and RENAMO has not had a chance to rule the nation.

The next presenter Dr. Paulo Joao Mamunambozi , presented a paper on **“The Causes of War in Mozambique”**. Highlights of the transitional justice process in Mozambique. By the time of independence, Mozambique’s population of about 25 million people was predominantly Christians and Muslims. The government of the time adopted some measures after independence to unite the country however the major loopholes for impunity were left gaping. These measures resulted into:

- Restriction of liberties of worship and association
- Transcended to a socialism whereby even private property became state-owned
- At this time mass public assassinations were also prevalent in the country.

During this time too, the government forcefully resettled 2 million peasants from their land without dialogue. As a result the displaced population revolted together with other people from the ruling party who were not pleased with the way the government (FRELIMO) conducted its duties.

The resisting party, RENAMO, was against the communism, maxism and nationalization by the state. This resulted into 16 years of war in Mozambique whereby 1 million people died, thousands were displaced, bodies of several people were mutilated and limbs amputated, and the national economy severely collapsed

The final Presenter Dra. Felicidade dos Anjos Munahire Segundo Banze spoke on **“The Role of women in Consolidation of Peace in Mozambique”**. Dra. Felicidade dos Anjos highlighted that even though women constitute 52% of the population, women and children were not included in the decision-making committees on peace initiatives. Hence, between 1980s and 1990s, many NGOs came into Mozambique to champion for the rights and dignity of the women. A few examples of these NGOs include Association of working women in Africa, Women and Law in Southern Africa, Association of Domestic Women, Association of Mozambican Women, among others.

THEME:

CURRENT AND EMERGING CHALLENGES ON ISSUES OF PEACE BUILDING IN AFRICA

SESSION VII – PLENARY

Moderator:

Amb. Prof. Philip Mwanzia, MBS,
United States International University, Kenya

Key Note Speaker:

Prof. Christopher Clapham,
Oxford University, UK

Respondent:

Dr. Adams Oloo, Chairperson,
Dept. of Political Science and Public Administration, University of Nairobi Kenya.

The Keynote address speaker Prof. Christopher Clapham spoke on **‘Current and Emerging Challenges in Peacebuilding in Africa’**.



Prof. Christopher Clapham, Oxford University, UK

In his presentation he made an assessment of Africa's conflicts and their origins. He identifies three key pillars for peacebuilding at individual state level and at the continent level: foundation of the Organization for African Unity- now the African Union (AU), critical recognition that the existing territorial demarcation of African states be maintained and that peacebuilding task in Africa should be an active participation of the African people and their governments and civil society organizations. He then explains that one critical challenge of peace is the imposition of systems of misgovernment- so bad that they induced rural insurgencies. These then overthrew the regimes against which they had been fighting e.g. the NLM in Uganda, the EPLF in Eritrea, the EPRDF in Ethiopia, the RPF in Rwanda and the SPLM in South Sudan. Secondly, the role of the army in these post-insurgency regimes has been more problematic than helpful.

He continues further that most emerging challenges arise from an upsurge of upsets aimed at overthrowing current leaders, albeit with disappointing outcomes; Libya and Egypt are a case in point. These urban insurgencies, he explains, are more problematic as they come up quickly forcing new leaders with no experience to govern; making it easy to overthrow such governments in future creating more conflict and hindering peacebuilding efforts. Such states are unlikely to succeed unless there is already in place a religious consistency and a semblance of ideology of governance to begin with.

With few successful transitions in some parts of Africa such as South Africa, Rwanda and Uganda several lessons have been learnt:

- The existing state apparatus has an enormous amount to contribute to peaceful transitions and maintaining peace
- A post-conflict regime will find itself in serious trouble if it destroys the productive bases of its economy no matter how unequal it may have been.
- A sense of statehood has been associated with an organized structure of rule. There is need for physical, cultural, governmental and economic infrastructure on which a hierarchy can be built. Without which peace won't be achieved. Post conflict Ethiopia and Rwanda can be contrasted to post-conflict South Sudan and Somalia.

Dr. Adams Oloo in response to Prof. Clapham's paper noted that emerging challenges to peace building in Africa can be situated and traced back to post cold war period which was characterized by interstate conflicts. The new conflict phenomena are intrastate and that security is at the center hence the need to address human security aspects. It is necessary to secure the environment for future development.

The conflicts have ceased to be limited to power struggle but have expanded to trans-boundary and or economic factors bringing to life the struggle for scarce resources.

The key question of security is to strategize how we can collectively secure trans-boundary peace. Dr. Oloo gave caution on the following:

- Avoid militarization of states - regimes that are coming in power in post-conflict settings should either choose a democratic or a military state. Not a combination of both. Creates less conflict.
- In fighting for justice during a countries transitional period compromise measures must be designed to incorporate all but the most egregious abusers of human rights into the post-conflict settlement and to lay the basis for solid and lasting peace.

