THE 2012 INTERNATIONAL AND TRANSITIONAL JUSTICE FORUM:

'Drawing Lessons From Local Processes to Improve Regional and International Perspectives of Justice'

DATE & VENUE

30th -31st July 2012

Imperial Botanical Beach Hotel Entebbe, Uganda

ORGANISERS

Avocats Sans Frontières

AND

The Uganda Coalition of the International Criminal Court (UCICC)

With the support of the European Union and the MacArthur Foundation

THE 2012 INTERNATIONAL AND TRANSITIONAL JUSTICE FORUM:

‘Drawing Lessons From Local Processes to Improve Regional and International Perspectives of Justice’

DATE & VENUE

30th -31st July 2012

Imperial Botanical Beach Hotel Entebbe, Uganda

List of Acronyms

DPP	Directorate of Public Prosecutions
ICC	International Criminal Court
ICD	International Crimes Division
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
TJ	Transitional Justice

Acknowledgements

ASF and UCICC, the conveners of this regional forum, thank all those who contributed to the success of this intriguing platform of experts from Sub-Saharan Africa on pressing matters of international and transitional justice. Special recognition is accorded to the various facilitators of the forum in the different categories namely; session chairs, presenters of discussion papers on a wide range of aspects of transitional justice and the various participants from across the divide such as academic institutions, civil society, Government agencies and Development Partners whose input contributed immensely to the productive discourse that characterized this meeting.

We are optimistic and anticipate that the circulation of this forum report will make available an imperative momentum to the continuing discourse on incorporating local/domestic perspectives into the internationally acclaimed and hyped mechanisms of transitional justice that seem to deliberately lock out local initiatives of dealing with transitional justice in post conflict societies.

The theme of the Forum *'Drawing Lessons From Local Processes to Improve Regional and International Perspectives of Justice'* clearly portrays the intention for the forum to act as a platform to articulate the view that the new-fangled archetype of transitional justice in the lens of only international mechanisms is incomplete without learning from progress that has been exhibited domestically and the challenges that abound in implementing the same mechanisms. Arguably, the ambitious aspirations that characterize international mechanisms of transitional justice have to place local mechanisms of transitional justice as well evenly at the pivot of its conceptualization and performance.

We also extend our gratitude to the rapporteur-Mr. James Nkuubi of HURINET Uganda for synthesizing the discussions we had at this important event and preparing

this final report. We specially thank the members of the ASF and UCICC team who participated in reviewing and editing this report.

Séverine Moisy	Mohammed Ndifuna
Head of Mission	Chairperson Steering Committee
Avocats Sans Frontières	**Uganda Coalition on the International Criminal Court (UCICC)**

I. Situating the event in the wider Transitional Justice Debate

This event is/was part of a series the activities that were organized in commemoration of the tenth anniversary of the Rome Statute that established the International Criminal Court (ICC). The participants at this event were drawn from both the legal and civil society communities of the ICC Situation countries in Africa inclusive of Uganda, Democratic Republic of Congo, Central African Republic, Sudan, Kenya, Libya and Cote D'Ivoire.

II. International Criminal Justice

International Criminal Justice first came to the fore of world discourse after the Second World War when tribunals were established to try members of the Axis Powers on the basis that crimes of such seriousness and magnitude could not be left unpunished by the international community.[1] These prosecutions emanated from the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and the Charter of the International Military Tribunal, August 8, 1945, 82 U.N.T.S. 279. Some fifty years later, ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) were set up. They were the first of their kind-International Courts established by the Security Council under Chapter VII of the Charter of the United Nations as a measure for the restoration of peace and security in strife-torn regions of the world.

Subsequently, in July 1998 the draft Rome Statute for a permanent International Criminal Court was adopted by an assembly of States. The required number of State ratifications was reached in April 2002 and in accordance with the Statute of the ICC, operation of the ICC commenced on the 1st day of July, 2002.

[1] Karim A. A. Khan & Rodney Dixon: Archbold International Criminal Courts Practice, Procedure & Evidence 3rd Edition 2009

Article 1 of this Statute stipulates that the International Criminal Court has the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in the Statute and shall be complementary to national criminal jurisdictions. The Court therefore uses prosecution as an accountability tool.

III. Transitional Justice

Transitional (post conflict) justice is a combination of a variety of all approaches geared towards providing victims with a sense of justice. Arguably, different countries look at their individual contexts to determine the kind of transitional justice mechanisms to adopt in the fight against impunity. They may therefore pursue either the retributive or restorative model. The UN Secretary General report 2004 "The rule of law and transitional in conflict and post-conflict societies" defined transitional justice as the comprising the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissal, or a combination thereof.[2]

a) Retributive

The prosecution approach is one of the most commonly implemented transitional justice mechanisms in the countries that will be represented at this forum. International Justice has been applied in these contexts given the fact that it is highly placed on the justice pedestal particularly in contexts where domestic prosecutorial mechanisms are considered too weak to provide any form of justice. To this extent, transitional justice is in tandem with the spirit of the current international justice framework which aims to foster complementarity and thus makes it the role of every individual nation to try suspects of international crimes. However, the biggest challenge with the prosecution approach is the fact that it is not necessarily meant to rebuild the lives of victims in war affected communities.

b) Restorative

In the short period since its emergence as a field, "transitional justice" has undergone a sharp learning curve, and expanded its remit and mechanisms considerably to respond

[2] Anne Kirstine Iversen , *'Transitional Justice in Northern Uganda: A report on the pursuit of justice in ongoing conflict'*, International Development Studies 30 October 2009 quoting UNSC report 2004 at page 4

to emerging knowledge victims' needs and societal considerations.[3] Transitional Justice mechanisms therefore extend their focus beyond the criminal justice prosecution approach and go ahead to foster truth telling, memory preservation, institutional reforms and reparations as means of addressing past human rights violations. Transitional Justice thus continues to gain ground as countries seek to deal with the core causes and harsh effects of conflict using national justice approaches. The implementation of many of these restorative transitional justice mechanisms has however been increasingly difficult in many jurisdictions given the political and non-political complexities surrounding approaches like truth telling, memorials and reparation which not only come at an extra financial cost but also require all perpetrators of gross human rights violations, some of may be part of the political structure of a given country, to acknowledge their role in conflict.

IV. Objectives of the International and Transitional Justice Forum

The main objective of this forum was to provide an avenue for the adaptation of realistic recommendations that can improve the implementation and effectiveness of international criminal justice and transitional justice in conflict and post conflict contexts. The specific objectives of the s forum were:

- To share context based experiences on international and transitional justice;
- To identify the practical challenges in fostering international and transitional justice in varied contexts;
- To formulate and adopt pro-victim policy recommendations within the international and transitional justice model.

[3] Rama Mani, *"Towards integral justice for victims: Integrating the spiritual, cultural and aesthetic within transitional justice"* Presentation at the 14th International Victimology Symposium.

Forum Modalities

Methodology

The conference adopted mainly the lecture-mode of dissemination. The various facilitators reduced their thoughts into conference papers that were shared with the participants by way of presentation to lay a ground for further discussion. Panels were also used-bringing together different experts to discuss the experiences of their countries' TJ processes and thereafter engaged in open discussion. The report summarizes some of the emerging issues from the papers presented. Full papers can be found at the conveners' websites for download. The first day of the forum was dedicated to a situational analysis of the great lakes regional international criminal justice initiatives while the second day focused largely on the victims' right to truth in post conflict situations as well as a discussion on the link between peace and justice and why there is need for balancing the quest for the two.

Resource Persons

Resource persons that facilitated the conference were drawn from a wide range of sources including the academia-from mainly the University level; civil society players with a particular bias to those dealing with transitional justice related aspects; representatives from governments-in particular ministries of justice and constitutional affairs; victim groups representatives such as Khulumani from South Africa, Uganda Victims' Foundation in Uganda among others, members from the judiciary.

DAY ONE OF THE FORUM:
The day's events involved a situational analysis of the Great Lakes Region Initiatives at International Criminal Justice and a critical discussion about the balance between Peace and Justice.

Opening Remarks

SEVERINE MOISY

Head of Mission

Avocats Sans Frontières

Severine noted,

"Ten years ago, who knew that an arrest warrant could be issued against the President of a sovereign country? Who knew that the notorious would sit humbled somewhere in The Hague called to account for their excesses? Who knew that Joseph Kony and his top commanders were not invincible after all? Who knew all that?"

In her opening remarks, Severine reiterated the objectives of the forum aimed at giving the participants an opportunity to share experiences from their individual countries, identifying challenges in realizing the goals and objectives of international and transitional justice and also providing recommendations to improve the justice models.

She went on to highlight the significance of the ten year anniversary of the International Criminal Court and noted that, over the last decade, the Court has greatly contributed to the fight against impunity, a move that has brought about relative peace and justice in previously war tone parts of the world such as Northern Uganda.

Severine also delved into the criticism levied against the ICC and its apparent focus on Africa. Participants were reminded of moves by regional bodies such as the African

Union and the East African Legislative Assembly to frustrate the exercise of the ICC's mandate. In her words,

> 'It is important to recall that the ICC operates on the basis of the principle of complementarity which highlights that the Court will only intervene in a given country where it can demonstrate that the country is either unable or unwilling to investigate and prosecute perpetrators of international crimes. It is therefore important for different nations to use this principle as an opportunity to take realistic steps towards ensuring that they have the capacity to try such perpetrators. However this alone is not enough. The needs of victims of such crimes need to be taken into account.'

Severine, however, cautioned the participants against using the forum to merely levy criticism against international and transitional justice models that have been implemented in different parts of the African Continent. Participants were therefore requested to offer meaningful and practical recommendations that can assist different post-conflict societies as they forge a way forward. A strategy of this nature recognizes our shared hatred for impunity and highhandedness.

NDIFUNA MOHAMMED
CEO-Human Rights Network & Chair-Uganda Coalition on the International Criminal Court (UCICC)-Co Conveners of the Conference

Ndifuna argues that the zeal to prioritize the international mechanisms as the best and proven means of addressing accountability questions, peace and justice dilemmas and deliberately ignoring the local/domestic mechanisms is a non-starter… the debate should be pitched on another level guided by the fundamental questions of How do we create a necessary balance between the various mechanisms of TJ without overtly asserting preference of one to the other?

