TRANSITIONAL JUSTICE IN POST-CONFLICT SOCIETIES: WHAT WORKS BEST?

July 16, 2010 Conference Report
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The Project on Leadership and Building State Capacity

The Project on Leadership and Building State Capacity was established at the Woodrow Wilson International Center for Scholars in 2005 by then Director Howard Wolpe and Consulting Director Steve McDonald. The Leadership Project seeks to promote holistic and sustainable approaches to international conflict resolution, prevention, and post-conflict recovery. The program’s founding methodology is based on the importance of inclusivity, interest-based negotiation training, and demonstration of interdependence to help rebuild fractured government systems and create greater collaborative capacity in post-conflict countries. Under the current direction of Steve McDonald, key Leadership Project programming consists of in-country training interventions for leaders in societies emerging from violent conflict, designed to rebuild trust and foster better communication and negotiation skills. Additionally, the Leadership Project convenes Washington-based public events and country-consultations on specific conflict-prone or affected states, which bring together experts, practitioners, and policymakers to provide clarity on complex issues and encourage informed decision-making on some of the most persistent policy challenges. Finally, the Leadership Project has just launched a major research effort on “Southern Voices in the Northern Policy Debate: Including the Global South,” funded by Carnegie Corporation of New York, that will engage Africa-based research and policy institutions in providing a southern perspective for the American policymakers on the mutual challenges faced by North and South. The Project on Leadership and Building State Capacity works in close collaboration with the Woodrow Wilson Center’s Africa Program, also under McDonald’s direction.

This publication would not have been possible without the contributions of the following individuals: All conference participants for sharing their experiences and expertise on international transitional justice mechanisms; Ophelia Speight for her writing contributions to the report; and the Leadership Project team, including Intern Lee Orr, Program Assistant Aly Lyons, and Director Steve McDonald, for general support and execution of the report.

Cover Photo: Graca Court - World’s Children’s Prize for the Rights of the Child; photo by Mark Vuori
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On July 16, 2010, the Leadership Project of the Woodrow Wilson Center hosted a conference on Transitional Justice, the impetus for which was the almost decade-long work that the Wilson Center has been engaged in conflict transformation and peace-building in the countries of Burundi, the Democratic Republic of the Congo, and Liberia. These projects were based on a concept born from my 40 years of involvement in many African peace processes. I have learned that, prior to putting in place democratic institutions and legal structures in a post-conflict society, it is imperative to work with the diverse antagonists from the leadership level to that conflict in order to create a sense of common purpose, shared interest, renewed trust, and collaborative capacities to allow them to work together on a democratization, development and recovery agenda. As my former colleague, Howard Wolpe, and I commenced this work in Burundi in 2002, one of the first challenges we faced was who should be invited to the process; in essence, who should “be at the table.” Without exception, our Burundian interlocutors felt strongly that all parties who could effect the transition, “for better or worse,” should be there, including the so-called spoilers. Many of our international interlocutors felt quite differently, fearing that if included, these participants would be too self-protective and try to scuttle the process. There was great angst about the morality of legitimizing bad actors and of prioritizing peace over justice. It is not surprising that we found some of the most effective personal transformations and commitments to integration and inclusion amongst these very spoilers.

The issue of peace versus justice continued to overshadow our work, particularly in Liberia where we began our process in 2006, the same time the Truth and Reconciliation Commission (TRC) had come into existence. We saw again that the Liberians, from former warlords to executive branch ministers to members of the TRC, continued to be torn over how to prioritize and sequence these transitional justice imperatives. Therefore, I decided to
assemble a group of universal experts, thinkers, and practitioners who could help us deal with the broader conceptual framework of transitional justice, as well as extract lessons learned and identify impacts made on post-conflict societies.

The rich dialogue and exchange that occurred on this fruitful day are a must reading for students of transitional justice. Not only did we look at theoretical perspectives on justice, but we focused specifically on case studies in El Salvador, Sierra Leone, East Timor, and Liberia to determine whether transitional justice mechanisms have played a role in helping those countries move forward. We also attempted to highlight certain “truths” that have surfaced in terms of procedure and substance, and discussed how the international community can benefit from comparative analysis. Certain themes that emerged throughout the conference were compelling, such as the subsiding of tension between “peace” and “justice” over the last decade and the now common wisdom that the two are complementary rather than contradictory notions. The remaining issues with international transitional justice mechanisms revolve around sequencing, local involvement and ownership, establishing legitimacy, and what role the international community should play in developing such mechanisms. I know that you will find the report details informative and useful in the field of transitional justice.
David Tolbert, President of the International Center for Transitional Justice, began his keynote address by discussing the important role that transitional justice plays in post-conflict transformation. He traced its inception to 2004 when then UN Secretary-General Kofi Annan published a report entitled *Transitional Justice and the Rule of Law*, followed by the publication of *Guidance Note on Transitional Justice*, which served to reinforce the significance of this mechanism. The document incorporated transitional justice “as a key element in post-conflict societies and fragile states.”

In providing a working framework for the discussion, Tolbert laid out four accepted core concepts of transitional justice—criminal justice, truth-telling, reparations or reparative justice, and institutional reform—and insisted that they are complementary rather than contradictory to one another.

Tolbert expressed his belief that we are ending one era in international criminal justice and entering another. Since 1993, there have been multiple international courts established throughout the world, such as the International Criminal Tribunal for the former Yugoslavia (ICTY); the International Criminal Tribunal for Rwanda (ICTR); the Special Court for Sierra Leone; and the Extraordinary Chambers in the Courts of Cambodia. Additionally, there has been the Bosnia State Court which, though domestic, worked closely with the ICTY. Tolbert contended that many or all of these courts succeeded in fighting impunity, as well as prosecuting war crimes, crimes against humanity and genocide. Over the past 17 years, there have been more than 200 trials resulting in presidents, prime ministers and other perpetrators being brought to justice and, in some instances, convicted. While some judicial proceedings seem deeply flawed, as with the Extraordinary Chambers in the Courts of Cambodia, the fact that the cases actually took place opened the space for dialogue and conversation about past atrocities and conflict-related events that were previously deemed taboo topics. Tolbert argued that we are now entering an era where the International Criminal Court (ICC), hybrid tribunals and domestic prosecutions will dominate the criminal justice arena. While the ICC’s past performance has been uneven, he suggested that if the question of complementarity is fully
addressed, the court will be in a stronger position to fight against impunity.

Tolbert described truth-telling as a right that is independent from the judicial process. This right is reflected in the findings and declaration of the United Nations Human Rights Commission and is recognized by many domestic courts, including South Africa, Indonesia, Columbia, Peru, Argentina and Chile. Presently, there are over forty truth commissions around the world that have emerged out of truth-telling. Tolbert admitted that there are challenges inherent in the truth-telling process that must be addressed, such as victims’ rights that must not be sacrificed for political expediency or to appease spoilers. He emphasized that Truth and Reconciliation Commissions (TRCs) must be flexible and adapt to local situations. However, he also noted that an important trend is emerging in truth-telling and TRCs which contextually integrates economic, social, and cultural rights into the transitional justice discussion.