It is clear that African problems need African solutions and that justice has to be anchored on shared values.



Dr. Adams Oloo, Chairperson, Dept. of Political Science and Public Administration, UoN, Kenya

LESSONS LEARNT AND CHALLENGES

Presenter:

Rev. Dr. Elias O. Opongo, SJ, HIPSIR

Peacebuilding

- Ethnicity which is entrenched in Africa, makes it difficult to prevent conflicts
- The process of conflict early warning and early response requires continuous support of peace committees and monitors who play an important role in information sharing. There are expectations to maintain peace committees for reports and updates.
- Women play a very important role in ensuring peace building and conflict management
- There is need for Interagency coordination and sustained partnerships
- Local peace committees add value to community dialogue
- There is a challenge on conflict sensitive media coverage, not many journalists are conflict sensitive in their reporting and in some situations they actually contribute to instigating conflict. The media can play a crucial role in conflict prevention.
- National peace building is closely related to regional peace building for instance Democratic Republic of Congo will not have stability if there is no cooperation from Rwanda
- All components of peace building and reconciliation processes should be addressed as they are a challenge especially in psychosocial support/healing and Disarmament, demobilization and reintegration (DDR).
- Peace building should bring together all stakeholders and not be left to state and regional organizations.
- Existing Policy and legislative framework are not adhered to, there is little information as to the existence of peace policy and other relevant legal instruments that can support the course.
- Economic aspects in peace building should be linked with the youth



Rev. Dr. Elias O. Opongo, SJ, HIPSIR

- TJRC process engaged children and collected at least 2000 statements them indicating that they were an integral part of the report thus importance of including them in the implementation. The report had a chapter dedicated to children therefore there is need to go back to them.
- Politicization of transitional justice is making it difficult to establish the role of government in politics of accountability and political transition.
- There exists a gap of work on TJRC being done by grassroots non-governmental organizations and government as many people expect the government to take lead role in the process without realizing that they cannot do everything. Stakeholders are therefore not sure where to begin in the process of implementation since transitional justice emphasizes on justice yet it seems elusive.
- Role of government in the implementation process is still not visible
- Traditional mechanisms which were much more restorative and community focused have been marginalized.

- There is no clear role of academic institutions in addressing transitional justice
- National infrastructure is necessary for transitional justice to prevail
- There exist a number of initiatives that have been undertaken to implement the TJRC Report and on the reform agenda yet very little information is known by the public including coordination of the same.

Mediators: African mediators seeking solutions to conflicts in the region lack many tangible resources' for mediation they are short of funding to support mobility and the actual process. We learnt that their capacities are limited, lack credibility and integrity; example portrayed in the limitation of mediation process in South Sudan and DRC

Victims: A lot can be done to ensure restoration of victims i.e. state can apologize to the victims, this action not legally liable and that it does not require any resources. We learnt that if a state apologizes it may transform the situation and their status.

- There some victims who chose to go to court to seek compensation and are awarded although the government doesn't implement or adhere to the ruling.
- There are many ways that TJRC report can be implemented in a cost effective way
- Sexual gender based violence survivors may need medical support which is already being done.
- County governments are interested in celebrating memorials and are willing to play a role in setting up monuments
- Treatment of victims' and how they can be part of the process
- Reparation has to date not been fully addressed

Recommendations and Way Forward – KENYA Truth Justice and Reconciliation Report

- There is need to look at the TJRC Report which has no clear implementation road map.

- The child friendly document should be validated to legitimize it and plan strategies for dissemination i.e. influence curriculum and or encourage ministry of education to use it in schools as part of peace education. As a way of changing the mindset of the community the TJRC child friendly report should be utilized as a civic education manual and incorporated as part of the school curriculum.
- Acknowledge and report back to the children who participated in TJRC
- The child friendly document to be validated to legitimize it and plan strategies for dissemination i.e. influence curriculum and or encourage ministry of education to use it in schools as part of peace education. It was recommended that as a way of changing mind set the TJRC child friendly report be utilized as a civic education manual and make it part of the school curriculum.
- How can we recommendations of the TJRC Report be implemented as well as find a place for justice.
- Victims should be involved in the implementation process as well as come up with clear strategies to assist/organize compensation to rebuild their livelihoods.
- Establish strong monitoring and evaluation network for affirmation on survivors.
- An audit should be be carried out and mandate National Steering Committee (NSC) on Peace Building and Conflict Management and National Commission Integration and Cohesion (NCIC) to retract their activities and seek ways of incorporating TJRC into their programs.
- Use every possible means that are accessible to push forward the recommendations of TJRC
- Align relevant policies with production of report
- On TJRC there is dire need to have continued engagement between the state and non state actors and establish body/organization to coordinate the process