Mr. Ndifuna, in his opening remarks, maintained that the conference was not to focus on finding out the best mechanism of transitional justice but rather to share experiences from the various affected or implementing jurisdictions. TJ handling process or mechanisms are a continuum ranging from the national/local to the international, each endowed with various advantages and disadvantages. According to Ndifuna, the challenge lies more in balancing one particular mechanism with another-which ultimately is not a question of preference and comparison of what is better than the other but rather a question of which mechanism equally dispenses off peace and justice, and respecting human rights.

He cautioned that the debate on which mechanism is better has long been abandoned. Thus, for maximum impact and enriching the debate on the quest for TJ solutions, the debate should be pitched on another level guided by the fundamental questions of How do we create a necessary balance between the various mechanisms of TJ without overtly

asserting preference of one to the other? How do we ensure complementarity of TJ mechanisms in preference for ranking workability of these various mechanisms?

In conclusion, Ndifuna noted that such questions would best be answered during the conference which has a rich attendance of participants with experiences from other countries.

I.A Broad Overview of Transitional Justice-Definition, Application and Methodology

Ms. SARAH KIHIKA-PROGRAM ASSOCIATE International Centre for Transitional Justice (ICTJ) Uganda

Ms. Sarah Kihika set the background paper for the conference discussing *'A Broad Overview of Transitional Justice-Definition, Application and Methodology.'* Ms. Kihika noted that transitional justice is a necessity to confront the past for a better future. The past has to be confronted for purposes of learning from it to prevent future conflict; to establish accountability; to build rule of law; to establish respect for human rights; to build participatory democracy; to create new society based on tolerance and understanding. Thus transitional justice is built on the need to confront legacies of past human rights abuses and atrocities to build a stable, peaceful, and democratic future.

Undertaking TJ mechanisms in the aftermath of a conflict should not be negotiated. Doing nothing is not an optional as it is tantamount to denying the past, a situation that may have grave repercussions for the future of the particular country that absconds from confronting the past.

As such, a wide range of initiatives can be undertaken. Among these include prosecuting the perpetrators of violence; giving amnesties where found necessary; investigating and reporting; pushing for reconciliation, forgiveness and apology; putting up memorials for victims; recovering bodies for families for descent burial; awarding reparations for victims; reforming institutions.

Mechanisms of Transitional Justice

Ms. Kihika also maintained that the world is adapting to mainly four mechanism of dealing with past namely: prosecutions; truth-seeking; reparations; institutional reform. Prosecutions can be on a national/domestic level such as the International Crimes Division of the High Court of Uganda-(ICD). These apply domestic criminal law and criminal codes of the country prosecuting or have International Crimes included in domestic law by way of domestication like Uganda which domesticated the Rome Statute establishing the ICC. They can alternatively use international jurisprudence in their trials.

The prosecutions can also be international as seen in the Ad Hoc Tribunals and the International Criminal Court as well as hybrid courts-involving interplay of

domestic and international aspects such as in Sierra Leone, Bosnia, Cambodia, and Lebanon among others. All these pursue International Crimes such as Crimes against Humanity; Genocide; War Crimes and crime of Aggression. Ms. Kihika however cautioned that prosecutions have various limitations including among others focus on few perpetrators; cannot focus on entire conflict period, or background, patterns, causes, impact; will not answer 'Why?' the conflict took place in the first place; cannot focus on lessons learned, and make necessary recommendations to avert such future wars. Furthermore, prosecutions involve limited victim participation and limited public access. For these reasons, prosecutions should be pursued cautiously preferably as a complementary mechanism to other measures of transitional justice.

The other mechanism is the truth and reconciliation commissions. According to Ms. Kihika, there have been more than 30 TRCs in the world the most prominent being in South Africa, Timor-Leste, Sierra Leone, Peru and in Uganda in 1971 and 1986 (Oder commission). The truth commissions have been projected and indeed have turned out to be the ideal mechanisms that provide an objective account of antecedents, causes and the history of conflict. They help confront the questions of what happened, who took part and who is responsible and the impact of the war. They provide a measure of accountability through findings reached during the subsistence of the truth telling. Such commissions bring victims' voices/ experiences into public arena-they are participatory and often propose solutions in a way of recommendations for reform of abusive institutions and redress wrongs suffered by victims. They are poised to Promote reconciliation if well handled and given political supports.

The truth commissions are next to no other mechanism in the quest to solve root causes of the conflict.

Truth Commissions involve a number of activities including investigations/ research, statement taking; interviews/ public hearings of the victims; victim support; events to promote reconciliation among others. TRC also come with challenges that may curtail their impact. Among the many are the questions surrounding the commission's independence & autonomy; selection of appropriate commissioners/ staff; poor funding and other resources, skills; analyzing massive information; poor or lack of facilities of Witness Protection.

The other contentious aspect incarnate in the TJ debate is the amnesty. Once again, there remain questions concerning what may justify an amnesty? And who should grant amnesty? Can a TRC be empowered to grant amnesty? Does an amnesty deliver truth? And what alternatives exist in place for amnesty?

Reparations

Ms. Kihika also noted the importance of reparations to help restore the victims to the level of life they enjoyed before the war. This cannot wholly be achieved but again, an attempt should not be avoided. The reparations can take various forms though the most prominent include monetary payments to victims; access to services such as health, education; symbolic reparations as museums, monuments to recognize harm to the victims. Reparations programmes too are faced with various challenges. They can generate high expectations which may not be fulfilled; it is also impossible to restore victims to positions prior to

violation. Additionally, they are expensive and marred with controversial questions of who pays? And who benefits? Ultimately, in designing a reparations agenda, efforts should be made not to ignore the practical realities and complexities that may be prevalent in a particular country.

On the other hand, institutional and legislative reform has to form part of the transitional justice. Such institutions and legislations for reform include the following- the Constitution, Military, Police, Judiciary, Parliament, Elections, Education, Media, Oversight institutions, Land and Mineral resources since most of the conflicts that have prevailed have been resource-based.

Cross Cutting themes in Transitional Justice

Ms. Kihika also averred the need to understand and analyze the various cross cutting themes in the TJ debates. Among these, the notion of gender should be given due attention in every TJ programme. In particular, focus should be geared towards women in the aftermath of the conflict because they form a significant portion of victims in most conflicts; they are singled out for abuse/ gender crimes with the most prominent being rape and sex slavery. These are issues which, if not projected on any TJ agenda, risk being often ignored or overlooked.

The other equally important aspect is reconciliation. On this particular notion, Ms. Kihika posed more questions than answers. She questioned whether justice, truth, reparations, institutional reform should be preconditions for reconciliation? And further still how can a TRC promote reconciliation? She maintained that reconciliation is Complex and Ambiguous . No clear one size fits all understanding can be formulated due to the fact that the act of reconciliation is largely subjective and at best, one can only achieve it when contextualized with a particular situation or country.

a) Justice as demanded by the victims -vs- 'available justice'

Participants decried the continued 'pumping of justice' to the victims as the 'giver wants it' and not necessarily from the perspectives of the victims. Indeed, the conflict between what victims want as justice and what the givers are in position to provide for reasons best known to themselves remain looming in most TJ implementing countries. As such, the overriding question remains how both the interests of the 'giver' and the recipient victims can be balanced for both parties to benefit equally. Justice as perceived by victims should not be sacrificed on the altar of the available justice.

b) The Quest for Institutional Reforms; going beyond mere personality changes

Another equally vital issue challenging the process of TJ especially aimed at reforms on institutions is the question of how to ensure meaningful reforms that go beyond personality changes at the helm of power. Cases are numerous where the so-called institutional reforms have been cosmetic and punctuated by a few face changes with no clear and concrete structural transformation of these notorious bastions of brutality such as the military and police among others. According to Ms. Kihika, the best counter to this kind of obstacle is legislative reform, mainly using the Constitution to change the status quo as a matter of constitutionalism and not administrative. Kenya seems to be on the right path with legislative changes in pursuit of police reform with the institution of a statutory oversight body to prevail over the potential police oriented brutality in the name of keeping law and order as exhibited in post-election violence of 2007. There should be a deliberate public oriented process of vetting who should be in the new institutions and who should not. It should be a process owned by the communities. Unfortunately, this vetting process has rarely been used in the African countries grappling with TJ issues.

c) Questioning the effectiveness of Traditional mechanisms of TJ:

According to some participants, the debate on how to best conceptualize the importance of the traditional mechanisms in the context of transitional justice, what facets to focus on, and what limitations are prevalent in its use, is still only embryonic. Many queries abound. In this particular context, questions arose in regards to the efficacy of Gacaca in Rwanda to deal with such heinous crimes of the nature that happened in Rwanda. According to the lead presenter, Ms. Kihika, even though the traditional mechanisms can be applauded as owned by the victims and indeed having legitimacy, they fall short in trying such crimes of mass murder and war crimes. There seemed to be convergence of thought that such mechanisms are best suited to deal with the persons that had no control over what they did such as child soldiers and enslaved girls and those that international mechanisms of criminal justice are silent about-mainly the children. The persons with the greatest responsibility would still be dealt with using formal international or domestic judicial mechanisms. In essence therefore, the primary element of TJ should be 'context' and 'sequence', there is no mutual exclusion between the two mechanisms (traditional and formal judicial) rather marrying the two to achieve justice.

There is need for policy practitioners to focus their attention and efforts on evidence-based appraisal of TJ alternatives, and to be cautious of arguments that particular TJ mechanisms are 'well suited' to be applicable in given community.

Click here to read Sarah Kihika's presentation

Great Lakes Region International Criminal Justice Situational Analysis Panelists

George Kegoro-ICJ Kenya

Mr. George Kegoro provided an update on the search for justice in Kenya following the post-2007 election violence. The paper described the response to the violence and the failed attempts to implement measures that would have brought accountability. Mr. Kegoro also tackled the tricky issues surrounding the intervention by the International Criminal Court, the progress of the Kenyan cases before the ICC and attempts in Kenya to bring about domestic accountability in relation to persons other than those facing ICC charges.

Responses to the Kenyan Post-Election Violence

The responses to the Kenyan post-election violence were varied. Some were continental-African Union oriented; others nationally sought after mechanisms of accountability and finally the international mechanism in the name of the International Criminal Court.

African Union Efforts of transitional justice

It is probably Kenya that helped shed some light on the possibility of the African Union - if well strengthened- to calm a civil war storm on the continent and set in motion a transitional justice process. Indeed the mediation process negotiated by AU was fruitful in as far as it facilitated the formation of a coalition government in which Mwai Kibaki, of the Party of National Unity, who had been declared re-elected in the elections, agreed to share power with his main challenger, Raila Odinga, of the Orange Democratic Party, (ODM), who became the country's prime minister.

