

"For the Sake of Peace ..."

Transitional Justice as a Field of Development-oriented Peace Work

Contents	
1. The Past in the Present	1
2. Truth and Justice in Post-Conflict Societies	2
3. Transitional Justice Mechanisms	3
4. For the Sake of Peace...	4
5. Strategies and Interfacing	6
6. Further Links and Literature	8

How do societies emerging from war come to terms with their recent violent past? How can people and communities, which are deeply divided and traumatized by war and gross human rights violations, regain trust in their fellow citizens and state institutions? How can they achieve a sense of security and economic stability, rebuild a system of shared values, participatory political structures and an inclusive identity? How can a past that is marked by violence be overcome, and a common future shaped? The peaceful transformation of post-conflict societies is undoubtedly a long and complex process, which ultimately has to involve all layers and structures of a society. However, experience gained over past decades has shown that restoring justice and the rule of law, truth-seeking mechanisms and the development of new social relationships are central to this process. The Nuremberg Tribunal, the Truth Commissions in Chile, Argentina

and South Africa, the payment of compensation to former forced labourers in Germany, and the reform of the police and the military in Bosnia and Herzegovina are examples of this type of measures. Since the mid 1990s, such measures are referred to as "transitional justice" mechanisms.

This FriEnt Briefing Paper explains terminology and concepts of relevance to transitional justice, identifies key challenges and issues arising for development and peace organisations, highlights the most significant problems, and outlines strategies for action.

1. The Past in the Present

War and repressive rule deeply affect the social fabric of a society. For the majority of people – especially refugees, victims of torture and war crimes, and the relatives of the missing – the violence experienced does not only belong to the past; it continues to have an effect and is part of the present. In many cases, the basis of social relationships has been completely destroyed, shattering people's trust in others. Very often, violence and relentless propaganda have overturned the value system and entrenched enemy images. This leads to the development of exclusive group identities and therefore mutually exclusive "truths" about the war, resulting in a strong victim identity and the negation of or emergence of taboos surrounding war crimes committed by one's own group. In this way, the

"war in people's heads" continues, influencing the development of social relationships.

At state level too, the past is often still very present: in many cases, those responsible for war and violence (still) hold positions of authority, blocking major reform processes and creating a culture of impunity. Public institutions are often in disarray and may not – or may no longer – be able to perform their protective and regulatory functions. Indeed, given the nature and extent of the atrocities committed, even a well-functioning judicial system would be overwhelmed by the scale of the task of bringing war criminals to justice.

2. Truth and Justice in Post-Conflict Societies

Against this background, affected societies and external actors are confronted with the challenge of supporting processes which seek to break through the ongoing effects of the social reality that has been created by the war. At individual level, new prospects have to be opened up for those living with injury and loss; at broader social and political levels, structures must be created which facilitate the development of a new peaceful coexistence within society.

The key elements of this process are:

- the restoration of justice and rule of law, especially for victims of violence
- truth-seeking, and
- the development of new social relationships.

The long-term goals of this process are peace, reconciliation and the democratisation of formerly repressive regimes. In this context, alongside the term "transitional justice", the concepts of "dealing with the past" and "reconciliation" are often applied as well. There is a strong conceptual link between these concepts and the measures deployed within them may also overlap.

Alongside the restoration of justice through criminal prosecution and other mechanisms, truth-seeking efforts and society's acknowledgment of the abuses play a key role. The latter in particular is assumed to have a healing and peace building effect. Creating shared memories is also important in divided societies. This is intended to bridge the old lines of conflict and create a shared frame of reference. Establishing the facts surrounding the violence and identifying the actors involved and the structures in which and through which the violent acts were committed is also intended to have a preventive effect: learning lessons from the past may help to prevent a relapse into the old patterns of behaviour which allowed violence to be used as a means of "managing" conflict.