Tolbert went on to discuss reparative justice, stating that there are tremendous difficulties when attempting to define what the phrase means in countries where economic resources do not exist. In post-conflict societies like Sierra Leone, East Timor or Northern Uganda, compensation may not be available or the aggrieved may not be allowed to return to his or her land, resulting in victims being unable to resume their livelihood. Another important challenge for reparative justice is the issue of gender equality, which is always present in terms of refugee flows and Internally Displaced Persons (IDPs). In fact, Tolbert argued, gender is an important issue throughout the field of criminal justice and must be closely linked as causative factors within a broader reparative justice context.

Turning to institutional reform, Tolbert emphasized that without security sector reform (SSR) there is the real possibility of a society cycling back into conflict. Civilians are the most affected segment of society and must have confidence in the police, military and judiciary system. He said that if soldiers or former militants participating in a disarmament, demobilization and reintegration (DDR) program are given compensation and the program fails to recognize and compensate victims who suffered at their hands, then the seeds for future conflict will be sown.

Tolbert affirmed there are many other issues relative to transitional justice that must be addressed, such as strengthening local ownership in the transitional justice process. He concluded his presentation by directing attention to “frozen conflict” situations, using the Gaza strip in the Palestinian territory as an example. He argued that until the question “what about justice for us?” is addressed, transitional justice may fall far short of its ideals.
CIVIL SOCIETY PARTICIPATION AND LOCAL OWNERSHIP
A View from Wendy Lambourne

Wendy Lambourne, Senior Lecturer and Academic Coordinator for the Centre for Peace and Conflict Studies at the University of Sydney, addressed the critical topic of granting local ownership to and including civil society participation in transitional justice mechanisms. She positioned transitional justice within the framework of sustainable and transformative peace-building, suggesting that such an approach moves transitional justice beyond a finite period of transition to something that continuously links to the past and thereby, develops a sustainable focus on building a peaceful future. Lambourne stressed the need for the core mechanisms of transitional justice, as stated by Tolbert, to complement local justice processes and traditional indigenous approaches. She argued that transitional justice within the context of peace-building must set up structures within institutions, as well as promote sustainable relationships that invite a holistic judicial approach. Such an approach, Lambourne reasoned, must involve all participants in the conflict whether they are alleged perpetrators or victims, noting there are times when victims and perpetrators can be one and the same.
Lambourne offered her own “Concept to Transformative Justice,” which invites a rethinking of focus from an interim process that links the past and the future, to a transformative one that, by its very nature, implies long-term sustainable approaches to peace. These processes are embedded in society, and embrace psycho-social perspectives on justice, as well as elements of political, economic, and legal perspectives. This, in turn, enables transitional justice frameworks to take on a holistic or trans-disciplinary nature that encourages going beyond thinking about isolated approaches to transitional justice in a peace-building context. Lambourne argued that not only do they need to be interlinked at the policy and practice level, but in order for transitional justice mechanisms to be sustainable, they must establish relational linkages with civil society as a whole. She underscored the need to be as inclusive as possible in these processes.

Lambourne focused attention on the three goals of outreach, viewing them as tools or mechanisms for putting into practice ideas about civil society participation and local ownership that aid in the success of transitional justice. First is the idea of transparency, which ensures a clear understanding of what is going on in the process, negating criticism and guarding against misperceptions and misinformation. Second is engagement, which goes beyond transparency and involves people in the communities, making sure that they are taking part in the process. Engagement supports capacity-building, positively feeding into peace-building and reconciliation. Third is what Lambourne calls “in-reach,” which goes beyond courts or truth commissions reporting their own activities within the communities where they operate. She sees “in-reach” as a fundamental tool used by the courts to obtain information, opinions and feedback from the locally-affected communities in order to promote dialogue, conversation and consultation about the conceptualization and implementation of transitional justice mechanisms. As an outcome, this method becomes a two-way process that promotes the sustainability of transitional justice and long-term reconciliation approaches to peace-building.

Lambourne talked briefly about the use of outreach by the ICC. She highlighted the objectives of the court—greater transparency, fostering increased participation and engagement from civil society, and responding to concerns and expectations of affected communities. She conceded that, in theory, the ICC’s outreach program appears to be impressive, but in practice...
it is mired down with problems. She gave the example of the chief prosecutor of the ICC doing outreach in the Democratic Republic of the Congo, which resulted in his role becoming convoluted and confused with public relations.

Lambourne closed by asserting that transformative justice must link the past and the future through locally-relevant mechanisms. She insisted that a more holistic approach to justice must be pursued, inclusive of an outreach mechanism promoting transformative justice through civil society participation and local ownership. Most importantly, according to Lambourne, “in-reach” must be an integral part of this process in order for transitional justice to be successful.

TRUTH COMMISSIONS: TRUTH VERSUS JUSTICE
A View from Priscilla Hayner

Priscilla Hayner, author of *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, spoke about the challenges of truth versus justice when developing frameworks for post-conflict truth commissions. She pointed out that over the past few years, truth commissions have tended to feed directly into criminal justice by recommending prosecutions, turning evidence over to prosecutors, highlighting weaknesses in the judicial system, and drawing attention to the demands for justice from victims. These realities have altered the dynamics of truth commissions.

Truth versus justice used to be the cause of tensions in the field of transitional justice, but over the past decade most of those tensions have dissipated, especially within the international human rights community. According to Hayner, many who voiced concerns about truth commissions are now prominent advocates of them. They no longer see truth commissions associated with amnesties, but rather as a tool that helps lead to the establishment of a criminal justice system.

Hayner noted that there are many truth commissions operating proactively, pushing for justice in the courts, with the exception of South Africa’s TRC, which had the power to grant amnesty and was atypical. She cited
Peru as a prime example of a commission that started without a focus on justice. She explained that from the start of the hearings, it was clear the victims wanted justice by way of prosecuting perpetrators. The commission developed dossiers and turned them over to the prosecution as a result, but successful prosecution of perpetrators left much to be desired. The prosecutor, as well as those in positions of power, was hesitant and resistant, finding excuses not to prosecute. Even cases that were technically prosecuted resulted in acquittals based on legally specious grounds. Hayner pointed out that what happened in Peru has often occurred in one form or another with other truth commissions. She stressed the need for a more robust judicial response, as well as a non-judicial response.

In her concluding remarks, Hayner admitted there is no agreed-upon definition for what a truth commission is. In general terms, a truth commission is described as an official body that analyzes a series of events that took place over a period of time and concludes with a final report that includes recommendations for reform or action. She cautioned that the definition is imprecise at best, with many things falling under its umbrella. To date there have been roughly 40 commissions—South Africa, Peru, Timor Leste, Guatemala and Morocco being the strongest—and at least six commissions currently underway—Solomon Islands, Mauritius, Canada, Kenya, South Korea and Togo. Hayner asserted the nature of truth commissions is changing and can focus on anything from colonialism, slavery and indentured labor, as with the Mauritius Truth Commission, to exploring events occurring during the Korean War, as with the South Korean Truth Commission. According to her, the impact of truth commissions should result in reforms, specifically in reparative justice and prosecutions if there is evidence that crimes have been committed.

