



# **PEACE VERSUS JUSTICE?**

## **TRUTH AND RECONCILIATION COMMISSIONS AND WAR CRIMES TRIBUNALS IN AFRICA**



**CENTRE FOR  
CONFLICT  
RESOLUTION**

CAPE TOWN, SOUTH AFRICA

**POLICY ADVISORY GROUP SEMINAR REPORT**

17 AND 18 MAY 2007, VINEYARD HOTEL, CAPE TOWN, SOUTH AFRICA

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### **POLICY ADVISORY GROUP SEMINAR**

VINEYARD HOTEL, CAPE TOWN, SOUTH AFRICA

17 AND 18 MAY 2007

ORGANISED BY THE CENTRE FOR CONFLICT RESOLUTION, CAPE TOWN, SOUTH AFRICA

SEMINAR REPORT

### **RAPPORTEURS**

SUREN PILLAY AND HELEN SCANLON



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## About the Organiser:

### The Centre for Conflict Resolution (CCR), Cape Town

The Centre for Conflict Resolution is based in Cape Town, South Africa. Established in 1968, the organisation has wide-ranging experience of conflict interventions in the Western Cape and southern Africa and is working increasingly on a pan-continental basis to strengthen the conflict management capacity of Africa's regional organisations, as well as on policy research on the United Nations' (UN) role in Africa; South Africa's role in Africa; African Union (AU)/New Partnership for Africa's Development (NEPAD) relations; and HIV/AIDS and Human Security.

## The Rapporteurs

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# Executive Summary

**The Centre for Conflict Resolution (CCR), Cape Town, South Africa, held a policy meeting in Cape Town on 17 and 18 May 2007 on the theme, “Peace versus Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa”. The Cape Town policy seminar was attended by around 40 participants, including past and present senior officials from truth and reconciliation commissions and war crimes tribunals on the continent, civil society activists and academics.**

## Context

The development of peacebuilding initiatives in Africa in the last decade is reflected in the proliferation of numerous models of transitional justice. Recent experiments on the continent range from judicial to non-judicial approaches, including United Nations (UN) tribunals, “hybrid” criminal courts, domestic trials, and truth and reconciliation commissions (TRCs). War crimes tribunals and TRCs have been in operation in Africa since 1974, with varying degrees of success. At an international level, the Hague-based International Criminal Court (ICC), which came into existence in 2002, was established as a court of last resort to prosecute offences where national courts failed or were unable to respond. An analysis of the variety and relative success or failure of these approaches can add much to our current and future understandings of peacebuilding in Africa. A key concern for the Cape Town seminar was to analyse the dilemmas posed by peace without justice, as opposed to justice without peace.

## Concepts of Peace and the Politics of Justice in Africa

Countries emerging from a violent past face numerous obstacles to achieving reconciliation and ensuring nation-building. Whether moving from armed conflict; the end of authoritarian rule; or systematic state repression, there is often a demand for justice which is juxtaposed with the need for reconciliation. While amnesties continue to be negotiated in many post-conflict settlements, it is now internationally accepted that there can no longer be amnesties for crimes against humanity, war crimes and genocide. Following political transitions in numerous African countries since 1990, a variety of transitional justice mechanisms have been developed, with varying degrees of success. The emphasis on reconciliation rather than retribution is seen to be one of the advantages of truth commissions and accords with the African spirit of ubuntu (the gift of discovering our shared humanity).

## Truth and Reconciliation Commissions in Africa

Truth commissions in Africa have helped to develop the field of transitional justice. The mandate of the South African Truth and Reconciliation Commission which was in existence between 1995 and 1998, was the most complex of any truth commission to date, and subsequently set international standards through recognition of:

- Public participation as critical to both the decision-making aspect, as well as the process leading up to the establishment of a truth commission;
- The importance of public hearings; and
- The right to reparations and rehabilitation.

Nigeria's Human Rights Violations Investigative Commission (HRVIC) was set up to establish the causes, nature and extent of human rights violations or abuses in the country between 1966 and 1999. An account of the operations of the military and the police allowed the Nigerian public to arrive at some element of the truth that could provide a narrative for understanding the periods of repression suffered under military rule. In similar vein, Ghana set up a National Reconciliation Commission (NRC) in 2000 to examine the detentions, arrests, killings, and torture that took place under Jerry Rawlings' three terms of rule (June-September 1979; 1981-92; and 1992-2000). A distinguishing feature of Ghana's NRC was the fact that the commission was not part of the country's transitional arrangements, and was formed nine years after the restoration of civilian democratic governance. The creation of the NRC thus reflected an expansion of the contexts in which truth commissions are set up, and a broadening of their function. As well as achieving the traditional role of TRCs of documenting the past in order to facilitate transition, commissions may also help to stabilise existing democratic dispensations. In order to address the impact of Sierra Leone's bloody 10-year conflict, both a Special Court as well as a TRC were set up to confront the wide-scale impact of conflict on the civilian population. The TRC's role was, first, to examine the extent and nature of gross human rights abuses; and, second, to give both victims and perpetrators the opportunity to provide an account of human rights violations committed during the armed conflict. The most tangible outcome from the TRC's recommendations has been the establishment of a Human Rights Commission in 2006.

The advantage of truth commissions is that they start a national conversation that involves all parties to a conflict (from grassroots to leadership levels), and, through focusing on the victims, truth commissions can help to restore the dignity of those who have undergone human rights violations during conflicts. These bodies do, however, often offer amnesty – either blanket or conditional – in exchange for full disclosure by perpetrators of their involvement in past atrocities. Some critics argue that amnesty is a form of impunity and that commissions consequently do not act as a deterrent to human rights violations – a criticism that has been levelled against the South African TRC. A second concern is that there is uncertainty as to whether truth commissions in fact create a lasting peace in divided societies.

## Transitional Justice and the Politics of Gender

Truth commissions and other formal institutions of transitional justice have come under mounting pressure to report the often-overlooked range of abuses suffered by women during conflicts. Recent examples from Africa have shown increased and varied approaches to addressing gender issues within transitional justice mechanisms. In South Africa, the TRC set a precedent due to its incorporation of a gender perspective, though it was also widely criticised for adding this issue as an afterthought. The Sierra Leonean TRC set out to pay special attention to the experiences of women and children during the country's civil war. Furthermore, Rwanda's Tribunal in Arusha, Tanzania, and the hybrid transitional justice experiment in Sierra Leone led to a number of landmark legal developments that have had significant implications for international gender justice. These included the recognition of rape in the definition of crimes against humanity, and widening this interpretation to include sexual slavery and mixed marriages. Nonetheless, while recent transitional justice mechanisms in Africa have directed attention to the impact of conflicts on women, they have not stemmed the occurrences of violence against women, which remains inordinately high in post-conflict settings. Furthermore, while there has been an increase in women in decision-making and political positions in many African post-conflict situations, women's effective power is still embryonic. These factors therefore need to be properly understood and considered in the context of future transitional mechanisms.



## The International Criminal Tribunal in Rwanda

The Arusha-based International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council in November 1994 to prosecute those responsible for serious violations of international criminal law during the 100-day genocide between April and June 1994. By 2007, 72 suspects had been arrested, of whom 28 have been tried, 24 convicted, and five acquitted. The ICTR has faced a number of challenges, including the fact that there is no official documentation of the genocide, which has meant that prosecutors have had to rely on evidence based almost entirely on witness testimony. Nonetheless, the tribunal has established international criminal jurisprudence through achieving the first international conviction on a charge of genocide and the first conviction for rape as a war crime. However, Rwanda's tribunal has been criticised on a number of fronts, including the slow nature of its proceedings. Its estimated cost currently is more than \$1.2 billion, compared to the \$100 million spent on rebuilding Rwanda's internal criminal justice system that has been attempting to deal with almost 120,000 cases of people arrested on suspicion of being implicated in the genocide of 1994.

## Sierra Leone's Special Court

The nature and extent of atrocities committed during Sierra Leone's civil war from 1991 to 2002 prompted the creation of the Sierra Leone Special Court at the end of the conflict to try war criminals. The innovation of the International Criminal Tribunal for Rwanda had created a significant precedent for addressing war crimes, while the creation of the International Criminal Court (ICC) in the Hague in 1998 made it difficult for the international community to overlook events in Sierra Leone. The Special Court operates under both Sierra Leonean domestic law and international humanitarian law. While beyond the control of the UN Security Council, the court is supported by its major funders: Britain and the United States. The Special Court was set up in a way that sought to address some of the perceived failings of the Arusha Tribunal. The promise of the Special Court was that it would leave a "legacy" in Sierra Leone, including improved infrastructure. However, many have argued that the separation between the court and national structures means that this will not be achieved. Five years after its creation and at the cost of more than \$100 million, the Special Court has so far failed to secure a single conviction. A further criticism of the court surrounds accusations that it has become an instrument of US foreign policy in its "war on terror". Many of the charges made against former Liberian president, Charles Taylor, referred to the role of Al-Qaeda in West Africa, leading to allegations that the court was promoting American interests rather than justice for the Sierra Leonean people.

## Indigenous Justice? The Cases of Rwanda and Mozambique

In Africa, a number of traditional mechanisms to promote reconciliation exist which involve truth-telling and requests for forgiveness to achieve both reconciliation and to challenge perpetrators of human rights abuses. These often differ from western legal systems that emphasise prosecution and retributive justice. A more formalised version of this has been implemented in Rwanda through *gacaca* (literally, "lawn-justice" or "justice on the grass") courts. These have nonetheless been marred by both the circumstances of their creation and the subsequent blurring of the line between what constitutes indigenous justice and what is, in reality, political expediency. Concerns have been raised that these courts fail to meet international standards for fair trial and lack independence, impartiality, and transparency. They have also been accused of promoting an ethnically biased justice (against Hutus who were the main perpetrators of the 1994 genocide), and that the critical tasks of judgment and sentencing are left to presiding officials who, more often than not, have no formal legal

training. Furthermore, *gacaca* courts have often failed to provide a platform for women to speak freely and, in turn, allow for full reconciliation into Rwandan society. In Mozambique, the failure to introduce transitional justice institutions has resulted in the development by war survivors of a number of mechanisms to achieve some form of post-war justice and healing such as those in the Central Mozambique district of Corongosa. However, while the strength of these mechanisms to help the healing of a community is laudable, the truths disclosed are usually not factual truths about an individual past, but constitute a multidimensional and collective truth that removes factors of individual or collective responsibility. As such, there has therefore been no clear process for collective healing to enable nation-building in Mozambique.

## The International Criminal Court: Problems and Prospects

The Hague-based International Criminal Court was established in 1998 to prosecute individuals accused of genocide, war crimes and crimes against humanity. The ICC's short existence has already created a number of concerns. The fact that the Court has thus far only formally investigated cases in Africa (Central African Republic [CAR], the Democratic Republic of the Congo [DRC], Uganda and Sudan) has led to concerns that the ICC punishes poorer nations, while powerful countries such as the United States continue to commit flagrant human rights abuses with impunity. Further, the potential conviction of members of Uganda's Lord's Resistance Army (LRA) for war crimes by the ICC has led to fears that this could destroy fragile peace talks between the Ugandan government and LRA rebels. Nonetheless, 29 of the 53 members of the African Union are signatories to the Court and most of the court's cases, with the exception of Sudan's Darfur region, have been referred to it by African governments themselves, making a more measured assessment of its relevance for Africa necessary.

## Policy Recommendations

Nine key policy recommendations emerged from the seminar.

1. If there is to be lasting peace in a society emerging from conflict, justice for victims must be incorporated into any peace and justice mechanisms, and this requires that instruments established ensure that the voices of victims are heard.
2. The decision about the kind of transitional justice approach must be made taking local needs into account, while learning from other experiences. Each country's post-conflict needs are distinct, and transitional justice mechanisms such as truth commissions should respond to each country's specific set of circumstances.
3. It is important to have a clear idea of what the injustice was, who the victim was, and who the perpetrator was in order to implement the appropriate transitional justice mechanism.
4. Peace and justice initiatives need to address the democratic deficit in a way that restores civic trust. Citizens must be able to have civic trust in their institutions of government. They must also believe that justice works for them irrespective of political affiliation, ethnic persuasion or other differences.
5. Agreements and undertakings made to victims and perpetrators by truth commissions must be fulfilled. This should also involve a more developed understanding of the various forms that reparations and healing can take, be it through financial, symbolic, individual or collective means.
6. The United Nations needs to pay attention to future Disarmament, Demobilisation and Reintegration (DDR) programmes, and recognise the multiple roles that women play during conflicts. Post-conflict power relations must also be considered so that women are fully integrated into these programmes.

7. There is a need to broaden the ambit of peace, justice and reconciliation strategies from legal instruments to be sensitive to wider considerations such as symbolic gestures, memorials, monuments, heritage, and indigenous forms of reconciliation and justice.
8. In the African context, the cultural constructions and format of commissions need to be considered. This involves the physical arrangements of hearings as well as a recognition of indigenous forms of communication, dialogue, and customary practices.
9. In order to achieve sustainable peace, peace processes must address the root causes of conflicts as well as the injustice which victims suffered. This requires a more complete assessment of the political economy and socio-economic factors that have fuelled these conflicts.



