

**19 MAY 2023**

# INTERNATIONAL JUSTICE SYMPOSIUM

*Transitions from where?*

*Transition to what?*

***Exploring transitional justice efforts  
in an ever-changing world***

**Aga Khan University**  
Graduate School of  
Media and Communications

**NAIROBI, KENYA**



THE AGA KHAN UNIVERSITY



Federal Republic of Germany  
Foreign Office



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Netherlands








**19 MAY 2023**

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# EXECUTIVE SUMMARY



Recognising that human rights violations are being committed on a daily basis in Sudan, the **Wayamo Foundation**, the **Africa Group for Justice and Accountability**, and the **Aga Khan University Graduate School of Media and Communication** hosted a public symposium on transitional justice and international criminal law on 19 May 2023, in Nairobi, Kenya.

The symposium brought together high-level regional and international experts as well as transitional justice and international criminal law advocates from Kenya in a forum for respectful and spirited discussion and debate. The proceedings were opened by **Prof. Nancy Booker**, Associate Professor and Interim Dean at the

Aga Khan University Graduate School of Media and Communications, who welcomed all the participants, and emphasised the important role played by media actors in reporting on human rights violations, and the steps being taken by her university to address this issue in its curriculum.

Wayamo Foundation Director, **Bettina Ambach**, observed, *"Everything changed on 15 April, when the armed conflict between the two generals broke out. All of our local colleagues and partners are now in a struggle for survival. I want to take a moment to acknowledge that what we have been and will be discussing here in Nairobi is not merely academic: it matters to people on the ground in Sudan right now, who are caught in a spiral of violence."*

**Fatiha Serour**, former Deputy Special Representative of the UN Secretary General in Somalia and AGJA Chairperson, stated, *“Those who have been violated—whether through sexual violence or other forms of abuse—are not always able to access a court to testify about human rights violations and seek justice. That’s why we need transitional justice with its multi-dimensional potential for serving victims and survivors.”*

**Zainab Bangura**, Director-General of the UN Office at Nairobi (UNON), gave an inspiring speech to Sudanese civil society actors, urging them to continue to fight for a democratic, civilian-led Sudan.

The joint Wayamo-AGJA conference explored timely and pressing issues regarding the tools available to states and affected communities to address past atrocities and ongoing human rights violations. The symposium’s opening session, entitled *“An ongoing obligation: the continuing importance of accountability in Sudan”*, featured Sudanese guest speakers, **Moneim Adam**, Access to Justice Programme Director, Gisa INC, and **Gouja Ahmed**, Sudan Communications and Logistics Officer, Wayamo Foundation. In a recorded video intervention, Mr. Ahmed gave an emotional and moving account of the events that were currently unfolding in Darfur, which brought many in the auditorium to tears. In his speech, he urged all those present to stand in solidarity with the Sudanese people and join efforts in the pursuit of peace and accountability in the country.

Over ninety participants drawn from Kenyan and Sudanese civil society organisations, the Kenya Bar Association, media representatives from Kenya and the Sudanese diaspora, the diplomatic corps, and law and international relations students from various Nairobi universities took part in the symposium. Spanning three panels and one conversation, the symposium addressed topics which included, transitional justice in a transitioning world, focusing on recent geopolitical, international and legal changes in the transitional justice field, opportunities and challenges in the collection of evidence of mass atrocities, the prosecution of international crimes in domestic courts, and lastly, the renewed momentum in international criminal law and concerns about double standards.

The rich and diverse panel of speakers included **Catherine Marchi-Uhel**, Head of the International, Impartial and Independent Mechanism for Syria (IIIM), Nema Milaninia, Special Advisor to the U.S. Ambassador-at-Large for Global Criminal Justice, Tabitha Ouya, Head of the Civil Rights Division, Office of the Director of Public Prosecutions, Kenya, and members of AGJA, a group of high-level African experts on international criminal law and human rights, among others.

A few key observations made by the panellists were:

- The positive trend in transitional justice mechanisms towards stressing the inclusion of victims and local ownership.
- The emphasis on reparations, and the truism that there is no justice without reparations.
- The importance of ensuring that investigative work is not done in silos, and that space is reserved for combining traditional and new technologies such as digital open-source information.
- The need to view justice from a holistic and comprehensive perspective, which includes justice efforts at an international, regional and domestic level.
- The importance of focusing on sexual and gender-based violence, something that is sadly all too common in conflict situations but is not addressed comprehensively.

The last panel’s closing discussion on double standards and how to achieve greater equality in the distribution of justice for international crimes left the participants with the following powerful words ringing in their ears,

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*“Let us create our own standards  
and make them work!”*

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## OPENING REMARKS



**PROF. NANCY BOOKER**  
Associate Professor and  
the Interim Dean at the  
Graduate School of Media and  
Communications, Aga Khan  
University

In her welcoming address at the International Justice Symposium held at the University Centre, Nancy Booker, Interim Dean of the Graduate School of Media and Communications, acknowledged the collaboration with the symposium organisers and highlighted the significance of hosting such important conversations where learning happens away from conventional conference rooms.

Booker emphasised the crucial role of the media in transitional justice and their ability to shape public discourse, promote accountability, foster reconciliation and document historical events. She stressed the need for journalists to be well-trained and prepared

to report on human rights issues proactively and ethically: “The conceptualisation that journalism is for all human beings, regardless of race, nationality, gender or geographical location, places a huge responsibility on journalists to report effectively on human rights violations. Journalists who use the freedom of expression to guide their practice must also not be seen to abuse the fundamental rights they seek to protect.”

Booker discussed the partnership with Journalists for Human Rights to develop a curriculum on human rights reporting for universities and colleges, highlighting the responsibility journalists have in protecting fundamental rights while exercising freedom of expression. Expressing her eagerness to learn from the experts present and incorporate their insights into their work with journalists in the region, she concluded by quoting Aga Khan University Chancellor, His Highness the Aga Khan, urging attendees to strive for justice, security, equality, tolerance, harmony, and human dignity to guide the day’s discussions.





**BETTINA AMBACH**  
Director, Wayamo Foundation

In her opening remarks Bettina Ambach acknowledged the support of the Dutch and German Foreign Ministries for the Nairobi events, and expressed gratitude to the Graduate School of Media and Communications, emphasising the importance of responsible and well-informed media in reporting on transitional justice issues.

She began by highlighting the dramatic turn of events in Sudan, where Wayamo's planned participation of Sudanese lawyers, civil society representatives, and media had been disrupted by armed conflict. *"All of our local colleagues and partners are now in a struggle for survival,"* she noted. *"I want to take a moment to acknowledge that what we have been and will be discussing here in Nairobi is not merely academic: it matters to people, right now, on the ground in Sudan who are caught within a spiral of violence."*

She went on to emphasise the real-life impact of transitional justice discussions on the ground in Sudan and expressed solidarity with those affected.

Despite the challenges, she highlighted the presence of representatives from the Sudanese diaspora and promised that Wayamo would share the panel debates online with its networks in Sudan.

Ms. Ambach then introduced the Africa Group for Justice and Accountability (AGJA) and noted the presence of six of its members: Fatiha Serour from Algeria, Aïchatou Mindaoudou from Niger, Navi Pillay from South Africa, Betty Murungi from Kenya, along with two members on hiatus, Mohamed Chande Othman from Tanzania and Zainab Bangura from Sierra Leone.

She outlined the diverse range of transitional justice tools that would be explored throughout the symposium, including truth commissions, war crimes tribunals, reparation schemes, evidence-gathering mechanisms, security sector reform, and amnesties. In addition, she highlighted the importance of documenting international crimes and human rights violations for future accountability purposes, the importance of fostering discussions on domestic application of international criminal law, and concerns about double standards.

Bettina Ambach emphasised the significance of time management, and looked forward to a day of respectful, creative, and engaging discussions with the audience.





**FATIHA SEROUR**  
former Deputy Special  
Representative of the UN  
Secretary General in Somalia and  
Chairperson of the Africa Group  
for Justice and Accountability

As the current AGJA Chairperson, Fatiha Serour acknowledged the partnership between the Africa Group and Wayamo, highlighting their shared mission to uphold justice and fight against impunity.

She emphasised the relevance of the conference's theme, which focused on the call for transition and justice in a troubled world. In a world plagued by ongoing conflicts, both recurring and new, such as the Russian invasion of Ukraine and the recent conflict in Sudan, the fundamental principles of human rights, dignity and peace are often disregarded. Transitional justice is crucial in such circumstances. While criminal

justice mechanisms, including courts, remain vital, they may not be sufficient for addressing the wide range of violations experienced by individuals affected by conflict. Transitional justice offers a broader approach that goes beyond courtroom proceedings, aiming to address the needs of survivors who may not have the means or opportunity to access formal legal channels.

Acknowledging the challenging nature of the discussions that lay ahead, particularly regarding the situation in Sudan, Serour nevertheless saw this as an opportunity to re-evaluate and move beyond the current unfavourable status quo.