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MARK GOODALE

INTERNATIONAL JUSTICE FRAMEWORKS
A View from Mark Goodale

Mark Goodale, Associate Professor at the Institute for Conflict Analysis and Resolution at George Mason University, discussed the history of international justice, which he said manifested after World War II with the Nuremberg and Tokyo Tribunals. Soon thereafter, temporary transitional versus permanent international justice mechanisms developed, followed by the rapid expansion of universal human rights discourse that exploded onto the scene during the end of the Cold War. Goodale explained that this had important effects on the international policy arena, which continues to perceive permanent tribunals, such as the International Criminal Court (ICC), as detached from conflicts. Instead, they are regarded as tools utilized by the international human rights community whose goal is to protect the interests and values of victims that have experienced human rights violations. Goodale believes that the ICC is the most important development in international law, despite the absence of membership from Russia, the United States, China and India—all countries which are vastly populated and wield significant political power.

Goodale continued his discourse by focusing his remarks on Article 53 of the ICC statute. He explained that in the late 2000s, a group of multi-disciplinary scholars, including himself, came together at the request of Luis Moreno-Ocampo, the chief prosecutor of the ICC, to help him interpret the article’s phrase “in the interest of justice”—what it means and how it works. Moreno-Ocampo, an Argentinean civil law prosecutor, admitted that his view of justice was very narrow and that, given his training, he was “not able to think expansively about justice in an international context.” Using comparative legal terminology, Goodale clarified that in Argentina, justice is 95% procedural due process and 5% substantive due process. In other words, a prosecutor in Argentina seeks to achieve justice if the rules and procedures of domestic Argentinean law are complied with according to their own terms. Moreno-Ocampo knew, as chief prosecutor of the ICC, this definition was much too narrow for the international context in which the court would operate.
According to Goodale, the scholars discovered that the notion of justice is expansive, and within that expanse there is great potential for ambiguity. They also determined that Article 53 provided the ICC with a culturally contextual opening within certain parameters, whether those parameters are defined by human rights law or other sets of values. However, they also identified that the difficulty of this ambiguity is the ability of spoilers to exploit it. In attempting to address this issue, Goodale stressed the need “to bridge the normative and empirical dimensions of justice in light of the kind of wide range of understandings, meanings and experiences” that can be documented.

In redirecting the conversation to the present, Goodale discussed the effectiveness and legitimacy of the international justice system. He argued that the question of effectiveness cannot be answered until a decision is made about what the set of objectives will be that the international justice system is trying to achieve. He contended that a disjunction between mechanisms and objectives has caused major problems in this regard. To illustrate the point, he talked about holding perpetrators accountable for violations of human rights. The question becomes, who are the perpetrators and what are their violations?

Goodale questioned the role that justice plays in the broader processes of transformation, asserting the complexities involved magnify the debate even more. He utilized the example of Mozambique, a perceived success story in the field of conflict resolution, and argued that just because the civil war has ended does not mean the underlying causes of the conflict are removed. Justice alone might not be sufficient in moving a country forward through transition to transformation. Goodale said that international justice mechanisms, such as the ICC, are a necessary component to this process, albeit not sufficient.

On the topic of legitimacy, Goodale asked, “Legitimate in relation to what set of values?” He argued that the question cannot be answered if the set of values are not articulated and understood. He stated most people have a different or broader set of values that are equally legitimate, in a political or cultural sense, and must be included in discussions surrounding this issue.

Goodale highlighted the relatively narrow focus of international justice,
which tends to hold people, groups, and institutions responsible for mass crimes and crimes against humanity. However, he expressed concern that this diverts attention away from other forms of wrongdoing that serve as underlying causes of conflict, such as low-level structural inequalities. He expressed the need for the court to refocus its efforts on these aspects of conflict before they emerge in dramatic consequences requiring redress. Goodale intimated the extent to which the ICC is suitable for addressing wrongdoing is an interesting and open question.

**PANEL RESPONSES TO QUESTIONS**

The panelists each weighed in with comments when asked about the ICC’s indictment of Sudanese President Omar al-Bashir and the court’s inability to detain him. Goodale asserted that the questionable effectiveness of the ICC perceived by outside observers is due to the compromises that made the court possible in the first place, namely the lack of participation with the court from the UN Security Council members. He argued that the absence of key international players illuminates a much larger cultural and social dimension to the nature of the international justice system. However, despite those compromises, Goodale noted that it is necessary to have the ICC and other similar mechanisms.

Hayner added to Goodale’s remarks on the ICC’s indictment of President Bashir and the perceptions of inadequacy that followed, but went further to say that, in general, the court has had many missteps that have made it difficult to rebuild its legitimacy. She suggested that the arrest warrant for President Bashir should not have been publicly announced, and instead would have benefited from a sealed indictment like that of former President Charles Taylor of Liberia. But whatever the perceived mistakes made by the court may be, Hayner pointed out the indictment has restricted his movements to non-ICC member states or he risks arrest.

Lambourne focused on the importance of civil society’s acceptance of the ICC and said it is not solely about how the international community views the court, but also how those on the ground perceive it. She used her own experience with Darfurians who attended the ICC review conference as an example of this. Lambourne said that for them, the fact that a court of such magnitude acknowledged their suffering and the wrongdoing that was imposed on them helped to legitimize the court in their eyes. Additionally, the indictment was important in terms of seeking justice for Darfurians against the Sudanese government.
The second question pertained to the notion of establishing a truth commission within the United States to tackle race relations concerns that followed the Civil Rights Movement of the 1960s. Hayner, whose expertise is on truth commissions, responded by saying that the idea of a specifically-structured truth commission to address this issue and persistent inequalities, particularly found in the southern part of the US, is interesting and deserves exploration. She noted that truth commissions can be shaped to respond contextually to a situation, as is apparent by the myriad variations of commissions that have been applied globally thus far. She did not rule out the possibility of establishing some sort of truth and reconciliation mechanism within the United States.

Hayner went on to discuss the difficulties involved when determining the appropriate time to integrate transitional justice measures into the peace process. She noted the contentiousness over the issue of amnesty and how that can alter prospects of participation in such measures if they are introduced too early during post-conflict negotiations. There are situations where perpetrators do not want amnesty at all because by agreeing to this stipulation, they are admitting wrongdoing. In situations where a request for amnesty has been made by the perpetrators, the international justice community has refused to grant it for serious crimes, such as crimes against humanity and genocide. Hayner said the results have been mixed, but threaten to lead to a stalemate of negotiations where no justice mechanism is established. While she conceded that very few rules have been established thus far as to how and when to approach the integration of transitional justice mechanisms into peace processes, she suggested that the guiding principle should be to avoid interrupting negotiations in order to establish some semblance of peace for those affected by conflict.

Lambourne added that the wisdom of local community members is essential when determining the sequencing of transitional justice into a peace process. She asserted that people affected by conflict want peace and justice, but recognized that sometimes justice may not be a central factor in the immediate post-conflict environment. However, based on her own experiences with civil society in Uganda and Cambodia, Lambourne has learned that it is never too late for transitional justice mechanisms to be implemented and

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past grievances of victims acknowledged.

