

**Conference Report “Transitional Justice in
Sub-Saharan Africa”, 20 – 24 November 2019,
Berlin**

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The African-German Research Network for Transnational Criminal Justice (“Network”) held its first annual conference on “Transitional Justice in Sub-Saharan Africa” between 20th and 24th November 2019 in Berlin at Berlin-Brandenburg Academy of Sciences and Humanities and at Humboldt-Universität zu Berlin. The Network was established after the 10-year-funding period for the South African-German Centre for Transnational Criminal Justice (“Centre”), which was supported by the German Academic Exchange Service and offered an LL.M.- and PhD-Programme, has ended in 2018. It aims to provide the very successful Alumni of the Centre with the basis and the resources to further their academic and personal exchange. The Network is directed by *Prof. Dr. Gerhard Werle* at Humboldt-Universität zu Berlin and supported by the German Academic Exchange Service and the German Federal Foreign Office.

The African-German Research Network for Transnational Criminal Justice has created an Advisory Board, members of which are distinguished African and German scholars, as well as three Working Groups that provide a basis for

interested Alumni to research and work together on specific topics in the field of transnational criminal justice. The Working Group “Transitional Justice“ focuses on recent transition processes in Africa and deals with specific legal issues and mechanisms for confronting with past injustices; it organized the Network’s first conference in Berlin on Transitional Justice in Sub-Saharan Africa.

In addressing legacies of gross human rights violations, Transitional Justice is usually considered as instrumental in establishing, amongst others, the rule of law, reconciliation, and democracy.¹ In Sub-Saharan Africa, the approaches used over the last decades evince a lot of diversity, in the wake of many countries in the region recovering from protracted conflict or dictatorial regimes. Recent developments in countries such as Ethiopia, South Sudan, or Zimbabwe once more highlight the relevance of Transitional Justice. While Transitional Justice mechanisms have to be tailored to meet the requirements of specific situations, analyzing and comparing different approaches can provide valuable insights that can be used to develop best practices and improve the implementation of Transitional Justice.

With a total of seven panels, the conference covered a broad range of Transitional Justice topics

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¹ *Gerhard Werle/Moritz Vormbaum*, *Transitional Justice* (2018), 6 et seq.

with a focus on different models in Sub-Saharan Africa. At the beginning of the conference, the current Transitional Justice situation in Ethiopia was discussed, chaired by *Dr. Aziz Epik, LL.M. (Cambridge)*, senior research fellow at the Chair for German and International Criminal Law, Criminal Procedure and Modern Legal History of *Prof. Dr. Gerhard Werle*, Humboldt-Universität zu Berlin. *Tamene Ena Heliso*, lecturer at Wolaita Sodo University, Ethiopia, and *Dr. Marshet Tadesse Tessema*, assistant professor at Hawassa University, Ethiopia, gave presentations on the Reconciliation Commission of Ethiopia. While *Heliso* portrayed the overall framework of Transitional Justice, *Tessema* provided a critical analysis of the Reconciliation Commission's establishment, composition of its members and their qualifications, timeline and scope of coverage, nature of its mandate, and ability to deliver based on its objectives and independence. In *Tessema's* opinion, the ongoing developments could rather be described as a forced process and a "transplacement" than as an actual transition. *Tessema* finds the Commission's manner of establishment as lacking people's involvement, its membership overly broad, and raises credibility questions on several of its members. Additionally, *Tessema* stated that the Commission's mandate is very limited compared to the practice of other truth commissions and doubted on the ability of the commission to deliver peace and justice to the people of Ethiopia. As a starting point for the discussion, *Tessema* recommended several amendments to the Proclamation to Establish

Reconciliation Commission. Subsequently, *Dr. Hannah Woolaver*, associate professor at the University of Cape Town, commented on the current situation in Ethiopia and highlighted general aspects of Transitional Justice, such as the legality of amnesties as a Transitional Justice mechanism. *Woolaver* also discussed the objective and role of the truth commission in Ethiopia and raised the issue of the commission's independence towards state and society.