Here she stressed: the Africa Group's commitment to fighting impunity, a theme that would recur throughout the conference; the importance of personal responsibility in supporting justice; and lastly, a collective responsibility to advocate for transitional justice mechanisms.





**ZAINAB BANGURA**  
Director-General of the United Nations Office at Nairobi (UNON)

In her opening remarks to the Symposium, Zainab Bangura, a renowned civil society activist and former Foreign Minister of Sierra Leone, addressed the audience with a mix of gratitude, humility, and determination. Bangura clarified that she was not present to contribute as an expert but rather to inspire and give hope to the Sudanese, emphasising that anything is possible.

Drawing on her own experiences in Sierra Leone, Bangura described a history of 24 years of one-party rule followed by a devastating civil war and a subsequent military coup. When the military government initiated a peace process, she and other civil society leaders questioned the legitimacy of allowing the military to negotiate on their behalf. They

launched one of the democratic parties and insisted on holding elections before achieving peace, a decision that was met with scepticism.

*"The Constitution at this time was suspended, there was no freedom. The country was dysfunctional, the parliament was a rubber stamp," she recalled. "Of course, we did not have a parliament, so we launched an election campaign before peace and we were told we were crazy. It was going to be a very, very imperfect election. But we had elections, the negotiation process was handed over to the civilians and in the process, we put in place mechanisms that would make sure we built a democratic state."*

Despite the imperfect circumstances, they pushed forward, gradually reforming institutions, and, importantly, drawing on external expertise: *"The police had been under one-party rule for so many years, so we had a British Inspector General of Police. Corruption was one of our biggest problems, so we had a Belgian from the EU as an accountant-general. We had Nigerians and Gambians in our Supreme Courts because building democracy is a process."*



Bangura highlighted with pride that Sierra Leone built new bodies, such as the Human Rights and Anti-Corruption Commissions, and sought expertise and support from international partners. She emphasised the importance of learning from the experiences of others and *“not reinventing the wheel”*. She recalled engaging with civil society leaders such as current AGJA member Betty Murungi, participating in truth and reconciliation commissions, and seeking advice from countries that had faced similar challenges. She urged the Sudanese to look to their history, understand the consequences of not being at the decision-making table, and take the lead in their own transition. She stressed the need to be bold, aggressive and focused, refusing to be swayed by external influences that might not align with the Sudanese people’s best interests.

Reflecting on her role as a diplomat, Bangura highlighted the importance of treating others with respect and empathy, as she had wished to be treated before she held positions of power. She encouraged the Sudanese to tap into the wealth of knowledge and experience available from countries such as Sierra Leone, Nigeria, and Mozambique, urging them to seek guidance and learn from the mistakes of others, determine their goals, seek help, and take charge of their transitional justice system, assuring them that the tools, experience, and exposure needed for success were readily available.

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## *An ongoing obligation: the continuing importance of accountability in Sudan*

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**GOUJA AHMED**  
Sudan Communications and  
Logistics Officer, Wayamo  
Foundation

In an emotional video address recorded on 12 May 2023, Ahmed Gouja, a Sudanese journalist and human rights defender, shed light on the dire situation in Darfur, Sudan. Speaking as a human rights monitor and videographer working with the Wayamo Foundation, Gouja highlighted the ongoing atrocities and the urgent need for justice. He emphasised that the entire region, including South Darfur, North Darfur, West Darfur, and Central Darfur, was facing extreme challenges that affected the lives of civilians.

Since the outbreak of the armed conflict in mid-April, numerous families had lost their loved ones and everything they owned. More than 200 people had been killed in El Geneina, over 65 in Nyala, and over 100 in Northern Darfur: these victims were primarily unarmed civilians, not armed groups. He painted a grim picture

of the humanitarian crisis unfolding there. He lamented the lack of functioning hospitals, with the first ten days being especially critical. Indeed, as he spoke, a new attack by militias and the Rapid Support Forces was underway in West Darfur. Such attacks resulted in the killing and burning of displaced peoples’ settlements, as well as the looting and destruction of hospitals, schools, and other public service facilities.

Gouja drew parallels between the current situation and the atrocities that occurred during the 2003 war in Darfur, emphasising the absence of accountability for those responsible and how it perpetuated a cycle of violence and impunity. He pleaded for justice to end these recurring tragedies, urging collective efforts to bring all perpetrators of past and present crimes to account.

His powerful words echoed the urgent need for justice and accountability in Darfur, reminding his listeners of the devastating consequences of impunity and the crucial role that justice plays in building a stable society.





**MONEIM ADAM**  
Access to Justice Programme  
Director, Gisa INC

Moneim Adam, Access to Justice Programme Director, expressed his deep concern over the current situation in Sudan. He lamented the devastating events unfolding in his home country, and highlighted the urgency of addressing the need for justice in Sudan, particularly given its history of wars and conflicts.

He noted that he was particularly moved by Ahmed Gouja's message to the symposium participants and by the sacrifices of Sudanese human rights defenders: *"I met Gouja many years ago and he is one of the very wonderful people who really work with IDPs on a daily basis. He's a very, very enthusiastic person, and with his very active personality he goes from camp to camp, risking his life just to document and publish about justice."* In a

similar vein, Adam acknowledged the presence of Nagla Ahmed, a Sudanese national who had just left Sudan highlighting the difficult journeys and difficult choices faced by those whose families remain in the conflict.

He turned to emphasise the importance of acknowledging and complementing the existing tribal justice mechanisms in Sudan. "Sudan has a very long history of wars, civil wars, and conflict. Even before the current conflict, there were internal mechanisms for justice in most tribes in Sudan, which served as mediation systems within the tribal framework. While recognising the significance of community-based justice, Adam stressed the crucial role of the state in providing comprehensive justice that satisfies all parties involved: *"That form of justice can be useful, but it should be complemented by a dedicated effort from the state to ensure that everyone feels satisfied."*

He then drew attention to the historical neglect of justice during peace negotiations in Sudan, citing the comprehensive peace agreement in 2005, facilitated by





Kenya, which failed to prioritise justice. *"Justice has been denied or neglected when it comes to peace negotiations. People do not believe that we can just forget things or sweep them under the table and move on. I think this is actually exactly the point why Sudan will never move on, unless people confront one another and listen to one another."*

To address the complex issues surrounding justice in Sudan, Adam highlighted the importance of open dialogue and mutual recognition of each other's pain. He mentioned a project conducted in collaboration with George Mason University, which involved collecting over 120 interviews from different parts of Sudan, and aimed at understanding how communities perceive justice and foster a sense of inclusivity and recognition of each other's pain.

Adam expressed his concerns about the potential escalation of conflicts, such as civil wars, if the current divisive attitudes persist, to the point where another's accent can be the subject of mockery. Moreover, while strong international mechanisms are needed to support justice efforts in Sudan, particularly through investigation and accountability, domestic efforts, including training, institutional reforms and media support, are equally important to achieve justice in Sudan. Justice, he emphasised, is a joint and inclusive effort that requires a deep understanding of its importance at the local level, and international justice cannot be the only solution.

In conclusion, Adam called for collaborative efforts through media, academia and advocacy, to raise awareness and support for justice in Sudan. "Looking at the current war, doing documentation and collecting evidence, efforts like advocacy and calling for accountability, I think it is very important to use the right data for that, but we need to look at the background as well," he concluded. "This war is not only

between two generals looking for power, but there is this undercurrent which can really awaken the fragile community clashes that happen from time to time in different regions. And I would really like us all to work together as media, as academics, in articles and debates. I think by this effort and others, we can help bring justice to Sudan."



## PANEL 1

# TRANSITIONAL JUSTICE IN A TRANSITIONING WORLD



The world is in transition. It always is and always has been, but recent geopolitical, international, and legal changes have had significant consequences on transitional justice and international criminal law processes. This panel will cover some of the latest developments in these fields and identify lessons that may be applicable to ongoing and emerging transitional contexts. It will also explore non-criminal law efforts to address international crimes and the importance of novel approaches to reparations, asset recovery and truth commissions, to redressing past harms, engendering peace, and meting out justice and accountability.





**MODERATOR****LINDA BORE**

International Criminal Justice lawyer and Project Coordinator, Wayamo Foundation

Linda Bore reflected on the impact of technology and its role in shaping the way information is disseminated and consumed, and the way this has transformed the world. With the advent of smartphones, individuals now have immediate access to real-time updates on conflicts, such as the situation in Sudan. Transitional justice too is always changing and plays a crucial role in addressing the violations and suffering which occur amidst such conflicts.

Exploring the historical context of transitional justice, Bore referenced the post-World War era and the establishment of institutions such as the United Nations and norms like “*never again*.” She acknowledged the pivotal role played by tribunals, such as the Nuremberg Tribunal and the ad hoc International Criminal Tribunals of the 1990s, in addressing abuses. Bore highlighted the presence of Navi Pillay, a prominent figure in the anti-apartheid struggle, as an embodiment of the efforts to confront historical wrongdoings.

