WHERE THE OLD MEETS THE NEW

Transitional Justice, Peacebuilding and Traditional Reconciliation Practices in Africa

Charles Villa-Vicencio

Claude Ake Memorial Papers No. 5

Department of Peace and Conflict Research
Uppsala University
&
Nordic Africa Institute
Uppsala

ISSN 1654-7489
ISBN 978-91-506-1996-6

Printed in Sweden by Universitetstryckeriet, Uppsala 2009
Distributed by the Department of Peace and Conflict Research (DPCR), Uppsala University &
the Nordic Africa Institute (NAI), Uppsala
Phone (DPCR) +46 18 471 76 52; (NAI) +46 18 56 22 00
Fax (DPCR) +46 18 69 51 02; (NAI) +46 18 56 22 90
E-mail (DPCR) info@pcr.uu.se; (NAI) nai@nai.uu.se
www.pcr.uu.se; www.nai.uu.se

The Claude Ake Visiting Chair

The Claude Ake Visiting Chair was set up in 2003 at the Department of Peace and Conflict Research, Uppsala University (DPCR), in collaboration with the Nordic Africa Institute (NAI) and with funding from the Swedish Government. The Chair honours the memory of Professor Claude Ake, a distinguished scholar, philosopher, teacher and humanist, who died tragically in a plane crash near Lagos, Nigeria, in 1996.

The holders of the Claude Ake Visiting Chair give, at the end of their stay in Uppsala, a public lecture, the 'Claude Ake Memorial Lecture.' The title, theme and content of the lecture are up to the holder. The assumption is that the topic of the lecture shall, in a general sense, relate to the work of Claude Ake, for example in terms of themes or issues covered, or in the theoretical or normative points of departure. The lecture is to be based on a paper prepared and made available to seminar participants and lecture audience in advance of the lecture.

Since 2006, DPCR and NAI publish the papers that constitute the basis for the Memorial Lectures in the *Claude Ake Memorial Paper Series (CAMP)*. The papers are edited at the DPCR and published jointly by the DPCR and the NAI in printed and electronic forms. In the future, the CAMP series may be opened up to contributions also from other scholars than the holders of the Visiting Chair.

The Chair is intended for scholars who, like Claude Ake, combine a profound commitment to scholarship with a strong advocacy for social justice. It is open to prominent social scientists working at African universities with problems related to war, peace, conflict resolution, human rights, democracy and development on the African continent. On the nomination procedure, please consult the web pages of the DPCR and NAI.

One representative from the Department of Peace and Conflict Research (currently Professor Thomas Ohlson) and one from the Nordic Africa Institute (currently its Director Ms. Carin Norberg) decide on the appointment of the annual holder of the Claude Ake Chair. There is also an advisory committee, currently consisting of Professor Peter Wallensteen (Dag Hammarskjöld Professor of Peace and Conflict Research), Professor Fantu Cheru (NAI Research Director) and Dr. Cyril Obi (representing previous holders of the Claude Ake Chair). The appointment decision is without appeal.

As of 2009, this Visiting Professorship covers a period of up to 6 months. It is awarded once a year. The Visiting Professor is offered a conducive environment to pursue his or her own research for about half the duration, while the other half is spent on lecturing, holding seminars and contributing to ongoing research activities at the Department of Peace and Conflict Research, the Nordic Africa Institute and elsewhere in Uppsala, Sweden and the Nordic countries.

Finally, it should be noted that the texts published in the Claude Ake Memorial Papers series are the responsibility of the author alone—their publication does not reflect any positioning on the issues at hand on the part of either the Department of Peace and Conflict Research or the Nordic Africa Institute.

Uppsala
January 2009

Carin Norberg
Director
Nordic Africa Institute
Uppsala

Thomas Ohlson
Professor
Department of Peace and Conflict Research
Uppsala University

Editor's Foreword

This—the fifth issue in the CAMP series—presents the text version of the 2007 Claude Ake Memorial Lecture, delivered by Professor Charles Villa-Vicencio. He served as Professor of Religion and Society at the University of Cape Town and is an Emeritus Professor of that university. He is also the founder and former executive director of the Institute for Justice and Reconciliation, based in Cape Town. Professor Villa-Vicencio was National Research Director in the South African Truth and Reconciliation Commission (TRC), also known as the Tutu Commission, and responsible for the final report of the TRC.

Conflict resolution has two tasks: first, ending one war (war termination) and, second, preventing a new one (peacebuilding). War termination is, in essence, about changing behaviour, that is, stop fighting. Peacebuilding is about addressing conflict issues and changing attitudes so as to raise the threshold against future violence. Galtung termed the successful outcome of this latter process 'positive peace', e.g., referring not only to the absence of a bad thing (organized, armed violence, e.g., 'negative peace'), but also to the presence of good things (such as relative socio-economic security and a measure of fairness and equity in human relations). Practitioners and peace and conflict researchers have lately begun to devote much energy to identifying conditions conducive to positive peace in weak and war-torn states.

In part, post-war peacebuilding is about highly tangible things, such as access to political power and participation; more accountability, transparency and good governance; more responsiveness from the state to popular demands for socio-economic justice, in the concrete form of better roofs over ordinary peoples' heads, more and better food on the tables, more clean water in the taps and more electricity in the wiring.

In part, it is also about less tangible things. It is about overcoming, somehow, the horrors, traumas and losses that result from war. In this paper, Professor Villa-Vicencio focuses a central dilemma facing peacebuilding after war. This dilemma is constituted by the, often contradictory, demands from various actor groupings concerning matters related to peace, justice, reconciliation and political stability. How can calls for reconciliation, truth telling, amnesty and so forth be made compatible with calls for justice and retribution in the light of war-time atrocities and human rights violations? How can victims and perpetrators deal with the memories of the past? How can they find ways to get on with their lives—in the same society, in the same communities? And how can peace be made durable?

Noting, first, that the argumentation of experts on transitional justice during the past 15 years or so has shifted from advocacy of amnesty, reconciliation and restorative justice to advocacy of prosecution, punishment and retributive justice and, second, that experts on peacebuilding tend to see measures of justice and retribution as potentially threatening to the political stability that is so crucial to peace, Professor Villa-Vicencio goes on to disaggregate the two key dimensions of the above-mentioned dilemma.

The first dimension, then, has to do with rule of law and formal measures of justice, on the one hand, and measures of reconciliation linked to individual and social psychology, culture and identity, on the other. The other has to do with justice and reconciliation, on the one hand, and, on the other, the political rapprochement necessary to maintain peace and address the socio-economic and other structural (mis)conditions that caused the conflict. Both dimensions are strongly linked to the broad theme of the Claude Ake Chair.

Professor Villa-Vicencio argues for a holistic approach: a process—in practice and in academia—that over time identifies and introduces measures that bring together the agendas of justice-seekers, reconcilers and peace-builders. Based in his profound experience of the South African transition and his knowledge of different African reconciliation practices, Villa-Vicencio identifies several lessons. Three of these seem particularly pertinent, including to the current debates on these issues and their implications in South Africa. First, the importance of *conversation* at all levels, from national to individual; within groups and between groups. Truth telling and mutual acknowledgement of the past contributes to the inter-group trust that is required for nation-building and durable peace. Also, and importantly, it makes it impossible for anyone to say: 'I didn't know.' Second, with instructive examples, he underlines and problematizes the importance of *appropriate sequencing and funding* of different measures for peace, justice and reconciliation, in order to avoid impunity without undermining political stability. Third, each society must involve its own *traditional reconciliation and justice mechanisms* and combine them with more formal rule-of-law measures, institution-building and popular empowerment, so that the outcome builds on both bottom-up and top-down dynamics, thus producing a sufficient measure of popular and national legitimacy for peace to last.

Uppsala
January 2009

Thomas Ohlson
CAMP Series Editor

WHERE THE OLD MEETS THE NEW

Transitional Justice, Peacebuilding and Traditional Reconciliation Practices in Africa

Charles Villa-Vicencio

1. Introduction

Professor Claude Ake's commitment to peacebuilding and his scholarly work is part of the bedrock that enriches the quest for peacebuilding and sustainable reconciliation in Africa. I offer my thoughts in what follows with respect and appreciation of his work. It is an honour and a humbling experience to hold the chair that honours his name.

Successful peacebuilding is a bit like a well-honed pendulum in a stately old clock. Given a gentle prod, the swing of the pendulum accelerates in one direction and then counter-balances with a swing in the other. Both extremes are sometimes necessary to ensure that when the balance is found both ends of the swing are incorporated in the equilibrium. To continue the metaphor, the tick of the clock needs to be co-ordinated with the tock. This all sounds a bit like old-fashioned Hegelianism, which seeks to incorporate the thesis and the antithesis in the synthesis – found hopefully at a higher level.

All analogies have limitations. I use this one only to suggest that those who are not evangelically committed either to the prioritising of prosecutorial justice or to simple forms of reconciliation can be forgiven for wondering if we are not (yet again) witnessing a wide pendulum swing in the field of international diplomacy and peacebuilding that is likely to find a more balanced momentum somewhere down the line. A few years ago the standard prescription for overcoming armed conflict and war, especially at an intra-state level, was to offer amnesty to all perpetrators on all sides of the dispute – although always under what the proponents of amnesty perceived as the ominous shadow of Nuremberg, Tokyo and The Hague. Today the dominant theory, legitimated in the Rome Treaty and the advent of the International Criminal Court (ICC), is prosecution.