"Reconciliation" is identified as a key objective but often remains diffuse in practice. As the term also has strong Christian connotations, its intercultural applicability, especially in situations of extreme violence, is highly controversial. As a result, there is a growing trend, in the international literature and discourse, to view reconciliation as a process that facilitates the restoration of social relationships on the basis of fundamental values such as human dignity, respect, the right to life, and the right to physical and psychological integrity. This value base must be considered from the outset in post-conflict processes.

Introduction

[International Center for Transitional Justice](#)

KOFF: [Dealing with the Past \(2004\)](#)

IDEA: [Reconciliation after Violent Conflict \(2003\)](#)

[Further Links & Literature](#)

3. Transitional Justice Mechanisms

Against this background, diverse measures have been developed which address the various elements and involve many different actors.

Criminal justice

The prosecution of war crimes can take place at national and international level. The United Nations, for example, has established the International Criminal Tribunals for the Former Yugoslavia and Rwanda. In some countries, national courts

Transitional Justice

„Transitional Justice is a package of judicial and non-judicial responses to human rights violations, implemented by either government officials or non-governmental advocates or both, after a period of violence or repression when a society is confronted with the difficult legacy of the past.“

are handling the prosecution of war crimes. However, very often in the aftermath of war and violence, national structures have been considerably weakened and public confidence in them severely undermined. As a response to these conditions, the model of mixed domestic-international courts has been developed (Sierra Leone, Kosovo, Bosnia). The newly established International Criminal Court (ICC) can also prosecute war crimes.

Reform of public institutions

Here, the key focus is initially on reforming the judicial system and security forces (the police and the military). The reforms are intended to (re-) establish legal stability and the state's monopoly on the use of force, and promote democratic control of these institutions.

Lustration (Dismissal from office / screening as part of the recruitment process)

Lustration processes are closely linked with the reform of public institutions, the purpose being to ensure that persons responsible for human rights abuses and/or crimes against humanity are barred from holding public office. The denazification processes in Germany and the dismissals of police officers and judges in Bosnia, along with screening as part of the recruitment process, are examples of lustration.

Traditional justice systems / conflict resolution mechanisms

For some years, there has been a growing trend towards recourse to traditional conflict resolution mechanisms. This applies especially in situations in which national institutions are non-existent or overstretched. A much-discussed example are the gacaca courts in Rwanda, a reworking of the traditional community conflict resolution system, which have been established to investigate and resolve cases of individuals implicated in crimes of genocide or against humanity in Rwanda in 1994. In East Timor, too, the Truth Commission used traditional forms of conflict resolution on a local level to reintegrate perpetrators into their communities.

Mechanisms I

UNDP: [Security Sector Reform and Transitional Justice \(2003\)](#)

CDRSEE: [Lustration in the Western Balkans \(2005\)](#)

Peter Uvin: [The Introduction of Modernized Gacaca](#)

[Further Links & Literature](#)

Truth-seeking processes

Truth commissions are now the best-known form of truth-seeking. In most cases, they are based on a negotiated compromise with the elite of a formerly repressive system. The compromise provides for the formal acknowledgement, documentation and analysis of human rights abuses and, on this basis, the provision of reparation for victims as an alternative to the criminal prosecution of alleged perpetrators. Documentation, education and public relations work, along with the establishment of memorial sites, are other elements of truth-seeking processes.

Mechanisms II

USIP: [Rethinking Truth and Reconciliation Commissions \(2005\)](#)

CSV: [Symbolic Reparations: A Fractured Opportunity \(2004\)](#)

CSV: [Reparations in Southern Africa \(2004\)](#)

[Further Links & Literature](#)

Reparation/compensation for victims of violence

International law provides for the granting of reparation to victims of violence. However, the range of measures does not only encompass material compensation, the payment of reparations or the provision of services to compensate for the injustices suffered; it also involves symbolic acts such as the acknowledgement of the injustices that have been committed, the appeal for forgiveness, the establishment of memorial sites or the introduction of memorial days. The compensation can be granted on an individual or collective basis. <http://www.csv.org.za/wits/papers/papwbhv.htm>

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4. For the Sake of Peace ...