Shifting the focus to the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), Bore invited Serge Brammertz to shed light on their contributions to transitional justice. Addressing the role of victims, she highlighted their limited participation as witnesses in traditional trials, stressed the need for victims to have a platform to express their experiences fully, emphasised their rights to remedies and reparations, and announced that her Wayamo Foundation colleague, Mikel Delagrangé, would be discussing this topic. Bore also referred to the concept of non-recurrence, an integral aspect of transitional justice aimed at preventing the repetition of atrocities in societies: Aïchatou Mindaoudou would explore this concept, examining its criminal law perspective and the significance of institutional reforms in fostering a return to a rule of law environment. Lastly, Christopher Gitari would be drawing on his extensive experience in various African countries to provide valuable insights into the evolution of transitional justice.

**CHRISTOPHER GITARI**

Senior Transitional Justice Advisor, Joint Monitoring and Evaluation Commission (South Sudan)

Christopher Gitari covered the progress and challenges faced by the war-torn nation, highlighting the three phases of transitional justice, and pinpointing the current moment in the third phase. While the first phase was the post-World War II period when the Nuremberg and Tokyo trials established international criminal justice as a tool to bring accountability, the second phase was the end of the Cold War and the accompanying rise in truth commissions and a preference for local or national justice approaches. He noted that the tensions between peace and justice really emerged during this period.

Moving on to the present, Gitari emphasised the ongoing third phase of transitional justice, characterised by the establishment of permanent mechanisms, such as the International Criminal Court (ICC). He stressed the significance of the ICC in addressing cases where countries are unable or unwilling to prosecute their own alleged perpetrators.

Gitari touched upon the influence of external factors on transitional justice in modern contexts, including the rise of artificial intelligence and the impact of the Ukraine war. He also drew attention to the shifting dynamics in a multipolar world and the financial challenges faced by countries of the global south in pursuing justice, particularly in relation to the north. He noted that the money is in the north and the experiences in the south, which leads to tensions.

Gitari also underscored positive trends in transitional justice, such as the inclusion of victims in designing mechanisms. Drawing from examples like Colombia and South Africa, he emphasised the pivotal role victims play in advocating accountability, even after the formal processes have concluded. Additionally, he highlighted the often-understated participation of women in transitional justice, citing Sierra Leone as a notable example where women were at the forefront of both designing and participating in transitional justice processes.



He made the point that the transitional justice conversation involves issues of capacity and emerging concepts to address the lack of institutions, such as the use of military tribunals to address capacity gaps in countries such as South Sudan and the Democratic Republic of Congo, to try to reign in reckless militias and soldiers.

Furthermore, the conversation expanded to encompass the resurgence of conditional amnesties, and the delicate balance between punishment and accountability, where the Colombian example offers an attempt to create a divide between the two concepts, with lighter sentencing guidelines where perpetrators can sometimes do community service after committing murders. Such examples focus on the problem of re-humanising perpetrators, an instance being Colombia's efforts to have perpetrators adopt the perspective of the victims to foster empathy and acknowledgement of the harm caused. There is a need for communities to acknowledge violations committed in their name, particularly in ethnically divided regions like South Sudan.

Drawing attention to the potential repetition of imperfect transitional justice mechanisms when certain groups feel left out or unsatisfied, Gitari cited the example of Chile, where multiple truth commissions were established to address the grievances of victims of torture.

One emerging trend, he said, is the global recognition of the right to truth as a concept distinct from the right to information, which is currently being affirmed by courts. There is an expanding understanding of the concept of transitional justice, which is no longer centred on the moment of transition of governments but rather on the fact that transitions often begin earlier, before a government has changed, and continue beyond the government tasked with conducting the transitional justice process, thus marking a shift from transitional justice being perceived as a government-centred process to it being perceived as a window of opportunity to change society.

He turned to the growing conversation around the intersection of environmental degradation and transitional justice, particularly regarding the accountability of transnational corporations for serious violations. An example of this was Lundin Energy, where executives are presently being prosecuted by the Swedish prosecution authorities because they sponsored militia to displace people in various oil fields in Unity State, South Sudan.

In South Sudan, the emergence of debate surrounding traditional and indigenous justice processes is generating considerable interest. However, the complex connection between these systems and transitional justice poses a significant challenge. It necessitates further contemplation, particularly in light of the fact that communities engaged in conflict often do not share the same local indigenous practices.

Social justice processes, he observed, often thrive in socially homogeneous environments, where all participants belong to a single group. In communities that find themselves at odds with each other, however, the absence of shared local indigenous customs presents a unique dilemma. Gitari suggested a solution known as *“people-to-people peace processes”*, where all stakeholders meet under a unified framework while striving to incorporate traditional systems. He cited the example of the famous 1999 Wunlit Peace Conference held in what is now the Republic of South Sudan, where a white bull was symbolically sacrificed to signify the acceptance of the end of conflict, with the animal’s struggle during the ritual embodying the challenges encountered in the peace process.

Indeed, these experiences now inform the [African Union Transitional Justice Policy](#), a guiding framework for driving transitional justice processes on the continent. Several principles are now emerging as key minimum standards for effective transitional justice:

- (i) the first of these centres on African leadership, underscoring the importance of involving African leaders in shaping transitional justice initiatives. Gitari shared a recent experience of engaging in four days of transitional justice conversations with South Sudan’s leadership, including the President, Vice-President, cabinet ministers and governors. This immersive dialogue highlighted the realisation that the responsibility for these processes rests with African nations themselves;
- (ii) the second principle emphasises local ownership, in that it is the locals who should draft and drive the transitional justice processes, with expert input if required; and,
- (iii) the third principle revolves around inclusion, with particular regard to internally displaced persons, refugees and marginalised individuals. Gitari stressed the significance of including those on the fringes of society, as well as acknowledging the concept of intersectionality. He described a scenario where a woman belonging to a specific ethnic group and social class, has endured a particular violation, and insisted that this has to be properly understood. This perspective prompts reflection on how far down the social ladder one may have to descend due to intersecting factors.





**SERGE BRAMMERTZ**  
Prosecutor, Under Secretary-  
General, United Nations  
International Residual Mechanism  
for Criminal Tribunals (IRMCT)

Serge Brammertz emphasised the significance of transitional justice and the need for tailored solutions in each specific situation, highlighting the importance of international involvement, whether through tribunals, hybrid mechanisms, expert commissions or investigations, as countries emerging from conflicts often lack the necessary expertise and infrastructure. Acceptance of the process and its outcomes depends on perceptions of independence and impartiality.

Regarding international tribunals, Brammertz acknowledged their focus on accountability but emphasised the importance of also integrating reconciliation. He argued that a successful transitional justice process requires both elements. While the

Yugoslavia and Rwanda tribunals have prosecuted over 250 individuals responsible for mass atrocities, the passage of time has revealed the challenges of delayed justice. Here, however, he noted that the situation can always change, and that those who hold power today might face prosecution in the future. He also noted how long prosecutions can take, and how quick outcomes are not always achievable, citing Rwanda, where 1,246 fugitives remain at large, and Sarajevo, where 3,000 individuals are still under investigation.

To achieve long-term justice, a comprehensive approach is required, including not only those most responsible but also the lower-ranking perpetrators, particularly where victims' reconciliation is concerned. In his view, accountability mechanisms must encompass an international component as well as a national and regional focus.

Turning to specific examples, Brammertz discussed the ICTY and ICTR. In Rwanda, where close on 1



million people were killed and 200,000 women were raped within 100 days, there was a lack of judicial infrastructure and expertise after the genocide. The ICTR was established to address accountability, but the government later implemented national legislation emphasising the confession of crimes. This resulted in the processing of over 10,000 cases at the national level. The introduction of community-based Gacaca Courts, based on a traditional pre-colonial system of justice, further facilitated accountability and reconciliation, with over 1 million individuals appearing before them. Brammertz concluded that thanks to this multi-level effort, and a strong focus on reconciliation, Rwanda stands out as a case where the reconciliation process has been the most efficient.

Turning to the former Yugoslavia, Brammertz acknowledged that reconciliation has been very unsuccessful, as the majority of the convicted war criminals are regarded as national heroes. He noted that in Serbia the glorification of these criminals is absolutely normal, noting that there are 250 large wall signs about General Ratko Mladić, despite the fact that he has been convicted of genocide. Although the ICTY indicted 161 individuals and achieved successes in jurisprudence, the lack of societal acceptance of the court's convictions remains a problem. The role of outreach, communication and media is crucial in addressing this issue.

Brammertz also mentioned two specific approaches used in the former Yugoslavia which might be applicable elsewhere. The first was an external vetting process for police officers involved in human rights violations, ensuring that those implicated could not hold positions in the transitional government. The second approach involved vetting local investigations and prosecutions by the national authorities to prevent arbitrary arrests and abuses of the judicial system.

