

**REPORT ON THE JICA AND ICTJ WORKSHOP ON
"TRANSITIONAL JUSTICE AND DEVELOPMENT IN AFRICA"
ENHANCING SOCIO-ECONOMIC JUSTICE IN SOCIETIES IN
TRANSITION: CASE STUDIES ON THE AFRICAN CONTINENT**

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Japan International Cooperation Agency (JICA)
International Center for Transitional Justice (ICTJ)

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Report Summary



With socio-economic development a crucial priority in Africa, transitional justice practitioners are asking whether methods of addressing past human rights abuses can also help tackle development issues. ICTJ, in conjunction with the Japan International Cooperation Agency (JICA), explored this question during a workshop on Transitional Justice and Development in Cape Town, South Africa, from Sep. 15-19. In their discussions, the more than 20 participants concluded that transitional justice mechanisms need to be shaped by the socio-economic and political contexts in which human rights violations took place if the justice measures are to be relevant to the public. Engaging development issues is an important way to take a more holistic approach toward justice.

The workshop was the third in a series devoted to the topic. At the previous workshops, in October 2006 and November 2007, experts examined the theoretical connections between transitional justice and development. The most recent seminar focused on the practical intersections between the two fields in post-conflict societies. The workshop brought together practitioners from government, civil society and international agencies in 11 African countries: Burundi, the Democratic Republic of Congo, Ghana, Kenya, Liberia, Rwanda, Sierra Leone, South Africa, Sudan, Uganda and Zimbabwe.

After opening remarks by ICTJ Chairperson Alex Boraine and JICA Regional Representative Shuji Ono, and a keynote address by South African Human Rights Commission Chair Jody Kollapen, the workshop took up a series of case studies that challenged participants to give the same weight to socio-economic and cultural rights as to civil and political rights. Topics ranged from transitional justice's treatment of the underlying causes and consequences of conflict, to the tangible benefits of mechanisms such as truth-seeking bodies and security sector reform. Participants also discussed institutional reforms meant to

boost equality and fight discrimination, reparations programs that focus on equitable development and the pursuit of socio-economic justice through post-conflict recovery mechanisms and international aid.

Delegates drew on their own countries' experiences to offer lessons for others. There were talks on the Sierra Leone Truth and Reconciliation Commission's lessons for Kenya; the lessons of Liberian security sector and institutional reform efforts for Kenya and Zimbabwe; and a Gender and Development talk that focused on DRC, Zimbabwe and Sudan, as well as the role of international aid. A special session reflected critically on South Africa's transition. Participants also discussed the formation of a Transitional Justice and Development Network within the broader African Transitional Justice Network. Participants agreed that the nexus between transitional justice and development was of continuing interest and relevance to their own work.

The presentations and discussion sessions are briefly summarized in the main body of this report. The next section reproduces the original concept paper that led to the workshop. It outlines in detail both the broad conceptual issues at stake as well as specific points of possible intersection between transitional justice and development. Following that is an overview of all of the formal presentation and discussion sessions that happened during the week. Finally, a brief conclusion discusses the 'way forward.' Appendices contain information about the workshop schedule (Appendix 1), and the participants, presenters and observers(Appendix 2).

Original Workshop Concept Paper

I. Introduction

1. From 15 to 19 September 2008, the ICTJ, in conjunction with JICA, will host the third in a series of workshops on Transitional Justice and Development in Cape Town, South Africa.

2. The previous workshops held in October 2006 and November 2007 brought together a range of experts and interested parties from across the African continent and around the world to examine the nexus between transitional justice and development. The 2007 workshop provided for a comprehensive opportunity to “identify and analyse specific linkages, both actual and potential, between transitional justice and development, as well as articulate how the two types of initiatives ought to be designed and implemented in order to contribute to or reinforce each other’s goals”. Transitional justice and development were dissected through their concepts and perspectives; correlations were established between the main transitional justice mechanisms (i.e. prosecutions, truth seeking, reparations and institutional reform building). In addition, the role of global and regional institutions such as the United Nations Peacebuilding Commission, the African Union and its sub-regional affiliates received significant attention in these seminars, as did issues of displacement, DDR, identity and reconciliation.

3. Participants at the November 2007 workshop agreed that the nexus between transitional justice and development was of continuing interest and relevance to their work. They however recognised that the conceptual terrain was so new and potentially complicated that further thinking was needed on whether a relationship could exist between both disciplines. To that end, one of the main recommendations from the workshop was the need to create a network of practitioners, academics and other individuals and institutions devoted to investigating further the intersection between both fields. Based on these concerns, this third seminar will focus on examining how far any interaction can be deepened between transitional justice and development by looking in concrete and practical terms at the intersection between both disciplines within the context of post-conflict societies.

II. Context

4. Specifically, this third workshop will use country case studies to critically examine whether transitional justice mechanisms can adequately address patterns of inequality and structural deficiencies, as well as support efforts to overcome historical patterns of marginalisation in an effort to ensure a more sustained and equitable political and socio-economic process in which the needs

of vulnerable groups, including war-affected populations, are addressed in post-conflict societies. In this connection, the seminar will revisit its previous objective of identifying best practices, to the extent possible, for the integration of development goals into a comprehensive transitional justice or a post-conflict public policy programme.

5. Following the two workshops in which ICTJ, JICA and its various interlocutors explored the links between transitional justice and development, it has become apparent that unless transitional justice mechanisms deal with historical patterns of social and economic injustice and develop recommendations to address their future recurrence, the discipline would have little impact on the lives of the victims it seeks to help. Participants argued that developing remedial actions to address these concerns is critical to ensuring the transition to more stable and peaceful societies. While there have been efforts to draw attention to social and economic injustice (e.g. East Timor and South Africa), critics argue that the narrow focus of the field, operating as it does as a sub-branch of international law and predominantly focused on individual criminal responsibility in which remedies are sought within criminal justice systems, has often resulted in the inability of transitional justice mechanisms to articulate a detailed understanding of the sources of conflict and from there, elaborate remedial actions that comprehensively address grievances in societies emerging from conflict. Critics further argue that a transitional justice discourse, which is rooted in a deeper appreciation of the sources of conflict (including an analysis of the structural inequities, socio-economic dimensions of violence and systematic discrimination and exploitation) and their continued manifestations after active fighting has stopped, may result in the broadening of the landscape of transitional justice to critically influence the process of societal change, transformation and prevention of a resurgence of conflict.

6. This being said, this conference will challenge participants to consider whether an expansive transitional justice agenda focusing on addressing structural inequalities and development concerns should be an aspiration of transitional justice mechanisms. While there is a call for transitional justice mechanisms to pursue a more holistic approach that goes beyond a civil and political rights understanding of the discourse to one that addresses the social and economic dimensions of violent conflicts, not only through the analysis of the sources of conflict, but in the design and outcome of transitional justice processes, can the discipline achieve this additional task when it faces challenges in various contexts to achieve its immediate mandate of addressing past human rights abuses and dealing with perpetrators of war crimes?¹

¹ Development and legitimacy in transitional justice, Report from workshops co-organised by the Working Group on Development and Peace at the conference "Building a Future on Peace and Justice, Nuremberg, 25 to 27 June 2007, (http://www.frient.de/downloads/FriEnt_Tagungsdoku_www.pdf), p. 6.

