TRANSITIONAL JUSTICE, A TWO-PRONG APPROACH: RECONCILIATION AND CRIMINAL RESPONSIBILITY FOR KENYA POST 2007 ELECTIONS VIOLENCE

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Kenya will be a world example on managing violence.¹
ICC Prosecutor, Louis Moreno-Ocampo.

1. Introduction

The expression transitional justice is predominately used in the context of a society that is striving to overcome any historically tragic period in which it suffered grave human rights violations. According to the United Nations Secretary General’s Report on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,² transitional justice has been defined to mean:

“… the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of

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international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”

The transitional justice process in Kenya after the 2007 post-election violence was first characterized by political reforms enshrined in the National Accord which later became an Act of Parliament so as to transit from the political crisis into a peaceful and harmonious state, before implementing other mechanisms to deal with the crisis.

During the mediation process one of the items on the agenda concerned long term issues and solutions to address *inter alia* perceptions of historical injustices and exclusion on the part of segments of the Kenyan society that constitute the underlying causes of the prevailing social tensions, instability and cycle of violence.

Countries emerging from conflict have several issues to grapple with on their way to stability. Addressing human rights violations is a fundamental aspect. However, this depends on the scale and duration of the conflict, the availability of a functional judicial system, and the underlying cause(s) of the conflict. What Kenya witnessed was a political crisis coupled with violence that lasted less than 70 days in which grave human rights violations, community displacements, evictions, destruction of property and political animosity took place. The great divide the post-election crisis in Kenya was along tribal lines.

However, the 2007 post-election violence was not a first. Using violence for political gain has been a continuous trend in Kenyan politics, while with the coming of multi-party democracy in 1992, it has only escalated. Thus, it was during the 1990s that violence became institutionalized with presidential and parliamentary elections.

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3 *Id*, para. 8.