The transitional justice approaches that are based on truth and justice do not necessarily facilitate confidence-building or lead to the restoration of social relationships, however. Nor do they automatically create an inclusive culture of remembrance or, indeed, promote peace and reconciliation. In most cases, the political context makes it very difficult to achieve the desired values of peace, truth and justice simultaneously. Very often, when peace agreements are concluded or during the transition from a formerly repressive regime to a democratic system, the decision is taken against truth-finding or the criminal prosecution of perpetrators – ostensibly "for the sake of peace". Tension thus arises between the different values, resulting in conflicting goals and agendas.

Justice

A strong focus on criminal justice, with the establishment of either national or international tribunals, should not obscure the fact that comprehensive justice in a formal sense cannot be achieved in the context of genocide. But if recourse to traditional conflict resolution mechanisms is opted for instead, as in Rwanda, issues of compliance with basic procedural standards arise – such as the assumption of innocence, the collection of evidence, witness protection, etc.

Justice for Victims?

"No one doubts that raped women would like to see the perpetrators brought to justice. But for Congolese women, the reality is very different (...) The criminal prosecution of perpetrators [can easily] become a punishment for the suffering women themselves – for in situations in which a rape becomes public knowledge and results in social ostracisation, women will do their utmost, out of desperation, to keep their experiences secret (...) even if their tormentor goes unpunished as a result."

Another issue which is increasingly arising is the relationship between international ad hoc tribunals, which are extremely well-resourced, and the national justice systems, which generally lack the very basic essentials in the aftermath of violent conflict. What's more, in deeply fragmented societies, one group may regard the criminal justice approach as "victors' justice". This prevents them from dealing with their own responsibility and publicly acknowledging guilt.

Another significant factor is that war crimes tribunals focus mainly on the perpetrators; at present, no adequate mechanisms have been established for the integration and long-term psychosocial support of victims and witnesses. A further issue to be considered is that victims of human rights violations, especially women, are often doubly marginalised and that social constraints or the sheer demands of survival may take precedence over any reckoning with the past through the judicial system.

Ultimately, then, the question which always remains is this: what is justice? How can it be defined, and who is defining it: external actors, political elites, or victims' groups too?

Truth

Due to the many dilemmas associated with retributive justice, priority has shifted increasingly towards truth-seeking mechanisms over the last few years. These are directed towards some form of restorative justice. But here too, numerous challenges arise.

Truth ...

"People feel that what came out of the Truth and Reconciliation Commission (in South Africa) was not the whole truth, they think there's still more truth to be known and some feel that the TRC favoured a few individuals."

The key issue, in this context, is that in these often highly fragmented societies, there is no such thing as one "truth", but many, often conflicting truths. Just as war crimes tribunals may be perceived as "victors' justice" and thus obstruct the society's reckoning with responsibility, truth-seeking processes in divided societies can also widen the divisions between communities and make it difficult to build closer relationships between them. And just as the definition of justice

depends on each community's specific experiences, needs and values, different actors with different interests will also shape memorialisation and truth-seeking processes in their own ways as well. Whose memories and whose truth apply? How can a shared process of remembrance be created in this situation?

It is generally assumed that the systematic analysis, documentation and publication of human rights violations – which is what truth commissions seek to achieve – have a peace building effect. However, experience in Latin American countries has shown that where there is a lack of political will, a limited mandate and an absence of or inadequate follow-up mechanisms, truth commissions may cause frustration, retraumatisation, a hierarchisation of victims, and a culture of impunity. Finally, it is essential to consider that public truth-seeking or admissions of guilt may conflict with local traditions of achieving reconciliation through "silence", as the example of Sierra Leone shows.

... and Remembrance?

"There is always the danger that the dominant political party will put resources into memorialising its particular narrative of the past (...) I think that needs to be contested (...) I think the tendency has been to memorialise certain great people that invariably mean great men."

So how, when and to what extent does "truth" serve society's interests? And when can "forgetting" also contribute to peaceful conflict transformation and reconciliation? These questions often remain unresolved.