Lawyers fear impunity. Advocates of peacebuilding and reconciliation fear the collapse of political rapprochement. The question is how to counter both fears, ensuring there is at least some measure of accountability, without destabilising the country. For peacebuilding to be sustainable the ship of state needs to be carefully steered between Odysseus' Scylla and Charybdis.

So, depending on your preference for an isochronic or maritime metaphor, balance and navigation are crucial aspects of peacebuilding. However, the balance or chosen navigation path cannot afford to degenerate into a tame compromise and decidedly not into a balance or middle path between good and evil. It needs to be a bold, if not radical, exercise in addressing the demands for both justice and peace in a creative manner.

The major players in the debate on the transition from armed conflict and war to the beginning of democracy, namely, advocates of transitional justice and those of peacebuilding, generally agree on the need for both justice and reconciliation. In practice, however, their approaches differ. It is this difference that, unless carefully co-ordinated, can lead to unnecessary confrontation between two equally important steps in political transition.

In brief, I am arguing that a holistic understanding of justice in a post-conflict situation demands an extensive programme that draws on a variety of local and international agents. Jose Zalaquett captures the essence of transitional justice in its fullness by suggesting it ought to have two overall objectives: to prevent the re-occurrence of abuses and to repair the damages they caused to the extent that both are possible (Zalaquett 1992). Alex Boraine favours a five-component approach to transitional justice: accountability of perpetrators, truth recovery, reconciliation, institutional reform and reparations (Villa-Vicencio & Doxtader 2004: 66-72). Yasmin Sooka provides her own five benchmarks: the depolarisation of society, institution building, economic stability, civic trust and the rule of law (Sooka 2007). Nuances aside, few working in the broader area of peacebuilding will disagree with these emphases.

The 1992 United Nations (UN) Agenda for Peace identifies many meeting points among the different levels of conflict management, peacebuilding, post-conflict reconstruction and, by implication, transitional justice (UN 1992). Fifteen years later, however, a 2006 UN document entitled *Rule-of Law-Tools for Post-Conflict States: Truth Commissions* provides a much narrower focus for transitional justice and truth commissions that fails to affirm adequately the necessary link between justice and reconciliation (UN 2007). In brief, the implication of the document is that justice is more important than reconciliation, accountability is more important than truth, and reparation is more important than reconstruction.

If this understanding of truth commissions provides an accurate understanding of the dominant interpretation of transitional justice, the report by Karen Brounéus on reconciliation and development cooperation, commissioned by the Swedish International Development Cooperation Agency (Sida), provides a necessary corrective to the neglect of reconciliation in the UN document. The Sida report emphasises the need "to identify the role of development co-operation regarding reconciliation in societies after internal conflict", providing a sober reminder that a holistic understanding of justice in a post-conflict situation requires a long, often tiresome, programme involving institutional reconstruction, human development and political reconciliation – surely the key ingredients of any litmus test for sustainable peace. "Planning support for reconciliation," writes Brounéus, "should begin with analysis including: the context of the conflict, root causes, consequences (including psychological trauma), and the existence of initiatives for reconciliation at different levels in society (top-level, middle range and grassroots) (Brounéus 2003: 54-5).

This echoes the recommendations of the Rule of Law Working Group of the Dag Hammarskjöld Symposium on Respecting International Law and International Institutions, which advocate that "more support needs to be given to the rule of law budgets in Africa for building institutions and practices of good governance, and less on showy projects of interest to the international community". The report argues that "a balance be struck between the universal norms associated with the rule of law and respect for local, national and regional values, and that greater reliance be placed on local and regional associations of lawyers and judges" (Symposium 2005).

Hopefully the reliance will extend beyond the legal profession as is the case, for example, with the recently established Council of Elders which includes Graça Machel, Mary Robinson, Jimmy Carter, Nelson Mandela, Li Zhaoxing, Kofi Annan, Muhammad Yunus and Desmond Tutu. This said, the Dag Hammarskjöld report criticised what it called the "detrimental and myopic competition among donors that promotes their own view of the rule of law without deference to local attitudes and conditions" (Symposium 2005).

An imposed form of justice that fails to embrace holistically the post-conflict challenges in a specific context, that fails to enjoy local ownership, and that fails to promote the need to build positive and constructive relationships between former enemies and adversaries as a basis for redressing past wrongs and promoting preventative measures to limit future conflicts, is simply unlikely to stand the test of time. This, I argue, is the weakness of the UN report on truth commissions.

In what follows I:

- identify the neglected business of the dominant transitional justice debate
- argue that the work of scholars and practitioners of peacebuilding offers a corrective to this neglect
- comment briefly on the different methodological approaches of the advocates of transitional justice and peacebuilding
- consider African traditional reconciliation mechanisms as a vehicle for promoting reconciliation.

2. Transitional Justice: Its Neglected Business

At the heart of the transitional justice debate is the question: Transition to what? Political analysts and proponents of peacebuilding and of transitional justice recognise that for peace to be sustainable after the cessation of hostilities a number of major political, social, economic and legal steps are required: the root causes of the conflict need to be identified and a structure put in place to minimise the recurrence of future conflicts; a minimum level of communication and reconciliation needs to be established between former enemies; institutions of state need to be developed to facilitate good governance through democratic participation and the rule of law; steps need to be taken to ensure economic stability; the human dignity of victims must be restored through appropriate forms of reparations; and those responsible for gross violations of human rights need to be held accountable for their deeds in accordance with the standards of international human rights law.

Bolstered by the architecture of the ICC that requires the prosecution of perpetrators of genocide, crimes against humanity and war crimes, the proponents of transitional justice often tend to focus on prosecutions to the neglect of other concerns. Charles Taylor is on trial in The Hague, following an indictment by the Special Court for Sierra Leone; Congolese warlords Thomas Lubanga and Germain Katanga have both been arrested and transferred to the ICC in The Hague; warrants of arrest have been issued for the Lord's Resistance Army's (LRA) leaders Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ogwen and Raska Lukwiya. Add to this the trial of Slobodan Milosevic and the pending trial of Alberto Fujimori and the message is clear. There is no place to hide from the long arm of international law.[1] Dictators, sadistic army generals, lawless rebels and other perpetrators

[1] Milosevic was indicted by the International Criminal Court for the Former Yugoslavia (ICTY), sent to The Hague for trial and found dead in his prison cell six years later on 11 March 2006. The former president of Peru, Alberto Fujimori, who fled the country in 2000, was extradited by Chile's Supreme Court to stand trail in Peru.

of gross violations of human rights will be pursued and have their day in court. This is a major victory for human rights. Any proposal or attempt not to honour the hard won agreement on the Rome Treaty and the establishment of the ICC must be scrutinised with the utmost care before being agreed to.

These developments, however, should not be allowed to imply that the responsibility of those advocating transitional justice is over once the prosecution of those regarded as the major perpetrators is resolved and some form of reparation is paid to victims. In reality, prosecution and other legal measures in dealing with the past are but a single step in the much longer process of reconstruction. This is a journey that must necessarily include the painful, in-depth grappling with the past as a basis both for understanding and correcting the socio-economic, political and structural causes of conflict, as well as the psychological, spiritual, cultural and identity-related factors. It is the tendency to fail to address these issues that constitutes what I have referred to as the 'neglected business' of transitional justice.

Whether past offences are dealt with via prosecutions, tribunals, national courts, the ICC or amnesties, more is required for the reconstruction and transformation of a nation to happen. This, necessarily, includes deep conversation between former enemies as a basis for overcoming the animosity, mistrust and historic inequalities that gave rise to the conflict in the first place.

This is more than what any time-bound truth and reconciliation commission or similar structure can achieve. Correctly designed and carefully instituted, however, such structures can initiate the kind of rigorous national conversation that contributes to the emergence of a social contract robust enough to put policies and programmes in place. This is a conversation that should include as many people as possible as a basis for the generation of policies seeking both to redress past wrongs and to minimise the future re-occurrence of past abuses. This debate needs to address the difficult and contested task of prioritising what can be accomplished immediately, and the projecting of a carefully managed national agenda on issues that can only be resolved later. Immediate priorities include the cessation of hostilities, the setting up of democratic institutions and the affirmation of basic human rights. Other needs, not least socio-economic rights, take longer to be realised.

My concern is simply that the prosecution of perpetrators and the payment of reparations not be allowed to overshadow the equally important task of national debate, the making of recommendations concerning the kind of future society being aspired to, and the important task of truth-seeking. Truth commissions can provide a nation with a rare opportunity to make a paradigmatic shift away from the old to the new. Truth commissions are arguably

also better able to expose the truth about the past in a broader and more comprehensive manner than a criminal trial. A court is required to prosecute against a limited charge sheet and it is the duty of a defence team to argue for the rejection of any evidence not directly applicable to the accusation at hand. In so doing most of the basic information used in persuasive storytelling and history writing is excluded from the court record. (Marrus 1998, see also Minow 1998, Garton Ash 1998)

Nowhere is this more clearly illustrated than in the trial of Saddam Hussein. Convicted of crimes against humanity for the killing and torture of 148 Shi'ite villagers in Dujail following a failed assassination attempt in 1982, he was sentenced to death and subsequently hanged. The courts did not address the more extensive record of his reign of terror. Questions about America and the West encouraging Hussein to invade Iran in 1980—an invasion that led to the deaths of 1.5 million people—were not posed. The supply of chemical weapons' components with which Saddam drenched Iran and the Kurds, the anarchy unleashed by American and British troops in the aftermath of what was described as a 'mission accomplished', and the use of Saddam's Abu Ghraib torture chambers by American torturers are not part of the court record.