7. Through various cases studies on the continent, the conference will examine whether transitional justice mechanisms have the capacity to tackle developmental issues and should be responsible for evolving developmental goals. While there may be some developmental connections, such as through reparation programmes, do such schemes have significant impact on the development agenda? Similarly, can the development agenda accommodate and properly address the core concerns of the transitional justice field especially around issues of redistributive justice and ensuring better equity on addressing social and economic rights. Currently truth-seeking mechanisms tend to look at a narrow band of human rights violations; other transitional justice tools do not grapple well with addressing patterns of historical exclusion and marginalisation evolving around such factors as ethnicity and identity or delve into debates around structural deficiencies or patterns of inequalities beyond discrimination. A few truth commissions have a mandate to look at economic crimes and the exploitation of natural resources (e.g. Liberia); but should we expect them to assume more responsibility? Truth commissions already suffer from gathering a team to effectively investigate and document human rights abuses; can we expect them therefore to be a corrective measure for addressing development concerns?

III. Conference Objectives

8. The major objectives of the conference are therefore to explore the possibilities and limitation of the interaction between transitional justice and development. To this end, the conference provides for:

- An examination of whether transitional justice mechanisms can effectively address and respond to patterns of historical exclusion and inequalities; can the discipline systematically include economic, cultural and social rights as a way forward in ensuring a more equitable future in societies in transition.
- Identifying best practices, to the extent possible, and to articulate innovative approaches to, and guidelines for, the integration of development goals into a comprehensive transitional justice or a post-conflict public policy discourse.
- Consideration of how the ambit of transitional justice can be broaden to give wider considerations to analyses that focus on gender, culture and social justice, as well as recommendations that respond to problems of forced displacement/dispossession of groups, systematic discriminations and inequalities in access to basic services such as health and education, food, water, social security, housing, environment rights which are not subject to international criminal jurisdiction.

IV. Conference topics and questions

9. The conference will be structured around eight sessions. Key topics and questions to address include:

Transitional Justice and the treatment of the underlying causes and consequences of conflict

- a. How well do transitional justice mechanisms address socio-economic injustice stemming from structural injustices and distributional inequities that are often the sources of conflict?
- b. How effective are truth commissions, prosecution initiatives, reparation programs, and institutional reforms in addressing patterns of social and economic inequalities, as well as discrimination and deprivation in their attempts to map out the root causes of conflict? Are there limitations or possibilities for transitional justice mechanisms ability to adequately address cases around systematic discrimination and inequalities in access to health care, work or housing; the forced displacement of populations, starvation through the restriction on the delivery of humanitarian assistance?
- c. Looking at the prospective truth commission in Kenya and the proposed mechanism in Uganda, are there lessons from previous commissions on addressing social justice issues that can influence that country's Truth, Justice and Reconciliation Commission?

Special Session on South Africa's transition: critical reflections

The South African transitional justice process has been extensive in its entirety; however, in this 10th anniversary year of the production of the final report of the TRC, the process is coming under scrutiny, with some in civil society focusing on various gaps in the TRC. One area of concern is that the TRC is often criticised for not adequately addressing the social and economic injustices of the apartheid system, in particular, that it “did not to reveal the underlying patterns that would have to be changed in order to bring about sustainable peace and justice”.² This session deliberates the perceived weaknesses of the process, including the absence of an analysis of systemic violations particularly of women, as well as remedies to address economic, social and cultural rights.

There will be a site visit to programme that focus efforts by South Africa to deliver an equitable development programme that targets marginalised and dispossessed groups.

Assessing the tangible benefits of transitional justice mechanisms

² Development and legitimacy in transitional justice, Report from workshops co-organised by the Working Group on Development and Peace at the conference “Building a Future on Peace and Justice, Nuremberg, 25 to 27 June 2007, (http://www.frient.de/downloads/FriEnt_Tagungsdoku_www.pdf), p. 6.

- a. Can transitional justice mechanisms adequately distil specific recommendations about a country's development programme?
- b. What role can transitional justice play in ensuring that economic, social and cultural rights are protected in the future?
- c. Can development practitioners learn from the findings of truth commissions to better inform their development goals and plans for a country's recovery and reconstruction?
- d. What impact can the recommendations from transitional justice mechanisms have on the design of new public policies and development programmes?

Transitional justice, equity and non-discriminatory institutional reform programmes

There is a growing consensus that transitional justice can and should encourage institutional reform, in particularly around reviewing and strengthening legislation that is critical to institutional reform. For example, transitional justice mechanisms could be used to strengthen or transform government agencies and ministries, as well as other state apparatus that have a direct impact on the protection of economic, social and cultural rights. To this end, this session will address the following questions:

- a. To what extent do Truth Commissions critically examine institutions that are perceived in society as being a source of conflict? What impact do transitional justice mechanisms have on supporting efforts to build transformative, democratic and inclusive entities? Of particular concern is the role of security agencies. Other potential state institutions include the justice, health and educational sectors.
- b. How effective are access to justice initiatives at addressing and designing programmes aimed at providing access to justice for previously marginalized groups?
- c. Can Truth Commissions promote redistributive justice mechanisms?
- d. Should transitional justice address the transformation not only of political and legal institutions but also economic ones?
- e. Can transitional justice mechanisms improve the protection afforded to victims of torture and sexual violence?
- f. How can transitional justice encourage governments to review existing laws or elaborate new laws to focus on social protection, health care and internally displaced persons and refugees?

Lessons for current and future transitional justice mechanisms: designing reparations programmes: laying the foundations for an equitable development programme

Without anticipating the outcome of current and future transitional justice processes, this session will focus on how whether reparations programmes can be designed in ways to provide effective remedies that can guarantee equitable development programmes in societies in transition and which comprehensively address the needs of war-affected populations (e.g. women, children, internally

displaced persons, as well as ex-combatant populations) within the context of reintegration and rehabilitation programmes. The session will examine how development goals interacts (or should interact) with transitional justice measures by focusing on the following:

- a. Designing an equitable, non-discriminatory framework for access to basic services (e.g. health care, education) for vulnerable and marginalised groups.
- b. Designing a framework for access to land.
- c. Developing programmes that focus on house and property restitution.

The pursuit of socio-economic justice in post conflict recovery mechanisms and in international aid mechanisms

- a. What are the critical attempts by donors in dealing with socio-economic justice in early phases of assistance to victims of conflict? The session will look at the role of the Consolidated Appeal Process (humanitarian response coordinated by the UN Office for the Coordination of Humanitarian Affairs), the UN Peacebuilding commission and the AU African Peace and Security Architecture
- b. The role of business (private) sector, including international corporate bodies in natural resources driven conflicts

10. Along with these topics, there will be a keynote speech, as well as a wrap-up session that focuses on the next steps in this final seminar series. In this context, of critical importance would be the need to address a recommendation made at the 2007 seminar to develop a Transitional Justice and Development Network, as well as deliberations on the publication of the findings from these seminars to a wider audience.

V. Resource Persons

11. As with the 2006 and 2007 seminars, the workshop participants will be drawn from the governments, donor agencies, academic institutions and civil society organizations in countries in transition or those emerging out of transition. Representatives of regional organizations will also be invited. The conference will target participation from the following countries: Liberia, Uganda, Sierra Leone, DRC, Angola, Mozambique, Rwanda, Burundi, Liberia, Zimbabwe, Ghana, Kenya and Sudan. This year, however, the participants will be the speakers at the meeting. The idea is hear the voices of those practitioners in the frontline of transitional justice and development. The idea is to use their practical experience to further interrogate the link between transitional justice and development.

VI. Conclusion

13. The proposed conference is part of a three-year joint effort by ICTJ and JICA to explore the possibilities and limitations of seeking to elaborate a development connection with transitional justice. This third in the series of

seminars will look at country specific case studies to explore both the expectation and limitations and advantages and disadvantages of bringing both disciplines closer together. It is hoped that following this workshop, participants can foster a network of informed individuals working in the transitional justice and development fields to further interrogate the connections in both fields through practical experience.

