The Fourth Institute for African Transitional Justice (IATJ)

Theme: Global Transitions, Africa’s Resource Riches, and the Future of Transitional Justice

Hosted by Refugee Law Project
At Commonwealth Resort Munyonyo, Kampala, Uganda
June 15-19, 2014

Summary Report
Established in 2010, the Institute for African Transitional Justice (IATJ) is an annual event that brings together transitional justice experts from across the continent and beyond, to develop context-appropriate African Transitional Justice theory and practice. Using a combination of lectures, group exercises, reflective sessions, and structured debates, the 4th IATJ was held from 15-19 June 2014 in Kampala, Uganda, and addressed the theme of Global Transitions, Africa’s Resource Riches, and the Future of Transitional Justice.

According to Mr Stephen Oola, Programme Manager, Conflict, Transitional Justice and Governance, the IATJ seeks to “bring together experts, researchers, and those with an interest in facilitating, sharing, debating and developing a body of independent thinkers who can inform appropriate applications and transitional justice mechanisms, taking into account varying dynamics within the continent.”

At the 4th IATJ the Refugee Law Project (RLP) hosted 63 participants and panellists who travelled from 14 different countries to attend. Since RLP’s first IATJ in 2010, the event has dramatically grown in terms of both attendance and depth of discussion. RLP is especially proud that in 2014, sixteen line ministry representatives from the Government of Uganda were present at the IATJ, as opposed to only three in 2013.

This report provides a succinct overview of the week’s proceedings and an introduction to just a few of the many memorable themes that surfaced in panellists’ presentations and subsequent discussions (See page 11 for a complete list of facilitators, panel discussions and paper titles). It does not aim to provide a comprehensive account of the event. The full report of the 4th IATJ, detailing each participant’s contributions, is forthcoming, and a complete transcript of the IATJ will accompany the publication.

RLP wishes to thank the Democratic Governance Facility (DGF) and the Department for International Development (DFID) whose financial support made the Institute possible. Additional thanks goes to RLP’s partners in the African Transitional Justice Research Network, the Peace Through Accountability in Africa Project, the Centre for the Study of Violence and Reconciliation, the Kenyan Human Rights Commission, Zimbabwe Lawyers for Human Rights, the Centre for Democratic Development (CDD Ghana), and the Campaign for Good Governance (CGG, Sierra Leone).

**Introduction**

"Few people need transitional justice more than forced migrants; for those still outside their country of origin a strong transitional justice process could be the signal required that it is safe to return; for those who were displaced internally it can be an opportunity to hold their own government to account for failures of protection. On a continent where conflict and mass forced migration have long gone hand in hand, an appropriate transitional justice process has to place forced migration at the heart of its concerns.”

Dr Chris Dolan  
Director, RLP

**Framing the Discussion**

The current state of flux in global power relations presents not only dangers but also windows of opportunity in which to re-conceptualize the meanings and future of African transitional justice. As such, this year’s Institute addressed the local and structural impacts of contemporary and emerging African transitional justice issues in the context of shifting global power dynamics (See Box 1).

Within the context of these core issues an assortment of insightful questions were addressed during the Institute’s fourteen sessions. Each session began with expert interventions followed by discussion. RLP worked to ensure that speakers with appropriate professional and academic backgrounds participated on each panel and sought to juxtapose speakers with divergent perspectives to maximise lively debate.

Panellists’ interventions included an assortment of academic papers, reports from the field on the state of transitional justice in different African countries, a donor roundtable, and the screening of various RLP documentaries. Following formal presentations, participants were invited to add their own comments and queries to the discussion. The Institute’s structure resulted in a highly interactive and dynamic exchange of ideas and the formulation of various new potential trajectories for African transitional justice discourse.