Saddam is the first ruler to be found guilty and made to pay the ultimate price for his crimes against humanity. For him there was no impunity. Yet, the truth behind Saddam's reign of terror remains untold. Hundreds of thousands of Iraqis, Iranians, Kurds and people in the West still seek to know the causes, motives and perspectives that are part of the monstrous crimes central to Saddam's rule. If truth has a capacity to heal, it must include this level of disclosure. A trial that found Saddam guilty was incapable of offering this. Historians, journalists, and those who suffered most will wrestle with this challenge for decades to come. Saddam's trail has not brought closure to the victims of his regime.

The South African Truth and Reconciliation Commission (TRC) sought to provide a level of truth that the Saddam trial failed to deliver. Although it did not succeed fully in delivering as much truth as many desired—a matter to which I return below—it did, however, constitute an encounter, directly and indirectly, between perpetrators, victims, bystanders, and the general public. This has been variously described as theatre, tragedy, epic storytelling, liturgy and drama. The Commission was about words spoken an unspoken—there to be heard, begging for response, waiting for action. It was an invitation to people to talk about the past. It was a national conversation that happened at three levels—in the public domain, internal to the Commission itself, and between victims and perpetrators—as a way of promoting democ-

ratic participation in the process of passing from the old to the beginning of a new order.

Public conversation on the Commission was often extremely heated, but an important part of the national conversation. Afrikaans language newspapers were especially relentless in their condemnation of the Commission, believing it was engaging in a witch-hunt against white Afrikaners and the former government. English language news media as well as black–based newspapers gave a more balanced overview, although here, too, controversy raged. This was particularly so around the public hearings involving, for example, Winnie Madikizela Mandela, the killing of Chris Hani, and other high profile people and events. The extent of the national debate in relation to the work of the TRC was huge. Few, if any, South Africans do not have an opinion on the TRC and are ready to speak about it. Most importantly, the silence on the past is being broken.

Conversation internal to the Commission was intense and not always amicable. The tensions inherent to the South African conflict manifested themselves in the attitudes of commissioners and staff. Issues of race, identity, social class and political persuasion impacted on the Commission's work and contributed to tensions that underpinned the inability of the Commission to reach consensus on the nature of reconciliation or on the relationship between truth-finding and reconciliation. There were those who equated reconciliation with interpersonal reconciliation and forgiveness. Others argued that it was inappropriate for a state-sponsored commission to promote forgiveness, advocating instead the promotion of a national framework for co-existence and civility within which individual healing and forgiveness might eventually take place. A third group had a still more limited view on the role of the TRC. It wanted to focus exclusively on truth-finding, arguing that this would provide a basis for both future co-existence and reconciliation.

Conversation between perpetrators and victims of gross violations of human rights, through the structures of the Commission, was varied and multi-layered. Perpetrators denied, blamed, and some confessed. Most are likely to take their memories and unspoken words with them to the grave. Victims remembered. Many chose, without success, to forget. Most bystanders denied what had happened and looked the other way, while others endeavoured to be a part of the new order.

The nation continues its struggle between remembering and forgetting. Silence persists and yet the need to talk is there. This is perhaps inevitable, if Yael Danieli is correct in attesting to the inability of many individuals and communities to deal adequately with trauma: "They can find no words to narrate the trauma story and create a meaningful dialogue around it."

(Danieli 1998: 678). This silence eats like a cancer. It often leaves victims who are unable to speak incapable of 'moving on' or grasping the opportunity to repair or restore their lives.

A survey conducted in the wake of the South African Truth and Reconciliation Commission, which submitted its preliminary report in 1998, showed that South Africans saw truth, acknowledgement, apology, and an opportunity for victims to relate their stories of suffering in public as important alternatives to both retribution and monetary compensation (Gibson 2004, Gibson & MacDonald 2001).

For many victims who are denied access to the courts for financial and other reasons, a truth commission is an important means of breaking their silence and obtaining some measure of truth about the past. Thembi Simelane-Nkadimeng, for example, has spent 23 years trying to find out what happened to her sister, Nokuthula, who was abducted by the security police and has not been seen since. Speaking at a public symposium on the 10th anniversary of the TRC she said: "I am favouring prosecutions now because it is the only option I have, but if I had an option to sit down and talk [with Nokuthula's abductors] I would choose that."[2] Many victims who resort to prosecutions often do so as much out of an effort to access some level of truth as out of a desire for retribution. The South African TRC, despite its many limitations, created a space within which the first phase of a limited national conversation began to take place, not only between victims and perpetrators, but also generally between South Africans who were prevented by apartheid from knowing the needs, the hopes and fears of one another.

The South African 'solution' that included public debate and truth-seeking is decidedly not the answer to all conflicts around the world. It is equally important to recognise that the capacity of South Africans to forge peace in the face of threatening anarchy does not mean South Africans are a 'race apart'. The genes that constitute humanity and the desire of the majority of human beings to co-exist with others suggest that there is political value in considering instances where some human beings get it more or less right. South Africa is one of the few places on earth where there might just be a chance of that happening.

This was also where the South African TRC disappointed the most. It did not accomplish all that it perhaps could have and, ironically, in so doing demonstrated to the world the importance of truth-seeking in societies that are moving from autocratic and oppressive rule to the beginning of democracy. Victims want to know, to the extent that it is possible, who did what to whom.

[2] Cape Town, 20 April, 2007.

They also need to share in the conversation concerning the nation's future. Methods of truth-seeking differ; accountability can be accomplished in a variety of ways and nations can be drawn into dialogue on how to create a better future. This is the potential contribution that an appropriately broad transitional justice programme can offer to programmes of reconstruction that too often focus on technical and material development in post-conflict situations to the neglect of truth-telling and national conversation. The problem is that truth commissions often fail to exploit the opportunity for this level of conversation to happen.

This is the essence of the criticism that Wole Soyinka and Mahmood Mamdani direct at the South African TRC. Conscious of the fragility of new democracies emerging from oppressive regimes, where those on opposing sides of a deadly conflict need ultimately to learn to live together, both authors show an understanding of the need to find an alternative to Nuremberg-type trials and impunity. Both, at the same time, regard the mandate of the TRC as having failed to address adequately the underlying depths of the South African malady. Both further imply that this level of exploration is still possible, although increasingly more difficult to realise.

Soyinka asks the probing question: How far dare a nation go in seeking to accommodate both victims and perpetrators of past abuse? Affirming the need for a purgation of the past through truth-telling and acknowledgement, Soyinka is critical of the South African amnesty process primarily because it allowed perpetrators to be absolved not only of criminality but also of responsibility. His concern is to move beyond the "hazy zone of remorse" to "a social formula that would minister to the wrongs of dispossession on the one hand, chasten those who deviate from humane communal order on the other, [and] serve as a criterion for the future conduct of that society, even in times of stress – and only then, heal" (Soyinka 2000: 81).

In brief, his argument is that the roots of apartheid oppression went deeper than the torture, abduction, killing and severe ill-treatment that constituted the TRC's definition of gross violations of human rights. Recognising that apartheid was grounded in material deprivation, social humiliation, naked racism and dehumanisation, Soyinka says reparations need to include material restitution and need to redeem victims from what he defines as a 'slave condition' that undermines the humanity of the oppressed. This, he suggests, imposes a sense of obligation and responsibility on both perpetrators and beneficiaries to engage, understand, and respond to the needs of the victims of apartheid. It also requires victims to 'seize and alter their [own] destiny'.

Mahmood Mamdani's critique of the South African TRC is similar to that of Soyinka (Mamdani 1996 & 2000). His criticism is that the TRC mandate

reduces the injustice of apartheid, which involves the dehumanisation of the majority of the population, to a narrow definition of gross violations of human rights defined as killing, abduction, torture and severe ill treatment. He sees the defining character of the South African struggle not as a conflict between a 'fractured political elite' of perpetrators and victims as defined in TRC legislation, but as one between all beneficiaries and victims of the apartheid system. With justification, Mamdani suggests that Bantu education and forced removals entrenched generations of black South Africans in a South African gulag that needs to be confronted in order for justice and reconciliation to become a reality:

> The violence of apartheid was aimed less at individuals than at entire communities, and entire population groups … The point is that the Latin American analogy [from which the South African TRC drew its inspiration] obscured the colonial nature of the South African context: the link between conquest and dispossession, between racialized power and racialized privilege. In a word, it obscured the link between perpetrator and beneficiary (Mamdani 1996).

Locating apartheid within the history of European colonialism, in which the native majority needed to be subjugated in order to maximise the privilege of beneficiaries, Mamdani's argument is that truth is not enough to ensure reconciliation. This, he argues, can only be realised through systematic socio-economic reform that he defines as 'a form of justice other than punishment'. Without opposing prosecutions, which may well be part of the justice he seeks, he prioritises restitution and structural change. He simultaneously stresses the importance of acknowledgment and apology that, he insists, needs to go beyond the formal 'deep regret' about apartheid expressed by former President FW de Klerk, which he contrasts with the apology of the post-war German leader Willy Brandt who went on his knees in the former Warsaw ghetto.

The context of Willy Brandt's apology was 'Realpolitik' grounded in extensive analysis and debate about Germany's past and present identity that he promoted and fostered in Germany and elsewhere. The lacuna in Soyinka and Mamdani's critique of the South African transition is its failure to give sufficient attention to the need for a similar level of unrestrained national conversation through the TRC. Sincere apology invariably flows from understanding, and understanding comes from debate, engagement and, often, from confrontation.