Way forward to report may require coordinating committee to ensure dissemination and effective implementation of the findings

CLOSING CEREMONY

Moderator:

Ms. Florence N. Mpaayei, Senior Advisor/Coordinator Peace Practice, HIPSIR

Guest of Honour:

Hon. Francis Ole Kaparo, EGH, Chair, NCIC

Closing Prayer:

Rev. Dr. John Ghansah, SJ, Rector, Hekima University College

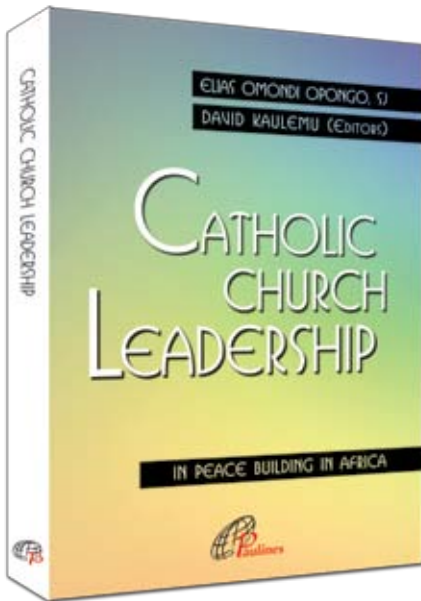
Hon. Francis Ole Kaparo, EGH, The Commission Chairman of the National Cohesion and Integration Commission (NCIC) gave the closing remarks. He highlighted that civilized human beings should be talking about justice and equality. It means that justice is not permanent but transiting into or out of use. We are victims of disorder and therefore we need to be transiting from disorder to peaceful society. Forgiveness is necessary for those who seek it even God expects us to confess before we are forgiven our sins. Society too expects one to seek forgiveness and that it is close to impossible to reconcile in absence of admission of guilt.



Hon. Francis Ole Kaparo, EGH, Chair, NCIC

He reiterated that freedom or liberty is of no use to a dead person because they will not enjoy freedom and liberty. Kenya needed to be cohesive as a nation. It appears the timing of the Kenya Truth, Justice and Reconciliation Commission was not ripe given the challenge of implementing the recommendations given in the report. Adherence to the rule of law is an important ingredient in moving towards sustainable peace.

Mini-Book Launch Ceremony



A book entitled “Catholic Church Leadership in Peacebuilding in Africa” edited by Elias Omondi Opongo SJ and David Kaulemu, was launched during the closing ceremony of the conference. The book is a collection of articles from different voices in Africa, expressing the role of the many Christian leaders who have transformed the society through their lives and commitment to justice and reconciliation. The authors have particularly been interested in identifying diverse categories of leaders, of both high and of low profile. In some cases, they have conducted direct interviews with the

various leaders, while in others they have relied on documented material. The individuals in this book demonstrate that change can never simply happen without commitment to faith and human engagement with the reality that confronts them. They further indicate that it takes courage, commitment and faith to bring change to society. This book is certain to provoke debate on important issues facing the African continent today including transitional justice issues.

The session and Conference was closed by a word of Prayer from Rev. John Ghansah, SJ.

LIST OF PRESENTERS

1. Keynote address

- His Excellency Benjamin William Mkapa,
former president of Tanzania

2. Plenary speakers

- Ms. Nardos Bekele-Thomas,
Resident Representative, UNDP
- Hon justice Paul Kihara- Kariuki, EBS, Judiciary- Court of Appeal –
Supreme court Nairobi-Kenya
- Mr. Dickson Magosti for Ambassador Dr. Monica Kathina Juma,
MBS, Principal Secretary, Ministry of Interior and Coordination of
National Government-
- Her Excellency Dr. Aisha Laraba Abdullahi,
Commissioner for Political Affairs, African Union
- Rev. Dr. Pius Rutechura, Vice chancellor the Catholic University of
Eastern Africa, Nairobi – Kenya
- Prof Makau Mutua, SUNY Buffalo Law School , USA
- Ambassador Sani Lawal Mohammed, Rector, African Institute of
International Law, Arusha- Tanzania
- Prof Chrstiother Clapham, UK
- Dr. Adams Oloo, Chairperson Department of Political Science and
Public Administration , University of Nairobi