The second panel centred on Transitional Justice in South Sudan. The panel was chaired by *Nicksoni Filbert*, researcher at the African-German Research Network. *Dr. Prosper Maguchu*, assistant professor and visiting fellow at Vrije Universiteit Amsterdam, The Netherlands, presented a paper on "The Fate of Transitional Justice in South Sudan" on behalf of *Taban Romano*, advocate and legal consultant from South Sudan, who was unable to participate in person. *Maguchu's* presentation focused mostly on the general overview of the Transitional Justice in South Sudan and the need to incorporate traditional African justice mechanisms and local ownership in the process. He concluded the presentation by highlighting recommendations for improvement and the main challenges facing Transitional Justice in South Sudan. His presentation was followed by a comment from *Prof. Dr. Moritz Vormbaum*, professor of law at Westfälische Wilhelms-Universität Münster, Germany. *Vormbaum* commented on South Sudan's current transitioning progress, including a look at the historical nature of the conflict and the

nature of the Transitional Justice mechanisms envisaged for South Sudan, namely: Commission for Truth, Reconciliation and Healing; Hybrid Court for South Sudan; and the Compensation and Reparation Authority. According to *Vormbaum*, the Revitalized Agreement's Transitional Justice provisions seem to align with the general principles of international law and, if implemented, will have a positive impact on South Sudan.

The fourth panel chaired by *Dr. Hannah Woolaver* dealt with Transitional Justice developments in Uganda. *Dr. Michael Mukwana*, Manager Litigation at the Kampala Capital City Authority in Uganda, presented Uganda's Amnesty Act and the specific case of Thomas Kwoyelo, a former Lord's Resistance Army fighter, who is charged under Ugandan law for crimes committed during the war in Northern Uganda and for whom amnesty was not granted. His case is extraordinary due to the fact that more than 26 000 fighters had benefitted from amnesty, all of whom were in comparable positions in the LRA. *Mukwana* argued that Kwoyelo has been a victim of arbitrary shift of government policy and that amnesty should be granted to him as well. *Mukwana* also debated Uganda's Amnesty Act with regard to its objective and prescriptions of blanket amnesty. *Brenda Nanyunja*, legal researcher at the Uganda Legal Information Institute, held a presentation on the victimization of children born of war in Uganda and possibilities of social integration as well as of general transitional justice mechanisms. *Nanyunja* stated that children born of war are rarely seen as victims themselves

and do not get proper governmental support for integration. In the ensuing discussion the conflict of the rule of law and the necessity of prosecution, non-retroactivity and traditional justice mechanisms were issued.

The fourth panel on Transitional Justice in Zimbabwe was chaired by *Dr. Marshet Tadesse Tessema*. *Felisters Francisco*, a senior state advocate in the Ministry of Justice and Constitutional Affairs of Malawi, presented a work on "Dealing with Past Human Rights Violations in Post Robert Mugabe Zimbabwe". Her presentation focused on the nature of the human rights violations committed in Zimbabwe for over three decades, the applicability of Transitional Justice mechanisms in Zimbabwe and the challenges which have made Zimbabwe incapable of realising a proper Transitional Justice process. The second presentation was tendered by *Sheilla Maribha*, law lecturer at Ezekiel Guti University in Zimbabwe. *Maribha* examined the work of the National Peace and Reconciliation Commission of Zimbabwe, an institution which has been established constitutionally. *Maribha* argued that the Commission, despite of its broadly framed mandates and functions, has missed several opportunities, which have made its effectiveness questionable. *Maribha* ended her presentation proposing several recommendations, including the Commission discharging its mandate proactively as well as taking a human security based approach as opposed to national security approach.

The conference's objective was also to deal with Transitional Justice in situations that have completed their transitions. Under the chair of *Prof. Dr. Gerhard Werle*, professor of law at Humboldt-Universität zu Berlin, *Dr. Windell Nortje*, international criminal law scholar at the University of the Western Cape, South Africa, and *Dr. Marian Mensah-Yankson*, project officer at International Nuremberg Principles Academy, Germany, discussed the cases of South Africa and Ghana. *Nortje* underlined the challenges in dealing with the past faced in South Africa, a country that had experienced a real transition by using different transitional justice mechanisms such as amnesty, prosecution and a truth and reconciliation commission. The discussion focused on the issue of how far crimes committed centuries ago may cause problems for prosecution. *Mensah-Yankson* held a speech on Ghana's transition process with a focus on the redrafting of the Constitution in 1992 and its impact on the National Reconciliation Commission, prosecutions, reparations, and amnesties and discussed, together with the participants of the conference, the disadvantages of including Transitional Justice provisions in the constitution. She discussed the nature of Ghana's transition process with regard to public consultations and the role of political opposition forces. *Mensah-Yankson* concluded that even though transitional justice and constitutionalism are separate processes, transitional justice mechanisms can be designed and used as part of the constitutional development progress.