Overview of Presentations

Opening Session: Enhancing Socio-Economic Justice in Societies in Transition (Monday, 15th September 2008)

KEYNOTE ADDRESS: (JODY KOLLAPEN)

CHAIR: Dr. Alex Boraine

Jody Kollapen's keynote address focused on transitional justice and development. Mr. Kollapen noted the anniversary of the Universal Declaration of Human Rights, and highlighted the enormous gap between the standards set and peoples lived reality. He asserted that international norms and standards must speak to societies, and one of the challenges is finding the balance between the international language and local reality. He observed that people have different conceptions of what justice is, which raises significant issues on how to construct transitional justice mechanisms.

He identified the major challenge for the field of transitional justice as that at its broadest, it includes anything a society does to deal with the past, but a narrow view can be criticized for ignoring root causes and privileging civil and political rights, and not including economic and social rights. He acknowledged that on the other hand broadening the scope may make the effort so broad that it becomes meaningless. He maintained that if the nature of the human rights violations is inextricably linked to the economic, social, and political system in that country, then it is difficult to imagine that you can deal with those violations without dealing with these larger issues, since there is a causal link between them.

He argued that the transitional justice process in South Africa did not look at violations of economic and social rights, for example, the dispossession of land. He stressed that South Africa's Truth and Reconciliation Commission (TRC) did not look at the policy of forced removals and the destruction that was wrecked on the cohesion of communities and families, noting that these limitations had sad consequences on South African society today. He asserted that beneficiaries have not determined their role in apartheid, which has resulted in South Africa's inability to deal with land reform, employment equity, affirmative action, or on changing the names of towns, and roads. He recognized that while the TRC cannot redress at state-societal problems, he questioned what the result would have been if the TRC adopted a wider approach?

He concluded that it is inevitable that transitional justice practitioners must cast the net wide, noting that the nature of the violations that we are dealing with is wide. He warned that not to adopt a wider transitional justice remit would reduce transitional justice a criminal justice or legal process.

Discussion Session

In the discussion that followed, a recurrent issue was whether socio-economic issues should be automatically incorporated into a transitional justice process. Kollapen responded that only where the nature of the conflicts is inextricably linked to those violations, and there is a relationship between the conflicts does it makes sense to incorporate socio-economic rights into transitional justice mechanisms. Additionally, the suggestion was made that traditional justice mechanisms already address socio-economic concerns and that perhaps they should be utilized more in transitional justice processes. Another issue raised was the need to distinguish what transitional justice mechanisms are to accomplish from larger governmental developmental policy. It was resolved that transitional justice mechanisms cannot replace that which a government must do, but that governments should implement the policy recommendations that come out of a transitional justice process. The discussion stressed the need to be realistic about the mandates for transitional justice mechanisms and the need not to overburden them.

SETTING THE SCENE: EXPANDING THE MANDATE OF TRANSITIONAL JUSTICE: CAN THE DISCIPLINE ADDRESS SOCIO-ECONOMIC JUSTICE? OVERVIEW OF THE WORKSHOP, COMFORT ERO

Comfort Ero introduced the main purpose of the workshop. Recalling that the previous workshops which aimed at enhancing the knowledge of practitioners vis-à-vis the link between transitional justice and development, she informed that this current workshop sought to move away from theoretical discussions and instead discuss practitioners' experiences with how transitional justice can reinforce development goals.

Discussions from Previous Transitional Justice and Development Workshops, Olivier Kambala

Olivier Kambala gave a brief background on deliberations from previous workshops. He began by mentioning the workshop of March 2005, which was the first cooperation between ICTJ and JICA on the nexus between transitional justice and human security. That workshop, together with the work of a United Nations commission on human security in 2003 and two subsequent reports by UN bodies on human security and development, provided the inspiration for the series of ICTJ/JICA workshops on transitional justice and development from 2006 to 2008.

The 2006 Transitional Justice and Development seminar focused on the concepts underlying the disciplines of transitional justice and development as well as the mechanisms through which transitional justice and development operate. By examining cases of post-conflict countries, the workshop sought to identify development projects which would enhance human security from a local

and regional perspective. The 2007 workshop provided an opportunity to identify and analyze specific linkages, both actual and potential, between transitional justice and development, as well as articulate how the two types of initiatives ought to be designed and implemented in order to contribute to or reinforce each other's goals. Participants noted the correlations between transitional justice mechanisms (prosecutions, truth-seeking, reparations and institutional reforms) and development mechanisms. African institutions, including the AU and its sub-regional affiliates, received significant attention.

Session One: Transitional Justice and its Treatment of the Causes and Consequences (Tuesday, 16th September 2008)

Facilitator: Comfort Ero

AN EXAMINATION OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION AND ITS TREATMENT OF THE CAUSES AND CONSEQUENCES OF CONFLICT, MOHAMED SUMA

Mohamed Suma's presentation made the case that, in Sierra Leone, the causes and consequences of the conflict were intertwined. He began by outlining the specific recommendations of Sierra Leone's Truth and Reconciliation Commission (TRC) to illustrate this point. Suma stated that the Commission's final report mentioned many causes and consequences of conflict, and emphasized that many of these continued to persist, but that "greed and grievance" were key factors of the conflict. According to the TRC report, other factors included bad governance, alienation of youth, a corrupt justice system, abuse of authority over police, elitist and unrepresentative politics, suppression of free speech, and rampant corruption. The Report found that these factors were not only causes, but also helped to prolong the conflict. Suma stated that the report emphasized the following areas for reform: the rule of law, governance, security sector, corruption, and women and youth. Suma noted that after the release of the report, a follow-up committee was to be established to supervise the implementation of recommendations, but that committee has not yet been appointed, and the implementation of the TRC's recommendations remains in doubt.

LESSONS FOR KENYA, WAINAINA NDUNG'U

While Kenya has been seen as an example of peace, Ndung'u argued, it the country has a long history of human rights violations to warrant a pressing need for transitional justice institutions. Ndung'u asserted that there is no institution in Kenya that really operates independently, for example, the electoral commission was not independent, and no one really knows who won the December 2007 presidential election. This he asserts resulted in the post-election violence. He maintained that Kenya will continue to erupt because of failures to address political and historical abuses of the past such as governmental failures to address justice, inequality, impunity, and constitutional reform. He also identified inequality and youth unemployment as important

factors. Although Kenya is now embarking on a transitional justice process, he noted the country's history of about 36 commissions of inquiry as explaining deep scepticism towards truth commissions. Ndung'u argued that Kenya needs to deal with transitional justice issues in a more solid way, including issues of land reform, structural inequality, and corruption.

ZIMBABWE'S AGREEMENT: TRANSITIONAL JUSTICE IMPLICATIONS, HOWARD VARNEY

As a first observation, Varney noted that there are no formal transitional justice mechanisms in the agreement. He asserted that the door seems to be left open for some form of justice, but in order to solidify the agreement, a de facto amnesty must have been understood, at least for senior perpetrators. Varney walked through the bill, noting provisions relevant to transitional justice:

- The Preamble refers to values of justice, fairness, and human rights.
- The first articles (3-5) address economic issues, calling for the end of sanctions and compensation of landowners by the UK.
- Article 7 provides for equal treatment of all, and calls for mechanism for advancement of national unity. But parties only have to *consider* whether a mechanism should be set up to advise on actions for national healing and victims. Perhaps this is partly because civil society did not make strong demands for victims up front, but waited until the eve of the agreement to release such demands.
- Article 6 recognizes the right of free political activity, but no provision is made for monitoring.
- Article 12 provides for freedom of assembly and association, but doesn't require the government to promote and protect, only requires training for personnel.
- Article 13 requires human rights training for security services, but no requirement for overhaul of rights or reform of security sector—will be left in political hands.
- Article 15 deals with youth, but does not call for disbanding of youth militias.
- Article 18 (c) states that the law must be applied impartially in bringing political criminals to justice. But senior perpetrators will presumably be left out. Civil society should call for accountability for them; pardons could be a problem.
- Article 18 (d) states that leaders of parties to the agreement must ensure that their organizations are not responsible for violence. But notice that the government itself is not party to agreement, including security forces.
- Article 18 (j) requires review of politically motivated prosecutions. But there has been no resolution of who will control justice ministry.
- Article 19 concerns the media. This article should encourage the starting of independent media, though all big media are state media at the moment.