Commissions of Inquiry: Independent Review Commission and the Waki Commission

Kenya also responded by use of two public commissions of inquiry. The first, the Independent Review Commission, was established to investigate the disputed presidential election results, which triggered the violence, with a view not only to establishing the true outcome of the results but also recommending reforms to the electoral process that would avoid the outbreak of similar disputes in future. The Commission was headed by a retired South Africa judge, Johann Kriegler. It

The need for police reform in transitional justice cannot be downplayed owing to the fact that the centrality of justice to this process has a lot to do with who wields power in the aftermath of civil strife.

In the call for such recommendations to overwhelming reform the security agencies especially the police force of Kenya, the Waki Commission was probably borrowing a leaf from the South African experience which centered part of its quest for reconciliation on the transformation of the South African Police Services which had initially been a weapon of oppression.

recommended a diverse range of reforms to Kenya's electoral process, including the abolition of the country's electoral commission, which had been discredited for the incompetent manner in which it handled the elections.

The other one was the Waki Commission established to study the causes of the violence, and ascribe responsibility. In its report, the Waki Commission proposed the establishment of a Special Tribunal to bring accountability against persons bearing the greatest responsibility for the violence. The Commission compiled and placed in sealed envelope names of suspects that should answer for some of the atrocities committed during the violence before the international criminal court. It handed over the envelope to the African Union for safe custody.

The quest for police reform and accountability

The Waki Commission also dwelt at great length with the role of state security agencies, establishing that the police had acted in a high-handed manner during the violence, and was responsible for the killing of a significant number of those who died during the violence. The commission recommended far-reaching reforms on the police force, including the establishment of an independent complaints authority for the police and a police service commission to take responsibility for policing matters. The commission recommended that, in order for these reforms to be carried out, an independent police reform group made up of both international and national experts be set up to work independently with the police with a view to implementing the reforms in question.

In its quest for justice, Kenya has not escaped the overwhelming debate on reconciliation or prosecution of the suspected perpetrators of violence. Indeed as Kegoro opined, the aftermath of the Waki report was largely a rope pulling venture between the camps that were in favour of the implementation of the Waki-report in its entirety as a mechanism of combating impunity and circumventing the ICC and those that were against the implementation of the report arguing that its implementation, especially through prosecution of the suspects, would curtail the efforts of reconciliation and instead 'open up ethnic divisions afresh.' According to Kegoro, Once again, the civil society in kenya has

stood up to be counted in its continued support for the implementation of the Waki report with the Catholic Church being particularly the most vocal in demands for action.

Slim hope of genuine efforts of T.J

The Kenyan case is again a clear indication of the lack of political will to pursue accountability mechanisms for grave crimes against humanity. Despite the clear road map proposed by the Waki commission, the tribunal to try the perpetrators of violence has not been set up yet. Kerogo summarizes how means that have been geared towards accountability in relation to the special tribunal have been swatted by the politicians. He noted that:

- The first legislation published by government in an attempt to establish a special Tribunal through a Constitutional Amendment on 28th January, 2009, sought to entrench the Special Tribunal in the Constitution was unequivocally rejected by Members of Parliament, who instead asked for suspects to be prosecuted by the International Criminal Court.

- The second attempt at generating a Special Tribunal Bill in July, 2009 was rejected by the cabinet citing a need for immunity clauses for the head of state as well as presidential power to pardon suspects within any such legislation.

- Subsequently, on 11th November 2009, a Member of Parliament, Gitobu Imanyara, tabled a Bill to establish a Special Tribunal for Kenya through Constitution of Kenya (Amendment) Bill (No 3). However, Members of Parliament defeated the bill through a walk out to deny the realization of quorum that would have enabled a discussion of the Bill.

According to Kegoro, it is this apparent lack of commitment at the recommendations of the Waki report and in particular the establishment of the special tribunal that led to the intervention of the ICC. This is so despite the fact that on 17 December 2009 President Kibaki and Prime Minister Odinga signed an agreement for the establishment of accountability mechanisms for the post election violence which includes an agreement not to shield from accountability any person against whom

Home grown TJ mechanisms are almost dysfunction when the suspected perpetrators continue in power and positions of Influence.

Clearly therefore, the home grown solutions to the quest for justice seem to have little impact especially if and when the persons suspected of having committed such crimes are the same people supposed to be implementing them yet they remain in positions of influence and power with capacity to block some of these initiatives if they do not favour them.

Kenya represents a section of countries where embracing transitional justice using local/home grown mechanism of reconciliation; accountability and justice are undermined by personal interests of politicians either protecting themselves or their kinsmen from accountability at the expense of national harmony.

recourse may be needed for the post election violence. Hence, in January 2010, the Prosecutor of the ICC applied for leave to commence investigations into the Kenyan situation the first time under the power conferred to him under article 15 of the Rome Statute.[4]

The ICC situation in Kenya has further been complicated by the fact that the charged suspects are still in their respective public offices, an act that the president has condoned by not relieving them of their duties. In fact, according to Kegoro, the 'President Kibaki announced that they would be allowed to remain in office until the confirmation of charges.'

Kenya's quest for domestic prosecutions was further hampered by the uncertainty in the judiciary which was under review following the enactment of the new constitution. Kegoro further substantiates this noting that the new Constitution required the retirement of the serving Chief Justice, a wholesale vetting of the existing Judiciary, and the establishment from scratch of a new court, the Supreme Court. This could not be achieved in the minimal time available without occasioning delays to prosecutions of the perpetrators of violence.

Additionally, the new Constitution mandated the retirement of the Attorney General and split his office into two, creating an independent Director of Public Prosecutions (DPP). The procedure of appointing the new DPP was marred in controversies and as such may lack legitimacy before the public. As such the string, independent arm of prosecution which is central to the legitimacy and fairness of the domestic

[4] On 15th December 2010, the prosecutor of the court announced that he would be presenting two separate cases for confirmation of charges: the first case was against ODM's chairperson Henry Kosgey, William Ruto, who at the time the charges were brought was a ODM Government Minister, and Joshua Sang, a radio announcer. The second case presented was against members belonging to the PNU camp, including deputy prime minister, Uhuru Kenyatta, the former head of the Kenyan police, Hussein Ali, and the head of the civil service, Francis Muthaura.

prosecutions is suspect. Further, the investigation arm of the Kenyan Police is also in question. Their capacity to investigate and protect witnesses when they were singled out as having perpetrated some of the heinous crimes is worrisome. How can the police that participated in the impunity and as thus eligible for prosecution be a worthy partner with the DPP to prosecute suspects of these crimes? The dilemma incarnate in Kenya's search for transitional justice is summarized in the political lens Kegoro uses:

> '…if Ruto or Kenyatta successfully runs for president, it is likely that the winner will use his position to control the response of the Kenyan state to the ICC intervention. Even though, this would significantly affect the country's international standing.'

The politics as it continues to play out in Kenya is not only threatening the peace and stability of the country but rather it has also cast a shadow of doubt over the use of the ICC as a mechanism of accountability.

Thus Keroga argues that the way the ICC maneuvers its course in Kenya will either diminish or add to its credibility as an institution that can deliver justice amidst doubt. George concludes by noting that 'the involvement of the ICC in Kenya has reinforced the difficulties in the relationship between the Court and the AU, which commenced with the court's involvement in Sudan situation.' To him, there seems to be a growing alliance of African states that are not in favour of the ICC and as thus worthy resisting. Sudan heads this growing list of anti-ICC bastions. He further notes that:

> *'…if, against the odds that they have generated, the ICC manages to put the Kenyan accused on trial, this will go a long way towards confirming its preeminence to try all persons regardless of official position. If, on the other hand, the accused manage to get Kenya to shield them from trial, this, coupled with the unresolved situation around Sudanese President al-Bashir, will deal the ICC and the international justice project a blow from which it will be difficult to recover.'*

Click here to read
George Kegoro's Presentation

Uganda's Situation
MARGARET AJOK
Justice, Law and Order Sector

From Ms. Ajok's presentation, it can be deciphered that Uganda has pursued a vigorous cocktail of TJ mechanisms albeit ambitiously and as thus occasioning poor co-ordination of these initiatives. These have included the judicial mechanisms-the International Crimes Division of the High Court (ICD); the referral to the ICC which occasioned the pursuit of LRA rebel leader Joseph Kony and his top five commanders; Juba peace talks with the LRA which eventually flopped without any concrete cessation of arms agreement between the two parties to put an end to the war; Amnesty to all the former combatants-rebels that denounce subversive activities as practicalised in the Amnesty Act by the Amnesty Commission; and the traditional mechanisms of justice as practiced by the different clans within the wider northern Uganda which was most affected by the 23 year civil war.

A Brief overview of the ICD-Judicial mechanism

The ICD was established to 'try any offence relating to genocide, crimes against humanity, war crimes and trans-boundary international terrorism, human trafficking, piracy and any other crimes under international law" as may be provided under the Penal Code Act of Uganda, the Geneva Conventions Act of 1964, and the International Criminal Court Act of 2010, as well as international customary law.'

Since the coming into force of the ICD, there has been some progress in ensuring the functionality of the court towards taking measures aimed at achieving justice. Various judges have been appointed and were provided intensive training on the application of international criminal law and international humanitarian law. There has been appointment of Court staff, such as the ICD registrar, clerks and interpreters all with specialized training. The ICD infrastructure is complete with a separate independent structure, housing the Court, the registry, and prosecution unit. Futuristically, in terms of procedure, the ICD is yet to adopt rules of procedure and evidence applicable to criminal trials in Uganda.

In terms of capacity enhancement, various stakeholders such as the Judges of the ICD, the Registry, the DPP, Investigators, the Ministry of Justice, and the Uganda Law Reform Commission among others have been engaged in specialized training. The ICD is now pursuing its first trial against Mr. Thomas Kwoyelo, who was a mid-level commander of the LRA, the notorious rebel group. The trial however has been hit by a constitutional challenge basing on defence objections that Kwoyelo was not granted amnesty even when he qualified for the amnesty and as thus pleading discrimination. There has been some progress however as depicted in capacity building of the police to undertake professional investigations and evidence gatherings; to the judiciary-judges and the prosecutors to enhance skills in international law. Witness vulnerability assessments have been carried out and a witness protection law is in the pipeline.

The establishment of the ICD is argued to be a testimony to Uganda's commitment to the principle of complementarity. More significant however is the fact that the ICD has been integrated within the national court structure and, as such, it is not only an avenue of sustaining all efforts of transitional justice in future but also countering impunity through accountability for crimes committed. The ICD is an important measure that promises sustainability, enabling Uganda to fulfill its international obligations on the long-term. Complementarity has come alive in Uganda through its adaptation of the various institutional, legal and judicial mechanism meant to enhance the rule of law institutions and justice.