Brammertz concluded by stressing the need for comprehensive approaches, international involvement and societal acceptance to achieve successful transitional justice processes in different contexts.



**MIKEL DELAGRANGE**  
International Criminal Justice  
and Victims' Expert, Wayamo  
Foundation

Having worked closely with international criminal tribunals throughout his career, Mikel Delagrange stressed the importance of reparations in restoring and repairing the damage caused by crimes. "*Reparations*" (deriving from the word "*repair*") encompass compensation, restitution, rehabilitation and satisfaction, with public apologies, memorialisation, and guarantees of non-repetition also falling under the umbrella of reparations.

Drawing on his ICC experience in Kenya, Congo, Uganda, Republic of Georgia and Sudan, Delagrange described his role as one of the first on the ground and the last to leave. His unique perspective led him to understand that justice cannot be achieved without reparations, particularly in the context of Sudan. Collaborating with his colleague, Ahmed Gouja, and engaging with the affected community in Darfur, Delagrange recalled witnessing the community's steadfast commitment to justice over a span of 20 years. That said, justice should encompass more than just retribution or criminal trials. The Darfuri community presented five demands for justice:

- (i) accountability through criminal trials for those responsible for the crimes committed against them;
- (ii) a return home for the nearly one million people living in IDP camps for 20 years;
- (iii) the disarming of the militias, so that people could return home safely;
- (iv) a guarantee of non-repetition, to avoid a situation where people would have to return to IDP camps after leaving; and,
- (v) support to rebuild lives upon returning, including infrastructure, schools and hospitals, which have fallen into disrepair for 20 years, and other means of income generation.

Delagrange acknowledged that international criminal justice systems have been myopically focused on retribution. He argued that this is rooted in a common law-based approach, where prosecutors are charged with following the evidence and securing convictions.

He noted that this is done because prosecutors are pursuing the public good, as well as the notion that international crimes are crimes which affect all of humanity.

While recognising the importance of prosecuting international crimes for the greater good, there is a need for a holistic approach to justice that addresses the broader issues faced by victims. Failing to consider the issues of returning home and repairing the harm caused by crimes leads to disappointment among victim communities. The concept of justice should be expanded beyond retribution, acknowledging the complexities involved. He saw domestic accountability as a crucial aspect of the future of justice, and urged the audience to take charge of their own future,

emphasising that support would be available for those who strived to make positive changes at the domestic level.

With respect to domestic accountability in Sudan, part of the strategy was to utilise findings from international processes to pursue simple property law claims in domestic courts. Delagrangé noted that demonstrating that individuals were wrongfully removed from their land would have significant symbolic value, and called on the journalists present to highlight such decisions as profound moments in the fight for justice, moments that move people, that create space for political, rather than merely legal, resolution. In short, there should be *"no justice without reparations."*







**AÏCHATOU MINDAOUDOU**  
Former United Nations Special Representative in Côte d'Ivoire, former Acting Joint UN/AU Special Representative in Darfur, Sudan and former Minister of Foreign Affairs, Niger

Aïchatou Mindaoudou, a seasoned diplomat with an extensive background in conflict resolution, acknowledged the unique perspective she brought to the table, having little connection to the ICC. Instead, she drew on her experiences in the field, specifically in the implementation of transitional justice processes.

Recalling her time in Darfur, where she had spent three years actively involved in mediating between the government and the justice and equality movement, she revealed her deep disappointment that the region's problems had re-emerged. She had witnessed the painstaking two-year process which culminated in the

signing of the Doha Document for Peace in Darfur (DDPD) on 14 July 2011, symbolising a transitional justice process born out of arduous negotiations between the government and rebels.

The African Union-United Nations Hybrid Operation in Darfur was in charge of implementing the DDPD, something that made her reflect on the significance of institutions which have a pivotal role. Echoing Zainab Bangura's earlier sentiment, she stressed the importance of building institutions, of having a starting point, even if confidence in such institutions is initially lacking.

When in Darfur, Mindaoudou negotiated with the government of Omar al-Bashir, which agreed to implement many provisions outlined in the DDPD. Notably, a Darfuri Vice-President was appointed and efforts were made to collaborate with IDPs and local communities to further the peace process. Now, however, she shared her devastation upon hearing

Ahmed Gouja's remarks. Having personally visited the region and spent countless nights engaging with its people in areas, such as South Kordofan, El Geneina and Darfur itself, Mindaoudou felt that everything had "returned to square one". Nonetheless, she acknowledged that each country's transitional justice process is unique and bespoke, and urged the Sudanese in the room to draw upon best practices, even if they had to begin again.

Turning to the core principles of transitional justice, she underscored the importance of a victim-centred approach, and emphasised the impossibility of fully comprehending victims' needs without their input: "outsiders cannot know better than the victims themselves!" Here, she recounted an encounter with women in El Geneina, where they discussed their priorities. While the pursuit of justice against perpetrators was crucial, trials often took time. The women expressed their concern for the safety of their daughters, revealing that fetching water from distant areas had exposed them to attacks. In response, Mindaoudou referenced the "quick-impact projects" undertaken by peacekeeping missions and how they had provided water nearby to alleviate this vulnerability.

In this connection, she deplored the fact that the issue of sexual exploitation and abuse was not prominent enough in

the current Sudanese peace process agenda. She acknowledged Zainab Bangura's presence during negotiations in Sierra Leone but said that it was not normal for women to have a seat at the table in any country: indeed, in the Doha mediation process, women had initially been excluded but were eventually included upon their return to Darfur. She stressed the significance of placing sexual violence as a key agenda item in all transitional justice processes.

In conclusion, Mindaoudou emphasised the critical importance of early reparations. She cited Côte d'Ivoire as an example of a country with strong pre-conflict institutions which took proactive measures. They established a Special Investigation Commission, conducted interviews, compiled a list of victims, and promptly provided reparations to each individual. This approach not only contributed to national reconciliation, but also brought a sense of solace to those who had endured humiliation and discrimination.



## Q&A

**Question:** *In the quest for accountability working hand in hand with bringing stability to the nation of Sudan, how can transitional justice processes effectively address the needs and concerns of marginalised and vulnerable groups, such as women, children and minorities, who have been disproportionately affected by the conflict and the human rights abuses currently going on in Sudan?*

**Answer from SERGE BRAMMERTZ**

One of the lessons learnt from previous investigation commissions and all international tribunals is that if mass atrocity trials begin, then the focus in the early days is always on the murder cases, which are the most visible cases. In contrast, sexual violence or violence against children is much more complex to investigate, as these crimes are much more hidden in society. He noted the problem of stigmatisation of victims, suggesting that the solution lies in ensuring that specialised investigators and prosecutors are tasked with specifically targeting this area in the early days of any accountability mechanism.

**Question:** *How do you merge the importance of truth commissions and local justice with the importance of the international criminal justice system?*

**Answer from CHRISTOPHER GITARI**

Transitional justice often entails looking at what is possible in a given context, bearing in mind the country's goals and victims' priorities. Certain processes are often prioritised over others because transitional justice, like politics, is the art of the possible. So, depending on the context, sometimes truth commissions are possible whereas criminal trials are not prioritised, whether because of politics or because of an ongoing war.

Gitari also noted Aïchatou Mindaoudou's point that one of the lessons learnt in Côte d'Ivoire was the importance of urgent interim reparations, because it really makes little sense to pursue transitional justice for 20-30 years in a very academic way, while victims have real needs. A bottom-up approach that tries to do what is possible for the victims, is much preferred.

He highlighted the challenge of sequencing and balancing, where a number of approaches are possible. Citing South Sudan, he noted the ongoing conversation about having a truth commission and a reparations authority, saying that both can be done simultaneously. However, does it make sense for a truth commission to go around and collect evidence while at the same time a reparations authority does the same? Would it not be better for a truth commission to register victims, and to receive applications for urgent interim reparations?

**Answer from SERGE BRAMMERTZ**

From his time at the international tribunals, both at the ICC dealing with Uganda and at the ICTY working on cases from the former Yugoslavia, and from meeting Rwandan survivors, he had learnt that, if one really wants to reach local communities, one has to be open to traditional justice mechanisms. He pointed to Rwanda, where one would never have the kind of comprehensive approach to justice, if there was not a combination between international, national or traditional justice, and the community-level Gacaca Courts.

**Question:** *Mikel Delagrange said that there is no justice without retribution and without repair. How can we link the concept of repair to the concept of transitional justice with regard to educating both the victims and the offenders, and are we offering psychological support to the victims, and is that a part of the repair?*

**Answer from MIKEL DELAGRANGE**

He noted the importance of the concept of satisfaction, in that perpetrators coming forward after criminal trials or truth commissions and acknowledging their role in past atrocities can be a form of reparations. Symbolically speaking, this can be very important to members of the affected community, and can help with reconciliation, which is a key concept for a holistic approach to justice.