- Article 20 concerns gender parity. It recommends appointment of women to the cabinet, but has no enforcement provisions or quota recommendations.
- Article 20 (1) (3) allows abuse of power by the president. He may proclaim martial law or national emergency, suspending much of the bill of rights. He may also wield preventative detention powers. The president may also make pardons, for which he needs advice of cabinet, but that is ambiguous. Finally, the president may make key appointments.

Discussion Session

The lively discussion following these three presentations focused on the prospects for transitional justice in Zimbabwe, the effects of the power-sharing agreement in Kenya, and the potential for traditional institutions to augment the work of formal transitional justice mechanisms. Topics discussed included:

- Njonjo Mue pointed out that the Kenyan model of power-sharing, which has been partially exported to Zimbabwe, is dangerous. It not only renders election results moot, but also creates a scramble for cabinet positions in both parties with a possible formation of a “grand opposition” of backbenchers.
- Howard Varney and Piers Pigou noted that the Zimbabwe agreement does leave a small amount of room for manoeuvring in terms of transitional justice. Varney mentioned that, while truth was not mentioned once in the agreement, there is a possibility for victims to sue for civil damages. Civil society lacks the resources, however, to fund many such suits. Varney and Pigou agreed that the short term prospects for a truth commission are not good, and Varney said he was particularly concerned at the lack of interim rules, for the 18 months before a new constitution is ready, in the agreement.
- Traditional and restorative transitional justice measures received attention as well. In Uganda and East Timor, such measures met with mixed success. On the one hand, they reached more people than formal measures could, but on the other hand, the procedures often excluded women and did not meet international standards.
- The importance of public involvement in the work of truth commissions came up. Sierra Leone was cited as an example of success in that regard—the public’s engagement in the procedure has meant that there is public pressure for implementation of the TRC’s recommendations.

Session Two: Assessing the Tangible Benefits of Transitional Justice Mechanisms (Tuesday, 16th September 2008)

Facilitator: Olivier Kambala

TRANSITIONAL JUSTICE MECHANISMS: CAN THEY PROTECT ECONOMIC, SOCIAL AND CULTURAL RIGHTS? HERRON GBIDI

Herron Gbidi's presentation focused on the question of whether transitional justice can protect socio-economic rights. Gbidi asserted that the violation of economic social and cultural rights leads to conflict and profound social inequality. He maintained that transitional justice mechanisms can contribute to the promotion of socio-economic rights by recommending transformative action through the establishment of anti-corruption commissions, and tribunals to look into economic crimes. Gbidi dispensed with the notion that economic, social and cultural rights are more complicated to implement or adjudicate than civil and political rights.

IMPACT AND LIMITATIONS OF RECOMMENDATIONS FROM TRUTH COMMISSIONS ON PUBLIC POLICY AND DEVELOPMENT PROGRAMMES, SARA-ANN LEWIS AND GEORGE OFORI

Sara-Ann Lewis' presentation discussed the tangible benefits of transitional justice mechanisms in Sierra Leone through the TRC and the Special Court for Sierra Leone (SCSL). Lewis noted that one of the main benefits of the TRC was the participation and wide reconciliation that took place through truth telling. She also enumerated the that creation of the Human Rights Commission which has a mandate to make sure that all the recommendations coming out of the TRC process are implemented was a tangible benefit. In addition, she identified the review of laws and the enactment of three gender sensitive laws as achievements of the TRC process. Further, she considered the TRC's recommendation regarding the payment of reparations to victims as an important contribution. Lewis observed that most of the prominent players during the civil war in Sierra Leone were arrested, and that one accomplishment of the SCSL is that it sent a clear message that impunity will not be tolerated. She stated that there were also indirect benefits of the SCSL because it hired legal practitioners in the country, which helped to build capacity and enhance skills. However, she questioned whether the creation of the SCSL was really necessary. In this regard, she highlighted a number of limitations pertaining to the SCSL, including: the TRC not revealing all the truth, because many victims were afraid to come forward because of the SCSL, the exclusion of the national justice system, the number of prosecutions by the SCSL were small, and that there are no clear next steps after the conclusion of the SCSL in 2010.

George Ofori's presentation focused on the National Reconciliation Commission (NRC) in Ghana. In his estimation Ghana's transitional justice process is a success. He described the NRC's mandate to investigate past atrocities, devise appropriate reparation and remedy programs and mainly to promote reconciliation of Ghanaian society. He asserted that the Commission established a forum to allow victims to come forward, tell their stories and receive relief. Ofori stated that the work of the Commission marks a great advancement

for Ghana since it is the first time in the history of the country that people have been remedied for the harm they suffered by the hands of government agents. He remarked that one criticism of the NRC was the lack of a mandate to prosecute for the crimes of the past, which created the impression that the NRC was nothing more than a toothless bulldog.

WHAT CAN DEVELOPMENT PRACTITIONERS LEARN FROM TRUTH COMMISSIONS TO BETTER INFORM THEIR DEVELOPMENT GOALS AND NATIONAL RECOVERY STRATEGIES?
MICHAEL OTIM

Michael Otim's presentation focused on Uganda's long history of failed commissions and transformative processes. Otim highlighted several lessons that can be learned from these experiences namely: that truth seeking is a very difficult task where conflict is still ongoing and that most people expect reparation and loose faith in the process when it is not forthcoming. He remarked that in the current discussions to design a transitional justice mechanism in Uganda, the designers are looking into ways of incorporating traditional justice systems. Otim noted for example, that the elders are to facilitate the truth-telling process and to resolve the dispute, mindful of the amnesty provision. He stressed that it is important that civil society serves as a driving force in the establishment of transitional justice mechanisms and push for truth seeking. Otim also highlighted the importance of establishing a more realistic time frame for the work of transitional justice bodies.

Discussion Session

The discussion following these presentations focused mainly on the issue of reparations. Many participants expressed concern about the small monetary value of material reparations particularly regarding the magnitude of some of the harms experienced. Participants raised the question whether the material reparations were to be symbolic or restorative in nature. Much discussion surrounded the design of Ghana's reparation scheme and the monetary value ascribed for particular violations. It was agreed that money alone was insufficient to repair victims. One participant noted that when utilizing traditional justice mechanism there is a possibility of setting punishment in the form of community work as a form of reparations.

Session Three: Special Session on South Africa's Transition: Critical Reflections (Wednesday, 17th September 2008)

Facilitator: Zohra Dawood, Executive Director, Open Society Foundation

PANEL DISCUSSION: NAHLA VALJI, PIERS PIGOU, TREVOR NGWANE, AND HOWARD VARNEY

Piers Pigou's discussion focused on South Africa's truth commission and the shortcomings of its recommendations. Pigou asserted that substantive transformation of structural inequalities should be the focus of transitional justice mechanisms, particularly truth commissions. Pigou argued that transitional justice mechanisms need to counter the impression that they are short-term and only deal with political concerns. He noted that the South African TRC's mandate was restrictive, and that it prioritized investigation into individual violations. The result, he concluded, was that there was no narrative on beneficiaries, which led to a culture of denialism. Pigou further remarked that continuing data collection is necessary to enrich and develop the TRC's data gathering and that access to the TRC archives should be granted. He pointed out that the TRC's recommendation-making process was not inclusive, and as a result there has not been much ownership of the recommendations and the government has only selectively followed them.