Additionally, Uganda has based most of its TJ mechanisms on the Juba Agreement which provides an overarching framework for Uganda's transitional justice process and reminds the different players to view transitional justice broadly and holistically. It emphasizes the importance of an integrated approach whereby complementary and coordinated mechanisms seek to achieve accountability through a variety of mechanisms, including truth-seeking, traditional justice and reparations for victims, with special emphasis on the rights of women and children.

The Quest for a national TJ policy-how participatory?

Currently, Uganda is in the process of concluding a TJ policy. The TJ policy being pursued by Uganda has largely been informed by views of the various communities especially from the affected regions of northern Uganda. There has been various research conducted with the victim communities to seek their

aspirations on what would amount to reparations, justice and accountability in their view without of course compromising the efforts of peace. Community dialogues have also been convened around contentious issues such as the extension of the Amnesty Act. Additionally, the different human rights groups, victim groups and other wider civil society groups have been involved largely in these consultations. This is a progressive move considering this methodology is central to the legitimacy of the mechanisms of TJ ultimately if adopted-they will be owned by the communities since they were involved. However, consultation should be meaningful and not mere cosmetic-token questions and answers by so called experts detached entirely from the realities of the suffering communities. The participation should not only be on the consultation level when developing the necessary legal framework and policies but even at implementation level.

Hurdles in Uganda's TJ search

Uganda's quest for transitional justice has also faced various challenges including managing of expectations from the affected communities which have been extreme. Additionally, the TJ sphere is new in Uganda and as thus JLOS has had to grapple with it on job-implementing at the same time learning for improvement. As such, delivery has been piece meal punctuated by insufficient funds. It boasts a good working relationship with the CSO operating at the grass root level with the affected communities.

Participants noted that all these mechanisms have been pursued in absence of a clear transitional justice policy to guide the different players in this porous atmosphere of pursing the same-justice and peace, using various mechanisms. As a result, the impact of all these mechanisms remains un-clear in the wider picture of the quest for accountability.

Arguably, Uganda has thus cut out herself as a committed partner in fighting impunity by coming up with all the various mechanisms starting from the Juba Peace Agreement, the setting up of the ICD, national consultations, fulfillment of international obligations through ratification, domestication and implementation of the Rome Statute. Participants noted this as strength of Uganda-pursuing a mix of transitional justice mechanisms and as thus making full use of the close up relations between them. By this, chances are that all the various victims that perceive justice and accountability differently can be catered for through at least aligning themselves with one particular mechanism of transitional justice.

"Lessons from Rwanda's National and International Transitional Justice: The Case to Improve Regional and International Perspectives of Justice"

HERBERT RUBASHA AND ISAAC BIZUMUREMYI[5]

The paper about Rwanda just like the preceding presentations, focused on transitional justice mechanisms that were employed by Rwanda in the post genocide era and lessons amenable to the region and the international community at large.

The Unique Situation of Rwanda

Rwanda posed a unique challenge to the international community and transitional justice scholars generally. With over 100,000 persons in custody as suspects of perpetrating genocide, how was the country to ensure justice with expediency without infringing on the rights of accused and at the same time, satisfying the justice and accountability aspirations of victims of the genocide? The state was in disarray with a disintegrated judicial system which was limited in composition as many court officials and members of the legal fraternity had either been killed, injured or fled the country for safety.

Enter Gacaca: the home grown solution

According to Herbert Rubasha and Isaac Bizumuremyi, Rwanda opted for home grown solutions rather than the 'classic judicial solution.' Apparently, Rwanda has pursued a multi-approach mechanism to transitional justice. Central to this has been the conversational Gacaca Courts. According to the facilitators, the term "Gacaca" originates from Rwanda's national language, (Kinyarwanda), which if translated into English could roughly mean short, clean cut grass or "umucaca".

They were informal means of solving disputes around issues like theft, marital issues, land rights, and property damage which were constituted as village

[5] Advocates -Kigali Bar Association, Rwanda. This paper was presented on the assumption that the reader is conversant with the background to the Rwandan conflict which culminated into internationally recognized crime against humanity – Genocide and as such, did not dwell on the history which pre-dates the conflict but rather the Rwandan response to the conflict, its national impact, and lessons that may be borrowed by regional and international stakeholders to improve the cause of Justice.

assemblies, presided over by the senior citizens, where each member of the community could request to speak. The trials were meant to promote reconciliation and justice of the perpetrator in front of family and neighbors. Well-respected elders, known as Inyangamugayo, were elected based on their honesty by the people of the community. It is symbolic for a gathering place for elders to sit on and judge the trial. The Inyangamugayo would assemble all parties to a crime and mediate a resolution involving reparations or some act of contrition.'

Rwanda opted for Gacaca in pursuit of 'the spirit of embracing a restorative justice rather than retributive justice.' This, as initially hoped, would act as pathway to the rebuilding and restoration of the 'Rwandan social fabric' which had completely been destroyed. However, to work best and ensure the 'effective delivery of Justice and the ownership of the system by the victims', the gacaca was modernized. Modernization included formal legal framework of prosecution of genocide suspects and redressing victims by way of civil reparations.

Despite the criticism from different circles that did not appreciate justice dispensed off by the court, Rubasha and Bizumuremyi, maintains that the Gacaca delivered justice which was home grown and as thus is a manifestation of the ability of 'Rwandans to rediscover their ability to find solutions to seemingly intractable questions and achieve restoration of unity, trust and reconciliation among themselves and to forge a way forward to economic reconstruction of their nation.'

To some participants, however, Rwanda's move to opt for Gacaca was largely inspired by the need to re-assert sovereignty at the expense of justice. However even such an argument is suspect considering that in every home grown transitional justice solution, there is an inherent show or quest for national pride and ability to handle internal affairs amicably to achieve justice. If anything, it is and can indeed be argued that it matters not to the 'outsiders' as long as the affected victims have thrown their will and support behind a particular mechanism of transitional justice. The participants converged minds over the view that legitimacy of any transitional mechanism whether home grown or otherwise is paramount and determines the success and acceptance of process and its outcomes. Thus Rubasha maintained that Gacaca had legitimacy and as thus citizens do not contend it even as it closed leaving behind a 'legacy of remarkable

successes that saw around 2 million trials in a period of 7 years.' They maintained that 'Rwandans believed that Gacaca courts are home grown and they fit into the underlying stated objective of accountability with overtones referring to reconciliation...' They added that 'this was far beyond expectations of everyone in Rwanda and all regional and international stakeholders of Justice in Rwanda.'

The ICTR: questioning the legitimacy of the Court

Rwanda also pursued the semi-international mechanism of accountability, an ad hoc tribunal – the International Criminal Tribunal for Rwanda (ICTR) established by the United Nations Security Council to prosecute individuals responsible for genocide, crimes against humanity and serious violations of international humanitarian law committed in Rwanda. As of May 2012, the tribunal had conducted 37 trials. He criticized the ad hoc mechanism of the tribunal noting that as 'opposed to a restorative Gacaca justice courts, the ICTR comparatively sounds to be a retributive Justice whose slow pace trials and failures to apprehend several master-minders of genocide is said by many if not by all victims to be a failure given the resources allocated to it.'

The argument of such ad hoc tribunals being isolated from the victim and being elitist in nature was raised- a bottleneck that home grown mechanism such as prosecution can easily surmount to ensure that the process has legitimacy. Perhaps this is what informed Uganda's path of the Crime Court which has carried out its maiden trial of Thomas Kwoyelo, a former LRA rebel accused of war crimes and crimes against humanity in Gulu, the epicenter of Acholi sub-region most affected by the war.

The law instituting Gacaca Courts also had provisions for civil reparations recognizing the need to attempt to restore the victims to a more humane level from where the genocide disintegrated them. These reparations took two forms, namely the monetary and the material gain including construction of destroyed residential homes, restitution of other property looted. The government of Rwanda also sought for 'institution of works for public interests' which were to be executed by the genocide convicts. The convicts were required to construct and repair public roads, public buildings, institutions and other public amenities. This was aimed at benefiting 'Rwandans in general.' More prominently however,

a Constitutional amendment was introduced to establish a national fund for the support of genocide survivors.

Owing to the fact that genocide was perpetrated by the state machinery namely the security agencies, the courts among others, the government of Rwanda believes that institutional reform is an often sidelined course to transitional justice. The facilitators summarize this course to institutional reform as follows:

> The institutional reform was not limited to unifying the genocide suspect and their victims but a complete institutional overhaul touching on gender, children and other special groups, institutions to combat corruption and injustice and those ensuring the state support of the genocide survivors. This overhauling of structural institutions was enhanced by establishment of relevant organs/institutions with specialized mandate of protection and promotion of human rights for better dispensation of justice.

Other simple-symbolic initiatives such as public apologies or day of remembrance have been established as mechanism of acknowledgement of suffering that befell the victims.

National Unity and Reconciliation Commission (NURC)

Rwanda has also taken on the truth telling mode of transitional mechanism. National Unity and Reconciliation Commission (NURC) is one such avenue. The NURC has mandate to prepare and coordinate all the country's programmes on promotion of national unity and reconciliation. It also investigates and reports on systematic patterns of abuse, recommends changes and helps understand the underlying causes of serious human rights violations that may occur. The importance of the Commission was noted as one avenue through which 'Rwandese have come to understand and appreciate the value of co-existing and living in harmony with each others as they strive to build a peaceful nation that they will leave to their children.'

Conclusively, the participants noted that there is no a one-size-fits-all Transitional Justice system and as such a successful system of transitional Justice in one country may not necessarily fit in any post-conflict situation as it is. However workable elements can be borrowed by other situations but even then they have to be contextualized to fit the local situation.

Click here to read Herbert Rubasha and Isaac Bizumuremyi's presentation

'Effecting Complementarity:[6] Challenges and Opportunities: A Case Study of the International Crimes Division of Uganda.'

HIS WORSHIP ASIIMWE TADEO-
Registrar of the International Crimes Division of Uganda

The International War Crimes Division (ICD) -formerly War Crimes Division- had its genesis in the Kony rebellion which occurred in Northern Uganda from 1986. Therefore, its creation in 2008 fulfilled both the ICC's requirement of a competent Court under Article 17 and the Government of Uganda's commitment to the actualization of the Juba Peace Agreement on Accountability and Reconciliation of 29th June, 2007. The Juba Agreement provided for the establishment of a Special Court to try those who committed serious crimes and human rights violations.