The former government, most of its supporters, and others on whom apartheid bestowed its privileges had not come to the point of acknowledgement and apology by the time of the South African Commission. Many have still not done so. For this to be accomplished, democratic politics and debate in

South Africa need to continue to wrestle with how to respond to a past that refuses to go away. Despite the fact that many perpetrators and benefactors were victims of a state ideology that drew bystanders and would-be decent people into its clutches, individuals were not entirely without resources to resist this level of propaganda (French 2001; see also Cooper 2001: 210). Daniel Goldhagen's argument in *Hitler's Willing Executioners* that Germans were under the "grip of a cognitive model" or "monolithic conversation" so powerful that few were able to escape its impact goes a long way to explaining the hideous anti-Semitic behaviour of otherwise seemingly decent people (Goldhagen 1996: 34, 45-48). The reality is that some did act, at great personal cost, against dominant ideologies in Germany, South Africa and elsewhere. The limitation of the South African TRC was that it did not have the mandate, the time or perhaps the will to address the underlying problems of racism and privilege that underpinned the gross violations of human rights that it sought to uncover.

The crucial question is how to get those who supported and benefited from a system to say a sincere *mea culpa* and commit themselves to work for the restitution and integration of the victims and survivors of a repulsive past. It can only be through continued engagement and democratic debate. Sincere and thoughtful remorse cannot be imposed through law or thumb screws. Nelson Mandela's answer to the question on how to enable people to turn away from their old ways in pursuit of the new is 'gently' and in a 'conciliatory' manner. He argued that, in engaging the past, South Africans "must be constrained … regardless of the accumulated effect of our historical burdens, seizing the time to define for ourselves what we want to make of our shared destiny" (Mandela 1994). This, according to him, would need to include the granting of amnesty to perpetrators of the most horrible crimes:

> In this context, I also need to point out that the Government will not delay unduly with regard to attending to the vexed and unresolved issue of an amnesty for criminal activities carried out in furtherance of political objectives. We will attend to this matter in a balanced and dignified way. The nation must come to terms with its past in a spirit of oneness and forgiveness and proceed to build the future on the basis of repairing and healing … In the meantime, summonsing the full authority of the position we represent, we call on all concerned not to take any steps that might, in any way, impede or compromise the processes of reconciliation that the impending legislation will address (Mandela 1994).

The TRC was no more than a cautious beginning to exploring the nature of reconciliation. It could have reached deeper into the nation's memory by holding a sharper and more penetrating mirror before the nation, persuading it to reflect with a more rigorous, penetrating gaze on what gave rise to the

gross human rights violations that it highlighted within the morass of the past. Maybe it was too soon for this to happen. Alternatively, is it too late?

The South Africa TRC did not succeed in depolarising the South African nation. Despite the economic empowerment of a black elite, in the words of President Mbeki, South Africa continues to consist of two nations: "One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure…The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the rural black population in general and the disabled."[3]

Not many perpetrators chose to use the TRC as an opportunity to deal fully with their past. Senior politicians and security force generals refused to take responsibility for the deeds of their foot soldiers. Most beneficiaries of apartheid have refused to acknowledge the economic and other privileges that they carry with them from the past. The impact of the apartheid economy has not been uncovered or reversed. State institutions have not totally succeeded in transforming themselves. Insufficient attention has been given to the roots and the nature of racism. The redress of poverty and human security remains a major challenge facing South Africa. Without making any dire prediction of a popular revolutionary upsurge in the short to medium term, this entrenched inequality can only result in new forms of struggle – what Neville Alexander (2002: 171) calls "movements of desperation".

The extent to which issues of poverty and economic exclusion are boldly at the centre of political debate (and protested against on the streets) in South Africa is not a direct result of the work of the TRC, although it could be argued that it is partly a result of the state having failed to implement many, even most, of the TRC's recommendations. It is partly a result of a neoliberal economic policy, which the African National Congress (ANC) for a variety of reasons had forced upon it when it assumed power in 1994(Legassick 2003). It is also a result of a post-conflict state being unable, for a range of reasons, to make conflict prevention a central ingredient of its programme of socio-economic and political reconstruction and transformation. It is here that the peacebuilding debate has most to contribute to transitional politics.

[3] An address to the National Assembly, 29 May 1998.

3. Peacebuilding and Conflict Prevention

As prosecutions are important but insufficient to bring an end to gross violations of human rights, so reparations, in the sense of seeking to compensate for past suffering, are important but insufficient to ensure the kind of social and economic milieu needed to prevent political instability.

Paul Collier and others argue that "the typical country reaching the end of a civil war faces around a 44 percent risk of returning to conflict within five years". The reason for this high risk, he suggests, "is that the same factors that caused the initial war are usually still present. If before a war a country had low average income, rural areas well endowed with natural resources, a hostile neighbour and a large Diaspora, after the war it is still likely to have these characteristics" (Collier 2003: 83; see also Miller 2007a).

The factors that may contribute to a return to conflict clearly differ from one context to another, as do the frustration and tolerance levels in different post-conflict societies. The South African stalemate and threatening revolution, for example, were driven largely by racism and a refusal to share political and economic power. It also involved a commitment by the ANC to form a radically different kind of state, which it is finding so difficult to deliver. In terms of the categories of the Uppsala Conflict Data Program (UCDP), the South African transition involved 'civil war'.[4] The post-conflict South African state, however, is also required to face some of the challenges associated with state formation, not least at the level of building state institutions that were not part of the former state (Wallensteen 2007a: 121-89).[5] However categorised, the social discontent presently being experienced in South Africa is of the kind that Collier and others see as having the capacity to drive a nation back into conflict. These issues of unemployment, insufficient health care, land scarcity, inadequate housing and related concerns are further aggravated in South Africa as well as in several other post-colonial countries by historically grounded issues of racism, classism and gender inequality that have given rise to a range of gross violations of human rights.

This requires transitional justice programmes and peacebuilding initiatives to address issues concerning the rule of law, history and memory, social development, human security, cultural inclusion and national identify in an integrated and balanced manner. This requires peace-builders to avoid the temptation to promote short-term, technocratic goals at the expense of such

[4] Uppsala Conflict Data Program, <http://www.pcr.uu.se/database/>.
[5] The South African case supports the suggestion that a distinction needs to be made between 'civil war' involving a change of state authority and 'civil war' aimed at state transformation. Both need to be distinguished from 'state formation', which suggests the creation of a state with minimal or no existing structures on which to build.

rights-based, moral and political approaches that are part of the transitional justice debate (Miller 2007b). As transitional justice needs to be broadened to address economic and developmental issues, so peacebuilding endeavours need to address issues central to international human rights law.

Peter Wallensteen identifies three recurring causes of civil war: "greed, need and creed" (Wallensteen 2007b). The late Govan Mbeki, a veteran of the South African struggle, merged "greed" and "need" to speak of "having and belonging" as essential ingredients for sustainable peace.[6] The relationship between greed and need in the process of universal or "shared having" is both complex and beyond the confines of this presentation, except to note that if the poor cannot sleep at night this has implications for the rich. An equal reality is that if people do not feel they belong to a society they are reluctant to contribute to the greater good of that society.

Having

The economic challenges facing transitional societies trying to recover from conflict, war and oppressive rule take time to resolve. Health care facilities need to be developed, roads need to be constructed or repaired, schools need to be established or re-opened, a transport system is required and attention needs to be given to the need for water, electricity and sanitation. The list is endless. Add to this the need to train doctors, teachers and engineers, plus the inevitable need to establish the rule of law, which requires appropriate election processes and a judiciary with adequately trained judges committed to the upholding of human rights. The timeline gets longer and longer.

Few African countries, South Africa included, have been able to meet these demands. It is also clear that economic transformation and development require the formation of a state governed by the rule of law and secure enough to formulate and execute long-term policies to deal with such human needs as freedom from hunger, disease and ignorance, and access to the basic necessities of life. Differently stated, economic development, societal cohesion and good governance are three sides of the same triangle, as is clear from the *United Nations New Agenda for the Development of Africa*. It acknowledges that "peace is an indispensable prerequisite for development". Stressing the need for peace initiatives by African countries "to bring an end to war, destabilisation and internal conflicts so as to facilitate the creation of optimal conditions for development", it calls on the international community "to co-operate with and support the efforts of African countries for a rapid restoration of peace, normalisation of life for uprooted populations and national socio-economic reconstruction" (UN 1991).

[6] Interview with the author, 15 September 2000.

Sue Brown and Funekile Magilindane develop the significance of this link by arguing that "a seldom-specified prerequisite for economic regeneration is the ability of ordinary citizens to look beyond immediate survival in order to plan future activities. Few are going to build, save or put extra work into anything but self-preservation or defence, if they have no reason to expect that they can retain the benefits of their hard work. As farmers will not plant if they cannot anticipate harvest, citizens cannot be expected to help build a new social framework if they cannot imagine a future without poverty and an endless struggle for mere survival." They conclude: "The more predictable the social framework, the livelier the economy that is able to develop." (Villa-Vicencio & Doxtader 2004: 114-20).

In brief, the reduction of impunity to legal impunity is a self-defeating exercise. Unless economic deprivation and impunity are addressed through economic transformation and growth, the possibility of sustaining the rule of law is minimised. Law is ultimately as good as the capacity of states to implement it. This requires an economic basis from which to develop structures, resources and skilled personnel to promote justice and the rule of law.

If economic inclusion is the material ingredient required to promote political reconciliation, the transcending of ethnic divisions is the social or subjective side of the process.