**ABOVE :** *From left:* Ms Nomfundo Walaza, Desmond Tutu Peace Centre, Cape Town, South Africa; Ms Cécile Aptel, International Centre for Transitional Justice, Johannesburg, South Africa, Ms Madeleine Fullard, Head of Missing Persons Task Team, National Prosecuting Authority, Tshwane, South Africa

**RIGHT :** Professor Kenneth Agyemang Attafuaah, Executive Director, Justice and Human Rights Institute, Accra, Ghana.

**FAR RIGHT :** Ms Nompumelelo Motlafi, Centre for Conflict Resolution, Cape Town, South Africa



# 1. Introduction

**The Centre for Conflict Resolution (CCR), Cape Town, South Africa, held a policy meeting in Cape Town on 17 and 18 May 2007 on the theme “Truth and Reconciliation Commissions and War Crimes Tribunals in Africa”. The seminar reviewed and analysed the experiences and lessons from recent case studies of transitional justice on the continent.**

The development of peacebuilding initiatives in Africa in the last decade is reflected in the numerous models of transitional justice.<sup>1</sup> These encompass a range of judicial and non-judicial approaches adopted by post-conflict societies to address human rights abuses of the past. War crimes tribunals and truth and reconciliation commissions (TRCs) have been set up in Africa since 1974, with varying degrees of success.<sup>2</sup> Recent experiments on the continent have ranged from United Nations (UN) tribunals to “hybrid” criminal courts, domestic trials, and truth and reconciliation commissions.

At an international level, the Hague-based International Criminal Court (ICC), which came into existence in 2002, was set up as a court of last resort to prosecute offences where national courts failed or were unable to respond. To date, the Central African Republic (CAR), the Democratic Republic of the Congo (DRC), Uganda and Sudan have all come under the Court’s scrutiny. The body has been subject to controversy from the outset over whom the Court decides to prosecute. The United States (US) has demanded that its own citizens be exempt from prosecution by the Court, arguing that national governments in the first instance, and then special courts such as the one created in Sierra Leone, are more effective at addressing human rights abuses. The fact that most of the cases currently before the ICC are in Africa has also led to questions over whose justice the Court is promulgating.

Debates abound over the need to prosecute, as opposed to the granting of amnesty for, past human rights abuses in countries emerging from civil wars such as Sierra Leone, Liberia, Rwanda and South Africa. An analysis of the variety and relative success or failure of these approaches can add much to our current and future understandings of peacebuilding in Africa. A key concern for the Cape Town seminar was to analyse the dilemmas posed by “peace without justice” as opposed to “justice without peace”.

About 40 participants, including senior officials from truth and reconciliation commissions and war crimes tribunals on the continent, civil society activists and academics, attended the Cape Town policy advisory group meeting. They included: Matthew Kukah, a prominent member of Nigeria’s National Commission; Yasmin Sooka, former Commissioner of the South African and Sierra Leonean Truth and Reconciliation Commissions; Kingsley Moghalu, former Special Counsel and Spokesperson of the United Nations International Criminal Tribunal for Rwanda; Dumisa Ntsebeza, former Head of South Africa’s Truth and Reconciliation Commission’s Investigating Unit; Kenneth Agyemang Attafua, former UN International Technical Adviser to the Truth and Reconciliation Commission of Liberia; John Hirsch, former US Ambassador to Sierra Leone; and Pumla Gobodo-Madikizela, of the Department of Psychology at the University of Cape Town, South Africa.

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1 Centre for Conflict Resolution, “African Perspectives on the UN Peacebuilding Commission”, CCR/Friedrich Ebert Stiftung Seminar Report, Maputo, Mozambique, November 2006 (available at [www.ccrweb.ccr.uct.ac.za](http://www.ccrweb.ccr.uct.ac.za)).

2 TRCs include Uganda (1974); Zimbabwe (1985); Uganda (1986); Chad (1991); Rwanda (1992); Burundi (1995); South Africa (1995); Nigeria (1999); Sierra Leone (2002); Ghana (2002); and Liberia (2006). War crimes tribunals were established for Rwanda (1994) and Sierra Leone (2002).

## 1.1 Objectives

When societies emerge from conflict, issues of accountability and reconciliation are often deemed critical for effective peacebuilding. Countries are often confronted with the choice between “retributive” or “restorative” models of justice.<sup>3</sup> While human rights practitioners often demand accountability – or justice – for the actions of perpetrators, political mediators tend to emphasise the importance of achieving peace, sometimes at the expense of justice. The primary goal of the Cape Town policy meeting was to address the relative strengths and weaknesses of “prosecution versus amnesty” for past human rights abuses in countries transitioning from conflict to peace. In particular, the policy meeting set out to identify ways to strengthen the capacity of African regional and sub-regional organisations in managing post-conflict reconstruction efforts with respect to human rights.

## 1.2 Seminar Themes

The following five key questions formed the basis of presentations and discussions during the meeting:

- What have been the African experiences of transitional justice?
- Should justice or truth be prioritised when dealing with post-conflict reconstruction in Africa?
- What are the challenges for nation-building posed by granting amnesty to perpetrators of war crimes?
- How effective have recent war crimes tribunals and truth commissions in Africa been in dealing with human rights perpetrators? and,
- Do the current models for addressing truth and justice overlook indigenous African methods of post-conflict reconstruction?

## 1.3 Background

The need to confront the human rights violations committed in countries during conflicts is stark, especially in light of the fact that wars have increasingly affected civilian populations in the recent past. By some estimates, half of war-torn countries in the post-Cold War era – many of them in Africa – have relapsed into war within five years of the end of hostilities, largely due to their failure to address the root causes of conflicts. Thus, the development of effective transitional justice mechanisms that hold political leaders accountable for alleged war crimes is deemed critical for effective post-conflict reconstruction. While many senior government officials were effectively immune from national and international human rights law during much of Africa’s post-colonial era, the last decade has seen a reversal of this trend. A UN-backed tribunal has prosecuted those responsible for the 1994 Rwandan genocide, while prosecutors have challenged war criminals in Liberia and Sierra Leone. International investigators have been invited into three African countries – Uganda, the DRC, and Sudan – and there has been a concomitant proliferation in the use of national truth and reconciliation commissions to document human rights violations.

The more traditional model of transitional justice has been the war crimes tribunal set up to try individuals accused of war crimes. These courts prosecute perpetrators of war crimes but, more generally, provide the accused with an opportunity to explain his or her actions and are seen to act as a deterrent for potential war criminals. This form of retributive justice has been adopted in countries such as Rwanda and Sierra Leone. The mandate of these tribunals

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<sup>3</sup> See, for example, Abdul Lamin, “Building Peace through Accountability in Sierra Leone: The Truth And Reconciliation Commission and the Special Court”, *Journal of Asian and African Studies* (2003), 38 2-3 pp295-320; Pumla Gobodo-Madikizela, *A Human Being Died that Night: A Story of Forgiveness* (Cape Town: David Philip, 2003); Alex Boraine and Janet Levy (eds.), *The Healing of a Nation?* (Cape Town: Justice in Transition, 1995); and Kingsley Moghalu, *Rwanda’s Genocide: The Politics of Global Justice* (London: Palgrave, 2005).

is to prosecute those alleged to have perpetrated gross human rights violations. However, tribunals have often been criticised for promoting “victor’s justice”. For example, under apparent American pressure, Liberia’s president Ellen Johnson-Sirleaf helped to facilitate the arrest of Charles Taylor, a former political rival, in 2006. It is also charged that these tribunals often overlook the need of victims for restitution or reconciliation, thus failing adequately to address the wounds of the past. In the last 20 years, more than 25 truth commissions have been created globally, with a significant number of these based in Africa.<sup>4</sup> The creation of national TRCs in countries such as South Africa in 1995, have become increasingly common in assisting fractured societies in their transitions from conflict to peace, or, more simply, in trying to address some of the wounds of the past. More recently, Liberia convened a TRC in October 2006 to facilitate a full account of atrocities committed in the country since 1979. The nature of truth commissions differs, but they generally perform two key functions: first, they attempt to document human rights abuses carried out during a specified time frame; second, TRCs make recommendations concerning reparations to victims, as well as suggest reforms which could help to prevent future abuses.

Truth commissions are often viewed as effective mechanisms to assist with the task of nation-building and peacebuilding. Commissions such as South Africa’s TRC are seen to have facilitated political stability in the country as well as having promoted moral ideals and a respect for human rights. Others have criticised the country’s TRC for absolving murderers, as well as for not adequately compensating victims of apartheid crimes. An important feature of the truth and reconciliation model is that it creates the circumstances for individual rather than collective responsibility. However, in countries such as Uganda, its 1986 truth commission was widely seen as a tool that was exploited by the government to discredit the previous regime of Milton Obote rather than as a transparent mechanism to facilitate reconciliation.<sup>5</sup> A further criticism of both war crimes tribunals and TRCs is their perceived inability to address issues of economic profiteering by business communities during conflicts.

FACT BOX

In the last 20 years, more than 25 truth commissions have been created globally, with a significant number of these based in Africa.

In Africa, a number of traditional mechanisms exist to promote reconciliation.<sup>6</sup> For example, among the Acholi of northern Uganda, indigenous reconciliation processes involve truth-telling and requests for forgiveness to achieve both reconciliation and to challenge perpetrators of human rights abuses. Alternative modes of reconciliation and restorative justice also exist on the continent, but often differ from western legal systems that emphasise prosecution and retributive justice.<sup>7</sup> Nonetheless, the proliferation of tribunals and TRCs have been a significant step in confronting impunity from war crimes on the continent and in assisting with addressing human rights abuses among the population at large. Despite the political nature of many of these bodies, many agree that their development mark a new post-Cold War era in which African conflicts are sometimes being resolved by judges rather than soldiers. These signify a move, albeit embryonic, toward the acceptance of human rights law in terms of which all citizens are treated equally.

4 These include Uganda (1974); Bolivia (1982); Argentina (1983); Uruguay (1985); Zimbabwe (1985); Uganda (1986); the Philippines (1986); Nepal (1990); Chile (1990); Chad (1991); Germany (1992); El Salvador (1992); Rwanda (1992); Sri Lanka (1994); Haiti (1995); Burundi (1995); South Africa (1995); Ecuador (1996); Guatemala (1997); Nigeria (1999); Peru (2000); Uruguay (2000); Panama (2001); Yugoslavia (2002); East Timor (2002); Sierra Leone (2002); Ghana (2002); and Liberia (2006).

5 Joanna R. Quinn, “Constraints: The Un-doing of the Ugandan Truth Commission”, *Human Rights Quarterly* 26, 2, (2004), pp.401-427.

6 Kevin Avruch, *Culture and Conflict Resolution* (Washington, D.C.: United States Institute for Peace, 1998).

7 Hizkias Assefa, *Peace and Reconciliation as a Paradigm* (Nairobi: Nairobi Peace Initiative, 1993).

## 2. Concepts of Peace and the Politics of Justice in Africa

**The challenges faced by countries transitioning from conflicts have been evident in a variety of contexts. Countries emerging from a violent past face numerous obstacles to achieving reconciliation and ensuring nation-building.**

Whether moving from armed conflict; the end of authoritarian rule; or systematic state repression, there is often a demand for justice which is juxtaposed against the need for reconciliation. Peacebuilding initiatives within and outside Africa, therefore, have to contend with two, often competing, demands:

- The need to give legitimacy to the experience of brutality, violence, and suffering endured by victims; and
- The need to assuage the fears of perpetrators about the consequences of their actions if they are to relinquish power.

The latter concern can perpetuate a conflict intractably: if an authoritarian state, ruler, or grouping reckons that yielding power will lead to their prosecution, they are more likely to cling to power. The process of transitional justice must therefore attempt to balance three critical goals: justice, truth, and reconciliation. In the aftermath of the Second World War in 1945, international law was dominated by the view that the most appropriate response to human rights violations is the prosecution of perpetrators, or, more cynically, the implementation of “victor’s justice”. The most prominent international example of this was the Nuremberg Trials of 1945 to 1949 during which 24 prominent members of the Nazi leadership were tried by the international community in Germany. These trials have since been subject to widespread criticism about the selective nature of prosecutions, as well as arguments that the Allied forces of Britain, the US and France should also have been held accountable for their actions during the war.

The Cold War which erupted by 1949 resulted in the slow development of international criminal justice mechanisms, as the US and the Soviet Union frequently bolstered undemocratic regimes throughout the developing world. For example, the US opposed the establishment of an international criminal tribunal for East Timor, as well as trials for atrocities committed in Chile under General Augusto Pinochet. Washington had provided strategic support to both countries.<sup>8</sup> Thus, more commonly, countries emerging from conflicts chose to grant amnesties for human rights violations and draw a symbolic curtain on the past. At the national level, the reality for most transitional societies is that a number of obstacles stand in the way of effective peacebuilding. While a new government may have achieved political power, they may still lack control over the military, the civil service and the judiciary. As a result, perpetrators and political elites could still retain some power in such societies, thus culminating in a fragile peace. New governments need to consider broader objectives when assessing transitional justice mechanisms. These include:

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<sup>8</sup> Charles Villa-Vicencio, “Inclusive Justice: The Limitations of Trial Justice and Truth Commissions”, Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

- Mechanisms for reconciliation, particularly when the human rights violations of the past transpired in a context of extreme political polarisation, including forms of armed struggle;
- The rebuilding or reconstruction of institutions that are conducive to a stable and fair political system; and
- Adequate economic resources to achieve these goals.

Crimes committed during conflicts often fall into two broad categories of laws - the national laws of a country, which governments are meant to enforce; and international humanitarian law. Ensuring compliance with, and enforcing implementation of, international human rights is not solely the responsibility of individual governments, but also of the international community. A number of different mechanisms have been developed in order to deal with the experience of victims and the fears of perpetrators in order to achieve the goals of justice, truth or reconciliation. While truth commissions have a long history in Africa, the idea has gained popularity following the perceived success of the South African model of 1995-1998. On the other hand, there is a growing, and sometimes conflicting, trend toward creating institutions which uphold international and national laws, and which emphasise justice in the form of prosecutions for crimes committed - regardless of national sovereignty or national peace processes.