Under the third schedule of Accountability and Reconciliation of the Juba Peace Agreement, a War Crimes Division (WCD) was to be set up by the Government. This was done in 2008 by the Judiciary and was formalized in 2011, by Legal Notice 10/2011, which renamed the WCD as ICD. The ICD has since then expanded jurisdiction to cover terrorism, human trafficking and piracy in addition to the crimes against humanity, genocide and War Crimes. Any function which is mandated by ICC Act, (11/2010) by the High Court of Uganda, the ICD is to carry it out. The Prosecution is done by the D.P.P., who has established a special Unit which sits at the ICD premises. The Investigations are carried out by a Special Unit of Uganda Police Force.

Additionally, the Parliament of Uganda passed the International Criminal Court Act 2010 (ICC Act 2010) which entered it into force on 25th June 2010. This Act incorporates the precepts of the ICC's Rome Statute ("Rome Statute") into Ugandan Law. The Act does not specifically mention the International Crimes Division of the High Court (ICD) (formerly the War Crime Division), which was established administratively in 2008. The ICC Act 2010 is meant to give effect to

[6] The ICC will have jurisdiction only if and when a Country is unable or unwilling to prosecute such crimes i.e. ICC would not interfere where a State party is taking actual, or genuine and positive steps to investigate and prosecute the perpetrators. Otherwise the ICC has reversionary power under Article 19 (10) of the Statute.

the Rome Statute of the International Criminal Court, to provide for offences under the Laws of Uganda corresponding to offences within the jurisdiction of that Court and for connected matters.

Indeed section 2 of this Act reinforces its purpose as geared towards giving the force of law in Uganda to the Rome Statute and to implement obligations assumed by Uganda under the Rome Statute. However, the efforts were initially challenged by the fact that the ICC Act 2010 does not cover crimes committed before 2002 yet most of the serious crimes in Northern Uganda occurred from 1986 – 2002. However, the Act specified the particular laws which were saved under the Act among which is the 1964 Geneva Conventions Act cap 363. Additionally, to cure this defect, reference is made to the Penal Code Act Cap. 120. As such the crimes not covered under the Act due to the retrospectivity principle in international criminal law, can be dealt with using the local law.

He noted that Uganda's ICD falls largely under the notion of positive complementarity-which presupposes that National institutions like the ICD in Uganda should have the necessary and vital tools to effectively and efficiently handle investigations and prosecutions of International Crimes under the statute. This therefore, calls for the ICC and other International Organizations, as well as governments of the other State Parties to facilitate the young national institutions to cope with the expected standards. This assistance could be in form of promotion of best practices, provision of technical expertise in such fields as legislation, witness protection, forensics, enforcement of sentences and the training of the National judiciary investigators and prosecutors.

As regards rules of procedure, Asiimwe maintained that ICD applies the domestic Rules of procedure and evidence. In absence of the above, the court shall adopt such other procedures as it considers justifiable and appropriate in the circumstances, having regard to the domestic laws and the views of the parties. (This could include International Customary Law). ICD can formulate its own Rules of Procedure through Practice Directions for better management of cases and timely disposal of such cases. There is a court users committee established in the legal notice as an advisory body on policy and the best "modus operandi" of the ICD. It is made up of the judges of the ICD, the Registrar, the Prosecutors, the Investigators, the law Society and Members of the public.

Challenges of the ICD

The ICD has faced numerous challenges since its first establishment including the fact that Uganda is a dualist state and as such international law has no automatic application as a source of law. International law or treaty obligations have to be incorporated by enacting an Act of Parliament. In the same way, Uganda has and is still grappling with the issue of applicability of customary international law. The question often posed is: can Uganda apply customary international law directly or does it also need Parliamentary ratification?

The other challenge lies in the sentencing of convicted persons. In Uganda, the maximum sentence for capital offences such as war crimes would be a death sentence. This contradicts the position in the Rome Statute which favours life imprisonment or a lesser term to be handed down to a convicted person. The confusion continues on how to reconcile the two.

Additionally is the question of immunity. Pursuant to Section 25 of the ICC Act, the existence of any immunity or special procedural rule attaching to official capacity of a person is not a ground for refusing or postponing a request for surrender. Hence the ICC Act 2010, just like the Rome Statute, does not grant immunity to perpetrators. In contrast, Article 98 (4) of Uganda's Constitution of 1995 as amended grants the President immunity as long as he is holding office. It is therefore not possible to surrender a sitting President in Uganda and hand him over to the ICC for prosecution.

The other challenge is related to evidence gathering and rules of procedure. The ICD does not have its own Rules of Procedure and Evidence that enables it to handle crimes against humanity, war crimes, or any other crimes that falls within its mandate. The administrative arrangement in the High Court enables each Division to enact Rules of Procedure and Evidence relevant to that Division where the Law does not already provide for them. In situations where the Rules are lacking, the relevant Division crafts the necessary Rules and forwards them to the Rules Committee for discussion and finalization. The Rules Committee comprises of, inter alia, the Chief Justice, the Principal Judge, the DPP and a representative of the Law society. At the moment, the momentum for debating the Rules by the Rules Committee and the stakeholders has abated. However, the responsibility of crafting the basic Rules still lies with the ICD.

Poor victim participatory Mechanisms of the ICD

The ICD in Uganda has been largely faulted with the lack of access for victims to participate in the process. Ultimately, it is viewed by some as an elitist institution which is bent on delivering justice to 'themselves.' The illusion that because the trials are taking place in northern Uganda which was the epicenter of violence, people will appreciate the initiative has been watered down by the indifference of the public towards the trials. Thus, concrete mechanisms that enhance victim participation well laid out in the establishing statutes of such judicial avenues of accountability are a necessity as a mechanism of building legitimacy for the institution.

Unanswered Questions on Appeal Mechanisms

The ICD is also wanting in its appeal mechanism. Despite the fact that it is supposed to deal with the unique crimes committed during war, and as thus relying heavily on international law-the law of war in particular, it does not have separate appeal courts. As such, any appeal that will arise will be channeled through the court of appeal up to the Supreme Court, the same courts used for 'ordinary' crimes. Pundits maintain that the judges that preside over these appellant courts may not have the same expertise especially in international law as poised by the bench presiding over the cases under the ICD which has been vigorously trained to handle such cases.

Click here to read Tadeo Assiimwe Registrar's presentation

DAY TWO OF THE FORUM:
The lead themes of the day included the Victims' right to truth in post-conflict situations; a discussion on AU-ICC backlash and how the two can work together.

Lessons from the Special Court for Sierra Leone

IBRAHIM TOMMY
Centre for Accountability and Rule of law

In his remarks, Mr. Ibrahim Tommy dwelt on the lessons that can be adopted from the Special Court for Sierra Leone as a mechanism of combating impunity and providing a platform of accountability. The court, he noted, was an offshoot of a 2002 agreement signed between the Sierra Leone Government and the United Nations to establish a Special Court with a mandate to bring to justice "those who bear the greatest responsibility" for the atrocities that took place in the territory of Sierra Leone since 30th November, 1996.

Ibrahim noted that the tribunal was limited in terms of time-it could not try the atrocities committed before November 30th 1996. Secondly, it was only to deal with the persons with the 'greatest responsibility' leaving out the equally notorious middle level commanders of small units that terrorized people on the streets of Freetown. Precisely these are some of the greatest hurdles that still impact on the legitimacy of judicial related mechanism of transitional justice such as tribunals. He maintained that 'this impunity gap needs to be addressed. It's certainly an important lesson that future war crimes tribunals will need to address. The "greatest responsibility" standard allowed too many key actors to remain at large and, of particular concern, in the army.'

This court swung into action in March 2003 when the Prosecutor issued the first set of indictments for the leaders of the Revolutionary United Front (Foday Sankoh and Issa Sesay), the Armed Forces Revolutionary Council (Johnny Paul Koroma), and the Civil Defence Forces (Sam Hinga Norman). The other indictment was for Charles Taylor but was to remain sealed until June 4, 2004. At the eve of its closure, the court had convicted eight accused – including two former leaders of the CDF, three former leaders of the RUF, and three former leaders of the AFRC with sentences ranging from 15 to 52 years. The trial of Taylor was transferred to The Hague, arguably for security reasons.

Emerging Lessons from Sierra Leone

1. The location of judicial mechanisms of TJ close to the victims helps in enhancing legitimacy and ownership of the Court or tribunal.

This observation re-emphasizes what was re-echoed by many of the participants in the plenary that where possible, what mechanism sought for accountability should be closer to the victim to for him or her to 'see, hear and smell and eventually appreciate justice.'

Uganda, participants maintained, would pick a leaf from the outreach program of the tribunal in Freetown. Currently the Crimes Division of the High Court in Uganda trying Kwoyelo is little known within the communities of Northern Uganda yet it purportedly is on a quest for their justice.

2. Other middle level commanders can still be brought to justice using the ordinary courts of law by relying on the statutory crimes within a particular country's penal laws for crimes such as murder, kidnapping, rape among others.

3. For future tribunals, the establishing statutes should incorporate provisions for strategic co-operations between different countries to counter protectionism of fugitives wanted for crimes against humanity.

Emerging international criminal justice jurisprudence

According to Mr. Ibrahim, the court has developed the international criminal justice jurisprudence in a number of landmark cases. These included the holding by the Appeals Chamber on May 31, 2004, that the recruitment or use of children under the age of 15 is a crime under international law. This was a success to the children who have been used repeatedly as child soldiers in almost all African wars. Additionally, the Appeals chamber also scrapped the supposed immunity for the heads of State from prosecution of international crimes when it rejected such arguments from Charles Taylor since he was a sitting president of Liberia at the time he was indicted. The message in this holding was clear- that no one however powerful was above the law and as thus accountability would not be negotiated by the powerful in invoking all sorts of legal blockades such as immunities. Ibrahim points out that the court has lessons to offer to other jurisdictions in the quest for accountability and transitional justice;

- Holding the trials within the locality of Freetown, the epicenter of the violence that marred the country contributed to the legitimacy of the court and its goal of justice. He maintains that 'in a sense, the proceedings helped create both a sense of ownership among the victims and respect for the potency of international criminal justice. This coupled with a vigorous outreach team of the court that is a conduit of relevant information as and when it emerges is critical to keep the stakeholders especially the victims informed of the progress.
- The SCSL Statute in contrast with the statutes of ICTY and ICTR did not provide for obligations on other states to cooperate with it in terms of investigation and arrest to bring to book the suspected perpetrators. Were it not for the good will of the Presidents of Liberia and Nigeria to hand over Charles Taylor for prosecution, the court

would have stalled. In future therefore, in the establishment of such tribunals, the statutes should be provided for such strategic co-operation related aspects.