Psychological support is fundamental, and is often thought of under the rubric of rehabilitation. Almost without fail, international atrocities result in



psychological trauma, and when people are faced with this type of violence, it leaves a mark. Sometimes such marks cannot be seen, and psychological support in the wake of such violence is a critical form of reparations.

**Question:** *We know the Kenyan ICC experience. How fair is the process to the people who are accused? And is there a big aspect of international interference, especially when you're talking about third world countries?*

**Answer from SERGE BRAMMERTZ**

International tribunals have a specific registry section dealing with defence counsels, whose fees are paid by the UN or by the tribunals themselves, if the accused does not have the necessary financial means. While defence lawyers would probably say that the prosecution has many more investigators at its disposal, he could confidently say from experience that the right of defence has always been very much respected at international tribunals, partly because the worst thing for any prosecutor is to have a weak defence, which could lead to an impression that the trial is unfair.

It is easier to guarantee the rights of defence at international tribunals than in the domestic sphere, particularly where those allegedly responsible for the

crimes committed are still in power. It can be a problem for defence lawyers to speak honestly and openly in a system where they could possibly be punished or discriminated against professionally.

**Question:** *What does asset recovery as part of transitional justice entail?*

**Answer from MIKEL DELAGRANGE**

He stressed the importance of not waiting for the conclusion of international criminal trials, and joined Aïchatou Mindaoudou in urging quick action on reparations. It could take years before proactive steps with respect to reparations are taken, and that it is very clear that things should move more quickly, even beyond asset recovery.

Collecting evidence for the purposes of establishing reparation claims does not need to wait. Even his prosecution colleagues could agree that this is not prejudicial to their cases, since it is standard practice in domestic legal settings. If there is a risk or fear of accused individuals hiding assets during these process, then those assets are traced and frozen; and if these criminal processes or civil processes result in convictions, then such assets can then be used for



future reparations in the form of compensation for affected communities.

#### **Answer from SERGE BRAMMERTZ**

In relation to fugitives from justice, his tribunal had successfully seized assets in several European and African countries, such as bank accounts and real estate which were frozen and will hopefully be used one day for reparations. Asset freezing must take place early, well before fugitives or potential suspects can hide their assets.

#### **Answer from CHRISTOPHER GITARI**

In the case of asset recovery, one could look at the Philippines, where the Philippine Commission successfully recovered \$680 million of the Marcos family's ill-gotten gains, hidden in banks in Switzerland, the USA and elsewhere. These funds were then used for reparations programmes.

***Question:** Ahmed Gouja said that the lack of accountability for past violations in Darfur is what led us here. How do we reconcile between that concept of pushing for accountability for both past and recent violations, and the concept of “no reparations, no justice?”*

#### **Answer from MIKEL DELAGRANGE**

He felt that he and Ahmed Gouja agreed on accountability in the form of retributive justice, so that people being held to account and jailed if they're found guilty is very important to the concept of justice. In the context of Darfur, it would have been much more difficult for the conflict to erupt again in Darfur, if these other forms of justice had also been implemented in the wake of the 2003 violence, and in particular, if the affected community returned home, re-established itself, and there had been a disarming of local militias and guarantees of non-repetition. It is much easier for violence to erupt when none of these things have taken place. Here, however, there had been no accountability and the perpetrators had got away with it: “So,” he asked, “why not do it again?”

***Question:** Serge Brammertz has talked about the experience of the ICTY and how many of the accused persons have become national heroes in Serbia. The whole concept of reconciliation is still very difficult in the former Yugoslavia, and knowing what you know now, what are some of the things that the international community should have done differently?*

#### **Answer from SERGE BRAMMERTZ**

Everyone who worked at the ad hoc tribunals could have done much better. In one word, however, the major problem in the former Yugoslavia is “nationalism”: there is a dynamic, both in the former Yugoslavia and elsewhere, whereby nationalism plays very well in elections. This, he believes, comes back to education. He cited the example of Bosnia Herzegovina where three different school history books are officially used for the Republika Srpska, Bosnian and Croatian communities respectively. The Republika Srpska Minister of Education has officially banned any references to the siege of Sarajevo or Srebrenica genocide in the history books, asserting that these crimes never happened.

Justice has been said to be best served domestically in the language which is understood, and in a legal system which is understood. People used to a civil law system did not always understand the very long proceedings in The Hague under a common law system. Furthermore, it is difficult to communicate the need for very complicated and lengthy judgments. While there is a need for outreach, communication and a better explanation of what is happening, this is not always enough, e.g., ICTY prosecutors have repeatedly shown videos in the courtroom showing soldiers under the General Mladić's orders executing prisoners, and yet he is still considered a national hero.

Finally, Brammertz mentioned an interesting dynamic when the ICTY was looking to arrest fugitives. In Serbia, majorities in surveys were against the arrest of fugitives, but when surveys asked whether joining the European Union or not arresting remaining fugitives was more important, 75% were in favour of joining the EU, while 60% were in favour of not arresting the remaining fugitives.

***Question:** What more can be done if retribution itself cannot make victims feel like they have achieved justice?*

#### **Answer from MIKEL DELAGRANGE**

It is not always the case that retribution is enough. He again stressed the importance of a victim-centred approach, and the crucial importance of consultation to find out from victims what justice looks like for them, which is not always what is expected. In Nepal he had worked on submitting a disappearance case before the Human Rights Committee. He recalled that while accountability and retribution were important to

villagers, the most important thing was identifying and locating the remains of their loved ones, because in their traditional society, they were considered cursed and banished from the village if they failed to do so. And banishment from the village was a death sentence because they could not feed their families. In this case, identifying the remains was the number-one concern.

Delagrange cited another example from the aftermath of a conflict in Ituri, in the Congo, with the Hema and Lendu people. He recalled that while at the ICC, the Chamber in the Katanga case was very enlightened, and that the judges had ordered his office, and him personally, to spend four months in eastern Congo doing nothing but consultation on the concept of reparations, something that changed both his life and his professional career. Many things had been tried on these people without consultation, e.g., the idea that victim communities would not be provided with cattle because cattle were the source of the conflict, and that they would instead be provided with fishing nets and sewing machines as replacements better suited to a modern economy. He recalled speaking to these people, who said clearly that “In my culture, without a cow, I’m not a man”, and that, “Without a cow, I cannot get married. So if you give me a sewing machine, I’m going to sell it and buy a cow. If you give me a fishing net, I’m going to sell that or catch fish only to buy cows because I’m going to recreate my life the way it was.”

Consultation is thus key.

**Question:** *How do we convince not just justice actors, but political actors in particular, that reparations matter? For example, after Hissène Habré’s trial at the Extraordinary African Chambers in Senegal, the African Union (AU) promised to set up a trust fund for victims and to fund it for reparations. It’s been six or seven years now and not a cent has gone in, and some of the very victims who received trial justice at that court have now passed away, including one just this week. Now I understand that we can persuade each other as lawyers, advocates, justice and accountability champions, etc., that reparations are necessary, and that perhaps we should fund them through asset recovery, but at the same time, it seems as if there are hundreds of reports from Amnesty International, Human Rights Watch, local human rights organisations in Senegal, Chad, etc., that have not been able to convince the AU to pay even just a paltry sum of money to provide a degree of reparations to victims of a trial that they helped set up.*

*What language, what rhetoric, what types of persuasion can we use to convince these political actors to do what seems obvious, which is that victims and survivors deserve reparations?*

#### **Answer from CHRISTOPHER GITARI**

It is sometimes forgotten that this process is political. Where they have been paid reparations, the victims are often in parliament, e.g., Kenya, where one of the MPs, the late Kenneth Okoto, was a champion of reparations, sat on the budgetary committee and collaborated with other parliamentarians who supported the victims. These conversations are taking place because a couple of people in government “*who were on the outside, are now on the inside*”. Transitional justice is often a political process, and the hard truth is that it has to be political actors —be they civil society or victims— who have to organise and influence the politics inside and outside, and that is where successes have been seen on the issue of reparations.

Gitari also pointed to a bureaucratic challenge posed by Kenyan civil servants’ fears of paying out money in an administrative reparations programme and of what would happen if mistakes were made. Because judicial courts have immunity, they were perceived as being better suited to the role. When setting up administrative programmes, government officials’ real fear is of possible consequences, and so we should think about reparations programmes also having immunities.

There have also been problems linked to corruption, with both Kenya and South Sudan being examples, where money has been paid out and lost, leading to a preference for court orders. Transitional justice requires thinking “*in terms of realpolitik rather than a softer approach*”.

#### **Answer from MIKEL DELAGRANGE**

Reparations are always resource drivers but creativity is needed. “*It’s a hard concept, but we shouldn’t be afraid of hard things.*” In Sudan, for instance, the refugees of past conflicts want to leave the camps and return home. It is one of the few situations where there are not actually other people sitting on the land, which is “*a massive opportunity*”. It does not require millions of dollars from the United Nations but does require some political thinking, advocacy and security.



