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New Horizons. Linking Development Cooperation and Transitional Justice for Sustainable Peace

International Conference | Berlin, 27 - 28 January 2010
Conference Report: Issues and Challenges



FriEnt

The Working Group on Development and Peace (FriEnt) is an association of eight German governmental and civil society organisations working in the field of development cooperation and peace building. FriEnt fosters joint learning amongst its members, provides information, capacity building, and advice and supports networking and cooperation.

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Preface: From Nuremberg to Berlin



“Even perfect judicial processes will not prevent violence from flaring up again if basic social, economic and political injustices are not addressed”. This was one of the main insights from a workshop entitled “Looking Back and Moving Forward. The Nexus Between Justice and Development” that had been organised by FriEnt at the international conference on “Peace and Justice” in Nuremberg in 2007. The Declaration that came out of the conference called on development actors to “be sensitive in dealing with the past when designing post-conflict development strategies and take into account the relevant recommendations of accountability mechanisms”. At the same time, it required transitional justice strategies to give early consideration to the socio-economic dimension of justice. The international conference “New Horizons. Linking Development Cooperation and Transitional Justice for Sustainable Peace” aimed to examine in more detail in which way development cooperation and transitional justice can take into consideration the full range of injustices that are at the root of war and violence.

Around 100 policy makers and practitioners from various countries participated in the two day conference, which encompassed an introductory panel and an open space session as well as a series of five parallel workshops, each on a particular sector of development cooperation and transitional justice. In a final panel, recommendations to the development and transitional justice communities were discussed. Moreover, a public event summed up and broadened the discussion towards a wider public. The conference was organised in a broad-based process that included the FriEnt member organisations and their respective partner organisations.

As in Nuremberg the allusion to German history and its own sixty year long transitional justice processes set the frame for discussions at the Berlin Conference. In Nuremberg the connection was made via the Nuremberg Tribunal. At the Berlin conference Rudolf Ficker from the Church Development Service (EED), in his welcome address, reminded participants that the conference date was connected to German history: January 27, 1945 marked the liberation of the Auschwitz concentration camp by the Soviet Army. Only in 1996 was it declared an official memorial day in Germany to honour the victims of the NS regime. Thus questions of justice and peace after war and violence are not questions of “us and them” but are of relevance throughout the world. This was underlined by Ulla Mikota from the German Ministry for Economic Cooperation and Development (BMZ) and Chair of the FriEnt board in her introductory speech. And she continued: They need time to be dealt with in their different aspects, which may become important at different points in time.

The present document is not intended to be a precise record of the conference proceedings. Rather, it is an issue paper that focusses on some main points for follow-up.

Last but not least, we would like to thank everyone who contributed their experience, time and energy to make this conference happen and a successful event – an undertaking of very complex challenges for all involved: the colleagues in our member and partner organisations, those from specialised organisations, and all members of the FriEnt Team.

Setting the Stage



"Apartheid was structural injustice. The redress required therefore equally needed to be structural" said Nahla Valji, from the Centre for the Study of Violence and Reconciliation (CSV), in her contribution to the conference's opening panel. It very aptly described the heart of FriEnt's interest, with three particular issues for further exploration during this conference:

- Definitions and understandings of transitional justice that see transitional justice as part of peace building dealing more particularly with past atrocities in violent conflict;
- An understanding of "past atrocities" that include social, economic, and cultural injustices;
- Maintaining transitional justice and development processes by linking actors from the fields of transitional justice, development cooperation, human rights, and peace building and from different levels of intervention.

Definitions and Understandings

Participants agreed that dealing with legacies of massive human rights abuses, redress for past injustice and guarantee of non-recurrence were objectives that are important to consider when striving for more sustainable peace. Furthermore, as Pablo de Greiff from the International Center for Transitional Justice (ICTJ) underlined in his intervention, transitional justice is an instrument of social integration in that it aims to recognise victims as victims and, at the same time, strengthen citizen regimes by making institutions minimally work, thus improving their trustworthiness.

Markus Lenzen from the Department for International Development (DFID) offered the classical definition given by the UN Secretary-General in 2004: transitional justice is "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 international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof". And, de Greiff added, further mechanisms may include memorialisation and the use of traditional or local justice mechanisms.

Participants appreciated this broad approach because, as one participant pointed out, "transitional justice is still too much focussed on law – and criminal prosecution has its limits in situations of gross post-violence".

Addressing Social and Economic Injustice

However, de Greiff – and to a certain extent – Lenzen cautioned against "overloading" mechanisms with the examination of social, economic, and cultural injustice of the past – tasks they were originally not made for, given their historical background in the Latin American context of the 1980s where they had to deal with post-authoritarian rather than with post-conflict situations and with countries with a high degree of institutionalisation rather than with lower levels of development.

Nahla Valji strongly disagreed with her co-panellists: "If we do not expand the definition and allow it to be context-driven we simply risk being irrelevant." And, she continued, the focus should move beyond a narrow legal individual rights paradigm "to define the justice we seek in transition as one of social justice". South Africa, she explained, was not about a handful of political and civil rights violations. "It was fundamentally about the wholesale marginalisation, underdevelopment and social and economic oppression of a population." And so "the

"The experience of the range of human rights violations is not separable in ordinary people's understanding, experience or sequencing of their sense of justice."