While amnesties continue to be negotiated in many post-conflict settlements, it is now internationally accepted that amnesties can no longer be granted for crimes against humanity, war crimes and genocide. The creation of the International Criminal Court in 2002, firmly put prosecution for these crimes under the auspices of the international community. This approach to prosecution has been bolstered through the International Criminal Court for Rwanda (ICTR) created in 1994; the Special Court in Sierra Leone of 2002; the 2007 trial of former Liberian warlord and president, Charles Taylor in the Hague; and the ICC warrants of arrest for the leaders of Uganda's Lord's Resistance Army (LRA): Joseph Kony, Vicent Otti, Okot Odhiambo, Dominic Ogwen, and Raska Lukwiya in 2005.<sup>9</sup>

## 2.1 Truth Commissions

During the 1980s, a number of Latin American countries, including Argentina (1983-4), Chile (1990-91) and El Salvador (1992-3), began to explore different approaches to dealing with their past during transitions from military to democratic rule. While there have been numerous other truth commissions established since 1973, these particular Latin American commissions are generally seen as having set the precedents which subsequent commissions have sought to emulate. Four key norms were established by the proceedings of these commissions:

- The right of victims to establish the truth about the past;
- The right to have this truth publicised and acknowledged;
- The right of victims to reparations; and
- The need for institutional reform.<sup>10</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Yasmin Sooka, "Peace and the Politics of Justice in Africa", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.



The emphasis on reconciliation rather than retribution is seen as one of the advantages of truth commissions. This, according to the former Chairperson of South Africa's Truth and Reconciliation Commission, Archbishop Desmond Tutu, is more consistent with indigenous African conceptions of justice: "Retributive justice is largely western. An African understanding is far more restorative – not so much to punish as to redress or restore a balance that has been knocked askew."<sup>11</sup>

Four key advantages of truth commissions have been identified through recent African examples:

- They start a national conversation which involves all parties to a conflict, from the grassroots to the leadership levels;<sup>12</sup>
- Through emphasis on the victims, truth commissions can help restore the dignity of those who have undergone human rights violations during conflicts;
- Truth commissions generally tend to foster wider public participation than criminal trials. Public hearings during which victims narrate their experiences, and perpetrators give accounts of past wrongs, often allow for wider public involvement. This may increase the legitimacy of the political settlement; and
- Truth commissions which offer amnesty to perpetrators encourage greater willingness to disclose and, could consequently lead to, more truthful accounts of the past. Disclosures at truth commissions differ from those in a criminal trial since the objective of the latter is to establish legal guilt or innocence.

There are, however, two important concerns over the nature of truth commissions:

- Truth commissions often offer amnesty – either blanket or conditional – in exchange for full disclosure by perpetrators of their involvement in past atrocities. Some critics argue that amnesty is a form of impunity and, as a result, commissions do not act as a deterrent to committing human rights violations.
- The second concern is whether truth commissions create a lasting peace in divided societies and whether they are adequate mechanisms for dealing with mass atrocities. If justice is not served in a post-conflict society, it may resurface later, as was evidenced in the lawsuits of victims against the former Chilean dictator, Augusto Pinochet, who had previously been granted amnesty.

## 2.2 Criminal Trials

Given the concerns over truth commissions, some transitional justice experts argue that criminal trials offer more suitable mechanisms to enable peacebuilding due to three key factors:

- Criminal trials emphasise accountability and act as a deterrent to the commission of future atrocities;
- Administering justice through prosecution may end in the victim a desire for retribution, through facilitating the full restoration of dignity; and
- Criminal trials establish direct responsibility for wrongs committed, creating a clearer sense of who the perpetrators are, and holding them directly accountable. This is in contrast to the principle of "collective guilt", which is more difficult to prosecute, but which may also hinder long-term reconciliation by perpetuating group animosities.

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<sup>11</sup> Quoted in Martha Minow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998), p.81.

<sup>12</sup> Charles Villa-Vicencio, 'Inclusive Justice: The Limitations of Trial Justice and Truth Commissions'.

## 2.3 Accountable Amnesty

A number of recent examples, such as in Sierra Leone, have seen an attempt to combine the processes of trials and truth commissions in order to achieve a form of “accountable amnesty”. The development of this approach, which is attentive to both the particular history of a conflict and justice, is seen as a means to address the strengths and weaknesses of truth commissions and criminal trials. Under such circumstances, peacebuilding can be viewed as a longer-term process, rather than an event, requiring not only the demand for justice by victims through truth-telling, but also addressing their suffering. This requires not only the application of restorative justice, but also “rectificatory justice”.



**ABOVE:** From left: Professor Pumla Gobodo-Madikizela, Department of Psychology, University of Cape Town, South Africa; Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town; Ms Yasmin Sooka, Executive Director, Foundation for Human Rights, Tshwane

**FAR LEFT:** Advocate Dumisa Ntsebeza, former Head of South Africa's TRC Investigations Unit, Cape Town, South Africa

**LEFT:** Dr Charles Villa-Vicencio, Director, Institute for Justice and Reconciliation, Cape Town, South Africa

## 3. Truth and Reconciliation Commissions in Africa: South Africa, Nigeria, Ghana and Sierra Leone

### 3.1 South Africa

With the overthrow of the apartheid system of government, South Africa was faced with a serious challenge – how to address the gross human violations that had occurred in its past and heal a nation with deep racial and political tensions. In an attempt to foster nation-building, the first democratically-elected government of South Africa under President Nelson Mandela established a truth and reconciliation commission in 1995.<sup>13</sup>

The commission emanated from the idea that South Africa could only make progress once it had confronted the gross human rights violations and officially-sanctioned racial discrimination that had occurred under apartheid.<sup>14</sup> The mandate of the commission was the most complex of any truth commission to date as it was tasked with compiling a detailed record of the nature, extent and causes of human rights violations that occurred between 1960 and 1994, and to hear and document testimonies of those subjected to violations. The TRC was also required to record the testimonies of perpetrators of violence and to grant amnesty from prosecution in cases of full disclosure of their crimes after these were proved to have been politically motivated.

The TRC was thus meant to be an instrument to promote national reconciliation and to help reshape the identity of South Africans into what the commission's chair, Nobel Laureate and former Archbishop of Cape Town, Desmond Tutu, called the "rainbow nation of God". The very creation of the commission became a national exercise with involvement from the public who were encouraged to contribute to identifying its mandate, goals and procedures.<sup>15</sup> The body comprised 17 commissioners (all South African), 300 staff and had a budget of \$18 million. The truth commission carried out its mandate through three committees: the Amnesty Committee; the Reparation and Rehabilitation Committee; and the Human Rights Violations Committee. The TRC took testimony from approximately 21,000 victims and witnesses, 2,000 of whom appeared at public hearings: it received over 7,000 applications for amnesty, most of which were ultimately turned down. The commission also held sessions on religious, legal, business and labour institutions in order to address their support of apartheid, and special hearings sought to examine the experiences of children, youth, and women. South Africa's former liberation movement, the African National Congress (ANC), had set a precedent through its establishment of a commission of enquiry in 1992 to investigate widespread reports of abuses that had taken place in its own camps while the movement was in exile in southern Africa (mainly Angola, Tanzania and Zambia). It was the work of the South African TRC, however, that subsequently set international standards.

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13 See Yasmin Sooka, "E Pluribus Unum? Race and Reconciliation", in Adekeye Adebajo, Adebayo Adedeji and Chris Landsberg (eds.), *South Africa in Africa: The Post-Apartheid Decade* (Scottsville: University of KwaZulu-Natal Press, 2007), pp.78-91. Alex Boraine, "Truth and Reconciliation in South Africa: Amnesty – The Price for Peace", in Jon Elster (ed.), *Retribution and Reparation in the Transition to Democracy* (Cambridge, New York: Cambridge University Press, 2006); Nomfundo Walaza, "Insufficient Healing and Reparation", in Charles Villa-Vicencio and W. Verwoerd (eds.), *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* (Cape Town: University of Cape Town Press, 2000).

14 Alex Boraine, "South Africa's TRC in a Global Perspective". Paper prepared for the CCR seminar, Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa, Cape Town, 17 and 18 May 2007.

15 Ibid.

These included four important innovations:

- The importance of public participation in both the decision-making and the process leading up to the establishment of a truth commission;
- The importance of public hearings;
- The right to reparations and rehabilitation; and
- The right to reconciliation premised on the recognition of living together without fear of harm due to different ethnic, religious, racial or diverse other affiliations.

As the first commission to hold public hearings, the proceedings of South Africa's TRC, which were televised throughout the world, allowed the reality of the atrocities of the apartheid era to become widely acknowledged. While there had been at least 15 other truth commissions before the South African TRC, none was as transparent and subject to international scrutiny as the South African one. The involvement of well-known personalities such as Archbishop Tutu and testimonies by individuals such as then South African President Nelson Mandela's former wife, Winnie Madikizela-Mandela, added to the drama of the event.

While many were angered by the amnesty granted to apartheid perpetrators in the South African case, the widely publicised notion of the "rainbow nation" was largely deemed to have been a result of the TRC's creation. Four important successes include the fact that the commission:

- Uncovered many hidden aspects of the country's past under apartheid, including widespread instances of torture, murder, rape and the sinister disappearance of citizens;
- Identified institutional weaknesses in state bodies, including the country's armed forces;
- Implemented reparation policies; and
- Produced a well-regarded five-volume report.

There were nonetheless clear weaknesses in the South African TRC process, which varied from issues such as the delay in the delivery of reparations, to the implementation of recommendations, to the more serious allegations that the commission did not sufficiently address the socio-economic impact of apartheid policies on South African society at large. Many argue that the commission failed to ensure that the individual and institutional beneficiaries of apartheid appreciated the extent of the social and material cost of the system. Generally, white South Africans failed to participate fully in the process and were noticeably absent during the proceedings. Not unrelated to this shortcoming, was the partial truth presented to the commission when much of the military failed to disclose fully the true nature of their activities. For many, South Africa's TRC failed to secure justice in relation to those responsible for the policies that spawned death squads and resulted in, among other things, torture, imprisonment and assassinations.<sup>16</sup> Given the new framework of international human rights law and the lack of full disclosure by many of apartheid's perpetrators, many are increasingly questioning whether the amnesties granted in South Africa remain valid.

It took the democratic South African government more than five years to implement the TRC's reparations policy, and yet, the amount received by the 19,000 identified victims was significantly less than that suggested by the TRC.<sup>17</sup> It took seven years to establish a unit to investigate apartheid-era disappearances fully.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

Furthermore, as at 2007, not many of the commission's recommendations have been implemented and the first cases of prosecution of those denied amnesty by the TRC for apartheid atrocities were only witnessed in the same year. One of these, for example, involved the former Law and Order minister, Adriaan Vlok, former Police Commissioner Johan van der Merwe, and three others who were charged with the 1989 attempted murder of Frank Chikane, a former anti-apartheid activist and cleric. The call for prosecution has become louder and is no longer confined to certain individuals, such as the family of murdered anti-apartheid activist Steve Biko, founder of the Black Consciousness Movement. To what extent the "rainbow nation" was achieved by the TRC is thus increasingly being questioned.

## 3.2 Nigeria

In 1999, Nigeria's president at the time, Olusegun Obasanjo, appointed a seven-member Human Rights Violations Investigation Commission (HRVIC) to investigate alleged abuses in the country.<sup>18</sup> Originally set up to focus specifically on abuses under General Sani Abacha's autocratic regime between 1993 and 1998, the panel's mandate was eventually broadened to cover any event since the country's first military *coup d'état* in 1966.<sup>19</sup> This included the period during which Obasanjo was himself in power as a military ruler between 1976 and 1979. At the time, he had voluntarily handed over power to a civilian government, which itself was replaced by a military regime four years later.

The Nigerian commission's mandate was to establish the causes, nature and extent of human rights violations or abuses and, in particular, all known or suspected cases of mysterious deaths and assassinations or attempted assassinations committed in the country during these years. The body was also tasked with identifying those accountable for deaths, assassinations or other violations or abuses of human rights and to establish whether these were the product of deliberate state policy. The commission, comprising the chairperson, retired Justice Chukwudifu Oputa, and six commissioners who included Father Matthew Kukah, a former Secretary-General of the Catholic Bishops conference, were granted a period of three months to fulfil their mandate and to submit a report to President Obasanjo.

The commission was established in the context of the successes of a series of national conferences which had taken place on the African continent and paved the way for multiparty democracies in the 1990s. The apparent success of the South African TRC was also important to the establishment of Nigeria's Commission.<sup>20</sup> Submissions of experiences of human rights violations were solicited from the Nigerian population through a vigorous advertising campaign in the national print and electronic media. Within three weeks, more than 8,000 cases had been received which included cases of:

- Physical and mental torture;
- Unlawful arrest and detention;
- Murder/assassination;

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18 Matthew Kukah, "Peace vs Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa: A View From Nigeria", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007. See also Michael Ikhariale, "The Oputa Reports: An Unfinished Job" (2004), (available at [http://www.nigerdeltacongress.com/oarticles/oputa\\_reports.htm](http://www.nigerdeltacongress.com/oarticles/oputa_reports.htm) ; accessed 12 August 2007).

19 Ibid.

20 Kukah, "Peace vs Justice?". See also Matthew Kukah, *Democracy and Civil Society in Nigeria* (Ibadan, Nigeria: Spectrum Books, 1998).

- Assault/battery;
- Intimidation/harassment;
- Communal violence; and
- Disappearances.

The commission also sought to further the public debate through a series of interactive discussions and seminars as well as an international conference on truth commissions to draw on comparative experiences from other parts of Africa and beyond.