Trevor Ngwane's also focused on the shortcomings of the TRC in South Africa. He stated that one of the problems with the TRC was that it adopted an apolitical a-historical notion of violence and equated the victim with the perpetrator in moral terms. Ngwane maintained that the TRC failed in terms of reparations, because the government only gave each victim R 30,000. He criticized the TRC for focusing on the violent excess of apartheid, while ignoring systemic violations. Ngwane pointed out that the true beneficiaries of apartheid were big business, which benefited from the cheap labour system. He stated that there is turmoil in South Africa today evidenced by protest actions and strikes, namely because of socio-economic issues particularly the failure to return land to indigenous peoples. Ngwane concluded that transitional justice needs to be integrated into broader developmental goals and needs to investigate structural and agency issues as well as focusing on the material beneficiaries of unjust societies such as big business.

Nahla Valji's presentation highlighted the main criticisms against the TRC in South Africa. She noted that the limitations of the TRC's mandate and its focus on individual political violations lead to the commission's failure to deal with socio-economic rights. Valji asserted that there is little support among Whites for affirmative action or redistribution, although most will agree that violence based on race is wrong. She maintained that the institutional hearings held by the TRC for business became a platform for business to talk about their role in the anti-apartheid struggle as opposed to their direct support to apartheid and keeping the system afloat. Valji stressed that the reparations program in South Africa refused to call business to account or to tax business adequately, but instead the President called on business beneficiaries to make voluntary contributions. She levelled a criticism at transitional justice practitioners in South Africa for not paying sufficient attention to the role of the Land Commission and Human Rights Commission. Valji argued that economic repression and physical violence are usually both means for maintaining power and not recognizing this misses the

continuity in violence. She concluded that we need to redefine how we think about transitions, and how long it takes to rebuild institutions.

In reflecting upon the various criticisms levelled against the TRC, Howard Varney queried what the alternative was to focusing on individual violations, since in order to draw attention to community issues, one needs to show a large number of individuals to demonstrate a pattern. He agreed that the recommendations of the TRC were weak, asserting that they were drafted by academics and not based on the fact-finding gathered by the TRC. Varney stated that where the TRC denied conditional amnesty or where perpetrators did not apply for it, there needed to have been some consequence, but this has not happened in South Africa. Speaking on the legacy of the TRC, he recoiled at the de facto back door amnesty as part of the current prosecution policy and the ongoing political pardons process. He questioned whether the development problems that were raised by the panel are the result of the failures of the TRC or failures of Government elaborating a national developmental policy. Varney conceded that the TRC should have focused more on socio-economic rights. Varney also admonished that it should not only be a question about truth-seeking mechanisms, which can only have limited impact, but instead we need to look at constitutional reform processes, as well as wider institutional reform processes.

Discussion Session

The discussion following these presentations touched on a number of key observations including:

- Acknowledging that transitional justice processes are not the panacea of all societal ills and the need to be realistic in terms of how transitional justice mechanisms can affect broader economic policy;
- The need to have a transitional process which empowers civil society and fosters ownership, since it is civil society that will ultimately facilitate further attempts to hold politicians accountable;
- Transitional justice should not be a tool to tinker with the system, but should be part of the broader struggle for true economic and political justice.

Session Four: Gender and Development (Wednesday, 17th September 2008)

Facilitator: Helen Scanlon

OVERVIEW OF ICTJ TRANSITIONAL JUSTICE AND GENDER CONFERENCE, TAMAR FELDMAN

Feldman summarized the Transitional Justice and Gender Conference. She remarked that there were delegates from both post- and pre-transitional

societies. Feldman explained that presentations stressed the significance of truth commissions, reparations, security sector reform, and traditional mechanisms for gender. She recalled that one of the first points of discussion was UN res. 1325 on the role of women in peacemaking processes, yet women's experiences have remained marginalized. Feldman observed that some discussions raised the need to broaden the consideration of gender-based crimes, and to get beyond the simplistic conception of women as victims. She asserted that women's roles during conflicts are rarely remembered and that transitional justice mechanisms could perhaps solidify gender justice outside of conflict as well. Feldman stated that transitional justice needs to reconceptualize its approach; economic and social violations need to receive more consideration, since women and children are frequently the principal victims of these crimes. She concluded that transitional justice, development and gender often intersect, and a key challenge of transitional justice is to create sustainable institutions to address those issues together.

PROMOTING GENDER JUSTICE AND DEVELOPMENT, DIANE INGABIRE GASANA, GHADA MOHAMED SHAWGI, ANTOINE NGALAMA, KUDAKWASHE CHITSIKE

Chitsike outlined the progress in Zimbabwe toward equality for women, but emphasized that legal progress often does not mean real progress, and that violations of women's rights are also often impediments to development. She found that the laws on the books have not really been enforced, and discrimination often persists in practice, in particular there exists a culture of violence against women. She asserted that women must have the legal right and access to the means of improving themselves and society. Reparations, Chitsike argued, are necessary to end impunity, and equal access to justice for women is a prerequisite for this.

Diane Ingabire Gasana outlined the status of gender roles in Rwanda. She stated prior to 1994, Rwandan women were infantilized and lacked inheritance rights, voting rights, or the ability to enter into contracts. Gasana claimed that since 1994, the legal rights of women have changed significantly, for example at the national level; the constitution guarantees women 30% of decision-making jobs. She noted that 300,000 women were victims of the genocide, and during the Rwandan genocide more than 100,000 women got HIV. She pointed out that women in Rwanda play a major role in gacacca and the truth-telling process. Gasana also praised Rwanda for having the highest rate of women in parliament in Africa (49%). She conceded that despite progress in some areas, gender mainstreaming has met challenges, especially from private and traditional institutions.

Ghada Mohamed Shawgi's presentation provided an overview of gender issues in Sudan, focusing on five main areas: displacement, poverty and female-headed households, sexual violence, political participation and women's rights.

She asserted that displacement and attacks are major concerns because they affect women's lives and affect their role in the family. Shawgi identified sexual violence as an important weapon of war in Darfur and highlighted the inadequate legal protection for rape victims. She described political participation by women in Sudan as dominated by the urban middle class at the exclusion of rural women. Shawgi commented on how subsequent peace agreements have not provided adequate roles for women to participate. She discussed a number of discriminatory laws, and identified the failure to create a mechanism to monitor commitments to women's rights in the Comprehensive Peace Agreement as a major flaw. She also criticized the blanket amnesty in the North-South war for reinforcing the culture of impunity for sexual violence.

Antoine Ngalama gave a brief summary of the state of gender issues in the Democratic Republic of Congo (DRC), and described training workshops that have been planned to combat discrimination. He noted that women's rights are included in the DRC's constitution. Ngalama asserted that the social situation in the DRC, has had a negative effect on women's lives: making them heads of households, fighting in militias, becoming "comfort wives," or becoming prostitutes. He stated that women face discrimination in every area of life, including access to education and health care. He also discussed the culture of violence against women, including physical and sexual abuse within families. He stated that women are still a minority in the government and private sphere. Ngalama argued that the Government should incorporate gender equality workshops with two objectives: to popularize the integration of gender equality in policy planning, and to educate policy makers on gender equality policies.

Discussion Session

The discussion stressed the disconnect in many of these situations between the legal and actual rights of women. There was general agreement on the necessity of basic rights for women for sustainable peace and development. In Sudan, it was noted that women's groups from different parts of the country are often able to cooperate when their male counterparts cannot get along. For Rwanda, Gasana received questions on the extent of progress for women in Rwanda. She responded that the high proportion of women in Parliament has been of mainly symbolic value for Rwandan women. Comments on Zimbabwe lamented the power-sharing agreement's lack of provision for gender issues, and several comments drew attention to the gap between advocacy goals and real progress.