In an attempt to develop a concise definition of the various types of justice, Goodale insisted that much depends on translation and language. The most interesting aspects for him are how those concepts are translated culturally and linguistically across different societies, and how they then manifest into practical applications, becoming an entrenched part of international processes.

Lambourne agreed with Goodale, and emphasized, when working with different cultures in different languages, context is critical. All parties to the process must understand the “other.” She explained that, for many languages, the English understanding of concepts that are linguistically separated, such as justice, truth, and reconciliation, are combined or perceived differently or defined differently in other languages. She utilized an example from Cambodian Khmer language, whose term for justice means “holding to truth,” which is understood differently than the English meaning of the word. Lambourne also brought attention to the commonly misconstrued practices of retributive versus restorative justice, claiming these types of mechanisms exist in various cultures and societies that meld these two ideas together. This was the case for both Timor Leste and also Rwanda, where the idea of punishment is held together with the idea of restoration and reintegration.

Hayner responded to the human and psychological dimensions of seeking justice and truth by saying it can be both cathartic and positive or retraumatizing and negative, acknowledging that airing grievances publicly may not always be the best option for victims of conflict. She said that it is essential for truth commissions or other truth-seeking entities to be clear about what people are asked to do and, importantly, making it completely voluntary. Hayner agreed with the suggestion that support systems must be built into the commissions or other truth-seeking bodies. She asserted that civil societies or community groups could be engaged in the support process which, because they are on the ground, could be more positive in the long-term.
IV. PANEL II: COMPARITIVE CASE STUDIES

Patrick Burgess, Asia Director, International Center for Transitional Justice, and former Director of Human Rights, UNTAET and UNMISET Missions in Timor-Leste; Douglass Cassel, Former Legal Adviser to the United Nations Commission on Truth for El Salvador, and Professor of Law, Notre Dame University; Jennifer Easterday, Trial Monitor for the Special Court on Sierra Leone, War Crimes Studies Center, University of California, Berkeley; Richard Joseph, Former Fellow for African Governance, The Carter Center, and Professor of International History and Politics, Northwestern University

THE CASE OF EL SALVADOR
A View from Douglass Cassel

Douglass Cassel, Former Legal Adviser to the United Nations Commission on Truth for El Salvador and Professor of Law at Notre Dame University, began his discussion by reviewing the pre-war conditions and accompanying atrocities that led up to the 12-year civil war in El Salvador, arguing that if the root causes of conflicts are not adequately addressed, violence is likely to recur, as has happened in this case. Before the war began in 1980, El Salvador was mired down with social, cultural and economic inequalities, with the main concentration of wealth and power in the hands of the “Fourteen Families.” As violence pervaded the country, military juntas, authoritarian regimes, and stolen elections convinced many Salvadorans that a democratic path to reform was impossible. As a result of the kidnapping and killing of the leaders of the democratic opposition group in 1980, the lower and
middle class youth, in addition to working class adults, took up arms and formed the Farabundo Marti Liberation Front (FMLN). Though made up of an alliance of different military guerrilla forces with varying ideologies, the FMLN came together to fight in what was to become a 12-year civil war lasting from 1980 to 1992. Cassel asserted that over the course of the war, 75,000 Salvadorans out of a total population of just 5 to 6 million people were killed, most of whom were civilians. According to him, the war was perpetuated in large part by support from outside interveners, with Cuba providing resources to the FMLN and the US supporting the Salvadoran government with approximately $6 billion in military assistance.

Cassel made special note of the series of atrocities and gross violations of human rights that occurred during the war, including the well-documented assassinations of figures such as Archbishop Óscar Romero and Jesuit Priest Ignacio Ellacuria. In addition to assassinations, there were widespread occurrences of extrajudicial executions and torture, both of which were met by an untrustworthy judicial system.

Cassel explained that there were three key reasons for the end of the war in the late 1980s: 1) it became apparent that neither side could win; 2) war fatigue set in amongst Salvadorans; and 3) the withdrawal of external support on both sides. In 1992, the peace accords, which included a number of provisions under the general heading “Transitional Justice,” were signed. These provisions were the purging of senior officials and an amnesty law, as well as the establishment of a Truth Commission, which was responsible for reparations and prosecutions. According to Cassel, the purging began with an Ad Hoc Commission comprised of three highly-respected Salvadorans who were given dossiers on the officer corps of the military from foreign governments and institutions, including US intelligence, human rights groups, and victims groups. The responsibility of the commission was “to remove from military service any officers who had, in the judgment of this commission, been responsible for atrocities.” The commission came up with over 100 names of people who were within its mandate. However, what was supposed to remain a secret list was leaked to the media and subsequently made public. The military balked over the names on the list and allegedly visited then-President Christiani at his home to say, “You are not removing any of us.” The amnesty law, Cassel indicated, provided official pardon for everyone involved on both sides of the civil war, except those who might be named by the UN Truth Commission as responsible for gross human rights violations in the future.

The third measure of the peace accords was the establishment of the 1992
Salvadoran Truth Commission, which, compared to similar mechanisms, was distinctively international in its make-up. Because of the polarized environment within the country, those involved in the design stage of the commission—including the government, guerrillas, and UN mediators—agreed it would be difficult to identify Salvadorans that could be trusted by both sides to serve as presiding officials. As a result, three international individuals were chosen by the government and FMLN to constitute the panel of judicial advisors for the TRC, Cassel being one of them. He stated the commission was given 8 months to review atrocities committed during the 12 years of war. The commission reported in-depth on 30 illustrative cases and statistically analyzed 22,000 more.

According to Cassel, the commission made numerous recommendations in the final report, with three being the most important. First, the commission recommended the removal of almost the entire high command of the Salvadoran military. As a reaction to this, the military called a press conference the week the report was made public in which they denounced the UN Truth Commission “as biased, as presumptuous, as unreliable.” The army demanded the president grant them amnesty or lose his civilian government. As a consequence, the Salvadoran Legislature passed a blanket amnesty for all human rights atrocities committed during the war. The Supreme Court, which was totally corrupt, upheld the amnesty law. However, within a few months of the report’s publication and despite the legislation, the entire high command was removed from office. It was not until 2000 that a reformed Supreme Court ruled the amnesty law invalid as a matter of international law.

The second significant recommendation from the commission was the removal of all judges, including the president of the Supreme Court for obstructing justice in 1993 by upholding the amnesty law for all human rights atrocities committed during the war. In 1994, the entire court was voted out and a new court put in its place.

The commission also recommended reparations be given to victims of the war through the establishment of a Reparation Fund using a small percentage of all foreign aid given to El Salvador. This was ignored by the international diplomatic community. Cassel admitted that, to his knowledge, no "Cassel concluded that the transitional justice process only marginally improved the underlying conditions of poverty, exclusion and inequality which led to the civil war in El Salvador..."
reparations have ever been paid to victims of the war.