The sixth panel on Transitional Justice policies had three speakers that were chaired by *Dr. Marian Yankson-Mensah*. *Dr. Prosper Maguchu* presented a comparative study of the African Union Transitional Justice Policy, 2019 and the European Union Policy Framework on Support to Transitional Justice, 2015. *Maguchu* made a comparison of the two policy frameworks based on their basic principles, elements of Transitional Justice mechanisms they envisage, and the means of implementation. *Maguchu* contended that any reasonable comparative study of the two policy frameworks needed to be situated in the policies' own contexts. *Donnet Rose Odhiambo*, advocate of the High Court of Kenya, presented her paper on "The Enigma of Transitional Justice in Africa: Accessing the AU's Commitment to Promote Accountability, Achieve Sustainable Peace and Foster Reconciliation." *Odhiambo* discerns a growing regionalisation of Transitional Justice in Africa which is championed by the African Union. Central to *Odhiambo's* presentation is the argument that the Regional Economic Communities (RECs) in Africa should include and incorporate Transitional Justice mechanisms in their mandates as they are in a better position to achieve stability and accountability of the African states compared to the African Union. *Dr. Juliet Okoth*, former lecturer at the University of Nairobi and visiting professional at Basel University Faculty of Law in Switzerland, held the third presentation on "An Overview of the African Union Transitional Justice Policy Framework with Focus on the Criminal Justice Initiatives". *Okoth*

scrutinized the basic features of the criminal justice initiatives of the African Union Transitional Justice Policy through an examination of its basic benchmarks and checklists for successful criminal justice mechanisms in Africa. To *Okoth*, the benchmarks and checklists set out by the African Union are very progressive, reflect the current acceptable practice under international criminal law and have responded to most of the questions which in the past seemed enigmatic.

The conference ended with its last panel on Transitional Justice and Economics. *Nelly Kamunde*, advocate and independent consultant in Kenya, discussed the role of corporations in Transitional Justice situations in Africa pertaining to restorative justice, truth telling and individual accountability of corporations. *Kamunde* explained that corporations operate as perpetrators of gross human rights violations, such as in the case of IG Farben and Krupp. Therefore, this necessitates the inclusion of economic actors in Transitional Justice processes to achieve transition. The second speaker of the panel, *Sarah Mutseo Ngachi*, corporate and commercial lawyer in Kenya, analyzed the case of Kenya and its Truth, Justice and Reconciliation Commission. She focused on the investigation of economic crimes. *Ngachi* examined the objective of the Kenyan commission to investigate economic crimes and the relationship between transitional justice and human rights. The panel was complemented by *Nicksoni Filbert*, Tanzania, and *Victoria Olayide Ojo*, Nigeria, who are researchers at the African-German Research Network for

Transnational Criminal Justice. *Filbert* and *Ojo* discussed the issue of failing transitional justice prescriptions and the scope for transitional justice mechanisms. Their main argument was that transitional justice mechanisms should not be applied in situations that lack genuine change from conflict or repressive regimes to committed democratic reforms. To them, applying transitional justice without transition defeats the actual purpose of transitional justice because it ends up justifying undemocratic regimes' violations while denying victims of abuses the long awaited justice.

In conclusion, the conference underscores the importance of Transitional Justice for Sub-Saharan Africa. In the wake of recent transitions and peace processes in several African countries, Transitional Justice presents one among several practical ways to reckon with the past and shape the future. The conference evinces that African countries have adopted dissimilar Transitional Justice mechanisms depending on their local contexts, prominent being truth commissions, prosecutions and reparations. In reality, however, it seems that there are several obstacles to the effective applicability of Transitional Justice mechanisms in Africa that should be tackled.