3. Panel presenters

- Mr. Hyppolyt Pul
- Ms. Leonie Abela
- Ms. Anne Munene
- Dr. Penninah Ogada

- Rev. Dr. Elias Opongo
- Dr. C.A. Mumma - Martinon
- Dr. Hellen Scanlon
- Ms. Aminata Ndiaye
- Ms. Lina Zedriga
- Ms. Rebecca Mukyala
- Dr. Ngozi Iheanacho
- Dr. Caroline Mbonu HHCJ
- Ms. Kamila Krygier
- Dr. Anna Floeerke Scheid
- Rev. Dr. Laurenti Magesa
- Prof. Jesse Mugambi
- Mr. Andrew Songa
- Mr. Christopher Gitari
- Dr. Eric Ndushabandi
- Dr. Scholastica Omondi
- Ms. Jasmine Brankovic
- Prof. Agbo Madaki-
- Dr. Fred Jonyo
- Dr. Richard Ochanda
- Mr. Victor Odubah
- Ms. Caroline Ackley
- Dr. Rahma Abdulkadir
- Sr. Elena Balatti
- Mr. Masheti Mashinjila
- Dr. Ceasar Mwangi
- Rev. Dr. James Stormes,SJ
- Dr. Timothy Murithi
- Ms. Clara Ramirez-Barat
- Dr. Jennifer Moore
- Mr. John Katunga
- Fr. Peter John Pearson
- Rt. Rev. Cornelius Korir
- Mr. Humphrey Sipalla

- Mr. James Nyawo
- Mr. Mbapale Shivachi
- Mr. Emmanuel Agbakor
- Dr. James Gondi
- Dr. Marek Jan Wasiński
- Dr. Fredrick Golooba Mutebi
- Prof. Levi Obonyo
- Mr. Macharia Gaitho
- Dr. Solomom Mebrie
- Mr. Babiha Sulayman
- Fr. Jean Baptiste Ganza
- Mr. Oliver Kambala wa Kambala
- Fr. Emmanuel Ntakuritimana
- Mrs. Martha Nalubega
- Dr. Paulo Joao Mamunambozi
- Pe. Rafael Baciao Sapato
- Pe. Ciprisio Salazar Del Muro
- Dra. Felicidade cos Anjo Munahire Segunco Banze
- Mrs. Margarete Heidemann Vida

ICT

Beatah Njageh, Hekima
 Natneal Samson, Hekima
 Benedict Mayaki, Hekima
 Jean-Fleurys Zezika, Hekima
 Marius Mufuta, Hekima
 Eugene Wirkwajie, Hekima

Volunteers

Winnie Gulliver
 Peter Ouma Ojunga
 Carine Umtoniwase

Hubert Kinkoh
Jude Kosimbo
Kennedy Odhiambo
Sr. Jane Kimathi
Cyprian Omoding
Delina King'asia
Leticia Kiketch
Irene Chege
Dennis Ong'aria
Patricia Kibaru
Hamida Musalaam
Rehema Mesa,

Service Providers

Carol Nga'yo, HIPSIR
Purity Wairimu, HIPSIR
Nancy Thuo, HIPSIR
Kefa Indimulu, HIPSIR
Mary Kyahosa, HIPSIR
Sarah Ayuma
Grace Gikonyo
Jennifer Gichuche
Elizabeth Atieno
Godfrey Shisundi

Rapporteurs

Oluma Bernard Ochieng
Florence Mwikali Kitheka
Luis Ndiwa Sangulla
Obiero Gilbert Roy
Purity Adhiambo Osumba
Ingrid Okello
Susan Owiro-Chege
Janevive Amondi Ouma

CLOSING PRAYER

“Almighty God, the Great Elder, the Dependable Friend, the Great Thumb we cannot evade to tie any knot; the roaring Thunder that splits mighty trees: the all-seeing Lord up on high who sees even the footprints of antelope on a rock mass here on Earth. You are the one who does not hesitate to respond to our call. You are the cornerstone of peace.

We have no words to thank you, but with your wisdom we are sure that you can see how we value your wonderful gifts. How we are grateful for journeying with us these past two days.

You, our Wisdom has given us clarity of mind on issues that worry our people, You, our Protector has kept us all safe from harm. You, our Great Friend have filled us with insights into transitional justice, and have offered us ways we can bind the wounds of our many people who suffer injustice.

Grant us the courage of the lion as we bring this conference to a close, so that we will walk the land and protect our people. Grant us the patience of the tortoise to deal with peace and justice in our land. Grant us the speed of the antelope to deal with threats of war and famine.

Bless us. Bless our land and our people.

Bless our forests. Bless our fields. Bless the waters that flow through our land.

Fill our land with bold and fearless leaders. Fill our homes with women and men who teach peace. Fill our fields with young men and women who love vision and mission of our countries.

Take away wars and famine from our land; Take away selfishness and timidity from our hearts. Take away greed and corruption from our countries.

Let us hear the cricket sound in the night, not the sound of the guns. Let us smell the fragrance of good harvest and not the stench of dead bodies. Let us see our children’s children and cuddle them on our laps, not bury them in their youth.

Be with us in our laughter and joys. Be with us in our sorrows and pain. Be with us in our birthing and dying.

Grant us safe journeys to our homes, and grant us good life and good health. In all these we pray to you our Elder, and Almighty and Friend you who live forever and ever. Amen”