- Whereas not entirely a practice ongoing in Sierra Leone, Ibrahim noted further that states that have opted for hybrid courts such as Sierra Leone and as thus restricted to pursuing persons with the greatest responsibility may need to revisit their strategy. He thus avers that other middle level commanders can still be brought to justice using the ordinary courts of law by relying on the statutory crimes within a particular country's penal laws for crimes such as murder, kidnapping, rape among others.

  Mr. Ibrahim further cautioned that whereas the court did well in the convictions, bringing the perpetrators to justice, the common place man and woman's life is not complete without an effective, sustainable reparations system to compliment the retributive system.

  Click here to read Ibrahim Tommy's presentation

‘Exploring the link between Peace and Justice- The need for a critical balance in the pursuit for accountability’

MICHAEL OTIM-
Head of Uganda Office
International Centre for Transitional Justice (ICTJ)

Mr. Otim’s central argument was based on peace v. justice debate albeit in a different angle. According to him, today international criminal courts operate in complex environments characterized by on-going armed conflicts where suspects of international crimes are the one who might be involved in peace negotiations. The ICC intervention in Uganda brought to light some dilemmas of pursuing justice during on-going conflict. In some instances, conflict resolution practitioners have strongly argued against issuing international arrest warrants against members of certain groups involved in negotiations on grounds that it might deter willingness to commit to a peaceful settlement and complicates the negotiation process. In such situations, the parties involved might even demand immunity from prosecutions as a precondition for concluding peace agreements.

This was the case during the Lome Peace negotiations aimed at ending the conflict in Sierra Leone where the RUF demanded for an amnesty as well as during the Juba negotiations between the Lord’s Resistance Army and the Ugandan Government (GoU) aimed at ending the conflict in northern Uganda. However it’s equally important to note that at times suspects of international crimes have used arrest warrants issued against them to scale up violence and this complicates efforts in executing warrants of arrest for such people.

Prosecutors of the International Courts do not engage in political settlements. Their job is to investigate and prosecute alleged perpetrators. While the pursuit of justice during on-going conflict may be challenging, the immediate effect of issuing an arrest warrant for suspects of international crimes is that it will isolate the suspects from being parties of a future political order based on a firm foundation for respect of the rule of law and sustainable peace.

According to Otim, the case of the northern Uganda offers an example where attempts to balance the two concepts of peace and justice were at interplay. For close to two

decades, northern Uganda suffered the greatest burden of armed conflict with various insurgent groups attempting to remove the NRM government from power but the most notable conflict has been the one involving the rebels of the Lord's Resistance Army. During the conflict, grave human rights violations were committed against the civilian population. Previous attempts at reaching a peaceful settlement of the conflict through dialogue failed on a number of occasions (first in 1994 and later 2004 under Betty Bigombe but her efforts did not achieve lasting peace). In July 2006 a new round of negotiations between the Government of Uganda and the LRA started in Juba, Southern Sudan mediated by the Government of South Sudan under Dr. Riek Machar.

The continued violence in northern Uganda put enormous pressure on GoU to seek ways of ending the unfolding humanitarian catastrophe orchestrated by on-going violence. The government adopted a twofold but sometimes contradictory approach involving the use of military means and a combination of peace talks and an offer for blanket amnesty for the rebels.

Having failed to end the LRA problem militarily, the GoU referred the LRA problem to the International Criminal Court (ICC) in December 2003. When the ICC began collecting information, it was apparent that there existed a reasonable basis to believe that crimes had been committed within the jurisdiction of the ICC and that crimes by the LRA were more serious that those committed by other parties. The ICC thought they had found a perfect case for its first war crimes trials and commenced investigations in Uganda. It's important to note that when carrying out an investigation, the ICC Prosecutor maintains independence and impartiality.

It is worth recalling that, in the mid 1990's, religious, traditional and community leaders from northern Uganda had been trying to facilitate talks between the LRA leadership and the GoU. While these efforts were underway, the announcements by the ICC came as unpleasant surprise to the local leaders. While some people were eager to see the ICC move with its first cases, Local leaders in Uganda were incensed by this move. Observers to these developments argue that the push for the ICC to have its first case conflicted with the views of the local population in northern Uganda. Others meanwhile saw the ICC as lacking legitimacy since people had not heard about it when the government ratified the Rome Statue and there was a feeling that the ICC was some kind of "western style justice' and should not trample over local traditional mechanisms of conflict resolution. Others also argued that the ICC intervention would jeopardize prospects for peace and worsen the security situation. Their arguments were straight

forward. Why would the rebels negotiate a peace deal when they would be arrested and sent for trial once they returned to Uganda**?**

> *Another complicating factor for the ICC was that it was not seen as impartial because Uganda's referral to the ICC was made at a joint press conference between the ICC Prosecutor and Uganda's President Museveni while in London and this also gave rise to perceptions that the ICC was siding with the government and that the ICC had not opened an investigation for atrocities committed by the Ugandan army. The ICC's decision not to indict government officials is viewed critically by the local leaders. But according to the ICC, the government was investigated but there was insufficient evidence to warrant an indictment. This action has proved difficult for the ICC to undo in subsequent years.*

The Juba Peace negotiations from July 2006 to April 2008 in Juba South Sudan were the most significant negotiations ever held with the LRA. The pending arrest warrants for the LRA leaders by the ICC gave the talks a special focus because the peace talks were being held under the scrutiny of an International Criminal Court. The two and half years of peace negotiations between the LRA and GoU were fraught with several challenges because there were considerable differences of opinion between the negotiating parties. The LRA repeatedly demanded that the ICC arrest warrants be eliminated as part of the negotiations- something that was not legally possible. The Government on its part viewed the talks as an opportunity to provide the LRA a "soft landing".

The GoU promised that once the LRA signed the Final Peace Agreement (FPA) then they would seek to approach the UN Security Council for a deferral. The LRA warned that if the indictments were pursued, then violence would ensue. By using the ICC indictments as an excuse not to sign the Final Peace Agreement (FPA), the LRA was able to garner popular support against the ICC since most people at the time were tired of the violence.

Despite the criticism against the ICC, observers do acknowledge some positive outcomes by the ICC intervention; for instance the indictments placed the accountability agenda at the very heart of the Juba talks and as a result, on 29 June 2007 the GoU and the LRA finally signed an agreement on principles of accountability and

reconciliation. It was one of the most challenging agreements to reach since at the center of the discussions was the peace versus justice debate. The parties later adjourned the talks to consult further with the people in Uganda to explore potentials for credible alternative justice systems consistent with international standards in addressing impunity.

The country-wide consultations by the parties (LRA and GoU) allowed for dialogue on accountability including further examination on the role of the ICC, national justice mechanisms and traditional justice processes. The results indicated that most Ugandan's at the time favored a national process over the ICC process. An outcome of these discussions can be found in the annexure to agenda item on accountability and reconciliation i.e. pursuing national processes for justice outside of the ICC but in conformity with the Rome statute including establishment of Special Court to try those accused of war crimes and crimes against humanity.

The pressure from the ICC arrest warrants was carefully utilized during the negotiations and this impacted on how agenda item number 3 on accountability and reconciliation was shaped. It was made known to the LRA that there was no way the agreements would be accepted internationally without accountability provisions. Fearing arrest, senior LRA leaders could not come to the negotiating table in person and instead preferred to use proxy's mostly comprising diaspora people who often pushed their own personal agenda's rather than those of the LRA leadership at the talks. These diaspora individuals were often people who did not have a clear understanding of the underlying grievances that perpetuated the conflict in northern Uganda. Most of them had little in common with the LRA leadership other than hatred for government led by President Museveni.

The LRA leaders often expressed preference for softer options of justice including the use traditional restorative justice to foster reconciliation with affected communities. As the talks progressed the negotiators agreed to use Uganda's Criminal Justice system and to establish a Special Division of the High Court now renamed the International Crimes Division as an alternative to the ICC. Unfortunately this was still not acceptable to the LRA leadership. When Kony realized that his expectations on personal security and international justice arrangements were not forthcoming he stopped engaging in the talks in a meaningful way. He remained distant and elusive giving an impression of a lack of interest in the negotiations.

The tensions between peace vs. justice are real and debates have matured overtime in that it's generally agreed that both concepts can actually work hand in hand for durable solutions. What is clear is that the ICC involvement in Uganda only gave the debate renewed attention and what we have learnt is that it's important for the ICC to improve communication with affected communities as early as possible during an investigations and indictment process through a robust outreach strategy.

It is evident that those who pushed for the talks had noble intentions but had not given due attention as to the LRA's real intentions /motivation to enter the talks and as a result; their chances of achieving lasting peace were quite slim. Nevertheless, the GoU has moved forward with the implementation of the agreement on accountability and reconciliation in Uganda even though the pace of implementation has been relatively slow; for instance-it established the Justice Working group of the Justice Law and Order Sector to implement transitional justice in Uganda. An International Crimes Division of the High Court of Uganda was set up in August 2008 and has 4 Judges appointed to it. Parliament of Uganda also passed into law the ICC Act in March 2010 to provide for the legal regime to try serious crimes in Uganda.

In conclusion, Otim maintained that Uganda is one of the countries that attempted to pursue a fully fledged peace process under the scrutiny of the ICC and its supporters. There is no doubt that the ICC arrest warrants complicated the negotiations but the talks did not prove impossible and proceeded in some way. This could challenge the perception that the ICC itself is an obstacle to peace. While a number of peace efforts had been pursued in the past, most of them produced short-lived results and did not resolve the conflict. On the contrary, it appears that rather than exacerbate the conflict, the ICC seemed to have created some momentum for the need to end the violence. Even when the arrest warrants were unsealed in October 2005, another protracted peace process began in Juba two years later which challenges the perception that international justice impairs peace. It compelled the LRA for the first time consider the talks more seriously.

Click here to read Michael Otim's presentation

The Victim's Right to Truth in Post Conflict Situations: the Kenyan Experience

WACHIRA WAHEIRE

Mr. Wachira Waheire's paper on the victim's right to truth was basis for a plenary discussion on the place of the right to truth in post conflict communities. To tackle this loophole, Kenya opted for a Truth and Reconciliation Commission to deal with both the human rights violations and economic crimes which had been committed between 12 December 1963 (Independence Day) and 31 December 2002. The first efforts were thwarted by the lack of political will in its implementation. The quest for TRC bounced back in the aftermath of December 2007 presidential elections, this time prominent an agenda on the mediation plan of Kofi Annan in the National Accord agreement signed on 28th February 2008 by the Orange Democratic Movement – ODM on one side and the Party of National Unity on the other.