Reparations are not always simply about compensation. When victim communities understand that compensation may not be a political reality, one is sometimes shocked to hear how creative they can be about things that will help them get their lives back and that may actually be political realities.

**Question:** *My reflection is about the question of sequencing peace and justice, because that happens quite a lot. We have two conflicts today that we are grappling with: Ukraine, which is an invasion with a “declared enemy”; but we also have Sudan where the conflict drivers are internal. What can we realistically do today in Sudan to start a process?*

**Answer from AÏCHATOU MINDAOU DOU**

Any transitional justice approach should begin at the root of the conflict, and the Sudanese will have to say where they want to go. There is a need for discussion, in which both the diaspora and the people in Sudan can express their goals, and for the whole international community to support them.

The issue of irresponsible politicians is crucial, as shown by the last 20 years in Sudan where there have been no reparations for victims or trials against perpetrators: this is because those in power were the ones who were supporting and protecting the militias. This is in contrast to situation in Côte d’Ivoire, where perpetrators were removed from power by others who were responsible enough to say that they would have to rebuild the society, and then to work towards reconciliation. As this has not happened in Sudan, 20 years later, the situation will remain the same. Where there is no credible state, one cannot think about bringing people to justice, even at the ICC to which each country should accept to send its nationals, as can be seen with Omar al-Bashir who never went to The Hague.



## PANEL 2

# MEETING THE THRESHOLD: OPPORTUNITIES AND CHALLENGES IN THE COLLECTION OF EVIDENCE OF MASS ATROCITIES



*Accountability is not always possible to achieve. Yet that should in no way bar efforts to prepare for justice. On the contrary, transitional justice can still play some role, even where transition is absent or has stalled. A major component of preparing for accountability is the timely and effective collection and preservation of evidence of international crimes. Topics to be covered in this panel include open-source intelligence investigations (OSINT) as well as methods and procedures in conducting OSINT.*



## MODERATOR

**MARK KERSTEN**

Senior Consultant, Wayamo



**CATHERINE MARCHI-UHEL**  
Head of the International,  
Impartial and Independent  
Mechanism – Syria (IIM-Syria)

The IIM-Syria was established by the UN General Assembly in December 2016 after vetoes in the UN Security Council (UNSC) prevented a referral of the Syrian situation to the ICC. It is currently the main mechanism supporting investigation and prosecution of international crimes committed in Syria since March 2011. With common acceptance of the reality that there is currently neither a transitional period nor access to “classic forms of international criminal accountability”, the IIM-Syria was nevertheless established as an instrument for future efforts toward transitional justice.

Addressing the political reality for justice outcomes within an international multilateral system, Marchi-Uhel explained that in December 2016, Russia and China had exercised veto power against an ICC referral of the Syria situation. She believed that the UNSC would have faced similar vetoes for the establishment of a dedicated tribunal system, such as that seen in the Rwanda or

former Yugoslavia contexts. Some national jurisdictions “not in Syria, but other countries in the world, particularly in Europe” have made use of the principal of universal jurisdiction to begin to offer justice. While this avenue has shown promise in recent years, only a few cases have been brought forward to date.

The IIM-Syria was brought in to work with the large amount of documentation collected by different Syrian civil society entities and international organisations outside the UN system, e.g., the Organisation for the prohibition of Chemical Weapons had examined instances of the use of chemical weapons received from the Commission of Inquiry on Syria (operating since 2011). Here, Marchi-Uhel also noted the important role of grassroots documenters, including citizen journalists who have made use of their own smartphones to document attacks.

The IIM-Syria sees the need to preserve this large body of documentation at a central repository, which subsequently feeds into a number of possible justice and accountability outlets. One example is determining the fate of missing persons, whether dead or in arbitrary detention; another includes supporting

assistance requests from other national jurisdictions, with IIM-Syria having fulfilled 180 out of the total of 277 received. Outside the strict scope of international criminal justice, the IIM-Syria has also supported a number of accountability efforts, such as a joint Dutch-Canadian initiative alleging Syria's violation of the UN Convention against Torture.

The IIM-Syria has now collected and preserved 247 terabytes of data. In leading this effort, Marchi-Uhel employs a team of investigators, analysts and lawyers,

which uses increasingly modern technologies and techniques, including OSINT, to investigate in an otherwise inaccessible environment. Without rejecting traditional forms of investigation, the Mechanism stands as an example of how technology can be employed as an asset in the justice and accountability sphere. Marchi-Uhel ultimately hopes that classic forms of international criminal accountability will be open to Syrian victims and survivors in the future, but in the meantime, the IIM-Syria works to deliver a very significant justice outcome on a day-to-day basis.



**NEMA MILANINIA**  
Special Advisor to the US  
Ambassador-at-Large for Global  
Criminal Justice

The present justice and accountability sphere faces a “confluence of two trends”. First and foremost, the global appetite for accountability has increased: indeed, over the past generation, justice has increased substantially to the point where “we no longer believe in boundaries.” Whereas obstacles have historically been posed by dictatorial regimes, chaotic ground situations, lack of access for investigators, or failures to establish a judicial body, there has since been an appetite to engage in innovative solutions for justice. The second

trend is that “information for justice actors has become more accessible”. Traditional forms of investigation are now augmented by tech-driven, commonly accessible means of information-sharing and -collection. This unique confluence opens an opportunity where “private persons, including universities, and now NGOs, have become more important in the project of international justice because they themselves [can now be] part of the investigative process.”

There are three practical examples in which OSINT was used in legal proceedings. Firstly, during ICC pre-trial proceedings against a Libyan general, prosecutors used the defendant's own YouTube and Facebook pages to show videos in which he was depicted shooting



three individuals. Secondly, a Swedish court almost exclusively used Facebook posts to prosecute a Syrian national accused of crimes in his own country. Lastly, prosecutors in The Netherlands were able to build a case, purely on social media content, against a number of those accused of shooting down Flight MH 17, a passenger plane flying over Eastern Ukraine in 2014. These three examples show that while OSINT is not designed to replace the *“centrality that victims and witnesses have in judicial processes”*, it nevertheless helps *“give light to the existence of crimes”*, augments investigators’ toolkits, and provides opportunities for the public to collect and preserve evidence.

OSINT, just like every other effective technique, comes with significant risks. Open-source investigators are cautioned to account for both individual biases regarding their own judgement of online content, and structural biases that may result in overrepresentation or underrepresentation of certain voices. OSINT is further limited in its explanatory capacity of an alleged perpetrator’s intent or motive, information that often comes from first-hand witness testimony. Lastly, there are the risks of data manipulation posed by misinformation and disinformation campaigns, some of which may digitally alter online content to deliberately mislead investigators. These challenges must be robustly addressed as OSINT moves forward.



**MONEIM ADAM**  
Access to Justice Programme  
Director, Gisa INC

Moneim Adam completed the panel discussion by presenting his own experience with the Gisa Group, an international organisation that conducts monitoring and documentation through its *“Access to Justice project”* with the Sudanese Archive, a well-established evidence

repository, and further supports a number of media initiatives including with the Ayin Network.

There is a need to train information collectors on the ground in the specifics of the Sudanese Archive database. Rather than collecting a broad array of information, Mr. Adam developed a target guide to enable Sudanese information collectors to determine what information is relevant and process it accordingly. In addition, he draws up a more detailed set of instructions when working on a specific investigation.

Collecting information is only the first step of monitoring and documentation. The bulk of the Sudanese Archive's work deals with verifying the accuracy of information. Since the conflict started in Sudan on 15th April, there has been an *"active movement for misinformation, very well organised by both parties to the conflict"*. Such misinformation could take the form of written rumours, posting of fake or outdated digital content, or even hordes of fake social media accounts.

In outlining the present and future justice outlets that the Sudanese Archive serves to inform, Mr. Adam said that much of the collected information is being stored for future accountability efforts, including transitional justice. The Sudanese Archive connects with the ICC, UN and governmental actors in their respective work on advocacy and accountability. It has also worked to support justice actors on the ground in Sudan, a collaboration that he hopes to continue when peace is achieved.



## Q&A

**Question:** *I work in cybersecurity and I've heard a lot from the panel about collection of evidence. And I know in Europe there's a lot of privacy legislation against stuff collected online. You have to have special permission for that. How do you deal with that in cases of transitional justice?*

**Answer from NEMA MILANINIA**

The most important thing with privacy is consent, even with content that is in the open space. Our understanding of what is public from a very legalistic standpoint is different to users' expectations as to

whether the information that they're making available actually should be consumed in a manner that is public and is therefore something over which they lose privacy rights. The guiding light in terms of how to address this issue should be to focus on consent from the witness, from the individuals themselves, especially as it relates to how information that they put up or post is going to be used.