Cassel concluded that the transitional justice process only marginally improved the underlying conditions of poverty, exclusion and inequality which led to the civil war in El Salvador, and the situation still remains grave today. He said the country has become one of the most violent in the world, with a higher number of deaths during periods of “peace” due to gang- and criminal-related homicides than that during the war. He concluded that politically there was no real transition until 2009 when the FMLN candidate for the presidency, Mauricio Funes, won the election, removing ARENA from political power. Cassel ended his discussion by generalizing, “If the underlying social and economic injustices that lead to armed conflicts are not seriously addressed… then violence is likely to recur, albeit in a different form, like what happened in El Salvador.”

THE CASE OF SIERRA LEONE
A View from Jennifer Easterday

Jennifer Easterday, Trial Monitor for the Special Court on Sierra Leone, began her case study analysis by stating that transitional justice in Sierra Leone represented three of the main mechanisms of the transitional justice process, including negotiated amnesty, a Truth and Reconciliation Commission, and a Special Court—the latter being the focus of her discussion.

She gave the audience an historical overview of the conflict in Sierra Leone that started in 1991 with the invasion by the Revolutionary United Front (RUF) from neighboring Liberia. The RUF was trained by then-president of Liberia, Charles Taylor, and was a proxy guerrilla force for the war campaign in Liberia, according to the prosecution. The Armed Forces Revolutionary Council (AFRC), primarily comprised of ex-Sierra Leonean soldiers, overthrew the government in 1997, at which time they began ruling the country jointly with the RUF. At the same time, the Civil Defense Forces (CDF) took up arms in defense of Sierra Leoneans. The CDF was largely comprised of traditional hunters and fighters who fought in defense of Sierra Leone against the AFRC and the
According to Easterday, the eleven-year conflict was marked by horrific violence, including crimes of sexual violence, sexual slavery, recruitment of child soldiers, and, unique to Sierra Leone, widespread amputations. When determining the appropriate justice mechanisms to be implemented after the conflict was over, Easterday pointed out that the president of Sierra Leone requested that the UN establish a tribunal to try the RUF. A negotiated treaty to establish the Special Court was signed in 2002. Its initial mandate was for three years, though the Court is now approaching its ninth year. The court is not a UN tribunal and does not have Chapter VII powers; thus its mandate, which is to try persons who bear the “greatest responsibility” for atrocities committed in Sierra Leone after November 30, 1996, is very limited. Easterday highlighted that within the limits of its mandate, the Court only addressed crimes committed in Sierra Leone even though the conflict is widely considered regional in scope.

Easterday explained that the Special Court was unique at the time of its creation and was touted as a new model of international justice. The creators of the court wanted to move away from the Yugoslavian and Rwandan models, which tried many low-level perpetrators, were expensive, and were located outside of the countries of the conflict. It was decided that the Special Court of Sierra Leone, which mixes Sierra Leonean and international criminal law, would be located in Freetown with a mixed composition of Sierra Leonean and international personnel. Easterday pointed out that the court was inexpensive to create, though the voluntary contributions upon which the creation was based ultimately proved to be a major challenge. The Special Court’s management committee, made up of the main donor states, was created to oversee the court and its controversial budgetary considerations.

She noted that while the Special Court’s trials were limited to indicting leaders of the various warring groups, initial prosecutions covered a wide range of crimes committed throughout the country. There were trials against the CDF, the RUF and the AFRC, and there is still the ongoing trial of Charles Taylor in The Hague. Easterday said the court has registered several successes; it developed a robust and creative outreach program, which has been widely considered a successful model for other international tribunals. The Special Court created the Defense Office, which offered a fourth component meant to help provide a fair trial for defendants. Notably, the

"...no one is free from impunity and there is no excuse for committing atrocities."
Defense Office has been replicated in other international tribunals. The Special Court has also successfully integrated services for witnesses and for victims. But the most important accomplishment of the court, from Easterday’s perspective, is the trials of the CDF, despite their controversial nature among many Sierra Leoneans, and the trial of Charles Taylor. Both demonstrated that no one is free from impunity and there is no excuse for committing atrocities.

However, Easterday also raised concerns she has with the Special Court. The first is its lack of efficiency. Multi-accused trials at the ICTY and the ICTR were conducted faster and at less of a cost per defendant than that of the Special Court. According to Easterday, in an independent report commissioned by the Management Committee of the Special Court, there were three factors contributing to the lack of efficiency: 1) the financial insecurity from voluntary contributions; 2) a lack of strong judicial leadership; and 3) the initial failure to draw upon the body of expertise at the international level. Easterday pointed out that although this critique may be true, “it does cut at cross-purposes with one of the expectations of the Special Court, which was to engage in capacity-building and use Sierra Leoneans within the court to help develop the capacity of the local judiciary.”

This led into her second concern, which is the absence of local engagement with the court. Easterday believes local concepts of justice must be understood and acknowledged, noting that the Special Court of Sierra Leone had an opportunity to build local capacity, but failed to do so. She explained how it was created with little involvement of the local community or judiciary, which led to disenfranchisement among the judicial, victims, and civil society groups. She cited the example of the relatively few Sierra Leoneans in senior positions in the Special Court since its inception.

The third concern is that of prosecutorial discretion. Easterday stated that the mandate of the Special Court was to try those persons who have “greatest responsibility” for crimes committed in Sierra Leone. If Charles Taylor’s trial concludes in a fair manner, then the limited mandate of the court will have been fulfilled, but the question remains, how does one interpret “greatest responsibility?” She was critical of the court prosecutor’s meaning of this ambiguous phrase, and pointed out that he decided to try only those persons in senior command positions. By using prosecutorial discretion, some of the worst direct perpetrators of crimes were not pursued. In some cases, perpetrators even benefited by becoming insider witnesses for the Special Court.

Finally, there is the issue of flagging interest. According to Easterday,
interest in the Special Court has dwindled. While outreach was somewhat successful, it has been documented that the depth of public understanding of the extent of the court’s mandate continues to be poor. Moving Charles Taylor’s trial from Freetown to The Hague has caused limited access to those proceedings. She noted there are some individuals in Sierra Leone who feel justice has not yet been served. They question why so much money has been spent on the Special Court, including some spent on perpetrators as insider witnesses. They believe the funds should have been spent on direct victims services and other development goals. Easterday said the day-to-day lives of the survivors and victims in Sierra Leone, one of the poorest countries in world, remain unchanged.

In closing, Easterday questioned whether the Court reflects a truly hybrid model. She argued that the Special Court is disconnected from the national courts, and neither institution bridged the gap between the two systems, resulting in a lack of engagement and a lack of dialogue. According to Easterday, had the Special Court and the local court engaged with each other, it is possible the local court system could have benefited and developed capacity. What’s more, none of the court’s indictments held to Sierra Leonean law; they adhered instead to international law. Easterday admitted there is significant room for improvement and lessons to be learned from the Special Court model.

THE CASE OF EAST TIMOR (TIMOR LESTE)
A View from Patrick Burgess

Patrick Burgess, Director of the Asia Program at the International Center for Transitional Justice and formerly the Director of Human Rights for the UNTAET and UNMISET Missions in East Timor, started his discussion by stating that East Timor is one of the most complete examples of transitional justice to date, explaining that there have been multiple mechanisms put in place: 1) a Truth and Reconciliation Commission in East Timor; 2) legislation for a Truth Commission in Indonesia that has yet to be fulfilled; and 3) the world’s first bi-national Truth and Reconciliation Commission involving both Indonesia and East Timor. Additionally, there has been a hybrid tribunal inside East Timor; national prosecutions for the war crimes in East Timor held in Jakarta; and a continuing UN investigation of crimes in East Timor.