Session Five: Transitional Justice, Equity and Non-Discriminatory Institutional Reform (Thursday, 18th September 2008)

Facilitator: Howard Varney

THE IMPACT OF TRANSITIONAL JUSTICE ON REFORMING STATE INSTITUTIONS: POSSIBILITIES IN KENYA AND LIBERIA FOR NON-DISCRIMINATORY REFORMS, NJONJO MUE AND HERRON GBIDI

Njonjo Mue's presentation focused on institutional reform in Kenya. Mue noted that there has been a history of lack of political will in carrying out institutional reforms. He surmised that this culture of maintaining the status quo is not likely to change without the establishment of a Truth Commission. He also discussed the dysfunctional prosecutorial authority, the lack of independence in the judiciary and the need for constitutional reform. Mue stressed the need to reform the police who routinely carry out extra-judicial executions and disappearances.

Herron Gbidi's presentation gave a historical review of Liberia and how this has led to the need for reforming state institutions. Gbidi stated that the Comprehensive Peace Agreement in Liberia provided a framework for state reconstruction. Gbidi also gave an overview of current institutional reform efforts in Liberia focusing on the electoral, security sector and governance reform. He concluded that civil society and international community involvement are the key factors that have contributed to the prospect of non-discriminatory reform of state institutions in Liberia.

DESIGNING REDISTRIBUTIVE MECHANISMS THROUGH TRANSITIONAL JUSTICE: POSSIBILITIES IN ZIMBABWE, TENDAI MAREGERE

Tendai Maregere's presentation examined the prospects of a redistributive mechanism in Zimbabwe. He surmised that the current political agreement in Zimbabwe does not completely shut out the possibility for transitional justice and redistributive justice. He noted that the Agreement calls for the establishment of an Economic Commission to address the living conditions of people in Zimbabwe. Maregere stressed the need for constitutional and security sector reform in Zimbabwe. He identified the issue of reparations as a key challenge for Zimbabwe.

Discussion Session

The discussion following these presentations highlighted the importance of ensuring that recommendations regarding institutional reform are implemented. Some participants raised concerns about what substantive changes occurred in abusive institutions following the end of a truth commission's work. One participant noted that while the government should take a leading role in implementing recommendations, civil society must be vigilant in its watch dog role.

**Session Six: Transitional Justice and Reintegration of War-Affected Groups
(Thursday, 18th September 2008)**

Facilitator: Helen Scanlon

HOW SHOULD GOVERNMENT REINTEGRATE COMMUNITIES WHOSE LAND HAS BEEN APPROPRIATED? AMB. PROCES BIGRIMANA

Amb. Proce Bigrimana's presentation discussed the efforts of the Burundian government in reintegrating refugees and returnees. He described the mandate of the National Commission in Charge of Lands and Other Goods, which includes settling land disputes, and providing assistance to the victims of dispossession. He concluded that the Commission has not been effective in carrying out its duties and that a lot more work needs to be done to resolve land disputes.

HOW SHOULD GOVERNMENT AND DEVELOPMENT DONORS CREATE AN ECONOMIC INFRASTRUCTURE FOR RETURNEES AND DISPLACED COMMUNITIES? MICHAEL OTIM AND YUKIKO KUMASHIRA

Michael Otim's presentation highlighted the necessity of successfully implementing reintegration programs. He stated that in Uganda many of those that have returned from conflict have not underwent formal DDR programs, which has been problematic. Otim discussed current efforts by the Ugandan government to implement reintegration programs, but asserted that much more needed to be done in terms of economic support. He gave an overview of a number of the difficulties that ex-combatants face when returning to communities ranging from lack of economic opportunity to social stigma. Otim stressed the necessity of psychological support in order to assist ex-combatants to deal with post-traumatic stress disorder.

ENSURING GENDER-SENSITIVITY FOR RETURNEES, KUDAKWASHE CHITSIKE

Kudakwashe Chitsike's presentation focused on the difficulties that women face regarding reintegration into communities. She stressed the need for gender training and sensitivity in any reintegration process, particularly with respect to traditional leaders. Chitsike maintained that since women are often re-victimized during conflict, it is imperative to have psychological services to help women deal with past violations. She concluded that reintegration has to be done holistically, and there needs to be focus on rehabilitation.

Discussion Session

The discussion following these presentations centered on the challenges faced by women returnees. Amb. Proce Bigrimana's described how women

returnees in Burundi often become refugees in their own countries because of their limited land ownership rights. In addition, Michael Otim explained the plight of “bush wives” who have children from the “bush” and face stigma in their communities.

Session Seven: Lessons for Current and Future Transitional Justice Mechanisms: Designing Reparations Programmes/Laying the Foundation for an Equitable Development Programme (Thursday, 18th September 2008)

Facilitator: Trevor Ngwane

DESIGNING FUTURE REPARATIONS PROGRAMMES: LESSONS FROM SIERRA LEONE, SARA-ANN LEWIS

In her presentation, Lewis outlined the short-term goals for Sierra Leone’s system of reparations. She explained that reparation was a key recommendation in Sierra Leone’s TRC report, and that the country is one of the two countries chosen by the UN as a pilot for the Peace Building Fund. Lewis described how Sierra Leone was allocated 3.3 million dollars to begin the reparations process, while the government is providing 246,000 dollars. She noted that while the reparations program is still in its preparation stage, the government has committed itself to the program. Lewis emphasized that there will be several categories of material and non-material reparations, for example amputees and war wounded form one category, while those that were severely sexually assaulted form another. She also identified community reparations as another category; recalling that in some cases, entire villages were destroyed. Lewis explained that skills training and micro-credit are to be provided as well. She noted that the current President’s public apology to women was a form of symbolic reparations and provided a form of public acknowledgement. Lewis said she hoped the government’s annual budget would include a quarterly allocation to sustain the reparations project and identified possible diverse funding sources including seized assets (from Charles Taylor, or beneficiaries of blood diamonds).

POSSIBILITIES FOR LIBERIA, DEDE AGNES DOLOPEI

Commissioner Dede Dolopei provided insight on how Liberia’s prospective reparations program might be fashioned and described Liberia’s plans for implementation. She began by calling reparations a problem area for the TRC, in Liberia and mentioned the TRC’s efforts to manage expectations regarding reparations. She recognized that since the war affected nearly everyone, one could in principle pay reparations to everyone, but that no final decision has been reached by the Commission on a reparation’s policy. She noted that Liberia intended to pursue a policy of both symbolic reparations (such as official apologies and public ceremonies) and material reparations (such as a trust fund for victims, educational services, restitution of land and property, housing assistance, health services, and micro-finance). Dolopei gave specific examples

of potential symbolic and material reparations including: giving symbolic reparations to Liberia's indigenous population in the form of a more inclusive account of the country's history; and giving material reparations to refugees who fled to Ghana by rebuilding their destroyed housing. She spoke of the need, however, to distinguish between reparations and development programs. Dolopei also called for broad involvement of civil society in victim outreach programs and in implementation of the upcoming reparations program. She ended her presentation by soliciting discussion of the role of international actors in the reparations process.

POSSIBILITIES FOR SUDAN, AHMED IDRIS ALI

Ahmed Idriss Ali's presentation described the obstacles to transitional justice mechanisms in Sudan. He began by describing the background of the conflict in various regions in Sudan. Ali maintained that the Comprehensive Peace Agreement, which brought an end to the civil war in the South of Sudan did not mention pardons or amnesty, but it was clear that a de facto amnesty was in place for all parties. The justifications for this he identified as the need for peace and stability, that necessary evidence is often unavailable, that the cost of prosecution may be very high, and that local practices favor traditional and non-judicial processes. Ali maintained that in the case of Darfur, there is no clear break with the past, since there has not been a regime change. Although Ali stressed the obstacles to transitional justice mechanisms, he remarked that there were a few possibilities, including a non-judicial truth commission, reform of the justice sector, and more general reconciliation policies.