Belonging

Mahmood Mamdani tells the story of Vladimir Lenin chiding Rosa Luxemborg for being so preoccupied with combating Polish nationalism that she was not able to see beyond it (Mamdani 2001: 132). In so doing, he argued, she risked being locked in the world of the rat and the cat. The outcome is that even if the rats manage to defeat the cats, the impulse of their victim mentality is to seek revenge. The rats exchange places with the cats and in so doing, perpetuate the very kind of society that they claimed to struggle against. He suggests: "You can turn the world upside down, but still fail to change it. To change the world, you need to break out of the world view of not just the cat, but also the rat, not just the settler but also the native." (Mamdani 2002).

Mamdani suggests that Rwanda failed to make this break at the time of independence from colonialism in 1962 and again with the defeat of Hutu power in 1994. He further suggests that South Africa failed to make the required break with the past in its transition from apartheid in 1994. Henning Melber and others compound the problem by suggesting that the majority of liberation movements acceding to power in the Southern African region have failed to make the kind of ideological shift that enables them to create the kind of society that their rhetoric suggested they aspired to in earlier years

(Melber 2003). The argument of Melber and his colleagues is different to that of Mamdani. The intertwining of ethnicity and economic privilege requires a lot more work in order to fully grasp the difficulties involved in the kind of change in worldview called for by Mamdani. This said, the common denominator operative between scholars and practitioners working in the area of paradigm changes in politics is the realisation that when the opportunity emerges for a nation to break out of its past, entrenched politicised difference often militates against this from happening. The rat adopts the worldview of the cat!

The fact that the vast majority of contemporary conflicts are intra-state rather than between countries makes this a matter of major concern for those concerned with peacebuilding and political transitions in Africa and elsewhere. This has resulted in a number of scholars arguing that ethnic conflicts, which are invariably the carriers of social and economic privilege, require peacebuilders and facilitators of conflict resolution to consider what incentives and rewards are required to enable adversarial groups to turn away from the demand for cultural autonomy and social privilege in return for inclusive and participatory democracy. Andreas Wimmer and his colleagues suggest, for example, that ethnic conflicts provide "a testing ground for a new morality of promoting peace, stability and human rights across the globe" (Wimmer 2004: 1).[7] In brief, the use of identity construction, although useful as a mobilising agent in one situation, can be a severe liability in another.

The list of communities caught up in religious and ethnic identity concerns is a long one: the conflict in Northern Ireland; the Serbs, Muslims and Croats in the Balkans; the Kurds in Iran and Iraq; the Sikhs in Northern India and Kashmir; the Tamils in Sri Lanka; the West Papua and Aceh communities in Indonesia; the Tibetans; the Basque communities in Spain and elsewhere. In Africa there are states ranging from Rwanda, Burundi and the DRC in the African Great Lakes region to Sudan and other countries of the Greater Horn, West Africa and Southern African regions that also face ethnic challenges. Add to these examples the sense of exclusion experienced by Pakistanis in Britain, Hispanics in the USA, Aborigines in Australia, Maoris in New Zealand, the Inuit in Canada, the French in Quebec, and the Khoi-San, Afrikaner and other minority groups in South Africa—and the extent of the identity issues in nation-building processes is obvious.

International instruments on group and minority rights, beginning as early as 1954 with the recommendation of the UN sub-committee entitled the *Prevention of Discrimination and the Protection of Minority Rights*, signal an

[7] Cited in Enns (2007).

increasing awareness by the international community that groups excluded from the dominant culture of their environment on the basis of ethnicity, religion and language constitute a serious threat to national and regional stability. This underlines the need to include in the nation-building process all those who have the capacity to undermine peacemaking and democracy, without allowing any one group to jeopardise or delay the emergence of an equitable and a just new order.

The question is how to build an inclusive state in situations of deep historical, cultural, religious and material divisions within which there is an overall culture of national unity that at the same time allows for the affirmation of individual cultural and other identities. It involves recognising that it will take more than the strong arm of the law, as important as this may be, to pacify those who feel that their particular identity is threatened by an emerging new order. It further requires the recognition that external peacebuilding interventions are essentially powerless to resolve this sense of unease. As already suggested, they may even heighten social identify anxiety among conflicting groups.

In a culturally heterogeneous nation, which means most if not all modern nations, the challenge of political pluralism is at the forefront of nation-building. A state that seeks to neutralise, exclude, absorb or expel those whose national or tribal origins differ from that of the majority or ruling minority ultimately destroys its own vitality.

Three options (which cannot be developed here) suggest ways beyond the challenge of statism, national chauvinism and cultural domination that developing states need to guard against. The dominant model in the West is *liberalism*. It promotes social and political assimilation, suggesting that where the language, religion and cultural rights of individuals are recognised and protected, issues of ethnicity, race, class and gender can be excluded from the public square. How long, asks the Ghanaian novelist Chinua Achebe, writing in a different context, is it necessary for a voice, politically suppressed, culturally ignored, or economically excluded, to sound while “in the distance the drums continue to beat” (Achebe 1986: 32)? It is a question asked by marginalised groups throughout the world. It is this sense of exclusion within liberal states that persuades some to promote *multiculturalism* as an alternative.

The problem is that apartheid was, of course, multiculturalism of a particular kind-a kind that entrenched group difference. ‘So let them be Zulus, Afrikaners or Jews. That’s okay by me as long as they do not intrude on my right to be who I am,’ is a typical response. The problem is that the attempt to build a society in which different cultures and ethnic groups live side by

side, rather than explore the possibilities of engaging one another, has its own set of problems. Human nature and politics being what they are, this level of difference lends itself to the likelihood of ethnic or group narcissism. Multiculturalism does not redress the hostile sense of politicised identity that Mamdani is suggesting needs to be overcome in the creation of a new national sense of belonging and shared future.

An alternative to both liberalism and multiculturalism is a *"cultural openness"* that explores new ways of being and relating to others. Yet, Max Weber (1976) is right: culture is more than a light coat that rests on our shoulders to be discarded at will. It is neither feasible nor is it expedient to ask individuals or communities to surrender the multiple identities they choose to adopt. Open debate and engagement, on the other hand, can be an invitation for people to explore new identities among the multiple identities they choose. The question is how to create a society within which different consensual identities are respected and given equal status—as opposed to politicised identities that are imposed and enforced by a dominant state. To overcome this imposition, Mamdani argues that the stranglehold on history writing and history making needs to be broken. This requires both a critical analysis of the historical process that gave rise to the different politicised identities, and the participation by all sections of the community in the historical project. It requires social and political interaction by the very groups that find it most difficult to engage one another. It also necessitates the development of policy, education, training, media co-operation and a willingness to explore new ways of being and relating to others.

Frantz Fanon's *Black Skin White Masks* captures the need for this level of openness, which includes risk, venture, and what is new. In a final passage that transcends the anger and the anxiety portrayed in many of the earlier pages of a book in which he reflects on the history of the colonialism and racism he experienced in Martinique, in France and in Algeria, Fanon writes:

> No attempt must be made to encase man, for it is his destiny to be set free. The body of history does not determine a single one of my actions. I am my own foundation … The disaster and inhumanity of the white man lie in the fact that somewhere he has killed man … I, the man of color, want only this: That the enslavement of man by man cease forever … Superiority? Inferiority? Why not quite simply attempt to touch the other, to feel the other, to explain the other to myself (Fanon 1967: 230-1).

To suppress an identity and impose a culture eventually leads to revolt in the deep Camusian sense that compels the victim, after the two hundred and seventieth stroke of the whip, to shout 'enough' and to fight back (Camus 1991). Openness to the new requires patience. National cohesion is a slow process that requires thoughtful and strategic interventions. This is part of

the unattended business of transitional justice that peacebuilding researchers and practitioners are perhaps best equipped to bring to the party: the promotion of equal participation by all citizens in the nation-building process.

4. Methodological Differences

Transitional justice and peacebuilding as two separate but related disciplines need to engage and complement one another to ensure that all citizens have an opportunity for equal participation in the nation-building process, and to recognise that their methodological differences have the capacity to undermine the common goals which they claim to pursue. The separation between area studies and theoretical disciplines often has serious political consequences, and in the realm of international politics there are significant ideological and resource (funding) issues at stake to persuade the advocates of transitional politics and peacebuilding to get involved in a 'turf war'.

Either to neglect justice at the expense of political stability and reconciliation, or to pursue reconciliation at the cost of justice, is to trade sustainable peace for a quick-fix appearance of conflict resolution that enables its sponsors to carve another short-term notch of 'success' on their peace pole. Human rights and the rule of law are not possible in the aftermath of violent conflict without the active and ongoing work of reconciliation. By the same token, reconciliation is not possible where the rights of individuals are not protected and those responsible for their suffering are able to prosper in their impunity. While this interdependence seems like common sense, on-the-ground reality often belies this balance. In societies emerging from extended periods of human rights abuses, advocates of reconciliation and human rights are often deeply divided on how to pursue both peace and justice, which, after all, is an objective they share.

Human rights actors focus on a principled outcome, a state in which human rights standards, including the prosecution of perpetrators, are upheld. Advocates of peacebuilding and reconciliation, on the other hand, emphasise a process of dialogue aimed at the generation of a culture of the rule of law and human rights. Likewise, human rights actors tend to direct their strategies toward systems of law (whether local, regional or international), whereas reconciliation advocates tend to see the limitations of legal judgments, evaluating them as much by their political and socio-economic impact on society as by the degree to which they satisfy strictly legal standards of justice.