Burgess offered an overview of East Timor, saying that it is a very small
country with a population of less than one million people, particularly when comparing it with neighboring Indonesia, the largest Islamic country in the world with a population of 250 million. He explained that the conflict in East Timor involved both countries and has historic roots of antagonisms that led to Indonesia’s 24-year military occupation of the smaller nation. He reported that in the 16th century, the eastern half of the island of Timor was colonized by the Portuguese while the western half and much of the Indonesian archipelago was colonized by the Dutch. After World War II, when Indonesia defeated the Dutch in a war of independence, their independence extended half-way up the island of Timor.

In 1975, Portugal had a revolution that led to decolonization of its territories, which ultimately led to violence in many of them, including East Timor. Young East Timorese formed political parties and shortly after, a civil war followed. The war was short lived due to the success of the Revolutionary Front for an Independent East Timor Party (FRETILIN) who declared East Timor’s independence. Burgess pointed out that soon thereafter, US President Gerald Ford and Indonesian General Mohammed Suharto met in Jakarta, Indonesia. According to documents contained in the National Security Archive, Ford told Suharto the US would not intervene if Indonesia invaded East Timor. Within ten days of East Timor declaring independence, Indonesia did just that. Burgess explained that much of the equipment used by the Indonesians was supplied by foreign countries including Australia, the United Kingdom, and the United States. Many of these findings were uncovered during the Truth and Reconciliation Commission.

According to Burgess what followed was a 24-year military occupation of East Timor that received the support of western countries because they believed FRETILIN to be leftist and part of the Communist threat. He said Indonesia thought they would win the war within 2-3 months since they possessed superior weaponry, but for 24 years the East Timorese fought a guerrilla war from the mountains. Indonesia never completely overcame their resistance. In 1998, in a UN-sponsored election, 78.5 percent of East Timorese voted for independence. Immediately after the vote, the Indonesian military unleashed a scorched-earth policy. Burgess said that within three weeks, the Indonesian military burned 60,000 houses, killed approximately 1,400 people, and raped several hundred women. It was only after President
Bill Clinton demanded that Jakarta accept international peacekeepers and an Australian-led military contingent arrived that the atrocities stopped.

Burgess explained that a UN mission was set up to prepare East Timor for independence and to hold those responsible for the violence accountable. Burgess, who was then Director of Human Rights for the UN, hosted the Commission of Inquiry. The commission recommended an International Criminal Tribunal for East Timor, but Indonesia would not cooperate. According to Burgess, the Secretary-General recommended to the Security Council that Indonesia try their own citizens allegedly responsible for the violence, thus leading to a two-track prosecutions process. In East Timor, there was a hybrid court set up under the UN mission in which a panel of one Timorese and two international judges oversaw cases. In Jakarta, a law was passed that made crimes against humanity and genocide illegal. In addition to two Truth Commissions, they also set up a court to hear the case of East Timor, resulting in the Ad Hoc Tribunal for East Timor.

Burgess highlighted both the massive problems of prosecutions, as well as lessons learned in East Timor. According to him, the UN was ill-prepared in a number of ways to establish transitional justice mechanisms. From the beginning, when the prosecutor of the tribunal requested UN civilian police to provide investigators, the UN sent traffic police and an air mechanic. They also failed to provide cars or computers for the investigation. Once the court got underway, the conviction and acquittal rate revealed flaws in UN planning and budgeting, including the failure to consider the needs of a defense counsel and a lack of parity in the prosecutions. There were a number of cases where individual Timorese were tried for crimes against humanity, but were defended by people who had never been in a criminal court.

Another problem noted by Burgess was the little contact investigators had with local communities and civil organizations. This problem, in combination with a lack of access to information gathered by civil society led to a grave misunderstanding of the enormity of the 24 years of violations. Foreign investigators failed to incorporate locals who knew the context of the war into investigative teams and, as a result, the investigations suffered badly.

Burgess also talked about the problems with a two-track prosecution process, the first of which being that East Timorese courts only had jurisdiction over its own territory. They were in a position where they were limited to prosecuting minor violators of war crimes, allowing time for the organizers and planners of the Indonesian occupation to flee to Indonesia. He said the 84 people found guilty were East Timorese and were given sentences
up to 34 years whereas in Indonesia, no one has been held accountable. He pointed out the UN team in Indonesia, which is quite substantial, is working hard to change the culture of impunity, though it is proving to be a challenge.

Burgess continued his discussion by turning to the Truth and Reconciliation Commission established by his office in East Timor, with the assistance of Priscilla Hayner and Paul van Zyl. The commission, comprised of seven East Timorese, utilized their strengths—local language fluency and ability to convene meetings—and supplemented their reading and writing weaknesses with international advisors and staff. For one particular field-based activity created by the commission, the Community Reconciliation Procedures, commission members went out and talked with East Timorese in all the districts. Their findings indicated that they wanted to prosecute perpetrators at home and allow local participation. He said the commission established a process whereby a panel of five, including local spiritual leaders, youth groups, women’s groups, and someone from the commission, would hear these cases where perpetrators of lesser crimes came forward voluntarily. “They would call the entire village together. They held amazing traditional, religious, and spiritual ceremonies. Then the perpetrators stood up in front of the entire community, admitted what they did wrong, and asked for forgiveness. The victims sat opposite them and were able to address them and the entire community participated.”

According to Burgess, at the end of the 18-month program, 1,400 perpetrators took advantage of the Community Reconciliation Procedures, building up bridges that had once been broken. It was a creative and successful initiative unique to East Timor.

Burgess spoke about the Truth and Friendship Commission (TFC), which was formed between East Timor and Indonesia and problematic from the start. This is partly because the commission would have given perpetrators or alleged perpetrators the opportunity to tell their stories before a national television audience without benefit of cross-examination, the exact opposite of the mandate of a TRC. Another issue was its ability to recommend amnesty, a capability considered unacceptable to the international community and the UN mission. The result was the dissolution of the TFC soon after it was established. Despite the controversy, this experiment provided another
interesting lesson on the transitional justice process.

According to Burgess, despite all the problems encountered by the commission, the evidence was put together in a report that found the Indonesian security forces responsible for crimes against humanity using East Timorese militia. Although Indonesia had been denying responsibility, in the end, the presidents of East Timor and Indonesia accepted the report together based on a civil agreement that there would be no further action on prosecutions. Some argue that the process was a failure because of the agreement, but Burgess pointed out that “without a basis of truth, you’re not going to move forward. Until Indonesia itself accepts its role in East Timor, there are no possibilities of any kind of prosecutions.”

Burgess ended by saying he sees the transitional justice framework as being a way for victims and civil society to exit a locked room for which the keys are held by the perpetrators. The question is, how do you gain leverage? Burgess offered that it will come in small accomplishments. He said victims and civil society must keep the pressure on and “become the ones who hold the keys…If you keep your shoulder to the door, the door can be unlocked…We do get some leverage, but it takes a long time and a lot of work.”