POSSIBILITIES FOR THE DEMOCRATIC REPUBLIC OF CONGO, DIEU-DONNE WEDI-DJAMBA

Wedi-Djamba's presentation described the DRC's urgent need for reparations, its three largely failed efforts at providing reparations, and some possible recommendations for future attempts at reparations. He asserted that over the last forty years, the DRC has experienced human rights violations on a massive scale, with over five million deaths, hundreds of thousands of disappearances, and a legacy of torture and rape, yet almost no reparations have been paid. Wedi-Djamba stated that a Human Rights Violations Commission was convened in 1991 as part of a national conference on political reform, but president Mobutu, fearing disclosures about his own role in abuses, ended the procedure prematurely, and prevented the Commission's 220-page report from being published. Wedi-Djamba noted that the DRC's current Truth and Reconciliation Commission has met a similar fate. He argued that the Commission was doomed from the start because of lack of political will; nearly all the parties in government have blood on their hands and fear the Commission's possible disclosures. He asserted that transitional justice efforts have been frustrated because of the fragility of the ceasefire in the Eastern part of the DRC. Wedi-Djamba proposed that a realistic reparations process in the DRC would

begin with community reparations initiatives in housing, education, and health care for victims, and continue with the establishment of an independent TRC, and end with the institution of a special court for violations of international humanitarian law.

Discussion Session

The discussion centered on the feasibility of large reparations programs, issues of funding, and divisiveness in the Liberian TRC.

- Sara-Ann Lewis received several questions about the adequacy of the \$3.3 million in funding so far received for reparations in Sierra Leone. She emphasized that this funding is to be used mostly to put in place structures for the administration of reparations, not to fund reparations themselves. She also defended the program's system of classifying victims and their deserved reparations by the severity of the crime suffered.
- Commissioner Dolopei received questions on the possible role of international funding of reparations in Liberia. She said that Liberia is seeking international funding for reparations, but has not yet received any.
- There was lively discussion of divisions and acrimony within the Liberian TRC. Commissioner Dolopei suggested that some divisions are to be expected in a diverse group of commissioners.
- Olivier Kambala noted one other source of reparations for the DRC. The International Court of Justice has ruled that Uganda should pay \$4 billion in damages to the DRC, but the money has not been forthcoming.

Session Eight: The Pursuit of Justice and International Aid Mechanisms (Friday, 19th September 2008)

Facilitator: Olivier Kambala

EXAMINATION OF DONOR AID ON SOCIO-ECONOMIC JUSTICE, DIANE INGABIRE GASANA, TENDAI MAREGERE AND WAINAINA, NDUNG'U

Diana Ingabire Gasana's presentation discussed how donor aid has been used for education, battling HIV/AIDS, good governance and accountability programs. She surmised that more donor aid was needed in order to advance socio-economic justice.

Tendai Maregere's presentation asked whether international aid is doing enough to ensure poverty alleviation in Africa. He maintained that 60-70% of donor money does not get to the recipient countries, but rather stays in the countries of origin.

Wainaina Ndung'u's presentation inquired whether we are doing enough to uncover the structural underpinning of inequality. He asserted that we need to examine the outcome of aid, noting that poverty remains at a high rate. Ndung'u concluded that human rights and transitional justice practitioners have to start asking themselves how transitional justice mechanisms can be harnessed to address structural inequality.

THE ROLE OF THE UN PEACEBUILDING COMMISSION AND TRANSITIONAL JUSTICE, MOHAMED SUMA

Mohamed Suma's presentation provided an overview of the UN Peacebuilding Commission's role in preventing a relapse to violence in post-conflict societies. He also described the role of the Peacebuilding Fund in contributing to peace building efforts in developing countries. He mentioned that the Peacebuilding Commission works on issues such as capacity building, justice system reform, and regional threats to security. One of the main challenges he identified based on the Peace Building Fund's intervention in Sierra Leone, was the need to consolidate requirements since each donor had their own criteria and presented different requirements to the government.

Discussion Session

Participants questioned the effectiveness of development aid. Michael Otim, for example, noted that in Uganda, considerably aid has been given but there has not been any corresponding advancement. He queried where the money was going and recognized the problem of corruption. Otim also noted that often donors have their own agenda and priorities, which are not always consistent with the needs of the recipient countries.

Session Nine: Transitional Justice and Development Networks (Friday, 19th September 2008)

Facilitator: Comfort Ero

THE SPECIAL ISSUE OF THE INTERNATIONAL JOURNAL ON TRANSITIONAL JUSTICE, HUGO VAN DER MERWE AND NAHLA VALJI

Hugo Van der Merwe and Nahla Valji discussed the origins of the International Journal for Transitional Justice. Van der Merwe stated that the journal seeks to encourage and develop South based voices to reflect on their own practice in the field of transitional justice. He discussed the special issue of the journal focusing on transitional justice and development. He noted that development issues are becoming part of the mainstream transitional justice debate and that soon there will not need to be a special issue to reflect debates on socio-economic rights. Both he and Valji stressed the need for African

practitioners to document and share their experiences through notes from the field.

THE AFRICAN TRANSITIONAL JUSTICE NETWORK: INTRODUCTION AND PLENARY DISCUSSION, FRANKLIN ODURO AND NAHLA VALJI

Franklin Oduro and Nahla Valji gave a brief overview of the creation of the African Transitional Justice Network. Oduro stated that the purpose of the network was to build capacity of African practitioners in the field to document, monitor their experiences and conduct research. Oduro discussed how the network's list-serve provides a forum for people to share ideas and debate about transitional justice issues in Africa. He identified the main challenge of the network as including practitioners from non-English speaking countries.

Discussion Session

The discussion following these presentations highlighted the need for language diversity within the African Transitional Justice Network, particularly regarding French and Arabic. Participants also stressed the necessity of creating regional sub-groups and thematic areas within the larger African Transitional Justice Network. Comments regarding the International Journal of Transitional Justice focused on encouraging African practitioners to contribute to the Journal.

Discussion: Way Forward and Recommendations

Much of the discussion that concluded the workshop focused on how to incorporate socio-economic issues into transitional justice mechanisms. There were many ideas and recommendations for how this might operate in practice. Ideas included:

- Including transitional justice mechanisms in peace accords and defining the mandate of the commissions in constituting legislation and incorporating social-economic objectives;
- Creating a concrete human rights framework to address development that has the potential of restoring human dignity to victims of atrocities. This human rights framework can also help us in analyzing conflicts;
- Reparations should be a shared responsibility of the members of the society. Outside resources should not be relied on, rather redistribution of wealth and resources should occur through tax reform and other means;
- Reparations programs should be an inseparable part of accountability;
- Perpetrators should be involved in community development and big business should be held accountable for ill-gotten gains during the conflict;
- Recalling that defining the field of transitional justice too narrowly will limit possible achievements, while overburdening transitional justice mechanisms by trying to address everything might undermine the entire project of transitional justice.