Where human rights groups seek to be an objective, impartial voice calling to justice all who commit human rights abuses; reconciliation advocates, while clearly not indifferent to such abuses, place more emphasis upon interpretations and the need to hear all voices—even the voices of the perpetrators. Human rights actors tend to see the quest for justice and the rule of law as the critical foundation for peaceful co-existence, while reconciliation advocates tend to see mutual understanding and the capacity to live together as the critical foundation for forward-looking justice and the rule of law.

In brief, human rights actors tend to define impunity for human rights abusers in a focused and narrow way, in an attempt to close down on future gross violations of human rights. On the other hand, reconciliation and peacebuilding actors tend to view impunity and accountability more comprehensively. They seek to extend the reach of impunity to incorporate other post-conflict priorities. These include the development of the structures and institutions needed for the implementation of the rule of law and human rights, an economy capable of sustaining these institutions and the promotion of reconciliation initiatives that enable former enemies and adversaries to begin to build relationships.

Reconciliation is both process and goal. As process, it is about exploring ways of gaining a deeper and more inclusive understanding of the problems that are the cause of a conflict. This often opens the way for a better understanding of how others see a problem, resulting in the beginning of respect and trust-building between adversaries. Above all, it is about finding ways to connect people across what are often historic and entrenched barriers of suspicion, prejudice and inequality. It is a process that can lead to an adaptation or change of values and a willingness to pursue a set of objectives that neither side would hitherto have been willing to consider. As goal, reconciliation is about a paradigm shift away from those who see themselves on one side or the other of a conflict. It involves a new sense of togetherness that transcends the binary political distinctions of black and white, Hutu and Tutsi, Serb and Croat, Palestinian and Israeli, and victim and perpetrator.

Again the question: How does a nation get there? What structures need to be created to promote trust-building and reconciliation? More important, are there institutions already in existence that enjoy the trust of individuals and communities that can be adapted or used to promote the kind of understanding that fosters reconciliation?

5. African Traditional Reconciliation Mechanisms

Ethnic conflicts have fuelled, have been fuelled and continue to fuel wars in Liberia, Sudan, Burundi, Rwanda, the DRC, Ethiopia, Eritrea and elsewhere on the African continent. At the height of such conflicts, culture invariably plays an important role both as an agent of conflict and as a potential means of healing wounds and fostering reconciliation. Where tribes, clans and families are pitted against one another, it is primarily traditional and local interventions that have the credibility and capacity to offer solace. In a careful study on Bosnia and Herzegovina, for example, Roland Kostic (2007) shows that external interventions in that conflict served largely to intensify rather than lessen social identity insecurity. He raises a sensitivity with implications for the African continent.

While the importance of local initiatives in the redress of intra-state conflicts is generally acknowledged by exponents of peacebuilding as well as most advocates of transitional justice, the retributive impulses promoted through international tribunals and the ICC invariably result in international initiatives being better funded and resourced than traditional practices. The latter have not received the kind of formal recognition needed for them to be reorganised in the wake of decades of conflict and undermining by successive governments, warlords and competing authorities. Traditional African reconciliation structures, on the other hand, are frequently indifferent to the requirements of international human rights law and judicial practices.

Traditional practices also vary from country to country as well as from community to community, with varying degrees of flexibility in their structures. These structures include *bashingantahe* practices in Burundi, the *gacaca* courts and *ingando* meetings in Rwanda, the *Barza intercommunautaire* in the DRC, the *Nyouo Tong Gweno, Mato Oput* and *Gomo Tong* customs among the Acholi in Northern Uganda, the cleansing of 'embittered blood' (*nueer*) and 'blood feuds' (*diya*) among the Neur, *Magamba* Spirit ceremonies in Mozambique, *umbuyiso* ceremonies among the Ndebele and different forms of ancestor appeasement in South Africa.

My intention is not to discuss the complexities of these ceremonies. Nor is it to ignore the limitations of traditional African courts and practices that have in many instances been discredited and marginalised not only by colonial authorities but also by post-independence governments. This has contributed to the emergence of incompetent elders and leaders who are open to manipulation and corruption. The impact of the traditional structures has been further undermined through the displacement in war of elders and others who gave the structures competence and credibility.

It is the ideas and values encapsulated in the traditional structures, rather than the structures themselves, that need to be affirmed and, where necessary, adapted to meet the demands of international law. Above all, a distinction needs to be made between blood crimes and less serious forms of crime, recognising that traditional courts probably do not have the competency to deal with the former, especially not where mass killings and genocide are involved. In Rwanda, for example, first category crimes are referred to the national courts and the International Criminal Tribunal for Rwanda (ICTR), with lesser crimes being handled through the *gacaca* courts.

While acknowledging the limitations of traditional structures in contemporary society, the cultural appeal and general acceptance of traditional ceremonies and courts among traditional African people is such that international and national courts as well as dispute resolution initiatives can scarcely afford to ignore them in any endeavour to build peace at grassroots level. Nelson Mandela recalls observing the proceedings of court of the Thembu regent. He noted, especially, the role of the regent, to whom his father was a counsellor:

> Everyone who wanted to speak did so. It was democracy in its purest form. There may have been a hierarchy of importance among speakers, but everyone was heard: chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and labourer. People spoke without interruption and meetings lasted many hours. The foundation of self-government was that all men were free to voice their opinions and were equal in their values as citizens … I was astonished by the vehemence – and candour – with which people criticised the regent. He was not above criticism – in fact, he was often the principle target of it. But no matter how serious the charge, the regent simply listened, showing no emotion at all … The meetings would continue until some kind of consensus was reached. They ended in unanimity or not at all. Unanimity, however, might be an agreement to disagree, to wait for a more propitious time to propose a solution … Only at the end of the meeting, as the sun was setting, would the regent speak. His purpose was to sum up what was said and form some consensus among the diverse opinions. But no conclusion was forced on those who disagreed. If no agreement could be reached, another meeting would be held (Mandela 1995: 20).

Modern democracies have neither the time at their disposal nor the staying power of the Thembu court. Democracy, in the sense of the ancient Greek agora, which was the place of assembly or marketplace of ideas, is however undermined when ideas are not heard and spoken about in times of conflict. Both inclusive democracy and political reconciliation find common cause in needing multi-levelled, open-ended processes of continuous interaction that engage clusters of citizens in and out of government in resolving public problems. At the risk of being romantic, the ancient Athenian notion of citizens being “potentially responsible for one another’s welfare” (Ober 1999:

28-9) and Frantz Fanon's affirmation of "communal self-criticism [and] a note of humour" are worthy of reflection (Fanon 2001: 37). Traditional African reconciliation mechanisms can contribute to this level of engagement in peacebuilding and decision-making endeavours.

A UNHCR report captures the need for the use of traditional practices, community participation in the decision-making process and compliance with the requirements of the ICC in the Northern Ugandan conflict. It states that "those responsible for the most serious crimes be held accountable in accordance with international norms and principles" and that "there can be no amnesty for serious crimes, such as war crimes, crimes against humanity, genocide and gross violations of human rights". The publication at the same time recognises that "accountability and justice do not begin and end with prosecution and punishment, but include a variety of other measures aimed at ensuring that victims' needs are properly addressed so that society as a whole can come to terms with what previously divided it and fuelled the conflict". The "other measures" cited in the document include truth and reconciliation commissions, other historical clarification bodies and traditional reconciliation practices, recommending that a national, consultative process be set in motion to gather views on appropriate forms of accountability and reconciliation (UN 2007, passim).

The recent *Agreement on Accountability and Reconciliation* (Juba Agreement) signed between the Government of Uganda and the Lord's Resistance Army (LRA) in Juba on 29 June 2007 similarly calls for recognition of traditional practices and rituals which, "*with the necessary modifications*", can play a central role in the proposed framework for accountability and reconciliation between government forces and the LRA (Uganda 2007, emphasis added). In line with this agreement, the Ugandan government that had referred the case of the LRA to the ICC for indictment in 2005 has earlier this year (2007) resolved to further 'engage' the ICC on whether this is in fact the most viable way of bringing the Northern Ugandan conflict to an end. Stating its desire "to give peace a chance" the Ugandan government suggests that the indigenous healing and reconciliation practices of the Acholi and other groups ought to be used to resolve the long standing conflict between the government and the LRA (IRIN 2007). Research among the people in Northern Uganda indicates that while those consulted are divided on the topics of justice, accountability and reconciliation, the majority of respondents either favoured some sort of amnesty for offenders, especially for

women and child soldiers, and the involvement of traditional Acholi truth-seeking and reconciliation mechanisms in the peacebuilding process.[8]

Commenting on the Juba agreement between the Ugandan government and the LRA, a spokesperson for the Ugandan government, Captain Barigye Ba-Hoku, suggested that the complexities of peace in Northern Uganda are such that "neither the usual legal system nor the traditional system was sufficient to achieve accountability for crimes on such a large scale". Acknowledging the ICC's legitimate concern about impunity, he stated: "We hope that once all agenda items are signed we will be able to go to them and present an argument that our agreement ensures that the commission of crimes in the conflict does not go unpunished … Each person who committed a crime will be held individually accountable and will be punished accordingly."[9] Reiterating this position in October 2007, the Minister of the Interior, Dr Ruhakana Rugunda, stated that "the LRA must disarm, demobilise and deal seriously with issues of impunity from war crimes and sign a peace deal before there is any approach from the Kampala government to the court's (ICC) chief prosecutor, Luis Moreno-Ocampo, to drop charges".[10]

Two important interrelated questions need to be addressed for there to be congruence between the ICC and those favouring the use of traditional reconciliation mechanisms. The first question concerns the nature of 'the necessary modifications' suggested in the Juba Agreement signed between the Ugandan government and the LRA. The second concerns the timing, implementation and nature of possible prosecution of offenders who are accused of being involved in war crimes, crimes against humanity, genocide and other serious crimes.