**Box 1**

**CORE ISSUES for IATJ 2014**

- The relationship between major infrastructural projects and agreements for the extraction of Africa’s resource riches, and how these are likely to affect the future independence of African states and citizens;
- The effects and implications of international relations tensions for African transitional justice, and whether the legacies of harm could themselves ever be the topic of transitional justice.
Key Themes and Interventions

I. Keynote Address


In his presentation Justice Owiny-Dollo argued that international criminal justice systems have a critical role to play in African post-conflict contexts. At the same time he acknowledged that the largely Western international justice system is occasionally intractable and ineffective in African post-conflict contexts. He argued that an appropriate approach to post-conflict justice in Africa should involve a nuanced combination of local and international justice principles. Fundamentally, and especially within the context of the future uncertainty of Africa’s relationship with its own resource riches, the Justice argued for the formulation of transitional justice interventions that prioritize principles of distributive justice (See Box 2).

II. Shifts in Transitional Justice Context and Discourse

The Institute first addressed the current context and discourse of transitional justice at a macro level. Panellists and participants spoke to the perceived disconnect between current international justice discourse and Africa’s own transitional justice realities.

Theme Question:

Can an international criminal justice system built on Western principles of retributive justice and a transitional justice which though emerging from the Global South was quickly appropriated into a Western-led discourse on a neo-liberal hegemony, retain any traction for Africa over the coming twenty or thirty years?

Dr Barney Afako, a Ugandan human rights lawyer and transitional justice expert based in the United Kingdom, offered provocative and engaging commentary on the shifts in the context and discourse of transitional justice. He questioned the applicability in Africa of retributive justice principles that rely on government implementation, asking “How can African states, the institutions of which are hardly functional in the areas most affected by conflict, be expected to effectively promote sustainable peace in these regions?” Afako was also critical of the current state of African transitional justice because of its reliance on international donor funding. He cautioned that this has “introduced the danger that the justice priorities of African communities are set by external funders.” His contribution challenged participants to adopt a balanced understanding and prioritization of local transitional justice and international criminal justice principles, and to be attentive to each strategy’s strengths and weaknesses (See Box 3).

III. African Transitional Justice and Shifting International Power Dynamics

IATJ panellists and participants subsequently began to address the issue of evolving international power dynamics on the African continent. Attendees were asked to consider the potential for transitional justice principles to contribute to a reversal of unfair power relations on the African continent.

Theme Questions:

In a globalized world where global power hegemonies are shifting and being redefined, what role is there for transitional justice to contribute to global democracy and sustainable peace?

How may transitional justice approaches confront unfair power relations rather than perhaps legitimize and consolidate them?

Mr Brian Kagoro, a celebrated Zimbabwean human rights activist and constitutional lawyer, offered a provocative and inspiring critique of the tendency for transitional justice discourse to adopt a singularly localized approach and to forego structural considerations. In his speech, titled Inequality, Power Imbalance and Legitimacy in African Transitional Justice Processes, Kagoro argued that sustainable transitional justice outcomes require structural approaches that have the capacity to question existing power dynamics in their diverse forms. Among such structural reforms, Kagoro prioritized policies that bring value addition to Africa’s production processes. According to Kagoro, “A very important starting point is the stimulation of domestic economic

Box 2

“Owing to its vast resource riches, with or without the contending international interests in these resources, Africa will continue to be a hot spot for conflict. The diamond curse of Sierra Leone, the oil curse of Nigeria and other countries, the resources of Darfur and South Sudan, and the never ending armed conflict in the DRC demand a shift in the transitional justice response. Unless there is serious focus on distributive justice, by which there is equitable distribution of the country’s resources to address the structural and systemic imbalances and discrimination, the countries endowed with these riches are sitting on a time bomb.”

Box 3

“There is nothing wrong with criminal justice in itself, but the reality is that its prioritization sucks energy and resources away from other interventions that are appropriate.”

Box 4

“We often take Judaeo-Christian constructions as the be all and end all. But when you superimpose these values on complex power dynamics in search of a solution, you run into problems. Lumping over an egg to make peace at a local level does not resolve the fact that resources at that local level are now being expropriated by international corporations. We need structural change that will introduce the real, fundamental transitions we need in Africa.”
Ms Sufiya Bray, of the Centre for the Study of Violence and Reconciliation, considered the ways in which transitional justice can challenge the power dynamics that currently underpin gender realities in Africa. In her remarks she offered Burundi as a case study and proposed a number of key components of gender sensitive transitional justice policies. These were based on her own experience as the author of a study that, of the Centre for the Study of Violence and Reconciliation, considered the ways in which transitional justice can challenge the power dynamics that currently underpin gender realities in Africa. In her remarks she offered Burundi as a case study and proposed a number of key components of gender sensitive transitional justice policies. These were based on her own experience as the author of a study that investigated the ways in which Burundi’s recent conflicts and accompanying mass population movements have resulted in dramatic increases in levels of rape and sexual violence in the country. Bray emphasized the need to reconsider popular understandings of comprehensive and gender-inclusive definitions of transitional justice (See Box 5).