Public hearings were integral to the process, and were conducted across Nigeria's six major geographical zones in order to ensure maximum participation and reduce logistical constraints on petitioners. An amnesty clause was not included in the framing of the commission's mandate, and this affected the nature of the hearings. Alleged perpetrators were given a chance to make legal representation to the commission and their accusers. At the same time, victims also had access to legal representatives who could make their case directly to the commission. Wealthier citizens, both victims and perpetrators, tended to employ their own legal representation, giving the hearings a legalistic tone where guilt and innocence were at stake. This had implications for the "truth" that was arrived at through the hearings.

Based on more than 11,000 public submissions and the public hearings, the commission compiled a report, presented to President Obasanjo in May 2002, recommending further investigation and possible prosecution of 150 cases. Though a coalition of civil society organisations, the Civil Society Forum, took the initiative to release the report in January 2005, the Commission's findings were not released officially to the public by the Nigerian government. The report's recommendations have therefore not been implemented. The failure to release the final report of the commission officially cast doubts over Obasanjo's political intentions in setting up the body, and fuelled speculation that it was designed to bolster his legitimacy at that time. This circumscribed the commission's potential role as a mechanism to attain justice.

Nonetheless, the level of public interest in Nigeria's truth commission, and the participation in its proceedings of a number of personnel from key institutions like the military and police, have been deemed as having had a positive effect. The hearings themselves, while initially broadcast on state television, became so popular with the



*From left: Dr Charles Villa-Vicencio, Director, Institute for Justice and Reconciliation, Cape Town; Ms Mary Burton, former Commissioner of the Truth and Reconciliation Commission, South Africa; Dr Kingsley Moghalu, former Special Counsel and Spokesman of the United Nations International Criminal Tribunal for Rwanda*

public, that private stations also carried the proceedings live, with rebroadcasts that extended well into the night in order to satisfy public demand. An account of the operations of the military and police allowed the Nigerian public to arrive at some element of the truth that could provide a narrative for understanding the periods of repression suffered under military rule.

### 3.3 Ghana

Ghana set up a National Reconciliation Commission (NRC) in 2000 to examine the detentions, arrests, killings, and torture that had taken place under Jerry Rawlings' three terms of rule (June-September 1979; 1981-92; and 1992-2000).<sup>21</sup> Since achieving independence in 1957, post-colonial Ghana has suffered four major *coups d'état* – in 1966, 1972, 1979, and 1981. These have been interspersed with unsuccessful coup attempts, which themselves gave rise to human rights violations. In addition, during the brief periods of constitutional rule, citizens were also not exempt from experiences of human rights violations.

Provisions in Ghana's 1992 constitution absolved all military personnel from judicial scrutiny, which meant that a legal route was unavailable to prosecute perpetrators of past abuse.<sup>22</sup> Instead, President John Kufuor thus established the NRC in 2002. Based on the South African model, the NRC was mandated to compile an accurate and complete historical record of human rights abuses through investigations into human rights violations and the circumstances surrounding these acts. However, unlike the South African TRC, Ghana's NRC had no power to grant amnesty, though this was considered less relevant since most of the perpetrators had previously been awarded indemnity. In exchange for national reconciliation therefore, it was decided that criminal tribunals would not be appropriate for Ghana's long-term stability. Rawlings himself appeared before the NRC to answer allegations of abuse.

The NRC comprised nine Ghanaian nationals and was tasked with investigating the contexts and causes of violations. The commission was also granted the power to name and "identify individuals, public institutions, bodies, organisations, public office-holders or persons purporting to have acted on behalf of any public body responsible for or involved in the violations and abuses".<sup>23</sup> The commission was further mandated to consider violations committed both under constitutional and unconstitutional regimes. The NRC received some 4,240 testimonies that covered events throughout all of Ghana's political regimes between 1957 and 1993.<sup>24</sup>

A distinguishing feature of Ghana's commission was that it was not part of the nation's transitional arrangements, and was created nine years after the restoration of civilian democratic governance.<sup>25</sup> The creation of the NRC thus reflected an expansion of the contexts in which truth commissions are set up, and a widening of their function. As well as achieving the traditional role of TRCs of documenting the past in order to facilitate stable democratic transitions, commissions may also help to stabilise existing democratic dispensations.

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21 Kenneth Agyemang Attafua, "A Path to Peace: Ghana and the National Reconciliation Commission", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007. See also Kenneth Agyemang Attafua, "An Overview of Ghana's National Reconciliation Commission and its Relationship with the Courts", in William A. Schabas and Shane Darcy (eds.), *Truth Commissions and Courts: The Tension between Criminal Justice and the Search for Truth* (Dordrecht, the Netherlands: Kluwer Academic Publishers, 2005).

22 Meredith Wain, "Ghana's National Reconciliation Commission", *Peace Magazine*, April-June 2003, p.18 (available at <http://www.peacemagazine.org/archive/v19n2p18.htm> ; accessed 20 October 2006).

23 *Report of the National Reconciliation Commission*, Volume One, Executive Summary (Accra, Ghana: October 12, 2004), p.164.

24 Attafua, "A Path to Peace: Ghana and the National Reconciliation Commission".

A distinguishing feature of Ghana's commission was that it was not part of the nation's transitional arrangements, and was created nine years after the restoration of civilian democratic governance.



From left: Father Matthew Kukah, Member of Nigeria's National Commission; Ambassador John Hirsch, former US Ambassador to Sierra Leone; Ms Thelma Ekiyor, Senior Manager, Centre for Conflict Resolution, Cape Town

In 2004, a five-volume report outlining the context and causes of human rights violations was produced by Ghana's NRC. This document made a number of recommendations, including the payment of reparations to victims for the violations and abuses they had suffered under successive regimes. Nonetheless, the report did not suggest prosecutions for those found to have been responsible for violations of human rights. The NRC faced a number of challenges from the outset, but did construct a historical record of 36 important years of Ghana's history. The commission's decision to individualise responsibility was seen to have fulfilled two goals: the restoration of dignity and honour to those who had been victims of abuses, and some understanding of the causes and contexts of violations so as to prevent their future repetition. Nonetheless, Ghana's NRC had a number of limitations, including its failure to muster consistent media interest in its proceedings.<sup>26</sup> Critics of the NRC also labeled it a partisan attempt by Kufuor's ruling New Patriotic Party (NPP) to tarnish the reputation of its main opposition, the National Democratic Congress (NDC), the party that had propelled Rawlings to power in 1992. Other critics felt that a truth commission was inappropriate within the Ghanaian context which was very different to the South African or Sierra Leonean cases. While the country did suffer human rights abuses, Ghana was not subject to widespread conflict that necessitated a vehicle to facilitate national reconciliation. It has also been argued that the relatively number of perpetrators in Ghana meant a war crimes tribunal might have been a more appropriate mechanism to address the crimes of the past. This was, however, not politically possible under the circumstances.

### 3.4 Sierra Leone

Sierra Leone was subject to one of the bloodiest civil conflicts between government forces and the Revolutionary United Front (RUF) rebels between 1991 and 2002. During this time, more than 50,000 people were killed, thousands more were the victims of systematic sexual violence, amputations and killings, and over 200,000 people were internally displaced to the neighbouring countries of Guinea and Liberia.<sup>27</sup> An

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> John Hirsch, "Peace and Justice: Mozambique and Sierra Leone Compared". Paper prepared following the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.



estimated 15,000 children suffered separation from their families and communities.<sup>28</sup> In order to address the impact of Sierra Leone's conflict, both a Special Court and a truth and reconciliation commission were set up to confront the wide-scale impact of conflict on the civilian population.<sup>29</sup> The two institutions functioned simultaneously throughout 2003. In contrast to the Special Court, the TRC was an initiative agreed to by all parties during the 1999 Lomé Peace Agreement, and was subsequently established through an act of the Sierra Leonean Parliament. The TRC was composed of seven Commissioners, four of whom were from Sierra Leone and three of whom were non-nationals, including former South African TRC Commissioner, Yasmin Sooka.

### The Sierra Leonean commission sought to emulate the South African TRC without addressing the key differences in contexts.

As with other TRCs, its mandate was to create an "impartial historical record of violations and abuses of human rights and international humanitarian law" between 1991 and 1999.<sup>30</sup> The aim of the commission was, first, to examine the extent and nature of gross human rights abuses, and to determine whether these "were the result of deliberate planning, policy or authorisation by any government, group or individual, and the role of both internal and external factors in the conflict". Second, the body was intended to offer both victims and perpetrators the opportunity to provide an account of human rights violations committed during the armed conflict. The commission was further tasked with paying particular "attention to the subject of sexual abuse and to the experiences of children within the armed conflict".<sup>31</sup>

Sierra Leone's commission operated in two phases. During the first phase between December 2002 to March 2003, statements were taken from 3,000 victims who had suffered more than 4,000 violations - of which 1,000 related to killings and 200 to rape.<sup>32</sup> The second phase involved hearings of victims and perpetrators in which approximately 350 people testified. These public hearings addressed specific events such as the 1992 and 1997 coups and the rebel attack on Freetown in 1999. At the height of its activities, the commission had 40 staff, and a budget of \$4.5 million.<sup>33</sup> A unique element of Sierra Leone's TRC was that it was asked to utilise the experience of religious and traditional leaders in resolving local conflicts arising from past human rights violations. Sierra Leone's commission was significant in a number of ways. The institution brought both national and international attention to the human rights violations committed during the country's civil war, and allowed for a chronological understanding of the conflict's causes.<sup>34</sup> The commission's report, submitted in 2004, and made public in 2005, has had a mixed reception. Its thorough account of the conflict, and its attempts to recognise the victimisation of women and children, have been widely praised. The report concluded that Sierra Leone's civil war was a result of post-colonial dictatorships and that "all sides in the conflict were responsible for serious violations of human rights and international humanitarian law".<sup>35</sup> It also provided a forum for victims and perpetrators to share their

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28 Yasmin Sooka, "Peace and the Politics of Justice in Africa".

29 The Truth and Reconciliation for Sierra Leone: An Overview of the TRC (available at <http://www.sierra-leone.org/trc-trcforsierra Leone.html> ; accessed 7 November 2006).

30 Ibid.

31 Ibid.

32 Ibid.

33 Alex Boraine, "South Africa's TRC in a Global Perspective".

34 Thelma Ekiyor, "Reflecting on the Sierra Leone Truth and Reconciliation Commission: A Peacebuilding Perspective." Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

35 William Schabas, "The Sierra Leone Truth and Reconciliation Commission and the Special Court", *Journal of International Criminal Justice*, December 2004, p.3.

experiences which was a significant achievement, given the challenges facing the commission. An important facet of the rebuilding of Sierra Leone's transition was the demobilisation and reintegration of former combatants, particularly young people, including girls and children. The most tangible outcome from the TRC's recommendations has been the establishment of a Human Rights Commission in 2006.

Nonetheless, a number of factors clouded the work of the commission. From the outset, the appointment process proved controversial, with accusations of politicisation and questions over the inexperience and unsuitability of several of its staff. Despite its achievements, the TRC's legacy in Sierra Leone has proved to be uneven, and its role in constructing an impartial historical record was complicated by a number of factors. Each side of the conflict claimed to know the "truth" about the origins and development of the civil war. There were also differences of opinion over whether the RUF were the only violators of human rights, or whether the pro-government forces should also have been held to account for atrocities that they had allegedly committed.<sup>36</sup> The role of transnational corporations and many governments in the country's "blood diamond" industry which fuelled the conflict was also overlooked by the commission.

Part of the problem was that the Sierra Leonean commission sought to emulate the South African TRC without addressing the key differences in contexts.<sup>37</sup> The Sierra Leone civil war was markedly different to the South African liberation struggle, and lacked the latter's ideological dimension.<sup>38</sup> Sierra Leone also lacked unifying elements provided by charismatic figures such as Nelson Mandela and Desmond Tutu in the South African context.<sup>39</sup> This may help to explain the general public apathy towards the commission. While involvement was higher in the provinces than the capital of Freetown, the public generally appeared disinterested in the commission's proceedings. The perceived partisan nature of the commission also proved to be problematic, a situation exacerbated by Sierra Leone's president Ahmad Tejan Kabbah's refusal to apologise to the population – and received the support of the TRC's chairman.<sup>40</sup>

The relationship between the Sierra Leone's Special Court and the TRC also introduced a number of competing goals.<sup>41</sup> The framing of the Special Courts' powers superseded those of the TRC, effectively prioritising prosecutions over the reconciliation imperatives of the TRC. As a result, there was uncertainty over truth-telling at the TRC hearings and whether this may incriminate perpetrators at the Special Court. While the TRC faced financial difficulties, the Court has been substantially better funded, creating the impression that prosecutions were favoured over reconciliation. Perhaps most controversially, the "ownership" of the peacebuilding process in Sierra Leone has been called into question, specifically over the role and responsibilities of the United Nations Office of the High Commissioner for Human Rights. While the commission was meant to have been fully independent, the UN's involvement was felt by many to have severely undermined its credibility. The TRC laid an important foundation on which reconciliation can take place in Sierra Leone, but lasting peace will require the implementation of a number of the recommendations that the commission suggested for the future. However, due to the lack of political will and limited financial resources, most of the body's recommendations for reparations have not been implemented thus far.

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36 Ekiyor, 'Reflecting on the Sierra Leone Truth and Reconciliation'.

37 Ibid.

38 Ibid.

39 Ibid.

40 Alex Boraine, 'South Africa's TRC in a Global Perspective.'

41 See Abdul Tejan-Cole, 'The Complimentary and Conflicting Relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission', *Yale Human Rights and Development Law Journal* (January 2003).