Local demands concerning the first question include the need for women to participate in the reconciliation processes that are traditionally the domain only of men; the need to protect the rights of children—not least child soldiers; the need for presiding authorities to be people of integrity with the necessary qualifications to adjudicate complex legal issues; and for there to be sufficient transparency for the community, as well as victims and perpetrators, to recognise that justice has been done. It is further recognised that traditional customs and practices have not been designed to deal with the so-called 'new crimes' of mass killings, genocide and related forms of conflict.

---

[8] Press release, dated 16 August, 2007, based on a survey conducted by the International Center for Transitional Justice and the Berkeley-Tulane Initiative on Vulnerable Populations, <htt://www.ictj.org/images/content/7/3/738.pdf>. See also JPR (2007).

[9] < http://www.irinnews.org/Report.asp?ReportId=73010>, 30 June 2007.

[10] http://www.mg.co.za/articlePage.aspx?articleid=321952&area=/insight/insight__africa/, 15 October, 2007.

It is, above all, in relation to these atrocities that the suitability and modifications of traditional practices need to be considered.

The concerns of international human rights agencies involve a principled commitment to prosecution in which it is argued that any attempt to deviate from an obligation to prosecute must be resisted as this undermines the hard won consensus that has emerged in the past 50 years and has culminated in the establishment of the ICC. It is further argued that any deviation from this obligation is seen to be a violation of a victim's fundamental right to the judicial process and the right to prosecution, and that the failure to prosecute undermines efforts to establish a stable democracy and undercuts efforts to re-establish the rule of law.

Is there another route in post-conflict situations that avoids impunity and assures political stability? Clearly, any possible deviation from prosecution, if allowed at all, ought to at least meet the following criteria and principles:

- convincing evidence that the majority of citizens support the quest for alternatives to normative forms of retribution
- the disclosure in public of as much truth as possible concerning past gross violations of human rights
- the accountability of those responsible for gross violations of human rights, recognising that accountability need not necessarily involve retributive forms of sentencing
- the restoration of human dignity, and delivery on appropriate forms of reparation for victims of gross violations of human rights
- the suspension of prosecutions such that they do not result in the abrogation of other requirements of international law
- retention of the option to prosecute both during and after the use of traditional reconciliation mechanisms.

The second question concerns the timing and nature of prosecutions. Clearly not all perpetrators can be prosecuted. Few countries in political transition have the resources for this and the logistics involved is beyond the capacity of the ICC, any special court, or criminal tribunal. By April 2007, 13 years after its creation in November 1994, the ICTR had handed down only 27 judgements, involving 33 accused, with 11 trials currently in progress, involving a total of 27 indicted people. Its budget, approved by the UN for 2006–2007, is US$269,758,400.[11] The approximately 130 000 other prisoners in the country's jails in 1994 face community justice through the *gacaca*

[11] <http://69.94.11.53/default.htm>

courts, a system with significantly lower budget and fewer resources than the ICTR.

The relationship between the Sierra Leonean TRC and the Special Court has, in turn, arguably been less successful but also more complex than the Rwandan situation. The Lomé Peace Agreement signed in July 1999 between President Ahmed Tejan Kabbah and Foday Sankoh, the commander of the Revolutionary United Front (RUF), made provision for the establishment of a TRC, and the necessary legislation for its establishment was passed by the Sierra Leonean parliament in February 2000. At more or less the same time, President Ahmed Tejan Kabbah wrote a letter to the UN in response to a violation of the peace agreement by the RUF, asking for assistance in the prosecution of the RUF leadership. The UN Security Council passed the necessary resolution and a Special Court was established to prosecute those who bear the greatest responsibility. There was confusion among victims and perpetrators about the role of the two institutions that competed with one another for access to detainees in custody, with the Special Court (again) being much better funded and equipped than the TRC. The net result was a situation within which the TRC's work was hampered and the Special Court had little to show by way of significant prosecutions. Its major achievement was the arrest of Charles Taylor who was sent to The Hague after a brief appearance in a Sierra Leonean court.

Suffice it to say that the co-existence of special courts and alterative truth-seeking and reconciliation institutions is a difficult process to co-ordinate. This is confirmed by the present stand-off between the UN and some other international NGOs, on the one hand, and the Burundian government and civil society, on the other, with regard to questions of local ownership and the relationship between prosecutions and the proposed TRC. Similar tensions emerged in the abortive DR Congo truth commission and are also present in Liberia. This poses the question whether the relationship between prosecutions and reconciliation, alternatively between justice and reconciliation, is not mutually harmful. The answer is to be found partly in relation to the sequencing of justice and peace. Which comes first, peace or justice?

Advocates of transitional justice and peacebuilding agree that peace must precede justice, at least at the level of peace-making. It is in the implementation of peacebuilding that the sequencing becomes important. Transitional justice advocates suggest that while political stability is necessary, and a measure of civic trust and political co-operation needs to be in place, prosecutions need to be dealt with as a priority in order to establish a basis for the rule of law and sustainable peacebuilding. Advocates of peacebuilding, on the other hand, tend to stress the need for a more comprehensive pursuit of justice to be established before decisions can adequately be made on the

implementation of perpetrator accountability, prosecutions, and appropriate forms of punitive judgement that should follow. The Ugandan-based Refugee Law Project specifically warns that for peace to have a chance of succeeding in the wake of armed conflict and war, where the infrastructure has been destroyed and the judicial system undermined, institutions need to be built or rebuilt, and people living in abject poverty need to be empowered and enabled to pursue justice for themselves. For this to happen, suggests Moses Okello (2007), "civilian authorities need to be back in place and clan structures responsible for transitional justice re-grouped after decades of forcible dispersal." In brief, substantial or positive peace needs to precede justice. This means, *inter alia*, that those who protected themselves behind high office can be confronted with their deeds. Political bosses, key civil servants and international actors, as well as their local agents who fuel Africa's wars, can be identified and, where appropriate, prosecuted. The rejoinder is, of course, that justice delayed is justice denied. The longer prosecutions are delayed, the more difficult it is also for a court to substantiate its case. The result of delay may be impunity by default.

The question is by what criteria the ICC and the political leaders in war-torn countries, whose task it is to secure peace and rebuild a nation, can find common cause? In the academy, in international debate and in intra-state negotiations, more attention, with equal funding, needs to be given to agendas and programmes of action that address the concerns of both transitional justice and peacebuilding. In turn, the advocates of the disciplines need to spend more time talking with one another.

6. An Unconcluding Comment

The South African TRC is the one transitional structure that most commentators cite as having a high level of legitimacy under international law. Although the ICC had not been established at the time of the South African TRC, the then General Secretary of the UN, Kofi Annan, spoke on the relationship between the proposed mandate of the ICC and the amnesty administered by the South African TRC shortly after the Rome Treaty was adopted and referred to states for ratification in 1998:

> The purpose of the clause in the Statute [which allows the Court to intervene where the state is "unwilling or unable" to exercise jurisdiction] is to ensure that mass-murderers and other arch-criminals cannot shelter behind a State run by themselves or their cronies, or take advantage of a general breakdown of law and order. No one should imagine that it would apply to a case like South Africa's, where the regime and the conflict which caused the crimes have come to an end, and the victims have inherited power. It is inconceivable that, in such a case, the Court would seek to substitute its judgement for

> that of a whole nation which is seeking the best way to put a traumatic past behind it and build a better future (Annan 1998).

The quest for a balance between the demand for both justice and peace in post-conflict societies is creatively present in the words of the former Secretary General. The South African TRC had its limitations, as I have argued in this paper. However, to suggest that the attempt to balance the scales between judicial accountability and political stability in South Africa is some kind of outdated idiosyncratic exception that predates the Rome Treaty and ICC is to refuse to ask whether the South African settlement has any lessons for peacebuilding and reconciliation that are worth pondering. The need is to refine and improve the South African balance—not to bracket it out of international debate and decision-making.

References

Achebe, Chinua (1986). *Things Fall Apart*, New York: Anchor Books.

Alexander, Neville (2002). *An Ordinary Country: Issues in the Transition from Apartheid to Democracy in South Africa*, Pietermaritzburg, South Africa: University of Natal Press.

Annan, Kofi (1998). Speech at the Witwatersrand University Graduation Ceremony, South Africa, 1 September.

Brounéus, Karen (2003). *Reconciliation–Theory and Practice for Development Co-Operation*, Stockholm: Sida.

Camus, Albert (1991). *The Rebel: An Essay on Man and Revolt*, New York: Vintage International.

Collier, Paul et al. (2003). *Breaking the Conflict Trap: Civil War and Development Policy*, Washington DC: World Bank and Oxford University Press.

Cooper, David (2001). 'Collective Responsibility, Moral Luck and Reconciliation', in Aleksander Jovic, ed. *War Crimes and Collective Wrongdoing*: *A Reader*, Malder MA: Blackwell Publishers.

Danieli, Yael (1998). *International Handbook of Multigenerational Legacies of Trauma*, New York: Plenum Press.

Enns, Diane (2007). *Identity and Victimhood: Questions for Conflict Management Practice*, Berkhof Occasional Paper No.28, Berlin: Berkhof Research Center for Constructive Conflict Management.