THE CASE OF LIBERIA
A View from Richard Joseph

Richard Joseph, Former Fellow for African Governance at the Carter Center and Professor of International History and Politics at Northwestern University, began his discussion by explaining how he became involved in Liberia within the framework of peacemaking efforts by the Carter Center in the early 1990s, led by former US President Jimmy Carter. Joseph said that during the time the Carter Center was engaged in Liberia, they were also deeply involved in Ethiopia and Sudan. He pointed out that Carter’s approach was to engage directly with the persons most responsible for the warfare in order to attempt to encourage them towards negotiated outcomes. In Liberia, this person was former Liberian president Charles Taylor. Joseph, who was an official of the Carter Center at the time,
said that although he was uncomfortable with it, he would help President Carter implement the strategy. Joseph regarded Taylor as an unindicted war criminal whose motivations appeared more nefarious the more they learned about his activities. He stated they were unaware of Taylor's more egregious abuses but found them consistent with the criminal intent of the National Patriotic Liberation Front (NPLF).

Joseph reflected on why a surgical military exercise to remove Taylor from Liberia was not carried out and said that such an exercise was not within the Carter Center mandate. However, in 2003, action did occur through diplomatic means when Taylor agreed to be escorted to Nigeria by President Thabo Mbeki. In March 2006, Nigeria was obliged to facilitate Taylor's capture and extradition to The Hague.

Joseph noted that in comparison to Sudan and Ethiopia, Liberia's outcome has been relatively benign. He stated that neither peacekeeping operations nor peace initiatives ended the conflict, but rather the British military intervention in Sierra Leone in May 2000. He rationalized the only way Taylor's criminal governance in Liberia would end was through military pressure, and the resumption of armed conflicts by various militias against Taylor's regime after the arrival of British troops set in motion events that led to his ultimate departure.

Joseph pointed out Taylor could not be brought to trial in Liberia or Sierra Leone because of the inherent risks for the two countries. Yet, having the trial in The Hague has allowed Taylor to abuse the judicial process by prolonging the trial, which in turn, forces the international community to expend huge sums on his prosecution and defense.

Joseph made special note of the international community's considerable investment in resources to achieve a peaceful and democratic transition in Liberia. He said the mandate of the Truth and Reconciliation Commission was “to promote peace, security, unity and reconciliation by investigating human rights abuses and the many atrocities committed over 20 years of conflict.” The commission began its work in February 2006 and submitted its final report in June 2009. Joseph pointed out that the commission's initial report included President Ellen Johnson Sirleaf among persons to be sanctioned or banned from holding public office for 30 years. It was then that Sirleaf recognized the great challenge of combining justice and reconciliation.
Joseph said that the final report called for prosecution of former warlords, but he contended that to do so would likely have plunged the country back into violence. He said that because Taylor could not be prosecuted in Liberia or Sierra Leone, lesser perpetrators of human rights abuses cannot be made to pay for their crimes through prosecution or incarceration. As an outsider to the field of transitional justice, Joseph believes this situation is something of an oxymoron. “To secure a transition to peace, security, unity and reconciliation, justice in the sense of holding accountable those responsible for heinous crimes must be diluted or averted or deferred.” He went on to explain, “There is a trade off that takes place, and each country in such post-conflict situations, must decide what is acceptable, desirable, and tolerable. And with different countries, there will be different answers to how you do that.” Joseph asserted that the truth and reconciliation process has put the Liberian people through a collective therapeutic exercise that has made it possible for Liberians to move on as citizens of one country, gradually binding up deep wounds.

Joseph concluded his case study discussion by presenting four important lessons learned from Liberia: 1) there should be no immunity for gross human rights abuses; 2) the responsibility to protect may require the use of collectively sanctioned military force; 3) international support for post-war reconstruction is extremely important; and 4) steps must be taken to ensure that conflicts that can be prevented and will be prevented. He stated, “The massive abuses of state power in Africa… mean there will be decades of deliberations over building peace and according some degree of justice for those who have suffered. Using South African and Liberian templates and those from other country’s experiences…perhaps the balance between justice and peace will begin to even out.” However, he remains skeptical about the likelihood of that outcome “in light of Africa’s weak and unconsolidated states; the fierceness of the religious, ethnic, and other sectional hostilities; and the low continental capacity to resolve them.” Joseph said the
international community has no choice but to intensify its efforts because transitional justice work in Africa will continue for a very long time.

**PANEL RESPONSE TO QUESTIONS**

Cassel began the question and answer session by addressing whether to prioritize reparations over removing the high command and the Supreme Court from office in El Salvador. He said the international participants on the commission lacked the legitimacy to make such a difficult judgment for the country. However, in his personal view, it is essential to remove the “bad actors” from office. Cassel pointed out that if people who led the atrocities remain in office, then there is no guarantee reparations would ever reach the people for whom they are intended. While reparations are important, he favors a purge as a top priority.

Cassel believed *crisis fatigue was a primary reason why reparations were not paid to the victims of the conflict*. In the immediate aftermath of atrocities, when there is a transition from war to peace or from an authoritarian to a more democratic government, the international community provides support, both financially and otherwise. However, after a certain period of time, the international community tends to lose interest and focuses efforts on another conflict. In the case of El Salvador, by the time the Truth Commission Report was published 15 months after the end of the war attention was diverted to the Yugoslavian crisis. A second reason postulated by Cassel was a failure of cooperation within the United Nations. The World Bank and the International Monetary Fund had the leverage to persuade El Salvador to pay reparations and to encourage friendly governments to fund those reparations, but there was no effective coordination between political officers in the UN Secretariat and the economic officers in the UN.

With respect to a question on **transitional processes twinned with reconciliation efforts**, Cassel said the response depends on the meaning attached to the latter concept. If the intent is for everyone to make peace and behave amicably in the future, he voiced skepticism. But if reconciliation entails something broader, including addressing the underlying social and economic injustices that started the war, then Cassel believes the transitional processes of truth, reparations, prosecutions and purges have a better chance of success.

Shifting questions towards East Timor, Burgess was asked to discuss the
Community Reconciliation Procedures. He said that the process began very slowly because of the lack of incentives and motivation for the participation of alleged perpetrators and even the possibility of using the threat of court action was a failure due to the weak capacity of the judicial system. However, over time the process slowly began to yield results. When the perpetrators saw that others were being accepted back into communities in other villages, they began to voluntarily participate. At the end of its 18-month mandate, 1,400 perpetrators of low-level crimes had participated while an additional 2,000 wanted to take part, but were unable to before the completion of the program. Burgess admitted to “being stunned” over the value of an apology, but he came to realize apologies gave people the opportunity to clear up both what did and did not happen, as well as what they had done and had not done.

To the question of replicating the process in other countries, Burgess said that lessons can be learned and core values can be replicated, but that the Community Reconciliation Procedures were specifically designed for a Catholic community where confessions were part of the culture. He said communities and culture must be considered when designing a truth and reconciliation procedure.