### 3.5 Liberia

The National Transitional Legislative Assembly – an interim government led by Gyude Bryant – established Liberia’s Truth and Reconciliation Commission in June 2005, in accordance with the 2003 Accra Comprehensive Peace Agreement (CPA). Liberia’s TRC began public hearings of both perpetrators and victims in October 2006. The commission, modeled after the South African TRC, is mandated with documenting atrocities committed in the country between 1979 and 2003 during the governments of Samuel Doe and Charles Taylor, and with making recommendations for restitution. The commission’s primary role is to “investigate gross human rights violations and war crimes, including massacres, sexual violations, murder, extra-judicial killings and economic crimes (such as the exploitation of natural or public resources to perpetuate the armed conflict)”.<sup>42</sup>

TRC Chairman, Jerome Verdier, heads up the nine-member commission and is responsible for making recommendations to the government on who should be granted reparations, receive amnesty, or face prosecution. Before the start of proceedings, the commission deployed over 200 people throughout the country to compile statements from victims and perpetrators.<sup>43</sup> The body, which formally started work in June 2006, has a two-year mandate. Many observers claim that the establishment of the TRC will not be enough to achieve reconciliation, since many Liberians still demand some form of retributive justice. In May 2006, over 10,000 Liberians marched in support of the Forum for the Establishment of a War Crimes Court in Liberia. The decision of Sierra Leone’s Special Court to try former warlord and president Charles Taylor on war crimes charges in 2007 has also increased tensions in Liberia.



**ABOVE:** Dr Victor Igreja, Leiden University, Leiden, Netherlands  
**RIGHT:** Professor Antjie Krog, University of the Western Cape, Cape Town, South Africa, left; Professor Jeremy Sarkin, Fletcher School of Law and Diplomacy, Massachusetts, US



42 The UN Mission In Liberia, “The Truth and Reconciliation Act of Liberia. Submitted to the National Transitional Government of Liberia. Passed by the National Transitional Legislative Assembly 09.06.2005. Summary of Key Provisions” (available at [http://www.unmil.org/images/liberia\\_trc\\_act\\_summary.pdf](http://www.unmil.org/images/liberia_trc_act_summary.pdf); accessed 12 April 2007).

43 Jonathan Paye-Layleh, “Commission hears Testimony on Years of Atrocities in Liberia”, The Seattle Times, 11 October 2006.

## 4. Transitional Justice and the Politics of Gender

**Truth commissions and other formal institutions of transitional justice have come under increasing pressure to report the often-overlooked range of abuses suffered by women during conflicts.<sup>44</sup>**

Adopting a gender-sensitive approach to the work of the commission in terms of its structure and ambit can assist in identifying the different experiences of women and men during particular conflicts. As well as helping to create a more truthful historical record, this approach can enable the creation of more gender-sensitive programmes for post-conflict reconstruction. Recent examples from Africa have shown increased and varied approaches to addressing gender within transitional justice mechanisms. In South Africa, the truth and reconciliation commission set a precedent due to its incorporation of a gender perspective. As a result of mobilisation by women's groups in the country, public hearings were organised specifically for women to recount their experiences under apartheid. Nevertheless, a clear weakness of the process was that, in the accounts given by women, they tended to speak about the experiences of others, such as their partners or children, rather than their own. The South African TRC failed to respond to calls for a more integrated understanding of the gendered nature of the anti-apartheid struggle and as a result, the experience of women was relegated to "a chapter" in the TRC report.<sup>45</sup>

Learning from the South African experience, the Sierra Leonean Truth and Reconciliation Commission, with the assistance of the United Nations Development Fund for Women (UNIFEM), set out to pay special attention to the experiences of women and children during the conflict. According to the UN Special Rapporteur on the Elimination of Violence Against Women, Radhika Coomaraswamy, an estimated 72 per cent of Sierra Leonean women and girls experienced human rights abuses during the country's civil war, and over 50 per cent were victims of sexual violence.<sup>46</sup> The public hearings of the TRC brought national attention to the plight of women during the war, and the commission also focussed on the marginalisation and discrimination of women prior to the war. As a result, the TRC's final report was able to highlight specific cases of gender violence.

Furthermore, the hybrid transitional justice experiment in Sierra Leone led to a number of landmark legal developments that had significant implications for international gender justice. These included recognising gender crimes in its definition of crimes against humanity and widening their interpretation to include sexual slavery and mixed marriages. The implementation of the TRC process also coincided with the adoption of international instruments calling for the inclusion of women in peace processes such as United Nations Security Council Resolution 1325 of 2000 on Gender and Peacebuilding.<sup>47</sup>

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44 Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-Conflict States – Truth Commissions* (New York and Geneva, 2006), p.22

45 Sheila Meintjes, "Gender and Truth and Reconciliation Commissions: Comparative Reflections", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

46 See *Ibid.*

47 United Nations Security Council Resolution 1325, S/RES/1325 (2000).

Nonetheless, while recent transitional justice mechanisms in Africa have brought attention to the impact of conflicts on women, they have failed to stem the occurrences of violence against women, which remains inordinately high in post-conflict settings. Domestic violence rates in South Africa, Rwanda and Sierra Leone have increased, while structures for the redress of violations against women are often inadequate. Furthermore, while there has been a growth in women in decision-making and political positions in these post-conflict situations, women's effective power is still embryonic.



**TOP :** *From left:* Dr Mireille Affa'a Mindzie, Senior Project Officer, Centre for Conflict Resolution, Cape Town; Dr Chris Landsberg, Director, Centre for Policy Studies, Johannesburg; Professor Sheila Meintjes, Political Studies, University of the Witwatersrand, Johannesburg  
**LEFT :** Ms Wambui Mwangi, Office of Legal Counsel, United Nations, New York, US  
**CENTRE :** Dr Kingsley Moghalu, Global Fund to Fight AIDS, Tuberculosis and Malaria, Geneva, Switzerland  
**RIGHT :** Professor Pumla Gobodo-Madikizela, Department of Psychology, University of Cape Town, South Africa

## 5. The International Criminal Tribunal in Rwanda

**The Arusha-based International Criminal Tribunal for Rwanda (ICTR) was established in Arusha, Tanzania, by UN Security Council Resolution 955 in November 1994 to prosecute those “responsible for serious violations of international criminal law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states between 1 January 1994 and 31 December 1994”.**<sup>48</sup>

The tribunal was set up on an ad hoc basis with the intention of trying those most responsible for crimes against humanity during Rwanda’s 100-day genocide, including former Prime Minister Jean Kambanda. The completion strategy presented to the UN Security Council commits the tribunal to finalise all trials by 31 December 2008, and complete the appeals two years later. By 2007, 72 suspects had been arrested, of which 28 have been tried, 24 convicted, and five acquitted.<sup>49</sup> The court has faced a number of challenges, including the fact that there is no official documentation of the genocide, which has meant that prosecutors have had to rely on evidence based almost entirely on witness testimony. Nonetheless, the tribunal has established international criminal jurisprudence through achieving the first international conviction on a charge of genocide and the first conviction for rape as a war crime. The trial of key individuals in the genocide also incapacitated the ability of perpetrators to regroup.

However, Rwanda’s tribunal has been criticised on a number of fronts, including the slow nature of its proceedings. Rwandan head of state, Paul Kagame, has argued that the ICTR was established “to do as little as possible”.<sup>50</sup> The tribunal’s cost is estimated at more than \$1.2 billion, compared to the \$100 million spent on rebuilding Rwanda’s internal criminal justice system which has been attempting to deal with almost 120,000 people arrested on suspicions of being implicated in the 1994 genocide.<sup>51</sup> Some have also argued that the most serious human rights perpetrators have been able to escape Rwanda’s death penalty by appearing before the international court in Arusha.

The fact that Rwandans were largely excluded from occupying any position of importance in the ICTR’s chambers was seen as having hampered its legitimacy. It was only in 2003, eight years after it began its investigations, that the Prosecutor’s office appointed three Rwandans to advise it on its work. Kagame and others have also decried the failure of the court to prosecute western actors who were complicit in the 1994 genocide. The Rwandan government has been accused of being unwilling to allow its own soldiers to appear before the international tribunal. Critics of the tribunal further charge that the body has never bridged the gap between itself and the Rwandan people who largely remained detached from events in Arusha.<sup>52</sup> The focus on individual perpetrators by the Court has also come under fire since victims have only been party to the proceedings as witnesses who are often subjected to cross-examination, thus failing to promote reconciliation.

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48 Kingsley Moghalu, *Rwanda’s Genocide: The Politics of Global Justice* (London: Palgrave, 2005).

49 See Ibid., and Stephanie Nieuwoudt, “Slow Progress at Rwandan Tribunal”, *Institute for War and Peace Reporting*, 27 July 2006.

50 Stephanie Nieuwoudt, “Slow Progress at Rwandan Tribunal” *Institute for War and Peace Reporting*, 27 July 2006.

51 Thierry Cruvellier, “Africa: The Laboratory of Justice”, October 2004 (available at [http://www.crimesofwar.org/africa-mag/afr\\_06\\_cruvellier.html](http://www.crimesofwar.org/africa-mag/afr_06_cruvellier.html) ; accessed 10 April 2007).

52 Ibid.

Furthermore, the question of the fate of those acquitted by international tribunals, such as the ICTR, presents a particular challenge to be considered from the perspective of transitional justice where the reintegration of perpetrators into local communities has to be considered.<sup>53</sup> Of these, two former suspects have been successfully relocated to western countries while three remain in Arusha, with no prospect of a state to relocate to. Repatriation to Rwanda, where some of the individuals have been charged with crimes other than those of which they were acquitted, could present additional complications. In the case of one individual who was charged with rape, this still carries the death penalty in Rwanda on conviction. The subsequent fate of individuals is therefore of concern since the absence of a reconciliatory framework presents a challenge for their reintegration into society, be it a society of which they are members, or a host community.

The Rwandan government has been accused of being unwilling to allow its own soldiers to appear before the international tribunal.



**ABOVE :** From left: Ms Wambui Mwangi, Legal Officer, United Nations, New York; Professor Henrietta Joy Abena Mensa-Bonsu, Member of Ghana's National Reconciliation Commission, Accra; Professor Kenneth Agyemang Attafuah, former UN International Advisor to the Truth and Reconciliation Commission of Liberia and Executive Secretary of Ghana's National Reconciliation Commission, Accra

**RIGHT :** Father Matthew Kukah, Member of Nigeria's National Commission



53 Wambui Mwangi, "The International Criminal Tribunal for Rwanda: The Dilemma of the Acquitted", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

## 6. Sierra Leone's Special Court

**The nature and extent of atrocities committed during Sierra Leone's civil war from 1991 to 2002 prompted the creation of the Special Court to try war criminals at the end of the conflict.<sup>54</sup> The innovation of the International Criminal Tribunal for Rwanda had created a significant precedent for addressing war crimes, while the creation of the Hague-based International Criminal Court in 1998 made it difficult for the international community to overlook events in Sierra Leone.**

While the 1999 Lomé Peace Agreement granted the Revolutionary United Front rebel leadership "absolute and free pardon" from prosecution, this immunity did not extend to prosecution for war crimes.<sup>55</sup> In 2000, the government of Sierra Leone urged the UN Security Council to authorise the creation of a Special Court to address these crimes. This move was supported by both the United States and Britain, resulting in the creation of a national institution which was subject to UN oversight. As such, this was the first international criminal tribunal to have been created by both the UN and a national government, and it was also the first tribunal with both international and national components.<sup>56</sup> As a result, the court operated under both Sierra Leonean domestic law and international humanitarian law and, while beyond the control of the UN Security Council, was supported by the court's major funders: Britain and the US.

Sierra Leone's Special Court was mandated to prosecute those who "bear the greatest responsibility" for war crimes, crimes against humanity and other serious violations of international humanitarian law.<sup>57</sup> The Special Court was not capable of trying all perpetrators of war crimes, and thus focused on senior military and political leaders. The court originally indicted 13 people, but only nine of these will stand trial. RUF leader Foday Sankoh and his deputy commander, Sam Bockarie, are now dead. Armed Forces Ruling Council (AFRC) leader Johnny Paul Koromah has disappeared. Chief Hinga Norman, head of the Civil Defence Force (CDF), was also charged, but died in detention in February 2007. The former Liberian president, Charles Taylor – accused of arming and training the RUF – awaits trial in The Hague on 11 counts of war crimes, including crimes against humanity.<sup>58</sup>

The Special Court was set up in a way that sought to address some of the perceived failings of the Arusha Tribunal.<sup>59</sup> This led to the establishment of the Court in 2002 within Sierra Leonean territory rather than in a different country. It also resulted in the development of the Court's "mixed" constitution, which included Sierra Leoneans at every level and in all organs of the Court. The intention was to make international justice locally relevant.<sup>60</sup> In similar vein to the ICTR, the Sierra Leone Special Court has proved to be significant in advancing the development of international criminal law, particularly in relation to child soldiers and gender-based crimes. For the first time, sexual slavery and forced marriages were ruled to be crimes against humanity. Nonetheless, critics of the Court have observed that its creation was largely driven by international players rather than by Sierra

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54 See Abdul Lamin, "Building Peace through Accountability in Sierra Leone", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

55 Institute for Security Studies, "Peacekeeping in Sierra Leone: UNAMSIL Hits the Home Straight", in *Peace with Justice? The Special Court and the Truth and Reconciliation Commission (TRC)*, Institute for Security Studies, Tshwane, Monograph No.68.

56 Abdul Tejan-Cole, "Sierra Leone's 'not so' Special Court".

57 Ibid.

58 Abdul Lamin, "Charles Taylor and the Special Court for Sierra Leone: Politics, Interests and Agendas", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007. See also A Bolaji Akinyemi, "The Taylor Saga: A Clash of Civilisations", *New African*, May 2006, pp.20-23.

59 Thierry Cruvellier, "Africa: The Laboratory of Justice", October 2004 (available at [http://www.crimesofwar.org/africa-mag/afr\\_06\\_cruvellier.html](http://www.crimesofwar.org/africa-mag/afr_06_cruvellier.html); accessed 11 November 2006).