**Question:** *You talked about the use of technology for open source when searching for evidence. You also talked about how accessible it is and how easy it is to manipulate.*



*My question is, especially with regard to time, should the verification problem be addressed at the level of monitoring and documentation-collection databases, or should it be resolved by journalists, communicators and the media?*

**Answer from NEMA MILANINIA**

If your goal is to address misinformation and disinformation, you have to address it early. If your goal is to collect information and then verify it for purposes of evidence, I think that's a circumstance where you can wait until there is an actual process established because the verification process takes a long time. You want it to be done by professionals in the correct way.

But I will say the volume issue is a very serious one, which I think even now a lot of organisations that are being set up are having difficulty addressing. On this very issue, I think the beauty of the technology is that, within your repository, it can really help you identify pockets of areas on which to focus your attention. It doesn't in any way suppress the need for human review of material and analysis, collaboration and aggregation. Technology helps us, but it's not a miracle solution. And in our context, I would say, be aware of the risk of manipulation! It's really integrated in the process. Verification forms part of the analytical process.



## Conversation – Lessons from the field: prosecuting international crimes in domestic courts

*Domestic courts are essential in the fight against international crimes. Whether through universal jurisdiction or cases involving their own citizens, national justice systems are an important forum in which to pursue justice and demand that states abide by international norms. What makes for effective, impartial and independent accountability at a national level? What contributions have states made in this area?*





**MODERATOR**

**LINDA BORE**  
International Criminal Justice  
lawyer and Project Coordinator,  
Wayamo Foundation



**TABITHA OUYA**  
DPP, Kenya

**Linda Bore (LB)** began by summarising some of the benefits and challenges facing national courts today. National courts provide us with an opportunity to be able to do more, go further, and do so more cheaply. An often-cited benefit of national prosecutions is that victims get to see justice being done, moreover, in a language that they understand. Another benefit is that we could also have more perpetrators being prosecuted. Nonetheless, national courts are not perfect: they also have their own challenges. How then can we ensure that we have effective, impartial and independent prosecution of international crimes in domestic courts?

The Civil Rights Division of the DPP operates under the 2008 International Crimes Act, which came into force after the 2007 post-election violence. Kenya needed to convince the world that it was able to deal with its own issues locally. Tragically we also had post-election violence in 2017: there were incidents in Kisumu and the first case ever registered in Kenya under the International Crimes Act, was referred to the High Court, and is now pending.

**LB:** “Kenya has had this history of post-election violence from 2007-2008, and then you just talked about the 2017 post-election violence. How did the country deal with these two instances?”

**Tabitha Ouya (TO):** “The 2007-2008 incidents were the worst I’ve ever experienced in this country; and the saddest bit is that there was no framework to address them for a long time. The justice system was thinking

within the box, so to speak, but no one imagined that these could be dealt with under the international crimes regime. Unfortunately, we had many victims but no culprits, no suspects, because all the victims and the witnesses could only see men dressed in jungle uniform, and nobody could be held to account. Even our own security system, the police system, would say 'we don't know those people'. And it was hard to see where they were deployed from, if at all.

I was dealing with these cases and at one point we had up to 800 complaints, which we could not address because we had no suspects. That was 2008. Then came 2012. Of course, there were incidents of violence, but a number of them could be addressed under the local framework and then the situation escalated again in 2017. There was a need for action; the office of the DPP obtained a directive for an inquest to take place. We held an inquest in Kisumu and we got a ruling which made findings and certain recommendations. Based on that ruling, we were able to follow up and do some thorough investigations. We were able to concretely see that there was a basis on which to file a case under the International Crimes Act."



**TINA ALAI**  
Transitional Justice Advisor,  
Commission on Human Rights in  
South Sudan

**LB:** "In Kenyan post-election violence, we just heard that there were over 800 complaints of sexual and gender based violence (SGBV) and no trials were held. Yet, when you were working at Physicians for Human Rights, you filed a constitutional petition on behalf of victims. Can you tell us more about this case?"

**Tina Alai (TA):** "Once the post-election violence had occurred and we had the Kenyan national dialogue and reconciliation process, a number of mechanisms were proposed to deal with the violence. Amongst these was a commission of inquiry into the post-election violence, which established that at least 900 victims had suffered SGBV. One of the key recommendations of the Commission was that the government should set up a special tribunal to conduct further investigations, and hold those who bore greatest responsibility accountable for violations which had risen to the threshold of crimes against humanity. Alternatively, the Commission



**TINA ALAI**

Domestic  
prosecution of  
international  
crimes: lessons  
learned from  
Kenya and the DRC

تينا ألي

الملاحظات القضائية المحلية  
للجرائم الدولية: الدروس  
المستفادة من تجارب كينيا  
وجمهورية الكونغو الديمقراطية

recommended that, if the government failed to set up a special tribunal, then the ICC should take up the cases, and hence this was how we ended up with the cases before the ICC.

Numerous institutions, such as the Kenya National Commission on Human Rights and many other civil society organisations, started working together, asking themselves critical questions, namely, if the ICC took up the cases, what would be the complementarity mechanism in Kenya? How do we deal with the impunity gap? What types of mechanisms would be necessary to deal with the rest of the cases? That was question number one. The second question was, how do we shift the focus away from political rhetoric to action.

We started working on three constitutional petitions. How do we prevent this cycle of violence? How do we ensure that when they occur, we are able to respond effectively? Most importantly, how do we guarantee non-recurrence? The case was thus born from this discussion. The SGBV constitutional petition was one. We had two other constitutional petitions -another was framed around police shootings because they had been rampant, and the third case was around IDPs.

Physicians for Human Rights, together with other partners, were core petitioners in the SGBV case. Our constitutional petition filed in February 2013 claimed that the state had failed to meet its obligations on four counts. At the time, we did not have the confidence that there would be sufficient goodwill to pursue reparations but nonetheless claimed that the state ought to put in place a comprehensive programme to establish the numbers and needs of victims. In 2020, in a landmark judgement, the Nairobi High Court found the Government of Kenya responsible for failure to investigate and prosecute the 2007-2008 post-election sexual violence. The judgement marks the first time ever in Kenya that post-election sexual violence has been legitimately recognised by the government, and survivors have been offered compensation for harm suffered."

**LB:** *"In passing, you mentioned the Baby Pendo case, which I know is currently in court. Why did you decide, first of all, to bring a charge of crimes against humanity in this case? And what was the thinking behind the preparation for the case?"*

**TA:** "The kind of violations that play out in the Baby Pendo case led to loss of life, but there are many other victims. We are looking at homicide, SGBV and torture. We also know that all these were committed during a breakdown of law. We thought that using the international crimes framework would give us the opportunity to display the circumstances in which the violations happened."

**LB:** *"Tina has also been involved in other cases in the Congo and elsewhere. Perhaps you can tell us more about these cases?"*

**TA:** "Yes, I've covered more cases. This is particularly interesting because it speaks to a number of factors that we want to see in an ecosystem which encourages survivors to come forward. Once they come forward, their cases are documented and they can be supported to pursue justice in a number of ways. [In Kahumbu, Democratic Republic of Congo], the civil system failed to take up the cases, and so the military courts took them up, and applied the international crimes framework to hold the perpetrators accountable. They established that up to 40 girls had been raped, some of them killed by a militia group, led by an MP. The case was determined in 2017 and subsequently upheld by a Court of Appeal."



## PANEL 3

# TURNING THE TIDE? RENEWED MOMENTUM ON INTERNATIONAL CRIMINAL LAW AND ADDRESSING CONCERNS ABOUT DOUBLE STANDARDS



*The world of international criminal law and justice has been rejuvenated by ongoing accountability efforts in Ukraine. Others are asking: what about us? This panel will explore what recent developments in international accountability efforts mean for the “Global South”, and how they might lead to greater equality in the distribution of justice for international crimes.*

## MODERATOR

**FATIHA SEROUR**  
former Deputy Special  
Representative of the UN  
Secretary General in Somalia and  
Chairperson of the AGJA





**NAVI PILLAY**  
Former UN High Commissioner  
for Human Rights and AGJA  
member

Navi Pillay reflected on her six years' service as UN High Commissioner for Human Rights, as well as her membership in AGJA. With reference to the numerous, harrowing conflict situations in the justice sphere over the past decades -ranging from Ukraine to Palestine, Serbia and Rwanda- she noted that due to structural inequalities and geopolitical interest, attention and justice demands have unfortunately not fallen equally and commensurately upon each situation. This phenomenon ought to be referred to as "double standards", which is the selfsame challenge she

continues to face in her present role chairing the UN Commission of Inquiry (COI) into Israel, Palestine, and East Jerusalem, a body that has a "very wide mandate, does not have an end date, and so is permanent. We are asked to find the root causes of the conflict and then make recommendations, investigate crimes and cooperate with justice institutions". Yet, when the COI's report was presented before the UN General Assembly last October, a number of governmental actors voiced opposition to the findings. The European Union, for example, objected because one of the commissioners had criticised its approaches to the Ukraine and Israel-Palestine situations as an instance of "double standards". Navi Pillay nevertheless stood by her findings "because the law is out there and it applies equally to both situations. Moving forward, the international community must avoid undermining its own credibility through the selective application of justice."