The TJRC Act No.6, 2008 was passed by parliament on 23 November 2008, granted presidential assent five days later and became operational on 9th March 2009 albeit passed in a rushed manner without maximum input by the citizens.[7] Since then however, it has been marred in controversies over the integrity of its chairperson. Its work was stalled due to a long tedious process in court battles. Additionally, it has been poorly funded by the government and also suffers from what Wachira calls 'general citizen apathy towards its work.' Its work has in the past included civic awareness on its roles and mandate. The commission has also engaged in a statement taking exercise for 5 months spanning from September 2010 to January 2011. This exercise has since yielded over 30,000 witness statements and Memoranda. It has also conducted countrywide public hearings commenced since April 2011 through to March 2012. The hearings included a) Individual hearings which included public and in-camera sessions in 8 Provincial locations; Special women and children's hearings; Thematic hearings for example armed militia, land, political assassinations, corruption and economic crimes; Institutional hearings focusing on the Police, Prison and the Armed forces;

[7] Please refer to www.kenyalaw.org for a complete version of the Truth Justice and Reconciliation Act No.6 of September 2008.

another aspect of the Commission was the community dialogues which were meant to promote national healing and reconciliation. Lessons that can be learned from Kenya were summarized by Mr. Wachira to include;

What does Kenya offer as lessons in relation to TRC?

- The need to have a sound localized legal framework which recognizes the different social political and economic conditions as opposed to copying and pasting frameworks from elsewhere. The law that informed the KTJRC was largely borrowed from that of South Africa without contextualizing it in the local situation of Kenya. This thus threatens not only its practicability but also its acceptability.
- The Kenya TJRC was given an impossible task of investigating all manner of violations including economic crimes occurring over a long time within a limited timeframe yet it did not have the capacity- both financial and human to do so. There is thus need to scale down on the period to which the Commission should span in the course of doing their work.
- The mandate of TRCs should be specific and tasks/assignment attainable within a realistic temporal period.
- It is also important that the process is acceptable and a sense of ownership and trustworthiness is created among all the citizenry. This means that the process of establishment of such commissions should as far as practicable be participatory bringing on board various views from the victims.
- Mandate period - care should be taken to define an inclusive period that captures a whole range of victims.
- Civil society should strive to be proactive and not reactive especially during the process of setting up and operationalizing the truth Commission. This is necessary to ensure that only persons of impeccable character, reputation and integrity are appointed to steer the truth commission.
- The Civil societies should also build the capacity of victims to network among themselves. The process of transitional justice should be victim driven as far as possible for only they know exactly what they want as justice in their own understanding.
- The withdrawal of support by civil society has reduced the credibility of

the commission, thus emphasizing the importance of civil society in ensuring public participation in such processes;

- It was unfortunate that the Kenyan Truth seeking process ended up as a forum for victims to pour their experiences without a corresponding reaction or acknowledgement or apology by the adversely mentioned persons and perpetrators thus failing to establish the truth. Legislation should be clear as to what it should achieve and not be vague.

Click here to read Wachira Waheire's presentation

Victims: The International and Transitional Justice Niche

JOSEPH AKWENYU
Legal Adviser-Uganda Victims' Foundation

Mr. Akwenyu based his discussion on the role of the victims on largely three thematic areas of Access to information, Access to justice, Participation, Protection and Reparations. In his introductory remarks he decried the changing terrain of victims' participation in most of the transitional justice initiatives prevailing. He attributed the peripheral victim participation today to the usurpation of conflict management by the experts rendering the victim a mere passive participant with no designated direct role to play as it was in ancient history. This sad event of affairs was even made more prominent during the military tribunals at Nuremberg and Tokyo whose main objective was 'establishing individual criminal responsibility arising from the commission of crimes against peace and crimes against humanity.' However, with the entry of the ICC, this peripheral treatment of victims has changed. The International Criminal Court provides for the participation of victims in proceedings of the Court. It is a clear attempt to bring on board the victim concerns in the quest for apportioning responsibility to the accused. Mr. Akwenyu, to contextualize the discussion, sought to define the victimhood concept and harm as propounded by the various international legal instruments and scholars.

Citing the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, Mr. Akwenyu defined a victim as 'persons who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.'[8]

[8] Other international instruments have defined victims differently. Thus for the Rome Statute, victims,

> 'means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art, or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.'

Mr. Akwenyu, applauding the progress of having the various definitions, cautioned the non-exhaustive nature in which most of these definitions are couched. According to him therefore, these definitions seem to 'concentrate more at…the relationship between the victimized person and the offender and ignores other actors such as the state which may be more responsible source of victimization for its failure to respond to social and or economic injustices as has been seen in the case of the LRA.'

Access to information

Mr. Akwenyu noted the importance of accessing information by the victim as central to meaningful participation. The ICC through its Outreach Office and the Victims' Participation and Reparations Section (VPRS) has been critical in providing information to victims on their rights in accordance with the Statute. In Uganda's case, the Office of Public Counsel for Victims (OPCV) was established to liaise and provide relevant information to the victims of the insurgency by Kony and his four indicted commanders.

Reparations

Mr. Akwenyu also discussed the notion of reparations. The UN Principles require states to ensure that victims of gross violations of IHRL and serious violations of IHL are provided with reparations. The principles additionally provide that reparation should be proportional to the gravity of the violations and the harm suffered. Additionally in cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim. In all, reparations may take the scope of compensation, rehabilitation, restitution, satisfaction and guarantees of non repetition of the suffering of victims. Article 75 of the Rome Statute echoes these provisions by providing for an avenue for victims to apply for reparations although the

---

On the other hand, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights law and Serious Violations of Humanitarian Law; victims are:

> 'Persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.'

ultimate decision lies with the Court to define principles upon which reparations may be made.

Ms. Marjorie Jobson-from Khulumani Support Group, a victims group in South Africa engaging the state in related initiatives including the right to truth noted that litigation remains as one of the mechanisms that can be used as an avenue of compelling the government to accord a listening ear to the pleas of reparations by the victims. The South African Victims" group of Khulumani expounds such a mechanism owing to the success that it has gained in the demand by its members for reparations. The Khulumani support group also highlights an organization that bases its support from its members [over 50,000 members]. It harnesses the people power and is victim centered and victims' aspirations driven. Rather than office based-elitism groups that claim to be speaking for the victims, there is need for social movement based organizations to demand for these reparations.

In relation to Mr. Wachira's lamentations over the poor workmanship in the TRC Act of Kenya that was marred with copy and paste provisions from a similar legislation of South Africa, Ms. Jobson in agreement with other participants noted that there is nothing wrong with borrowing a leaf from other jurisdictions. What is important is for the borrowing state to 'borrow in context and not as a whole' for no situations are the same and as thus, solutions cannot be the same. Additionally, the question of drafters has to be accorded much attention in situations where legislative reform is part of the transition. There is need for an established framework for participation and/or representation of the population in the draft processing such that the laws establishing some of these institutions to steer TJ are owned and have legitimacy as peoples' laws.

Mr. Stephen Lamony-UCICC provoked a discussion on the future of African Union and International Criminal Court-ICC. The discussion opened widespread passionate bordering on emotional discussions on the position of AU in its fight against impunity on the African continent. To many participants, the AU still boasts a big challenge to TJ mechanism – and especially the ICC- in light of the fact that most of the heads of the states in Africa consider the ICC a witch hunting institution that is against Africa. There was convergence of views on the need to break the 'protectionism' spirit of the AU –protection of indictees from accountability in the ICC. This it has done in the past in its practice of 'deferral' of arrests in the case of Sudan and Kenya. This spirit coupled with the

rhetoric of sovereignty of nations continues to be used as trump cards to counter accountability mechanisms at the international level. Participants maintained that there is need to engage the new AU chairperson Ms. Zuma and the new ICC prosecutor Bensouda, at an early stage of their offices. International coalitions such as the Coalition on the International Criminal Court-African Chapter are best suited to pioneer this kind of advocacy.

In relation to the above, participants fronted the possibility of extending the jurisdiction of the regional mechanism such as the SADC tribunal, East African Court of Justice to try cases that ICC tries. Maybe, many opined, the African continent heads will have confidence in their own mechanisms and accord it legitimacy. This suggestion is of course suspect in light of the failures Africa has witnessed in regard to its institutions both political and judicial to deliver justice when most needed. Indeed, if the African Court on Human Rights and Justice remains almost a relic, there are misgivings over the viability of the proposal to extend the jurisdiction of the existent institutions to cover war crimes, crimes against humanity and genocide among others.

Rather, some participants maintained, focus should be geared towards strengthening the national courts than relying on regional courts which may be hampered by the politics of selfish interests by different countries at the expense of accountability and justice for victims. At the most, the continental efforts should be geared towards enabling the African Court to enhance its capacity and eventual productivity in dispensing justice than creation of another entity allegedly to deal with the crimes originally dealt with by the ICC. To the participants, this is yet another way that the African heads of state seek to circumvent and make the ICC toothless in relation to African cases of impunity.

Synergies between international NGOs and domestic CSOs

According to Lamony, there is need for sustained advocacy at the regional, continental and international level. For impactful advocacy at the international mechanisms of TJ, there is need for strengthening the synergies between the domestic, regional and international non-governmental and inter-governmental organizations. At the domestic level, CSOs have to re-strategize their advocacy mechanisms by seeking out the centers of power such as the foreign affairs ministry; permanent ambassadors at the various mission, government legal advisers. Such people eventually hold the docket to changing government positions on particular issues. The CSOs should play the politics played at such

higher international levels such as AU engagements for eventually; it is how well one plays the political game.

Emerging Issues

1. According to the participants, whereas the notion of complementarity is commendable and indeed desirable, it should be pursued cautiously especially if and when the states emerging from civil strife have no immediate functional institutions especially justice dispensing institutions. An interesting debate that cropped during the discussions was the extent to which article 17 of the Rome statute can be stretched. Suggestions were rife to the effect that it is time to debate on whether regional courts (continental) can be an option to the ICC under the principle of complementarity. Is it possible that in light of the failed national institutions in the aftermath of a conflict to dispense justice, the ICC should give a chance to the regional courts that are increasingly re-asserting their mandate in protecting human rights of the population in their member states? This is certainly a challenge to the conventional, traditional view that the principle of complementarity is only 'national' in nature, that is, works in relation to ICC complementing national efforts and not regional bodies such as the now emerging East African Court of Justice.