Leoneans themselves.<sup>61</sup> While more than half of the court's staff is Sierra Leonean, there is a clear imbalance between national and international staff in posts of responsibility. Although one of the three Trial Chamber judges is Sierra Leonean, the Appeals Chamber has only one Sierra Leonean judge out of five, and there is no Sierra Leonean at management level in the other organs of the Court.<sup>62</sup> As a result, suspicion developed between national courts, and the Special Court, which the Sierra Leonean government was further criticised for its own appointment of international staff to key positions.<sup>63</sup> The reality that faced Sierra Leone was that its legal structures had been decimated by the civil conflict, and its judiciary was left bereft of human capacity and infrastructure. The promise of the Special Court was that it would leave a "legacy" in Sierra Leone, including improved infrastructure, but the separation between the court and national structures means that this might not be achieved.

Five years after its creation at the cost of more than \$100 million, Sierra Leone's Special Court has so far failed to secure a single conviction.<sup>64</sup> The Court has also been criticised for being partisan in mainly prosecuting the defeated RUF rebel group. Many consider that, with the exception of Charles Taylor, those on trial are not "those who bore the greatest responsibility" for war crimes. Taylor's removal to stand trial in the Hague has also created controversy since many believe that he should be standing trial in Freetown, where the Special Court is located and where many of his alleged crimes apparently took place. Taylor has argued that he had stepped down as president of Liberia and gone into exile in Nigeria in 2003 as a result of amnesty awarded to him during the Accra peace agreement. A further criticism surrounds the intention of the court, with accusations that it has become an instrument of US foreign policy in its "war on terror".<sup>65</sup> Many of the charges made against Taylor referred to the role of Al-Qaeda in West Africa,<sup>66</sup> leading to allegations that the Court was promoting American interests rather than justice for the Sierra Leonean people.

Critics of (Sierra Leone's Special) Court have observed that its creation was largely driven by international players rather than by Sierra Leoneans themselves.

*From left:* Mr Abdul Tejan-Cole, Deputy Director, International Centre for Transitional Justice, Cape Town; Dr Abdul Lamin, Senior Lecturer, International Relations, University of the Witwatersrand, Johannesburg; Prof Henrietta Mensa-Bonsu, Member of Ghana's Reconciliation Commission.



Ms Yasmin Sooka, Foundation for Human Rights, Tshwane, South Africa

60 Ibid.

61 Ibid.

62 Ibid.

63 Ibid.

64 Lamin, "Charles Taylor and the Special Court for Sierra Leone".

65 Ibid.

66 Al-Qaeda's involvement in the "conflict diamonds" wars in West Africa and other parts of the continent has been alleged. See Lamin, "Charles Taylor and the Special Court for Sierra Leone".

## 7. Indigenous Justice? The Cases of Rwanda and Mozambique

There has been increasing interest in the continent of the role of traditional mechanisms of peace and justice and whether these can be adapted to respond to the needs of societies which have experienced mass violations. *Mato oput* in northern Uganda and *gacaca* (literally, “lawn-justice” or “justice on the grass”) courts in Rwanda have presented opportunities to examine the relevance of local justice systems in Accra.

### 7.1 Rwanda

While retributive justice mechanisms were implemented in Rwanda, a major healing process was necessary after the 1994 genocide to rebuild a country that was severely divided along ethnic lines between Hutu and Tutsi, with an inadequate judicial system to cope with the atrocities of its past. With the gaping reality created by the arrest of almost 120,000 mostly Hutu people implicated in the genocide and a beleaguered Rwandan judicial system post-1994, the necessity to find alternatives was stark.<sup>67</sup>

The *gacaca* system is based on a pre-colonial community system for resolving conflicts, and was established throughout the country from October 2001 in order to address the crimes of the 1994 genocide.<sup>68</sup> *Gacaca* hearings are traditionally held in the open and are used to assist with community disputes. The hearings usually centre on the confession of the perpetrator who seeks forgiveness for his or her actions, overseen by respected male elders known as *Inyangamugayo* or “persons of honourable/exemplary conduct”. Their official resurrection under the authority of Rwanda’s government was seen by some as a positive and expedient means to fill the gap between the need for justice and that of reconciliation.<sup>69</sup>

The Rwandan government outlined five ambitious objectives for the *gacaca* system:

- Truth-telling about the genocide;
- Promotion of reconciliation among Rwandans;
- Eradication of the culture of impunity;
- Accelerating the trial of genocide suspects; and
- Demonstrating Rwanda’s own problem-solving capacity.<sup>70</sup>

The *gacaca* courts were thus established to exact a different form of justice with an explicit mandate to emphasise the importance of confession and forgiveness, as well as compensation for victims. They also provided

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67 See for example, Jeremy Sarkin, “The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the *Gacaca* Courts in Dealing with the Genocide”, *Journal of African Law* 45 (2) (2001), p.149.

68 See Rachel Rinaldo, “Can the *Gacaca* Courts Deliver Justice?”, *Inter Press Service*, 8 April 2004; and Dina Temple-Raston, *Justice on the Grass: a Story of Genocide and Redemption* (New York: Free Press, 2005).

69 Helen Scanlon and Nompumelelo Motlafi, “Indigenous Justice or Political Instrument? The *Gacaca* Courts in Rwanda”, Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

70 Wendy Lambourne, “Justice after Genocide: the Rwandan Experiment with *Gacaca* Community Justice”, *Justice after Genocide, Social Justice and Human Rights in the Era of Globalisation*, pp.48-49.

a solution to addressing the backlog of prisoners awaiting trial for crimes committed during the 1994 genocide. In 2003, Rwanda's current head of state, Paul Kagame, issued a decree to grant the provisional release of over 50,000 prisoners implicated in the Rwandan genocide, pending their trials in local *gacaca* courts.<sup>71</sup>

Over 250,000 community members were trained to serve on panels consisting of 19 judges in the 12,000 community-based courts set up throughout Rwanda. They were tasked with identifying victims and perpetrators and then holding trials. Under the process, the accused are tried in the communities where they are alleged to have committed the crimes. Those who are seen to have provided honest testimonies to the courts may have their prison sentences reduced. Attendance by all members of the community is compulsory.

As at April 2007, over 71,405 cases had been heard before the *gacaca* courts and the pink uniforms of those prisoners sentenced to community service are now a common sight in Rwanda's rural areas.<sup>72</sup> Despite the ostensibly honourable notion of the *gacacas*, they have nonetheless been marred by both the circumstances of their creation and the subsequent blurring of the line between what constitutes indigenous justice and what may in reality be political expediency. The open nature of *gacacas* has also attracted many critics. Concerns have been raised that these courts fail to meet international standards for fair trial and lack independence, impartiality and transparency. There have been a number of reprisal killings of genocide survivors, as well as judges and witnesses linked to the *gacaca* courts. The fear of implication and prosecution has reportedly led to both flights from the country and suicides. Furthermore, the courts have been criticised for the fact that all the defendants have been Hutu, while atrocities and human rights violations by the Rwandan Patriotic Front (RPF) committed against both Hutu and Tutsi civilians are addressed in military tribunals and therefore not accessible to the public. This projects to some a public message of an ethnically biased justice. This situation is further compounded by the fact that judges without any formal legal training are handing down sentences ranging from community service to life imprisonment. Furthermore, women bore the brunt of Rwanda's conflict, with an estimated 500,000 being raped during the genocide. Yet, in the face of social stigmatisation within their communities, *gacaca* has often failed to provide a platform for women to speak freely and, in turn, allow for full reconciliation in Rwandan society.

## 7.2 Mozambique

Mozambique was subject to conflicts for over 27 years between 1965 and 1992; first, as a result of the liberation struggle against Portuguese colonialism; and, subsequently, due to the protracted civil war between the *Frente de Libertação de Mocambique* (FRELIMO) government and the South Africa-backed *Resistência Nacional Mocambicana* (RENAMO) after 1974. Around one million people are estimated to have been killed during this period, with a further one million Mozambicans displaced to Zimbabwe, Malawi and South Africa.<sup>73</sup> As part of the 1992 Peace Agreement, a legislative amnesty was granted to all combatants, and no discussion took place over transitional justice mechanisms. As a result, an official silence was endorsed by all concerned parties.

Despite this official approach, a number of mechanisms have been developed by war survivors to achieve some form of post-war justice and healing such as those in the central Mozambique district of Gorongosa. In this

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71 The initial decision to set up *gacacas* occurred in 2000, but the courts were officially launched after the 2003 elections.

72 Fondation Hirondelle, 'Rwanda/*Gacaca* - The *Gacaca* Courts Prepare To Finish Their Mandate', 24 April 2007.

73 See Helena Cobban, *Amnesty After Atrocity? Healing Nations After Genocide and War Crimes*, Ch. 4, pp.136-182 (Boulder: Paradigm Publishers, 2007); and Priscilla Hayner, *Unspeakable Truths, Confronting State Terror and Atrocity* (London: Routledge 2001), 'Leaving the Past Alone', pp.183-205, for two incisive accounts of how Mozambicans dealt with the aftermath of their civil war.

region, strategies enacted through so-called war-related “spirits” have allowed war survivors to re-appropriate the past and find ways to heal communities divided by violent conflict.<sup>74</sup>

One such process involves a ceremony of the *magamba*. These are spirits of male soldiers who died during the civil war whose bodies were not properly buried. Within this context, *magamba* spirits are thought to return and, in general, enter the bodies of women whose relatives were allegedly involved in some crimes against the soldiers. It is argued that the *magamba* spirits strike in order to address the post-civil war politics of denial and to fight for justice.<sup>75</sup> These goals are attained by causing afflictions among war survivors and, in order to deal with *magamba* spirits, there is a need to address war violence so that a process of truth disclosure can be initiated. After diagnosis, *magamba* healers initiate a ceremony which depicts war events, suffering and death and, ultimately, releases the *magamba* spirit. This, in turn, initiates a process of community healing.

While the strength of these mechanisms to help to heal local communities is laudable, *magamba* healers have come to constitute a reality that the state authorities have refused to recognise and engage with. Furthermore, the nature of the “truth” disclosed during the occasions of the *magamba* spirits process does not constitute factual truths about an individual past, but rather a multidimensional and collective truth which removes factors of individual or collective responsibility. As such, there is no clear process for collective healing to enable nation-building.



**ABOVE :** From left: Dr Victor Igreja, Senior Lecturer, Leiden University, Leiden; Ms Annamarie Minder, Country Director, Swiss Agency for Development and Co-operation, Tshwane; Dr Helen Scanlon, Senior Researcher, Centre for Conflict Resolution, Cape Town; Ms Nompumelelo Motlafi, Centre for Conflict Resolution, Cape Town  
**LEFT :** Dr Mireille Affa'a Mindzie, Senior Project Officer, Centre for Conflict Resolution, Cape Town, South Africa

74 Victor Igreja, “The Politics of Peace, Justice and Healing in post-war Mozambique: Practices of Rupture by *magamba* spirits and healers in Gorongosa”. Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007.

75 Ibid.

## 8. The International Criminal Court: Problems and Prospects

**Moving from the local to the external level, the International Criminal Court, a permanent judicial body, was established in The Hague by the Rome Statute of 1998 to prosecute individuals accused of genocide, war crimes and crimes against humanity. The idea of a permanent ICC has a long history.**

More recently, however, the Rwandan genocide and the conflict in the former Yugoslavia republics in the Balkans prompted the creation of two international criminal tribunals, both of which had a limited lifespan. In 1994, the International Law Commission presented a draft statute of a more permanent court to the UN General Assembly. A conference convened in Rome in 1998 adopted what became known as the Rome Statute, in which 120 states voted for the final draft. A total of 60 ratifications were required to bring the statute into operation, and in July 2002 this occurred, thus establishing the ICC. By July 2007, 104 governments were signatories of the treaty, a significant proportion of which are African. A number of powerful governments, such as China and the US, expressed criticisms of the Court, and have refused to sign the Rome treaty.

The ICC's first two cases were brought by Uganda in January 2004 and the DRC in March 2004.<sup>76</sup> The Court can only exercise its jurisdiction where the accused is a national of a signatory state; the alleged crime took place in the territory of a signatory state; or a matter has been referred to the court by the UN Security Council. In the Ugandan case, the indictments issued against Lord's Resistance Army (LRA) leader Joseph Kony and four others came as a result of the referral of the matter to the ICC by the government of Uganda. Thereafter, the government persuaded the LRA to engage in a peace process, and Ugandan leader, Yoweri Museveni, has made an offer of amnesty to the leaders of the LRA. The threat of prosecution for crimes against humanity under international humanitarian law might therefore undermine the promise of amnesty offered by the government in its sovereign capacity to absolve the perpetrators under the national jurisdiction's provisions. The Prosecutor of the ICC, has, however, brought the dilemma to a head when he issued a statement to the effect that, since the cases were referred by Uganda itself, the legal route will have to follow its logical path, defining his role and that of the ICC as a legal and not a political one. This is at the heart of the tension between the legal imperative of justice and the political imperative of reconciliation. While not necessarily contradictory, the relationship between the two goals need further refinement in order to achieve the intention of establishing a cohesive political community which restores the dignity of all its citizens, allowing them to live together, while at the same time not creating a precedent for acting with impunity against fellow citizens.