5. Strategies and Interfaces

Despite the dilemmas, the measures described above offer very practical starting points for governmental and non-governmental organisations. The context will determine which form and combination of these various mechanisms can be applied in any specific country, the prerequisite being a careful analysis – focussing especially on the fields of tension and the values and structures established within and aspired to by the society concerned. Coherent strategies which involve the various measures and actors through complementary action are key in this context. The following aspects are important when developing strategies for action:

Coping with tensions

The tensions arising within and between truth- and justice-oriented measures often cannot be resolved. However, they can be minimised through analysis of the local context and sensitive timing.

Considering complexities

Institutions, social relationships and basic values must be considered in a holistic sense. In addition, the function and responsibility of governmental actors must not be ignored by civil society, and, by the same token, civil society's own role must not be ignored by the state. And unless fundamental values are integrated into the process, institutional reform is likely to fail, along with trust-building measures and efforts to re-establish social relationships.

A careful analysis of the local context is essential

Which measures can be implemented, and when? This depends on a variety of factors, including the type of conflict, the continuity or discontinuity of elites, the diversity of violent actors and victim groups, and the strength of civil society. Due to the exclusive culture of remembrance, truth commissions, for example, are far more difficult to implement in intra-state ethno-political conflicts than in political conflicts in which a repressive regime has applied "concealed" violence (disappearances, torture, etc.). If there is no break with the previous political system, the opportunities afforded by the criminal justice system at national level are reduced. And the more diversified the victim groups, the greater the risk of hierarchisation and the exclusion of certain groups. Finally, it is important to ascertain the strengths and weaknesses of civil society, to determine where conflicts and tensions exist, and whether key actors are being excluded from the process.

As a general principle, neither the "state" nor "civil society", nor "perpetrators" nor "victims" should be viewed as monolithic, for within each group, there are different actors with their own scope and interests in initiating and implementing transitional justice measures. It is important to consider – especially in view of what is called "new wars" – that when it comes to the issue of perpetrators and victims, the dividing line between these groups will become increasingly blurred.

Thinking in stages, linking in with local processes

When developing transitional justice measures, the long-term timeframe for transformation processes must also be considered. Very often, individual measures, such as the documentation of human rights violations or the identification of missing persons, are a prerequisite for further steps. The decades of work undertaken by Chilean human rights organisations, for example, have established an important basis for the Truth Commission, whose own documentation was used years later in criminal trials. So it is important to think in stages, link in with local processes, and deal sensitively with timing and sequencing.

Careful modelling

Transitional justice mechanisms cannot be duplicated at random in different contexts. If the prerequisites and parameters for a specific measure are not in place, the concept may be discredited for years and may block processes and put people at risk. Nonetheless, it is important to consider which mechanisms should be integral to a package of measures that can be deployed in post-conflict situations – such as criminal trials for those who are primarily responsible for human rights violations and war crimes – and which measures must be viewed as fundamentally problematical, such as amnesties.

6. Further Links & Literature

Introduction

[Centre for the Study of Violence and Reconciliation](#)

[Governance Resources – Transitional Justice](#)

UN: [The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies \(2004\)](#)

Berghof Research Center: [Supporting Justice, Co-existence and Reconciliation after Armed Conflict: Strategies for Dealing with the Past \(2005\)](#)

Transitional Justice Mechanisms

[International Criminal Court](#)

[International Criminal Tribunal for the Former Yugoslavia](#)

Berghof Research Center: [Security Sector Reform: Potentials and Challenges for Conflict Transformation \(2004\)](#)

Commonwealth Human Rights Initiative: [Police Accountability \(2005\)](#)

Penal Reform International: [Gacaca and Reconciliation \(2004\)](#)

[Redress](#)

[Khulumani Support Group](#)

[Truth Commission](#) – Online Guide

[Healing through Remembering – Northern Ireland](#)

USIP: [Trauma and Transitional Justice \(2005\)](#)

Imprint

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ISSN: 1861-8634

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