In closing the question and answer session, Joseph reflected on both the morning and afternoon panels, highlighting the transformative aspect in transitional justice that Wendy Lambourne focused on in her presentation. He said in thinking about these processes, one must consider how to connect them in order to take post-conflict societies forward and out of the conflict cycle. When thinking about those transformations, it is evident by the presentations that the immediate, short-term exercise in transitional justice is addressed by the international community. However, if the process is to be successful, a broader approach that includes transformational processes that address structural inequalities of the state, society, and the economy must be pursued.
CONFERENCE AGENDA

Session 1: Transitional Justice Concepts and Frameworks
10:00am-12:30pm

INTRODUCTION
Steve McDonald, Consulting Director, the Africa Program and the Project on Leadership and Building State Capacity, Woodrow Wilson International Center for Scholars

KEYNOTE SPEAKER
David Tolbert, President, International Center for Transitional Justice

PANELISTS
Mark Goodale, Associate Professor, Institute for Conflict Analysis and Resolution, George Mason University
Priscilla Hayner, Author, Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions
Wendy Lambourne, Lecturer and Academic Coordinator, Centre for Peace and Conflict Studies, University of Sydney

MODERATOR
Lisa Schirch, Director, 3D Security Initiatives

LUNCHEON
12:30pm-1:30pm
Session 2: Comparative Case Studies
1:30pm-4:00pm

INTRODUCTION
Steve McDonald, Director, the Africa Program and the Project on Leadership and Building State Capacity, Woodrow Wilson International Center for Scholars

PANELLISTS
Douglass Cassel, former Legal Advisor to the United Nations Commission on Truth for El Salvador, and Professor of Law, Notre Dame University
Jennifer Easterday, Trial Monitor for the Special Court on Sierra Leone, War Crimes Studies Center, University of California, Berkeley
Patrick Burgess, Asia Director, International Center for Transitional Justice, and former Director of Human Rights, UNTAET and UNMISET missions in Timor-Leste
Richard Joseph, Former Fellow for African Governance, The Carter Center, and Professor of International History and Politics, Northwestern University

MODERATOR
Martin Kimani, Deputy Director, Ansari Africa Center at the Atlantic Council
SPEAKER BIOGRAPHIES

PATRICK BURGESS

Patrick Burgess is an Australian barrister who was a trial counsel, including jury trials for serious criminal offences, and was later appointed as the Senior Member the Australian Refugee Review Tribunal. He led refugee and humanitarian assistance programs in Rwanda/Zaire following the genocide in 1994, 1996 and 1997, and has managed emergency projects in Yemen, eastern Indonesia and post-tsunami Aceh. Patrick served on the UNAMET mission responsible for the independence ballot. Following the outbreak of mass violence he remained in Timor for the following six years, serving as a District Administrator and then Director of Human Rights for the UNTAET and UNMISET missions, which included responsibility for the war crimes investigations unit in its early stages. His responsibilities included the lead role for the UN in relation to establishing the East Timor Commission for Reception, Truth and Reconciliation (CAVR), where he worked for three years, as Principal Legal Counsel and Senior Advisor to the Commissioners. From 2005-7 he was the Lead Advisor on Human Rights and Access to Justice for the Australian government program of support to the Indonesian legal system, based in Jakarta, Indonesia. This work included training of judges, prosecutors and lawyers on international law and transitional justice.

DOUGLASS CASSEL

Douglass Cassel is Professor of Law, Notre Dame Presidential Fellow and Director of the Center for Civil and Human Rights at Notre Dame Law School, where he teaches international human rights, international humanitarian and international criminal law. His experience in the field of transitional justice includes service as Legal Advisor to the United Nations Commission on the Truth for El Salvador, and consulting to governments and non-governmental organizations on transitional justice issues in Guatemala, Ghana, Indonesia, Northern Ireland, Panama and Peru. He also teaches law school courses on the subject. Professor Cassel was twice elected by the Organization of American States to serve on the Board of the Justice Studies Center of the Americas, of which he was elected President. Among other organizational affiliations, he continues to serve as President of the Due Process of Law Foundation, based in Washington,
DC, which promotes judicial reform throughout the Western Hemisphere. He holds a BA in Economics from Yale University and a JD from Harvard Law School.

JENNIFER EASTERDAY

Jennifer Easterday has worked with the UC Berkeley War Crimes Studies Center on research and monitoring projects since 2006, starting with a project related to the Extraordinary Chambers in the Courts of Cambodia. Jennifer is currently monitoring and researching the Special Court for Sierra Leone trial of Charles Taylor. She has worked on projects related to trial monitoring at the Iraqi High Tribunal and the Special Tribunal for Lebanon, and training local practitioners on international criminal law in Rwanda and Uganda. Based in The Hague, her experience as a researcher and trial monitor for the SCSL includes daily monitoring of the Taylor trial, researching and reporting on key developments in the Taylor trial, legal analysis of SCSL jurisprudence, building relationships with key tribunal personnel, and recruiting and training trial monitors. She also has experience working at the ICTY and with other international criminal law and human rights NGOs in Europe and Latin America. She recently published a special report on the Taylor trial for the WCSC, and has been published in the Berkeley Journal of International Law and the Arizona Journal of International and Comparative Law. She received her JD from the University of California, Berkeley School of Law and is a member of the California State Bar.

MARK GOODALE

Mark Goodale is Associate Professor of Conflict Analysis and Anthropology at George Mason University and Series Editor of Stanford Studies in Human Rights. He is a specialist in culture and conflict and conducts research on political transition, ethnic conflict, human rights, post-conflict processes, and international law. He is the author or editor of six books including, most recently, Mirrors of Justice: Law and Power in the Post-Cold War Era (Cambridge UP, 2010), Surrendering to Utopia: An Anthropology of Human Rights (Stanford UP, 2010), and Dilemmas of Modernity: Bolivian Encounters with Law and Liberalism (Stanford UP, 2008). He is currently writing a new book on constitutional revolution and the possibilities for radical social change in the contemporary world based on four years of research in Bolivia funded in part by the National Science Foundation.
PRISCILLA HAYNER

Priscilla Hayner, a co-founder of the ICTJ, is an expert on truth commissions and transitional justice initiatives around the world and has written widely on the subject of official truth-seeking in political transitions. She is the author of *Unspeakable Truths* (Routledge, 2001), which explores the work of more than 20 truth commissions worldwide. Prior to joining the ICTJ, she was a consultant to the Ford Foundation, the UN High Commissioner for Human Rights, and other organizations. Ms. Hayner was previously a program officer on international human rights and world security for the Joyce Mertz-Gilmore Foundation in New York. She holds degrees from Earlham College and the School of International and Public Affairs at Columbia University.

RICHARD JOSEPH


WENDY LAMBOURNE

Dr Wendy Lambourne is Senior Lecturer and Academic Coordinator at the Centre for Peace and Conflict Studies, University of Sydney. Her research is concerned with analyzing and evaluating transitional justice, reconciliation and peacebuilding after mass violence, with a regional focus on Africa and Asia/Pacific. She has conducted field research in Rwanda, Cambodia, East Timor, Sierra Leone and, most recently, in Northern Uganda, with a particular focus on civil society participation, the role of outreach, and