Some concern has been expressed that, while the ICC has received more than 1,700 communications regarding crimes that fall within its ambit from many parts of the world, the only cases thus far into which investigations have been conducted are in Africa. Accusations have been made that the Court has acted in a way that furthers the unequal power relations between the global North and Africa, promoting a type of "jurisdictional neo-imperialism". This has led to allegations that the ICC punishes poorer nations, while powerful countries such as the US

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76 See Håkan Friman, "International Criminal Court: Investigations of Crimes Committed in the DRC and Uganda: What is next?" *African Security Review* 13(4) (2004), pp.18-28.

continue to commit flagrant human rights abuses in place like Iraq and Guantanamo Bay with impunity. There has also been considerable opposition in many quarters to an international criminal court which is accused of devaluing traditional justice practices and promoting a western form of retributive justice deemed inappropriate in the African context. It is nonetheless important to address the perception, in some quarters, that Africans are inclined to shield war criminals from ICC investigations and prosecutions.

In considering the ICC's relationship with Africa, four important counter-arguments should be considered:

- First, the number of African signatories to the Court is proportionately quite substantial. Twenty-nine of the 53 members of the African Union are signatories of the Statute;
- Second, the nature of crimes that fall under the Court's jurisdiction - war crimes, crimes against humanity, and genocide - have been higher in African countries than in many other parts of the world;
- Third, the Court can only consider cases where crimes were committed after 2002; and
- Finally, most of the cases, with the exception of Darfur, have been referred to the Court by African governments themselves.<sup>77</sup>

## 8.1 Darfur

United Nations Security Council resolution 1564 of September 2004 authorised the then UN Secretary-General, Kofi Annan, to establish an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Sudan's volatile Darfur where about 200,000 have died since 2003.<sup>78</sup> The UN Security Council referred the Darfur case to the ICC in March 2005. It was the first time that the Security Council had made such a decision, and the first time that Washington had compromised on its adamant opposition to the ICC. A five-person commission which included, among others, former South African TRC Commissioner, Dumisa Ntsebeza, was tasked with the investigation and submitting a report to the Security Council within three months.<sup>79</sup> The ICC prosecutor had begun examining war crimes and crimes against humanity in the DRC's Ituri region in 2003. The following year, the Congolese president, Joseph Kabila, requested that the ICC investigators extend their investigation to include abuses committed throughout the country. In October 2005, members of Uganda's Lord's Resistance Army became the first individuals to be officially indicted by the ICC. Arrest warrants were issued for members of the LRA, including its leader, Joseph Kony. Having initially requested ICC intervention, the Ugandan government made belated attempts to stop the ICC from pursuing prosecutions. (Arrest warrants have nonetheless also since been issued for militia leaders in the DRC.)

Based on their investigations, the Darfur commission established that:

- The government of Sudan and the militia known as the *Janjaweed* were responsible for serious violations of international human rights law amounting to crimes under international law; and
- Government forces and militia had conducted attacks, which involved killings of civilians, torture, enforced disappearances, rape and other forms of sexual violence, and forced displacement.

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77 Chandra Lekha Sriram, "The International Criminal Court Africa Experiment: Darfur, Uganda and the Democratic Republic of Congo", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007. For a further discussion of this point, see Chandra Lekha Sriram, *Globalising Justice for Mass Atrocities: A Revolution in Accountability* (London: Routledge, 2005).

78 See: United Nations Commission of Inquiry Report (UNCOI), (available at [http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)), p.2.

79 Dumisa Buhle Ntsebeza, "The International Criminal Court in Darfur", Paper presented at the CCR seminar, *Peace vs Justice: Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17 and 18 May 2007. The five members of the commission were: Antonio Cassese, Mohamed Fayek, Hina Jilani, Dumisa Ntsebeza and Theresa Striggner-Scott.

The commission did not find that the crimes committed constituted genocide, although they were crimes against humanity and war crimes. Its recommendation was, therefore, that the UN Security Council refer the matter to the ICC since the situation in Darfur was deemed to be a threat to international peace and security. The US and China, which are not signatories to the ICC, abstained from voting for the referral, but did not veto the motion, and the case was successfully transferred to the ICC. This was followed by the allegation and identification of two members of the Sudanese government, Ahmad Harun and Ali Kushayb, as being responsible for crimes against humanity in the Darfur region. The ICC and the Sudanese government were involved in what appeared to be a co-operative relationship in establishing a process through which these individuals could be brought to account. Subsequently, the matter has been handed over to the judges of the ICC who are to make a decision regarding the prosecution of the identified individuals.

When considering whether to recommend a TRC or a Criminal Court in the case of Darfur, the UN Commission of Inquiry noted that the two processes need not be mutually exclusive. However, the decision to establish a TRC would need to be taken by the people of Sudan themselves. The UN Commission of Inquiry argued that the prosecutorial route would assist in the ending of conflict, and that thereafter, a reconciliatory process could be implemented to assist with post-conflict peacebuilding. The Ugandan case raises an important tension between the concerns of legal justice administered through international legal instruments, and the national imperatives of peacebuilding and reconciliation processes which make political decisions about prosecutions rather than legal decisions.<sup>80</sup>



**ABOVE :** *From left:* Advocate Dumisa Ntsebeza, former Head of South Africa's Truth and Reconciliation Commission's Investigating Unit; Advocate Howard Varney, Johannesburg Bar and former Member of Sierra Leone's Truth and Reconciliation Commission; Professor Chandra Lekha Sriram, University of East London, London  
**RIGHT :** Mr Suren Pillay, University of the Western Cape, South Africa.

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<sup>80</sup> Diane F. Orentlicher, "Whose Justice? Reconciling Universal Jurisdiction with Democratic Principles"; Leila Nadya Sadat, "The International Criminal Court and Universal International Jurisdiction: A Return to First Principles", in Biersteker, Spiro, Sriram and Raffo (eds.), *International Law and International Relations*, pp.181-93 and 204-221; and Jamie Mayerfeld, "Who Shall Be Judge? The United States, the International Criminal Court, and the Global Enforcement of Human Rights", *Human Rights Quarterly* Vol.25, No.1 (2003), pp.93-129.

## 9. Conclusion

**A number of different mechanisms have been developed to deal with the experience of victims and the fears of perpetrators in order to achieve the goals of justice, truth or reconciliation.**

While truth commissions have a long history in Africa, the idea has gained popularity following the perceived success of the South African model. On the other hand, there is a growing, and sometimes conflicting, trend toward creating institutions which uphold international and national laws, and which emphasise justice in the form of prosecutions for crimes committed regardless of national sovereignty or national peace processes. Despite the political nature of many of these bodies, many agree that their development mark a new era in which African conflicts are sometimes being resolved by judges rather than soldiers. These signify a move, albeit embryonic, toward the acceptance of human rights law under which all citizens are treated equally.

### Policy Recommendations

Nine key policy recommendations emerged from the seminar.

1. If there is to be lasting peace in a society emerging from conflict, justice for victims must be incorporated into any peace and justice mechanisms, and this requires that instruments established ensure that the voices of victims are heard.
2. The decision about the kind of transitional justice approach must be made taking local needs into account, while learning from other experiences. Each country's post-conflict needs are distinct, and transitional justice mechanisms such as truth commissions should respond to each country's specific set of circumstances.
3. It is important to have a clear idea of what the injustice was, who the victim was, and who the perpetrator was in order to implement the appropriate transitional justice mechanism.
4. Peace and justice initiatives need to address the democratic deficit in a way that restores civic trust. Citizens must be able to have civic trust in their institutions of government. They must also believe that justice works for them irrespective of political affiliation, ethnic persuasion or other differences.
5. Agreements and undertakings made to victims and perpetrators by truth commissions must be fulfilled. This should also involve a more developed understanding of the various forms that reparations and healing can take, be it through financial, symbolic, individual or collective means.
6. The United Nations needs to pay attention to future Disarmament, Demobilisation and Reintegration (DDR) programmes, and recognise the multiple roles that women play during conflicts. Post-conflict power relations must also be considered so that women are fully integrated into these programmes.
7. There is a need to broaden the ambit of peace, justice and reconciliation strategies from legal instruments to be sensitive to wider considerations such as symbolic gestures, memorials, monuments, heritage, and indigenous forms of reconciliation and justice.
8. In the African context, the cultural constructions and format of commissions need to be considered. This involves the physical arrangements of hearings as well as a recognition of indigenous forms of communication, dialogue, and customary practices.
9. In order to achieve sustainable peace, peace processes must address the root causes of conflicts as well as the injustice which victims suffered. This requires a more complete assessment of the political economy and socio-economic factors that have fuelled these conflicts.



# Annex I

## Agenda

Day One: Thursday 17 May 2007

**9h00 – 9h15 Welcome and Opening**

Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town

**9h15 – 10h30 Session I: Concepts of Peace and the Politics of Justice in Africa**

Chair: Dr Adekeye Adebajo, Executive Director, Centre for Conflict Resolution, Cape Town

Keynote Address: Ms Yasmin Sooka, Executive Director, Foundation for Human Rights, Tshwane, South Africa, and former Commissioner of the South African and Sierra Leonean Truth and Reconciliation Commissions, "Peace and the Politics of Justice in Africa"

Discussant: Professor Pumla Gobodo-Madikizela, Department of Psychology, University of Cape Town

10h30 – 10h45 Coffee Break

**10h45 – 12h30 Session II: Truth and Reconciliation Commissions in Africa**

Chair: Ms Mary Burton, former Commissioner of the Truth and Reconciliation Commission, South Africa

Speakers: Dr Charles Villa-Vicencio, Director, Institute for Justice and Reconciliation, Cape Town, "Peace versus Justice: The South African TRC and War Crimes Tribunals in Africa"

Dr Kingsley Moghalu, former Special Counsel and Spokesman of the United Nations International Criminal Tribunal for Rwanda, "Prosecute or Pardon? Between Truth Commissions and War Crimes Trials"

12h30 – 13h30 Lunch

**13h30 – 15h00 Session III: Transitional Justice, Democratisation and the Politics of Gender**

Chair: Dr Chris Landsberg, Director, Centre for Policy Studies, Johannesburg

**Speakers:** Professor Sheila Meintjes, Political Studies, University of Witwatersrand, Johannesburg, "Gender and Truth and Reconciliation Commissions"

**Dr Mireille Affa'a Mindzie**, Senior Project Officer, Centre for Conflict Resolution, Cape Town, "Transitional Justice, Democratisation and the Rule of Law"

15h00 – 15h15 Coffee Break

**15h15 – 16h45 Session IV: Case Studies: The Truth Commissions in Sierra Leone and Nigeria**

**Chair:** Ambassador John Hirsch, former US Ambassador to Sierra Leone

**Speakers:** Father Matthew Kukah, Member of Nigeria's National Commission, "Peace vs. Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa: A View from Nigeria"

**Ms Thelma Ekiyor**, Senior Manager, Centre for Conflict Resolution, Cape Town, "Reflecting on the Sierra Leone Truth and Reconciliation Commission: A Peacebuilding Perspective"

16h45 – 17h00 Coffee Break

**17h00 – 18h30 Session V: Charles Taylor and the Sierra Leone Special Court**

**Chair:** Professor Jeremy Sarkin, Fletcher School of Law and Diplomacy, Massachusetts

**Speakers:** Mr Abdul Tejan-Cole, Deputy Director, International Centre for Transitional Justice, Cape Town, "Sierra Leone's 'not so' Special Court"

**Dr Abdul Lamin**, Senior Lecturer, International Relations, University of Witwatersrand, Johannesburg, "Charles Taylor and the Sierra Leone Special Court"

19h30 Dinner

**Day Two: Friday 18 May 2007**

**09h00 – 10h45 Session VI: Case Studies: The TRC in Ghana and The International Criminal Tribunal in Rwanda**

**Chair:** Professor Henrietta Joy Abena Mensa-Bonsu, Member of Ghana's National Reconciliation Commission, Accra

**Speakers:** Professor Kenneth Agyemang Attafuah, former UN International Advisor to the Truth and Reconciliation Commission of Liberia and Executive Secretary of Ghana's National Reconciliation Commission, Accra, "Ghana's Truth Commission"

**Ms Wambui Mwangi**, Legal Officer, United Nations, New York, "The International Criminal Tribunal for Rwanda: The Dilemma of the Acquitted"

10h45 – 11h00

Coffee Break

### **11h00 – 12h30 Session VII: Indigenous Justice? The Cases of Rwanda and Mozambique**

**Chair:** Ms Annamarie Minder, Country Director, Swiss Agency for Development and Co-operation, Tshwane

**Speakers:** Dr Victor Igreja, Senior Lecturer, Leiden University, Leiden, "Peace, Justice and Healing in Post-War Mozambique: *Magamba* Spirits in Gorongosa"

**Dr Helen Scanlon**, Senior Researcher, Centre for Conflict Resolution, Cape Town, and

**Ms Nompumelelo Motlafi**, Centre for Conflict Resolution, Cape Town, "Indigenous Justice or Political Instrument? The *Gacaca* Courts in Rwanda"

12h30 – 13h30

Lunch

### **13h30 – 15h00 Session VIII: The International Criminal Court: Problems and Prospects**

**Chair:** Advocate Howard Varney, Johannesburg Bar and former Member of Sierra Leone's Truth and Reconciliation Commission

**Speakers:** Professor Chandra Lekha Sriram, School of Law, University of East London, London, "The International Criminal Court Africa Experiment: Darfur, Uganda and the Democratic Republic of the Congo"

**Advocate Dumisa Buhle Ntsebeza**, former Head of South Africa's Truth and Reconciliation Commission's Investigating Unit, "The International Criminal Court in Darfur"