Fanon, Frantz (1967). *Black Skin White Masks: The Experiences of a Black Man in a White World*, New York: Grove Press.

Fanon, Frantz (2001). The *Wretched of the Earth*, London: Penguin Books.

French, Peter (2001). 'Unchosen Evil and Moral Responsibility', pp. 4-41 in Aleksander Jovic, ed. *War Crimes and Collective Wrongdoing*: *A Reader*, Malder, MA: Blackwell Publishers.

Garton Ash, Timothy (1998). 'The Truth About Dictatorships', *New York Review of Books*, 19 February.

Gibson, James (2004). *Does Truth Lead to Reconciliation? Testing the Considered Assumptions of the TRC Process*, Bloomington, Indiana: Midwest Political Science Association.

Gibson, James & Helen MacDonald, eds. (2001). *Truth – Yes, Reconciliation – Maybe: South Africans Judge the Truth and Reconciliation Process*, Cape Town: Institute for Justice and Reconciliation.

Goldhagen, Daniel (1996). *Hitler's Willing Executioners*, London: Little Brown & Co.

IRIN (2007). Uganda: Government to seek review of ICC indictments against LRA leaders, 21 June 2007, <http://www.irinnews.org/Report.aspx?ReportId=72861>

JPR (2007). Gulu-based Justice and Reconciliation Project (JPR) Special Report, *The Cooling of Hearts: Community Truth-Telling in Acholi-land*, July.

Kostic, Roland (2007). *Ambivalent Peace: External Peacebuilding, Threatened Identity and Reconciliation in Bosnia and Herzegovina*, Uppsala: Department of Peace and Conflict Research, Report No. 78, Uppsala University.

Legassick, Martin (2003). 'Armed Struggle in South Africa: Consequences of a Strategic Debate', in Henning Melber, ed. *Limits to Liberation in Southern Africa: The Unfinished Business of Democratic Consolidation*, Cape Town: HSRC Press.

Mamdani, Mahmood (1996). 'Reconciliation without Justice', *Southern Africa Review of Books*, November/December.

Mamdani, Mahmood (2000). 'The Truth According to the Truth and Reconciliation Commission', in Ifi Amadiume & Abdullahi An-Naim, eds., *The Politics of Memory: Truth, Healing and Social Justice*, London: Zed Books.
Mamdani, Mahmood (2001). *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, Cape Town: David Philip, 2001.
Mamdani, Mahmood (2002). 'Making Sense of Political Violence in Postcolonial Africa,' *Identity, Culture and Politics*, Vol. 3, No 2, December.
Mandela, Nelson (1994). State-of-the-Nation Address, delivered two weeks after Mandela's inauguration as President on 10 May 1994.
Mandela, Nelson (1995). *Long Walk to Freedom*, Randburg: Macdonald Purnell (Pty) Ltd.
Marrus, Michael (1998). 'History and the Holocaust in the Courtroom'. Paper delivered at the conference "Searching for Memory and Justice: The Holocaust and Apartheid", Yale University, 8–10 February 1998.
Melber, Henning ed. (2003). *Limits to Liberation in Southern Africa: The Unfinished Business of Democratic Consolidation*, Cape Town: HSRC Press.
Miller, Zinaida (2007a). *The Economics of Reconciliation: Towards a Discussion of Land, Power, and Transitional Justice in Post-Genocide Rwanda*, IJR Occasional Paper, Cape Town: Institute for Justice and Reconciliation.
Miller, Zinaida (2007b). *Constructing Sustainable Reconciliation: Land, Power, and Transitional Justice in Post-Genocide Rwanda*, IJR Occasional Paper, Cape Town: Institute for Justice and Reconciliation.
Minow, Martha (1998). *Between Vengeance and Forgiveness*, Boston: Beacon Press.
Ober, J. (1999). *The Athenian Revolution*, Princeton: Princeton University Press.
Okello, Moses (2007). 'The False Polarisation of Peace and Justice in Uganda.' Paper delivered at the International Conference on Peace and Justice, 25–27 June, 2007, Nuremberg, Germany.
Sooka, Yasmin (2007). 'Holding Peace and Justice in Tandem'. A paper presented at a Centre for Conflict Resolution Conference: *Peace versus Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa*, Cape Town, 17–18 May, 2007.
Soyinka, Wole (2000). *The Burden of Memory, the Muse of Forgiveness*, Oxford: Oxford University Press.
Symposium (2005). *Report of the Dag Hammarskjöld Symposium on Respecting International Law and International Institutions*, 13–15 June 2005. Uppsala: Dep't of Peace and Conflict Research & the Dag Hammarskjöld Foundation.
Uganda (2007). Agreement On Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement. Juba, Sudan, 29 June.
UN (1991). *New Agenda for Development of Africa*. <http://www.un.org/ecosocdev/geninfo/afrec/sgreport/repdfs/nadinfo1.pdf>
UN (1992). *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping. A Report of the Secretary General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council*, A/47/277-S/24111 (14 June 1992), <http://www.un.org/docs/SG/agpeace.html>
UN (2006). *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, Office of the United Nations High Commission for Human Rights, New York and Geneva: United Nations.
UN (2007). *Options for Accountability for Reconciliation in Uganda*, Office of the United Nations High Commissioner for Human Rights (UNHCR) in Uganda, February.

Villa-Vicencio, Charles & Erik Doxtader, eds. (2004). *Pieces of the Puzzle*, Cape Town: Institute for Justice and Reconciliation.
Wallensteen, Peter (2007a). *Understanding Conflict Resolution*, London: Sage Publications.
Wallensteen, Peter (2007b). *Strategic Peacebuilding: Issues and Actors*, Kroc Institute, Occasional Paper, No.28.
Weber, Max (1976). *The Protestant Ethic and the Spirit of Capitalism*, New York: Scribner's.
Wimmer, Andreas et al, (2004). *Facing Ethnic Conflict: Toward a New Realism*, Toronto: Rowman and Littlefield.
Zalaquett, Jose (1992). 'Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations.' The Mathew O. Tobrinder Memorial Lecture, August 1992. Published in the *Hastings Law Journal* (43 Hastings L.J. 1425).

About the Author

Professor Charles Villa-Vicencio is the founder and former executive director of the Institute for Justice and Reconciliation, based in Cape Town. He is the former National Research Director in the South African Truth and Reconciliation Commission. Prior to that he was Professor of Religion and Society at the University of Cape Town. He was appointed a Fellow of the University of Cape Town in 1994 and is an Emeritus Professor of that university.

He has published in excess of a hundred scholarly articles and authored or edited eighteen books. These include: The Spirit of Freedom: South African Leaders on Religion and Politics; Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission in South Africa; The Provocations of Amnesty: Memory, Justice and Impunity: To Repair the Irreparable: Reparations and Reconstruction; Pieces of the Puzzle: Notes on Reconciliation and Transitional Justice; and Building Nations: Transition in the African Great Lakes Countries; Truth and Reconciliation in South Africa: Ten Years On.

His present work is largely in the area of transitional justice and current political analysis in South Africa. He is also working on transitional mechanisms and peacebuilding initiatives in Rwanda, Burundi, the DRC, Sudan and Zimbabwe, as well as having consulted on political conflicts in the Spanish Basque country, Sri Lanka, Peru and Colombia. He works closely with universities and research institutes in Africa and elsewhere in the world.

Holders of The Claude Ake Visiting Chair

2003: Professor L. Adele Jinadu (Nigeria); a former President of the African Association of Political Science (AAPS), Jinadu is Executive Director of the Centre for Advanced Social Science (CASS), in Port Harcourt, Nigeria.

2004: Dr. Cyril I. Obi (Nigeria); Associate Research Professor at the Nigerian Institute of International Affairs and Senior Research Fellow/Programme Coordinator at the Nordic Africa Institute, Uppsala.

2005: Professor Amadu Sesay (Sierra Leone); Head of the Department of International Relations, Obafemi Awolowo University, Nigeria.

2006: Professor Kwame Boafo-Arthur (Ghana); Head of the Department of Political Science, University of Ghana, Legon.

2007: Professor Charles Villa-Vicencio (South Africa); Professor Emeritus at the University of Cape Town and Executive Director of the Institute for Justice and Reconciliation (IJR), Cape Town.

2008: Professor Adam Azzain Mohamed (the Sudan); Director of the Institute for the Study of Public Administration and Federal Governance at the University of Khartoum, the Sudan.

Abstract (for back cover page)

Professor Charles Villa-Vicencio addresses the difficult task facing societies that seek to move from situations of entrenched oppression or open warfare towards peace and sustainable reconciliation. He argues that effective peace initiatives are rarely accomplished by idealists who insist on rigorous standards of legal procedure and the rule of law. His contention is that peace agreements and peacebuilding are usually accomplished through a series of small steps and compromises designed to ensure political stability as a basis for the kind of dialogue, negotiations and political transition that allows for a peaceful transition from the old dispensation to the beginning of the new. Reconciliation, in the modest sense, of former enemies and adversaries developing a sense of trust, enables them to explore the possibility of finding joint solutions to the causes of conflict—as a basis for the further enhancement of justice, human rights and democracy. The paper specifically explores the inter-relationship between transitional justice and peacebuilding scholarship. It further considers traditional African initiatives in peacemaking and post conflict peacebuilding. The South African experiment in transitional justice, as captured in the Truth and Reconciliation Commission, is critically assessed as an example of how the oftentimes contradictory demands and priorities of transitional justice and peacebuilding can be balanced.