2. There is need for the highly advocated for institutional reforms to go beyond personality changes to concrete changes that are not manned by the victors who most of the time are in charge of the administering the justice to the 'villains'. Mere face changes in crucial institutions such as police without dislodging the machinery that facilitated suffering of the populace poses a challenge of legitimacy. Whereas these institutions and processes may be legitimize by laws, polices and rules, they never the less need the people legitimacy.

3. Reparations should be contextualized-it cannot be a one size fits all especially in situations or communities where suspicions remain rife-ethnic in nature. A cautious path has to be taken on collective as against individual reparations programmes. There is a very big difference between social uplifting programmes that are an obligation of the government to its citizens with redress sought by victims. Thus, the talk that some of the reconstruction programmes in post-conflict communities are actually reparations is not fair to the victims within

such areas for such as development projects are like any offered to other parts of the country.

4. Methodology of TJ matters –as far as possible it should be victim-centered TJ pursuits-initiatives should be informed and indeed generated from the masses; the conflict between what victims want as justice and what the givers/rulers of the day are giving as justice remains alive and threatens the legitimacy of some of these processes.

5. Justice has to be defined to fit in the known peculiar situation or transition of a country not necessarily or entirely the international mechanisms informing the local processes. Preference should thus be given to the locals and what they perceive as justice. Rwanda experience gives a very interesting example albeit to be followed with caution owing to the flaws that were incarnate in the Gacaca.

6. Victimhood has to be defined locally taking into consideration how far the period of war goes. Victimhood is not homogenous in relation to time and war.

7. The notion of who is a victim has to be dealt with cautiously to avoid hierarchy of victimhood guided by the principle of non-discrimination. This contestation of victimhood is likely to occur in relation to periods of the conflict. Thus, the best mechanism to avoid the pitfalls of re-victimization is to define the victimhood within the context of the local setting than the legalistic definitive aspects in the various international instruments and directive principles. Additionally, the question of how far TJ processes should go back in indentifying who a victim is, is best answered by considering the particular situation of a particular country for some conflicts though broken up by peace talks and resuming repeatedly are inter-linked that severing them is an injustice to the victims. In the same vein, it could also depend on the goal of the TJ process. Ultimately, there is need for mechanisms that identify and assess victims and extent of harm occasioned to them during the conflict.

8. The traditional mechanisms of TJ have to be re-examined in terms of how participatory they are in relation to the young generation which, out of ignorance or adamancy, may not understand and appreciate these mechanisms. Besides, their inherently patriarchal and old age/elders' club phenomenon may be a bar to participation to other victims-this again raises the question of legitimacy. The

gender perspectives come in handy here-to what extent are the traditional mechanisms gender sensitive and youth/young opinion sensitive. As a result, gender-based abuses should not be subsumed among the broader violations of human rights, with no separate focus on gender-based violations save for of course the Akayesu judgement.[9]

9. Security Sector Reform
   Security reform should be marked with the creation of oversight, complaint and disciplinary procedures; reform or establishment of new legal frameworks govern the new forces: the development or revision of ethical guidelines and codes of conduct. But more importantly, central to this reform of an institution is the screening and removing personnel who are unsuitable for holding office in a process known as vetting. Perhaps, it is only South Africa that has travelled this lane of concrete security sector reform initiatives. In Kenya where the security forces, especially the police, were implicated in the post-conflict violence, the reforms have been minimal and piece manifest mainly through the creation of an independent oversight body by way of statute. This may not be all but it is progressive on the search for justice and accountability and more importantly as an avenue of ensuring and guaranteeing non-repetition.

10. Use of litigation to demand for accountability
    The Judiciary should also be utilized to the maximum especially in situations where the judiciary is fairly independent. The ICJ of Kenya offers a great lesson in this aspect when petitioned the High Court of Kenya to compel the government to act by arresting President Bashir if he flew into Kenya. ICJ argued that it was an obligation of Kenya as a signatory to the Rome statute to co-operate with the ICC by arresting him to answer charges to crimes of humanity in Darfur region in Sudan. By this move, the judiciary can be used to undermine the African Union hostility towards the ICC in Africa.

11. Where there is amnesty, reparation is an effective mechanism to deal with the various claims for justice. This is especially so where some women out of stigma may not come out publically to relay their ordeals during the conflict.

[9] Cultural norms and stigma may prevent women from testifying publicly, and this needs to be addressed in creative ways to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Further sensitivity is needed regarding language.

12. Revisiting the complementarily question in relation to the regional blocks in Africa-in situations where everything has been watered down, should we complement the ICC by the Regional courts for ownership purposes and as a mechanism of combating the so called ICC hunting down the machinery.

Click here to read Joseph Akwenyu's presentation

APPENDIX 'A': PARTICIPANTS

	NAME	ORGANIZATION
1.	Aimee Ongeso	Kituo Cha Sheria
2.	Annelieke Van de Wiel	Refugee Law Project
3.	Brenda Akia	Human Rights Watch
4.	Brian Bwesigye	CACE
5.	Brian Kalenge	LHRF
6.	Catherine Anite	Human Rights Network for Journalists
7.	Chris Ongom	Uganda Victims Foundation
8.	David Hofisi	Zimbabwe Lawyers for Human Rights
9.	Edigah Kavulavu	Kituo Cha Sheria
10.	Elias Naturinda	Uganda Christian University
11.	Fauzia N. Sewa	IRRI
12.	George Kegoro	ICJ Kenya
13.	Herbert Rubasha	Kigali Bar Association
14.	Ibrahim Tommy	Centre for Accountability and Rule of Law-Sierra Leone
15.	Irene Nakimbugwe	Directorate of Public Prosecutions-Uganda
16.	Isaac Bizumuremyi	Kigali Bar Association
17.	Ismene A. Zarifis	Justice Law and Order Sector
18.	Ja'afaru Adamu A.	NCICC-Nigeria
19.	James Nkuubi	Human Rights Network Uganda

20.	Jane Adong Anywar	Women's Initiatives for Gender Justice
21.	Jimmy Otim	ICC Field Outreach Office Uganda
22.	Joseph Manoba	Uganda Victims Foundation
23.	Joyce Asekenye	Teso Women's Initiatives for Peace
24.	Julius Kemboy	Kenya Law Society
25.	Kyomuhendo A. Ateenyi	ASF
26.	Lydia Kiriire	Advocates for Public International Law, Uganda
27.	Margaret Ajok	Justice Law and Order Sector Uganda
28.	Marjorie Jobson	Khulumani
29.	Michael Otim	ICTJ Uganda Office
30.	Phoebe Murungi	Makerere University
31.	Sarah Kihika	ICTJ Uganda Office
32.	Severine Moisy	ASF
33.	Sharon Esther Nakandha	ASF
34.	Stephen Lamony	Coalition for the International Criminal Court
35.	Susie Alegre	European Union
36.	Victor Ochen	AYINET
37.	Vincent Babalanda	UNHCR
38.	Wachira Waheire	National Victims Survivors Network-Kenya

APPENDIX 'B':

PROGRAM FOR THE 2012 INTERNATIONAL AND TRANSITIONAL FORUM

KAMPALA –UGANDA 29th -1st August 2012

Sunday 29th July 2012 **Arrival of all participants, pickup and Check in- Hotel**	
Day 1: Monday 30th July 2012	
08:00-08:30 Arrival and Registration Welcome and Opening Remarks	• Mohammed Ndifuna-Chairperson Uganda Coalition for the ICC • Severine Moisy-Head of Mission ASF
09.00-10.15 Chair Jane Adong	**A broad overview of Transitional Justice, definition, application and methodology:** • Sarah Kihika- ICTJ Uganda Click here to read Sarah Kihika's presentation
10.15-10.30	Break Tea
10.30.11.30 Chair Stephen Lamony-CICC	**Great Lakes Region International Criminal Justice situational analysis:** Panel Uganda –Margaret Ajok JLOS Uganda Kenya –George Kegoro-ICJ –Kenya Herbert Rubasha and Isaac Bizumuremyi - Advocates, Kigali Bar Association

	DRC-Dr Joseph Yav Katshung UNESCO Chair for Human Rights, Good Governance, Peace and Conflict Resolution Darfur -International Refugee Rights Initiative Click here to read George Kegoro's presentation Click here to read Herbert Rubasha and Isaac Bizumuremyi's presentation
11.30-12.30	Discussion, Question and Answer Session
12.30-01.45	Lunch
02.00-02.45 Chair Vincent Babalanda	**Exploring the link between Peace and Justice-The need for a critical balance** Michael Otim-ICTJ Uganda Click here to read Michael Otim's presentation
02.45.03.00	Discussion, short interventions – Discussion
03.00-04.00 Chair -Brian Kalenge	**Effecting Complementarity; Challenges and opportunities-Case study- The International Crimes Division of Uganda** Tadeo Asiimwe Registrar ICD of Uganda Click here to read Tadeo Assiimwe Registrar's presentation
04.00-05.00	Discussion , Question and Answer and Lessons for other Jurisdictions
DAY 2: Tuesday 31st July 2012	
08.00-08.30	Recap of Day 1-Rappoteur-James Nkuubi
08.30-09.30 David Hofisi	**Lessons from the Special Court for Sierra Leone :** Ibrahim Tommy –Centre for Accountability and Rule of Law Click here to read Ibrahim Tommy's presentation
09.30-10.00	Question and Answer
10.00-10.30	Break Tea
10.30-11.30	**The Victim's Right to Truth in Post Conflict Situations:**

Sarah Kihika	**The South African Experience:** Marjorie Jobson - Khulumani Support Group **The Kenyan Experience :** Wachira Waheire Click here to read Wachira Waheire's presentation
11.30-12.00	Discussion, Questions
11:30-12:30 Jimmy Otim	**Victims: The International and Transitional Justice niche:** Joseph Akwenyu-Uganda Victims Foundation Click here to read Joseph Akwenyu's presentation
12:30-01:00	Discussion, Questions
01:00-02:00	Lunch
02:00-03:00 Alpha Sessay-OSJI	**The AU-ICC back clash-Strategies for moving forward-** Stephen Lamony CICC Click here to read Stephen Lamony's presentation
03.00-04.00	Wrap up and Closure Stephen Odong –HURINET-U
Wednesday 1st August 2012 Departure of Participants	