15h00 – 15h30

Filling out of evaluation forms and Coffee Break

### **15h30 – 16h30 Session IX: Rapporteurs' Report and the Way Forward**

**Chair:** Ambassador John Hirsch, former US Ambassador to Sierra Leone

**Speakers:** Dr Helen Scanlon, Senior Researcher, Centre for Conflict Resolution, Cape Town

**Mr Suren Pillay**, Senior Lecturer, Department of Political Studies, University of the Western Cape

# Annex II

## List of Participants

1. Dr Adekeye Adebajo  
Executive Director  
Centre for Conflict Resolution  
Cape Town, South Africa
2. Ms Cécile Aptel  
Senior Fellow  
International Centre for Transitional Justice  
Johannesburg, South Africa
3. Professor Kenneth Agyemang Attafuaah  
Executive Director  
Justice and Human Rights Institute  
Accra, Ghana
4. Mr Paul Bradnum  
Senior Manager  
Centre for Conflict Resolution  
Cape Town, South Africa
5. Mr Chris Brown  
Consul-General of Canada  
Cape Town, South Africa
6. Ms Mary Burton  
Former Commissioner of South Africa's  
Truth and Reconciliation Commission  
Cape Town, South Africa
7. Ms Yaliwe Clarke  
Senior Project Officer  
Centre for Conflict Resolution  
Cape Town, South Africa
8. Professor André du Toit  
Department of Political Studies  
University of Cape Town, South Africa
9. Dr Fanie du Toit  
Programme Manager: Reconciliation and  
Reconstruction  
Institute for Justice and Reconciliation  
Cape Town, South Africa
10. Ms Thelma Ekiyor  
Senior Manager  
Centre for Conflict Resolution  
Cape Town, South Africa
11. Ms Madeleine Fullard  
Head of Missing Persons Task Team  
National Prosecuting Authority  
Tshwane, South Africa
12. Professor Pumla Gobodo-Madikizela  
Department of Psychology  
University of Cape Town, South Africa
13. Ambassador John Hirsch  
Former US Ambassador to Sierra Leone  
New York, US
14. Dr Victor Igreja  
Leiden University  
Leiden, Netherlands
15. Professor Antjie Krog  
University of the Western Cape  
Cape Town, South Africa
16. Father Matthew Kukah  
Member, Nigeria's National Commission  
Kaduna, Nigeria
17. Dr Abdul Lamin  
University of the Witwatersrand  
Johannesburg, South Africa

18. Dr Chris Landsberg  
Centre for Policy Studies  
Johannesburg, South Africa
19. Ms Taryn Lesser  
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Washington, USA
20. Mr Leon Levy  
Commission for Conciliation, Mediation and  
Arbitration and Chair of the Board of Governors  
Centre for Conflict Resolution  
Cape Town, South Africa
21. Ms Lorna Levy  
Independent Writer and Researcher  
Cape Town, South Africa
22. Mr Ndaba John Makhubele  
Chief Director: International Legal Relations  
Department of Justice and Constitutional  
Development  
Tshwane, South Africa
23. Professor Sheila Meintjes  
University of the Witwatersrand  
Johannesburg, South Africa
24. Prof Henrietta Mensa-Bonsu  
Member of Ghana's Reconciliation  
Commission and University of Ghana  
Accra, Ghana
25. Ms Annamarie Minder  
Country Director  
Swiss Agency for Development and Co-operation  
Tshwane, South Africa
26. Dr Mireille Affa'a Mindzie  
Senior Project Officer  
Centre for Conflict Resolution  
Cape Town, South Africa
27. Ms Matshepo Mobeng  
Department of Justice and Constitutional  
Development  
Tshwane, South Africa
28. Dr Kingsley Moghalu  
Global Fund to Fight AIDS, Tuberculosis and  
Malaria  
Geneva, Switzerland
29. Mr Thapelo Mokushane  
Deputy Director: TRC Unit  
Department of Justice and Constitutional  
Affairs  
Tshwane, South Africa
30. Ms Nompumelelo Motlafi  
Centre for Conflict Resolution  
Cape Town, South Africa
31. Ms Wambui Mwangi  
Office of Legal Counsel  
United Nations  
New York, US
32. Advocate Dumisa Ntsebeza  
Former Head of South Africa's TRC  
Investigations Unit  
Cape Town, South Africa
33. Mr Suren Pillay  
University of the Western Cape  
South Africa
34. Professor Jeremy Sarkin  
Fletcher School of Law and Diplomacy  
Massachusetts, US
35. Dr Helen Scanlon  
Centre for Conflict Resolution  
Cape Town, South Africa

- 36. Ms Yasmin Sooka  
Foundation for Human Rights  
Tshwane, South Africa
- 37. Professor Chandra Lekha Sriram  
University of East London  
London, Britain
- 38. Mr Abdul Tejan-Cole  
International Centre for Transitional Justice  
Cape Town, South Africa
- 39. Advocate Howard Varney  
Johannesburg Bar and former Member of  
Sierra Leone's Truth and Reconciliation  
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South Africa
- 40. Dr Charles Villa-Vicencio  
Institute for Justice and Reconciliation  
Cape Town, South Africa
- 41. Mr Gerard Voges  
Centre for Conflict Resolution  
Cape Town, South Africa

- 42. Ms Nomfundo Walaza  
Desmond Tutu Peace Centre  
Cape Town, South Africa
- 43. Mr Richard Wood  
Consul-General of Britain  
Cape Town, South Africa

**Conference Team:**

- 44. Ms Nompumelelo Motlafi  
Centre for Conflict Resolution  
Cape Town, South Africa
- 45. Ms Pippa Segall  
Centre for Conflict Resolution  
Cape Town, South Africa
- 46. Ms Selma Walters  
Centre for Conflict Resolution  
Cape Town, South Africa
- 47. Mr Fanie Jason  
Photographer  
Cape Town, South Africa



ABOVE: Participants in the seminar, "Peace versus Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa", held at the Vineyard Hotel, Cape Town, on 17 and 18 May 2007

# Other publications in this series

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## VOLUME 1 THE NEW PARTNERSHIP FOR AFRICA'S SECURITY

THE UNITED NATIONS, REGIONAL ORGANISATIONS AND FUTURE SECURITY THREATS IN AFRICA

The inter-related and vexing issues of political instability in Africa and international security within the framework of UN reform were specifically focused on at this policy seminar, held from 21 - 23 May 2004 in Claremont, Cape Town.



## VOLUME 5 WHITHER SADC?

SOUTHERN AFRICA'S POST-APARTHEID SECURITY AGENDA

The role and capacity of the Southern African Development Community's (SADC) Organ on Politics, Defence and Security (OPDS) were focused on at this meeting in Oudekraal, Cape Town, on 18 and 19 June 2005.



## VOLUME 2 SOUTH AFRICA IN AFRICA

THE POST-APARTHEID DECADE

The role that South Africa has played on the African continent and the challenges that persist in South Africa's domestic transformation 10 years into democracy were assessed at this meeting in Stellenbosch, Cape Town, from 29 July - 1 August 2004.



## VOLUME 6 HIV/AIDS AND HUMAN SECURITY:

AN AGENDA FOR AFRICA

The links between human security and the HIV/AIDS pandemic in Africa, and the potential role of African leadership and the African Union in addressing this crisis were analysed at this policy advisory group meeting in Addis Ababa, Ethiopia, on 9 and 10 September 2005.



## VOLUME 3 THE AU/NEPAD AND AFRICA'S EVOLVING GOVERNANCE AND SECURITY ARCHITECTURE

The state of governance and security in Africa under the AU and NEPAD were analysed and assessed at this policy advisory group meeting in Misty Hills, Johannesburg, on 11 and 12 December 2004.



## VOLUME 7 BUILDING AN AFRICAN UNION FOR THE 21ST CENTURY

RELATIONS WITH REGIONAL ECONOMIC COMMUNITIES (RECS), NEPAD AND CIVIL SOCIETY

This seminar in Cape Town from 20 - 22 August 2005 made policy recommendations on how the AU's institutions, including NEPAD, could achieve their aims and objectives.



## VOLUME 4 A MORE SECURE CONTINENT

AFRICAN PERSPECTIVES ON THE UN HIGH-LEVEL PANEL REPORT, A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY

African perspectives on the United Nations' (UN) High-Level Panel report on Threats, Challenges and Change were considered at this policy advisory group meeting in Somerset West, Cape Town, on 23 and 24 April 2005.



## VOLUME 8 THE PEACEBUILDING ROLE OF CIVIL SOCIETY IN SOUTHERN AFRICA

This meeting, held in Maseru, Lesotho, on 14 and 15 October 2005, explores civil society's role in relation to southern Africa, democratic governance, its nexus with government, and draws on comparative experiences in peacebuilding.



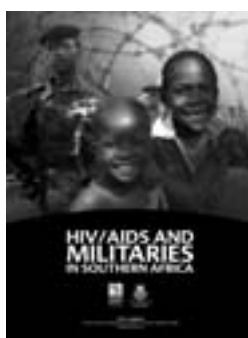
**VOLUME 9  
WOMEN AND  
PEACEBUILDING IN  
AFRICA**

This meeting, held in Cape Town on 27 and 28 October 2005, reviewed the progress of the implementation of UN Security Council Resolution 1325 on Women and Peacebuilding in Africa in the five years since its adoption by the United Nations in 2000.



**VOLUME 13  
SOUTH SUDAN WITHIN  
A NEW SUDAN**

This policy advisory group seminar on 20 and 21 April 2006 in Franschhoek, Western Cape, assessed the implementation of the Comprehensive Peace Agreement (CPA) signed in January 2005 by the Government of the Republic of the Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A).



**VOLUME 10  
HIV/AIDS AND  
MILITARIES IN  
SOUTHERN AFRICA**

This two-day policy advisory group seminar in Windhoek, Namibia, on 9 and 10 February 2006 examined issues of HIV/AIDS and militaries in southern Africa.



**VOLUME 14  
AFRICAN PERSPECTIVES  
ON THE UN  
PEACEBUILDING  
COMMISSION**

This meeting, in Maputo, Mozambique, on 3 and 4 August 2006, analysed the relevance for Africa of the creation, in December 2005, of the UN Peacebuilding Commission, and examined how countries emerging from conflict could benefit from its establishment.



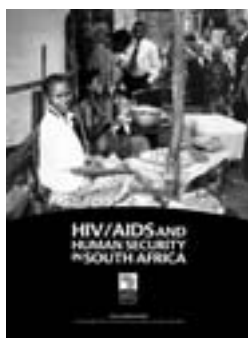
**VOLUME 11  
AIDS AND SOCIETY  
IN SOUTH AFRICA:  
BUILDING A COMMUNITY OF PRACTICE**

This policy and research seminar, held in Cape Town on 27 and 28 March 2006, developed and disseminated new knowledge on the impact of HIV/AIDS in South Africa in the three key areas of: democratic practice; sustainable development; and peace and security.



**VOLUME 15  
THE PEACEBUILDING  
ROLE OF CIVIL SOCIETY  
IN CENTRAL AFRICA**

This sub-regional seminar, held from 10 to 12 April 2006 in Douala, Cameroon, provided an opportunity for civil society actors, representatives of the Economic Community of Central African States (ECCAS), the United Nations (UN) and other relevant players to analyse and understand the causes and consequences of conflict in central Africa.



**VOLUME 12  
HIV/AIDS AND HUMAN  
SECURITY IN SOUTH  
AFRICA**

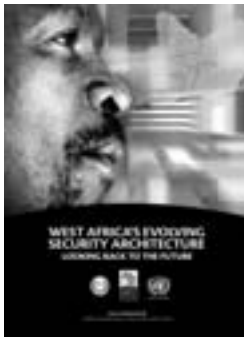
This two-day policy seminar on 26 and 27 June 2006 took place in Cape Town and examined the scope and response to HIV/AIDS in South Africa and southern Africa from a human security perspective.



**VOLUME 16  
UNITED NATIONS  
MEDIATION EXPERIENCE  
IN AFRICA**

This seminar, held in Cape Town on 16 and 17 October 2006, sought to draw out key lessons from mediation and conflict resolution experiences in Africa, and to identify gaps in mediation support while exploring how best to fill them. It was the first regional consultation on the United Nations' newly-established Mediation Support Unit (MSU).





**VOLUME 17**  
**WEST AFRICA'S**  
**EVOLVING SECURITY**  
**ARCHITECTURE**

LOOKING BACK TO THE FUTURE

The conflict management challenges facing the Economic Community of West African States (ECOWAS) in the areas of governance, development, and security reform and post-conflict peacebuilding formed the basis of this policy seminar in Accra, Ghana, on 30 and 31 October 2006.



**VOLUME 20**  
**WOMEN IN POST-CONFLICT**  
**SOCIETIES IN AFRICA**

The objective of the seminar, held in Johannesburg, South Africa, on 6 and 7 November 2006, was to discuss and identify concrete ways of engendering reconstruction and peace processes in African societies emerging from conflict.



**VOLUME 18**  
**THE UNITED NATIONS**  
**AND AFRICA: PEACE,**  
**DEVELOPMENT AND**  
**HUMAN SECURITY**

This policy advisory group meeting, held in Maputo, Mozambique, from 14 to 16 December 2006, set out to assess the role of the principal organs and the specialised agencies of the UN in Africa.



**VOLUME 21**  
**AFRICA'S EVOLVING**  
**HUMAN RIGHTS**  
**ARCHITECTURE**

The experiences and lessons from a number of human rights actors and institutions on the African continent were reviewed and analysed at this policy advisory group meeting held on 28 and 29 June 2007 in Cape Town, South Africa.



**VOLUME 19**  
**AFRICA'S RESPONSIBILITY**  
**TO PROTECT**

This policy seminar, held in Somerset West, South Africa, on 23 and 24 April 2007, interrogated issues around humanitarian intervention in Africa and the responsibility of regional governments and the international community in the face of humanitarian crises.

Whether moving from armed conflict; the end of authoritarian rule; or systematic state repression, there is often a demand in Africa's post-conflict societies for justice that is often counter-balanced by the need for reconciliation. A key focus of the concerns captured in this seminar report is an analysis of the dilemmas posed by the establishment of peace without justice, as opposed to the establishment of justice without peace.



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