Dr Adam Branch, Senior Research Fellow at Makerere Institute of Social Research and Professor of Political Science at San Diego State University (USA), reflected on the potential for changing international power dynamics in Africa to impact and transform dominant conceptions of both transition and justice. To Branch, the growth of a ‘TJ industry’ with rigidly defined parameters has had the unfortunate effect of limiting the potential of transitional justice discourse. Considerations of international power politics or the injustices of neoliberal capitalism, for example, are for the most part ignored (See Box 6). Branch argued that Africa’s shift away from the West and towards China as a development partner offers an invaluable opportunity for theorists and practitioners to recontextualise and broaden African conceptions of transitional justice beyond the restrictions imposed by a Western ‘TJ industry’. However, he warned that this opportunity must be aggressively pursued, lest it be missed (See Box 7).

Mr Stanley Baluku delivered a compelling paper titled The Imbroglio of Tribe, about the role of tribal identity as a conflict driver in western Uganda. He demonstrated that tribal affiliation, largely based on “assumptions that naturalize imaginations of group configuration,” now supersedes national identification in much of Uganda. Baluku argued that the primacy of constructed tribal identities is to blame for the weaknesses of the post-colonial Ugandan state and serves to destabilize much of the country, opening doors to new conflicts in the future. In essence, according to Baluku, “notions of truth, justice and reconciliation will remain farfetched in as far as ‘tribe’ and its tailings remain the cogs of socio-political recognition.” Baluku’s comments were especially intriguing as they challenged other speakers’ promotion of traditional post-conflict reconciliation measures that in many cases differ according to ‘tribal’ identity (See Box 8).

Rwot (Chief) of the Pattiiko Clan, Jeriimya Muttu Bongojone, delivered an insightful presentation titled Understanding the key practices, principles and applications of transitional justice mechanisms in Acholi. The Rwot discussed the introduction of new punitive justice systems in Uganda following the arrival of British colonizers. The imported retributive justice mechanisms directly clashed with the restorative justice principles historically valued by the Acholi people. Today, the same tensions remain as Acholi elders continue to administer traditional justice in the context of the Ugandan state’s largely retributive justice system. The Rwot illustrated this conflict with a detailed discussion of three different Acholi mechanisms for reconciliation that emerged as local justice priorities during the 2006 Juba Peace Talks that ended the Ugandan state’s war with Joseph Kony’s Lord’s Resistance Army.

These included Culo Kwor, an inter-clan truth telling and mediation process that is usually implemented following cases of murder. Fundamentally, Culo Kwor revolves around communal understandings of guilt; according to the Rwot, “such incidents [as murder] are viewed as clan issues rather than individual ones,” and when an individual commits such a crime he or she “brings misfortune and shame to the entire community.” The Rwot also discussed the principle of Gomo Tong, a ceremony that involves bending a spear to signify the end of on going conflict. Finally, the Rwot addressed the principle of Mato Oput, a ritual ceremony that seeks to reunite alienated parties through the sharing of ceremonial food and drink, including a combination of oput root and the blood of a sheep or goat. The Rwot’s comments provided invaluable practical context to the week’s discussions, illustrating the clash between international and local justice priorities (See Box 9).
V. Transforming Transitional Justice: Engaging Line Ministries beyond the Justice Sector

Box 10
“RLP believes that transitional justice is a field in which as many actors as possible should be included. It is not a private space for a particular individual, profession, or group. The success, relevance, and impact of any attempt to deal with legacies of the past and to guarantee non-repetition is measured by two things: who is around the table and involved in the discussion and who considers him or herself a stakeholder in the process.”