**MOHAMED CHANDE OTHMAN**  
Chairperson of the Commission  
of Human Rights Experts on  
Ethiopia, former Chief Justice of  
Tanzania and AGJA member on  
hiatus

In answer to the critical question of whether the international justice system has two-tier processes depending on a situation context's degree of privilege and surrounding geopolitical interests, Chande Othman noted that the last two UNSC deferrals to the ICC were for Darfur in 2005 and Libya in 2011. A notable gap of twelve years has passed with no additional UNSC deferrals, even with Yemen labelled as *"a country where brutal warfare is going on"*. Failure by the UNSC or UN Human Rights Council/High Commission for Human Rights to act on Yemen was due to *"no principal reason apart from a lack of political will"*.

Responsibility for the international community's failure to act must, he said, be attributed to more than just the UNSC states: *"I think African states also need to face reality. I think they are not also spotless or stainless or faultless."* In the case of Yemen, Senegal, Somalia, Sudan, Togo, Gabon, Eritrea, Burkina Faso, Namibia, Malawi and Côte d'Ivoire abstained. In light of several African countries' threatened withdrawal from the ICC, the ICC has also shown willingness to meet African states' concerns of being disproportionately investigated. The ICC has since worked with states such as Nigeria, Uganda and Guinea on arrangements for positive complementarity.

There are *"opportunities for renewed momentum"*, and a clear need for careful re-examination of the international community's political will in matters of justice and introspection by African states as regards their own positions.







**MARK KERSTEN**  
Senior Consultant, Wayamo  
Foundation

Revisiting Navi Pillay's question about how Western governments justify the need for accountability in Ukraine when so many other contexts have seen inaction in similarly dire circumstances, Mark Kersten pointed out that Ukraine had received the bulk of attention in the international justice sphere: *"Forty-one states referred the Ukraine situation to the ICC, an unprecedented number! There's a UN Commission of Inquiry on investigating human rights violations there. Moreover, at least a dozen states, including Canada,*

*Spain, the UK, etc., have opened their own investigations, their own national investigations into crimes committed in Ukraine".* The problem, however, is not that Ukraine is getting attention, but rather that *"other states do not get it, including states experiencing the same types of atrocities."*

Western states are surprised that the narrative surrounding Ukraine has not resounded as much with the Global South as they had expected. This is largely because *"international justice actors need to develop a "global narrative that makes it clear that what is happening in Ukraine is imperial colonial violence and it does matter to other places and communities that also have experienced imperial colonial violence."*



**BETTY MURUNGI**  
Transitional justice expert,  
Advocate of the High Court of  
Kenya and AGJA member

Referring to the long history of justice coalitions and supporters that have painstakingly built the momentum seen in the international justice sphere today, Betty Murungi recalled her time at the 1998 Diplomat Conference for the ICC in Rome, *“a long five weeks”* which ultimately resulted in the treaty establishing the ICC.

Momentum for justice and accountability may help fellow African countries *“not get caught up in the double standards argument”* and develop *“normative and policy solutions that we have seen on our continent”*. Concretely, Murungi asked, *“How can we show that we have strengthened the rule of law, that we are upholding those principles? Why do we think somebody else should come and do it for us?”* ICC States Parties are allowed,

but have been reluctant, to exercise jurisdiction under the complementarity framework of the Rome Statute. Of the 150 post-election violence cases since 2008, none have been prosecuted in Kenyan courts.

She agreed with previous speakers that the Ukraine situation showed a disparate resource commitment and timeline for a justice response, where really powerful nations *“did it for one of their own”*. Kenyans had likewise supported Ukraine: *“There was a radio station here in Kenya which mobilised many resources to send to Ukraine...We went there, we paid money and we went to the Ukrainian embassy and we delivered the money.”* The same vigour and attention ought to be applied to other contexts from Western and African States alike.

Rejecting the idea that excuses can be made for justice in the African context, she noted the need to focus inward, on regional and domestic efforts first: *“There is a lot of hope. We need to strengthen our regional system”*.







## Q&A

**Question:** *"We often see countries like Argentina, which exercise universal jurisdiction. And then in Europe, we see countries like Germany, France, Belgium that exercise jurisdiction with respect to international crimes when perpetrators arrive on their territory. My question for you is why not Kenya?"*

**Answer from BETTY MURUNGI**

"Without going into too much detail, there are many reasons why we haven't exercised universal jurisdiction. This is what I meant by saying we need to actually not just have the normative and policy advances to change our laws. We have to change our culture about how we're capable of dealing with these questions. Nobody is going to come and do it for us. We have to do it for ourselves."

**Question:** *"How can domestic justice figures, especially judges, be pushed to ensure greater outcomes?"*

**Answer from MOHAMED CHANDE OTHMAN**

"I think improvements are made in terms of competitiveness, so that you don't only have judges from the judiciary: you must have cross-breeding from the legal profession, from the bar association, from academia. We didn't have judges from academia. Now, in Tanzania, out of almost 120 judges, you have about 15 PhDs who were professors of law."

**Question:** *"What can be done in the future to make sure that international crimes are going to be stopped before they happen, instead of waiting for them to happen and calling for transitional justice afterwards?"*

**Answer from BETTY MURUNGI**

"Incorporating prevention as part of transitional justice is in fact a new approach. Under the African Union's transitional justice framework, it is proposed that all transitional justice initiatives be undertaken with a preventive lens, a preventive approach. So that is something being seriously considered."



## CLOSING REMARKS



**GITONGA M'MBIJJEWE**  
Director of Strategic Initiatives,  
Aga Khan University's  
Graduate School of Media and  
Communications.

M'Mbijjewe underscored the gravity of the situations addressed by the experts and journalists present, and highlighted the most important question: what happens next? Noting the presence of young lawyers, students from Riara University, United States International University Africa, and Aga Khan University, he said that the experts would be able to point the way to some sort of equity. He quoted Martin Luther King, saying “The arc

*of the moral universe is long, but it bends toward justice”,* but reminded his audience keep working to hammer the steel in the direction of justice.

He thanked the Wayamo Foundation, AGJA, and Judie Kaberia, a faculty member at the Aga Khan Graduate School for Media and Communication and Wayamo’s coordinator for East Africa, for organising the symposium. He also thanked the distinguished guests from the Office of the DPP, and all of the speakers and activists present. He closed with the African proverb, “*If you want to go fast, you go alone. If you want to go far, you go together.*”



**BETTINA AMBACH**  
Director, Wayamo Foundation

Wayamo Director, Bettina Ambach, summed up the day and reminded the attendees of the inspiring speech of Zainab Bangura, who urged all the Sudanese colleagues to continue to fight for a democratic, civilian-led Sudan.

She highlighted some of the main topics of discussion during the day, namely:

- the positive trend in transitional justice mechanisms towards stressing the inclusion of victims and local ownership;
- the positive trend of more local ownership over transitional justice processes, and the need for a more comprehensive system where the international, regional and national level initiatives work together for a better outcome;
- the emphasis on reparations, and the truism that there is no justice without reparations, stressing that we should look at justice in a holistic way, which includes both retributive mechanisms and those focused on repair;
- the importance of focusing on SGBV, something that is sadly all too common in conflict situations but is not addressed comprehensively;
- the need to see transitional justice as the “*art of the possible*”, and the things that can be done when a conflict is still ongoing, such as open-source investigations and ongoing collection of evidence, which is a focus for the Wayamo Foundation;
- open-source information is now an instrumental part of accountability mechanisms, which supplements traditional investigations that remain crucial, but which nonetheless adds a new element to the accountability landscape. There are also many risks, e.g., biases, deep fakes, privacy and security concerns, and open-source experts needed to continue developing strong verification systems to avoid mis- and disinformation.
- the example of Kenya and the first crimes-against-humanity case under the International Crimes Act, which is before the courts;
- the final panel’s closing discussion on double standards and how to achieve greater equality in the distribution of justice for international crimes, stating that, while Ukraine deserved all the attention to see that justice was being done, other countries deserved the same attention too.
- a change in the international climate regarding the ICC. Where, only a few years ago there were concerns that it was only looking at African countries, in 2023 the criticism may be that it is focusing too much on Ukraine.
- it is clear that domestic systems everywhere have to be strengthened for everyone to benefit from a holistic approach to justice.

She left the participants with the powerful words used by Betty Murungi in her presentation:

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*“Instead of waiting for international justice actors to come,  
let us create our own domestic standards and institutions  
and make them work!”*

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## CONTACT

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Federal Republic of Germany  
Foreign Office



Ministry of Foreign Affairs of the  
Netherlands