Appendix 1: Full Workshop Schedule

SUNDAY 14	Arrival of Participants	
MONDAY 15		
09:30 – 09:45	Opening of the Conference by the ICTJ Chairperson	Alex Boraine
	Opening Address by Resident Representative of JICA South Africa	Shuji Ono
09:45 – 10:15	Keynote Address: Enhancing Socio-Economic Justice in Societies in Transition	Jody Kollapen
10:15 – 10:45	Tea/Coffee	
10:45 – 12:30	Questions and Answer Time	<i>Chair: Alex Boraine</i>
12:30 – 13:30	Lunch	
13.30 - 14.00	Introduction of Participants and their Organisations Introduction of ICTJ and JICA	

MONDAY 15

Continued

14:00 – 14:15	Housekeeping issues	Paddy Clark
14:15 – 14:30	Presentation Setting the scene: Expanding the mandate of transitional justice: can the discipline address socio-economic justice? Overview of the workshop	Comfort Ero
14:30 – 14:45	Discussions from previous Transitional Justice & Development Workshops	Olivier Kambala
14:45 – 16:00	FILM DOCUMENTARY	
16.00-16.30	Tea/Coffee	
16:45	Shuttle departs for the University of Cape Town	
17:30	Seminar on “Barack Obama and the Black Atlantic: Towards a Post-racial Global Africa”, Prof Ali Mazrui	

TUESDAY 16

Session One

 Transitional Justice and its Treatment of the Causes and Consequences of Conflict

Facilitator: Comfort Ero

09:30 – 11:00

Presentations

Addressing patterns of historical exclusion and socio-economic injustice in Truth Commissions

Presenters:
Howard Varney (ICTJ)

An examination of the Sierra Leone Truth and Reconciliation Commission and its treatment of the causes and consequences of conflict

Mohamed Suma (Sierra Leone)

Lessons for Kenya

Wainaina Ndung’u (Kenya)

11.00 – 11:15

Tea/Coffee

11:15 – 12:30

Group Discussion

12:30 – 13:30

Lunch

TUESDAY 16

Continued

13:30 – 15:30	Session Two Assessing the Tangible Benefits of Transitional Justice Mechanisms	Facilitator: Helen Scanlon
	Presentations Transitional justice mechanisms: can they protect economic, social and cultural rights? Impact and limitations of recommendations from truth commissions on public policy and development programmes What can development practitioners learn from truth commissions to better inform their development goals and national recovery strategies?	Presenters: Herron Gbidi (Liberia) Sara-Ann Lewis (Sierra Leone) George Ofori (Ghana) Michael Otim (Uganda)
15:30 – 15:45	Tea/Coffee	
15:45 – 17:00	Group Discussions	
17h:30	Reception/Cocktail Party	

WEDNESDAY 17

	Session Three	Facilitator: Zohra Dawood
09:00 – 11:00	Special Session on South Africa's Transition: Critical Reflections	
	Panel Discussion Followed by Q & A	Panellists: Nahla Valji Piers Pigou Trevor Ngwane Judith February
11:30 – 11:45	Tea/Coffee	

WEDNESDAY 17

Continued

11:45 – 13:30

Session Four

Facilitator: Helen Scanlon

Gender and Development

Presenters:

Tamar Feldman (ICTJ)

Overview of ICTJ Transitional Justice & Gender Conference

Diane Ingabire Gasana (Rwanda)

Promoting Gender Justice and Development

Ghada Mohamed Shawgi (Sudan)

Antoine Ngalama (DRC)

Kudakwashe Chitsike (Zimbabwe)

Group Discussion

13:30 – 14:30

Lunch

15:00 – 17:00

Visit to Philani Development Centre, Khayelitsha

THURSDAY 18

Session Five

Facilitator: Howard Varney

Transitional Justice, Equity and

Non-Discriminatory Institutional Reform

09:00 – 11:00

Presentation

Presenters:

Njonjo Mue (Kenya)

Herron Gbidi (Liberia)

The impact of transitional justice on reforming state institutions: possibilities in Kenya and Liberia for non-discriminatory reforms

Tendai Maregere (Zimbabwe)

Designing redistributive mechanisms through transitional justice: possibilities in Zimbabwe

Group Discussion

11.00 - 11.15

Tea/Coffee

THURSDAY 18

Continued

Session Six

Transitional Justice and Reintegration of War-Affected Groups

Facilitator: Olivier Kambala

11:15 – 13:00

Presentations

How should government reintegrate communities whose land has been appropriated?

How should government and development donors create an economic infrastructure for returnees and displaced communities?

Ensuring gender-sensitivity for returnees

Including Group Discussion

13:00 – 14:00

Lunch

Presenters:
Amb. Proces Bigirimana (Burundi)

Michael Otim (Uganda)
Yukiko Kumashiro (IOM)
Kudakwashe Chitsike (Zimbabwe)

Facilitator: Trevor Ngwane

Session Seven

Lessons for Current and Future Transitional Justice Mechanisms: Designing Reparations Programmes/Laying the Foundation for an Equitable Development Programme

14:00 – 15:30

Panel Discussion

Designing future reparations programmes:

- a) Lessons from Sierra Leone
- b) Possibilities for Sudan, DRC and Liberia

Presenters:

Sara-Ann Lewis (Sierra Leone)
Dede Agnes Dolopei (Liberia)
Ahmed Idriss Ali (Sudan)
Dieu-Donne Wedi-Djamba (DRC)

15:30 – 16:00

Tea/Coffee

16:00 – 17:00

Group Discussion

FRIDAY 19

Session Eight
The Pursuit of Justice and International
Aid Mechanisms

Facilitator: Olivier Kambala

09:00 – 10:30

Presentation
Examination of donor aid on socio-economic justice

- How much is spent?
- How effective?
- How can donor aid be used to leverage the pursuit of justice?

Presenters:
Diane Ingabire Gasana (Rwanda)
Tendai Maregere (Zimbabwe)
Wainaina Ndung'u (Kenya)

Mohamed Suma (Sierra Leone)

The role of the UN Peacebuilding Commission and transitional justice

Group Discussion

10:30 – 10:45

Tea/Coffee

10:45 – 12:00

Transitional Justice and Development Networks:
a. The Special Issue of the International Journal on Transitional Justice: transitional justice and development: presentation on the history, objective, authors, readership.
b. The African Transitional Justice Network: Introduction and Plenary Discussion

Facilitator: Comfort Ero
Nahla Valji
Hugo van der Merwe
Franklin Oduro

12:00 – 13:00

Lunch

Facilitator: Comfort Ero
Tamar Feldman, Matiangai
Sirleaf, David Hausman

13:00 – 14:00

Closing Session
Summary of Workshop, Discussion:
The Way Forward

14:00 – 14:30

Tea/coffee

14:30

Closing Ceremony

SATURDAY 20

Departure of participants

Appendix 2: Participants, Guest Speakers & Observers

Participants

Ahmed Idriss Ali (Sudan)
Proces Bigirimana (Burundi)
Dede Agnes Dolopei (Liberia)
Herron Gbidi (Liberia)
Scholastique Harushiyakira (Burundi)
Diane Gasana Ingabire (Rwanda)
Sarah-Ann Lewis (Sierra Leone)
Samia Abd Alla Mohamed Ali (Sudan)
Gerard Ndikumagenge (Burundi)
Antoine Lumonadio Way (DRC)

George Edward Kwadwo Ofori (Ghana)
Michael Otim (Uganda)
Ghada Mohamed Shawgi (Sudan)
Mohamed Lamin Suma (Sierra Leone)
Dieu-Donné Wedi-Djamba (DRC)
Chitsike Colletah Kudakwashe (Zimbabwe)
Tendai Maragere (Zimbabwe)
Njonjo Mue (Kenya)
Wainaina Ndung'u (Kenya)

Guest Speakers

Yukiko Kumashiro
Zohra Dawood
Jody Kollapen
Trevor Ngwane
Piers Pigou
Franklin Oduro
Nahla Valji
Hugo van der Merwe

ICTJ Staff

Alex Boraine
Paddy Clark
Comfort Ero
Tamar Feldman
David Hausman
Olivier Kambala
Helen Scanlon
Matiangai Sirleaf
Howard Varney

JICA Representatives

Shuji Uno
Yuki Kuraoka

Observers

Daniela Baro
Natalie Jaynes
Shuvai Nyoni