-Stephen Oola, RLP

A common misconception about the field of transitional justice, and a symptom of its co-optation by a western-led ‘TJ’ industry, is that it is invariably centred on formal justice mechanisms and operates in a primarily legalistic framework. The legacies of human rights violations and injustice cut across society and require a variety of responses; RLP believes strongly that there is a role for all government institutions and line ministries to play in a country’s transitional justice story (See Box 10). A key objective of RLP’s flagship transitional justice initiative, the Beyond Juba Project II, is the “engagement of line ministries and other Government departments and institutions in transitional justice” (See Box below).

As the engagement of Uganda’s line ministries is such a critical component of RLPs transitional justice agenda, the extensive participation of line ministry officials is among the outcomes of the 4th IATJ of which RLP is most proud.

Box 11
“At the Ministry of Defense I have been tasked with writing a legal opinion on transitional justice. As someone who has spent most of her career as a defense lawyer, transitional justice was a very new and unfamiliar topic to me. I am very happy and grateful to be able to say that after the IATJ I am going back to Kampala with a good legal opinion on transitional justice. I have learned a lot. I understand now the importance of the implementation of transitional justice measures that seek to redress human rights abuses that have occurred during conflict, in order to obtain sustainable peace in Uganda.”

-Ms Amuge Grace, Ministry of Defence

Objective 5 of the Beyond Juba II Project: Engaging Line Ministries and other Government Departments and Institutions in Transitional Justice

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<th>Specific activities under this objective will include:</th>
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<tr>
<td>6.5.1 Linking relevant government sectors/departments/line ministries with communities for appropriate interventions; for example on reparations;</td>
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<tr>
<td>6.5.2 Conducting specific trainings for policy makers in the relevant line ministries, for example the Ministry of Health and the Ministry of Gender, Labour and Social Development and Office of the Prime Minister on transitional justice discourses;</td>
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<tr>
<td>6.5.3 Programme development with key line ministries such as the Ministry of Gender Labour and Social Development, Ministry of Health, Ministry of Education and the Ministry of Justice and Constitutional Affairs in implementing appropriate transitional justice related programmes.</td>
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During previous IATJs, engaging line ministries proved challenging as some ministry representatives were reluctant to draw connections between their day-to-day work and the field of transitional justice. However RLP’s interventions in the form of one-on-one meetings and training sessions paid off: 16 line ministries participated actively in the 4th IATJ, a dramatic increase from the three that came in the previous year. In addition to their attendance, representatives from an array of ministries extensively contributed to discussions. Line ministry representatives demonstrated a sincere appreciation of the application of transitional justice principles to their own fields of work (See Box 11).

VI. Donor Roundtable

The IATJ included a panel of donor group representatives who addressed the changing impact of development assistance to post-conflict recovery programmes and transitional justice initiatives in Africa. Panellists discussed current trends in donor approaches to addressing development in post-conflict societies and situated transitional justice within this context. They offered possible explanations for the under-prioritization of transitional justice by donor groups and suggested strategies for increasing donor interest in the field.

Mr Lars Christensen, Director of the Democratic Government Facility (DGF), observed that in Uganda, economic and infrastructural development projects are emphasized by many donor groups at the expense of “softer conflict recovery programs” which prioritize victim-oriented social and psychological support projects. In considering the reasons for the under-emphasis of transitional justice projects, Christensen cited reluctance among donors to “dwell on the past.” Donor groups, he said,
“want to act in the current context and try to do something that has future implications. But to look at what happened 15 years ago and to try and rectify the damage done is not trendy.” As such, he urged transitional justice practitioners to emphasize the future implications of their work wherever possible.

Christensen continued that Ugandan survivor and victim groups are significantly less organized and effective in lobbying for support than similar groups in Nepal and Mozambique, where he previously worked. He cited this as another possible reason for the under-prioritization of transitional justice in Uganda. Christensen argued that there must be a profound reconceptualization of the way in which transitional justice practitioners present the importance of the field to donor groups. He argued that to date, transitional justice practitioners, while a strong professional group, have been ineffective in requesting assistance and that increased funding for transitional justice projects will require a re-evaluation of fundraising strategies (See Box 12).

Mr Xavier Ejoyi delivered comments on behalf of Ms Leslie Reed, Ugandan country director for USAID. Ejoyi encouraged transitional justice practitioners to continue to frame their work in the context of human rights discourse and to emphasize to the greatest degree possible the concrete means by which the field benefits individuals. This, he reminded participants, is a strict condition for USAID funding.

Ejoyi continued that a key means by which donor groups can aid the efforts of transitional justice groups is to facilitate learning exchanges between various regional civil society organizations and government bodies working in the field. He emphasized that transitional justice practitioners should be open to drawing lessons from other contexts and complimented the IATJ for advancing such exchanges. Ejoyi also expressed a degree of frustration with the lack of explicit definition between the roles of states and civil society organizations in the formulation and implementation of transitional justice processes. He argued that the lack of clarity in this regard makes it difficult for donor groups to know where best to allocate funds (see Box 13).

The IATJ’s success was in large part thanks to the extensive scope of the week’s discussions, paired with the expertise panelists brought to the table. A diverse array of issues were discussed at an intellectually high level (see below for a complete list of facilitators, presentations and panel discussions). The ability of participants to meaningfully engage with the Institute’s various themes was likely the result of the extensive assortment of professional and academic backgrounds represented in discussions. The 63 participants included 36 civil society organization representatives, 16 government line ministry officials, two politicians, six students, and two donor group representatives. The international and interdisciplinary nature of the dialogue thus yielded inspired and nuanced exchanges. The Institute produced a variety of both qualitative and quantitative outcomes which are briefly recounted below.

**Evaluating Successes**

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### The Fourth Institute for African Transitional Justice (IATJ) Facilitators

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<tr>
<th>Panel/Presentation Title</th>
<th>Presenter(s)</th>
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<tr>
<td>Global Transitions, African Resource Riches and the Future of Transitional Justice</td>
<td>His Lordship, Justice Owiny-Dollo, Ugandan High Court</td>
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<td>The disconnect between the current international justice discourse and Africa’s transitional justice realities</td>
<td>Dr Barney Afako, African Union Legal Advisor</td>
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<td>Reflections on the shifts in transitional justice context, discourse and scope</td>
<td>Mr Michael Otim, Head of Office, International Center for Transitional Justice, Uganda Ms Annelieke van de Wiel, Refugee Law Project Dr Barney Afako, African Union Legal Advisor</td>
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<tr>
<td>Contemporary Transitional Justice Situations in Africa: Country experiences, context, mechanisms and challenges in South Africa, Rwanda, Zimbabwe, Kenya, Uganda, Burundi, and the DRC</td>
<td>Ms Annah Moyo, Centre for the Study of Violence and Reconciliation Mr Stanislas Bigirimana, African University in Zimbabwe Mr Andrew Songa, Kenya Human Rights Commission Mr Stephen Oola, Refugee Law Project Mr Fred Nkusi, Independent Institute of Lay Adventists of Kigali Mr Symphorien Pyana Mwamba, Centre Patrice Emery Lumumba pour Leadership &amp; Development Durable</td>
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<td>Funding Transitions: The impact of development assistance to post-conflict recovery programmes and transitional justice initiatives in Africa</td>
<td>Mr Lars Christensen, Democratic Governance Facility Mr Xavier Ejoyi, USAID Dr Busingye Kabumba, Lecturer, School of Law, Makerere University</td>
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<td>A discussion of the new conflicts and legacies resulting from the current repositioning of African leaders vis-a-vis donor states and new partners from the East</td>
<td>Hon. Norbert Mao, President General, Democratic Party Dr Adam Branch, Makerere Institute for Social Research</td>
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<tr>
<td>Inequality, Power Imbalance and Legitimacy in African Transitional Justice Processes</td>
<td>Mr Brian Kagoro, Zimbabwean lawyer</td>
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<tr>
<td>Gender Realities in post-conflict situations</td>
<td>Ms Sarah Khika, International Center for Transitional Justice, Uganda Dr Rose Nakayi, Director Human Rights and Peace Centre Mr James Ojok, Lead Gender Researcher, Refugee Law Project</td>
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Cover photo
Participants at the 4th IATJ engage with Mr Brian Kagoro (at podium) following a panel discussion on Africa’s resource riches.

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