"There is no overall policy framework for development assistance to transitional justice".

limited focus of the Truth and Reconciliation Commission (TRC) which spoke only to the violent individual excesses of the apartheid system did not speak to the vast majority of victims – that is, victims of a system that was itself a crime against humanity".

There have been other sites of redress in South Africa apart from the TRC, such as the constitution, new political institutions and redistributive justice policies like land restitution. However, these have resulted in restitution and reform within the broader framework of a neo-liberal economic agenda that has in fact entrenched pre-1994 property rights and a focus on commercial farming at the expense of smaller land-owners, Valji argued. So the limited definitional mandate of the TRC contributed to ongoing fractures and injustices that continue to plague the country.

This becomes even more evident, when taking into consideration gender inequality: This most pervasive and universal inequality is exacerbated by conflict and its impact on the terrain of the post-conflict society. Yet beyond a focus on women as victims of sexual violence gender, gender power relations in particular and the need for gender equality and justice have largely been ignored by transitional justice mechanisms to date.

Maintaining the Process

This is where development cooperation comes in. As Valji argued, "giving back land can have little transformative or reparative impact,

however, if it is not linked to a broader poverty reduction agenda". There is an important role for development agencies to play in supporting the development components of redress programmes.

Here again, the gender lens may clarify important aspects: Because of gender inequalities women are disproportionately impacted by socio-economic violations in conflict. Taking on a gendered lens on designing and supporting transitional justice interventions and development programmes (e.g. those concerning land restitution and tenure reform and rural development) is not simply about targeting women; it is first and foremost about ensuring that resources are reaching those for whom they are intended. So, pursuing gender justice can both redress past violations and combat cycles of poverty and underdevelopment effectively.

However, sustainable peace is not only contributed to by linking the fields of transitional justice and development but also by linking transitional justice mechanisms to each other in a meaningful and context-sensitive way. This means supporting processes and not "just" mechanisms. Lenzen remarked that there is a wide range of transitional justice mechanisms that have been supported by bilateral and multi-lateral donors and much conceptual work has been done. However, "there is no overall policy framework for development assistance to transitional justice", he summed up.

Participants were interested in taking the specific roles and activities of state and non-state organisations of different fields of intervention into account and to consider their relationship. As one participant said, "transitional justice and development meet at the local level." And Pablo de Greiff underlined the importance of coordinated deployment of mechanisms that presuppose mutual learning processes and effective coordination of initiatives.

"It is not enough to broaden transitional justice and simply include economic, social and cultural rights. Rather, the focus should move beyond a narrow legal individual rights paradigm to define the justice we seek in transition as one of social justice."

FriEnt's Favourites for Further Exploration

- 1 | Transitional justice has to move beyond a narrow legal individual rights paradigm to define the justice sought in transition as one of social justice.
- 2 | Spoilers for peace are spoilers for development – transitional justice interventions that are not linked to development will not unleash the transformative dynamics.
- 3 | A strategy is needed that includes actor coordination with a long-term perspective in order to bring about and maintain processes towards sustainable peace.

Linking Development Cooperation and Transitional Justice Interventions: Experiences and Perspectives



Towards Deeper-rooted Justice: Addressing Land Issues in Post-Conflict Societies

Access to land and land use play a life-sustaining role for the large majority of the population in many regions of the world. At the same time, inequality in landholdings and illegal or unjust dispossessions are not only 'symptoms' of underlying patterns of discrimination, but very often also key causes of violent conflict. Moreover, land tenure systems can be profoundly affected during conflicts: Changes may range from forced eviction and reduced access to land to the alteration of local land tenure systems and the takeover of land by refugees or internally displaced persons. These changes can become consolidated after violent conflict. Hence, addressing land issues in conflict and post-conflict situations is a highly complex but important endeavour. Even though a broad range of actions has been developed and implemented by a multitude of actors, rarely have linkages between development cooperation programmes and transitional justice interventions been articulated.

Worlds Apart: Land and the ECCC in Cambodia

The forced eviction and land dispossessions of millions of people by the Khmer Rouge are not within the mandate of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Indeed, according to Chhit Sam Ath from the NGO Forum on Cambodia, restitution of land does not figure among the requests of the victims of the Khmer Rouge regime. Land redistribution that followed in the 1980s was considered by many to have benefited everyone and was widely accepted as compensation for the loss suffered by all.

Rather, land problems in Cambodia are regarded as a more recent problem and linked with the

post-Khmer Rouge government. Challenges abound, ranging from clear demarcation, a rising number of landless people with a higher incidence of women; forced evictions and land grabbing, now resulting from increasing domestic and international private sector investment; resettlement policies being implemented without transparency or compliance with legal procedures with, again, women being most vulnerable; and alienation of indigenous peoples from their traditionally owned land.

So land and – accordingly – judicial system reform are regarded as two key development priorities of the current government. Even though the question of land reform is separate from the proceedings of the Chambers it is hoped that the judicial system will be positively influenced by the ECCC.

Empowerment not Punishment: Mindanao

From his work in Mindanao, Kaloy Manlupig from the Balay Mindanaw Foundation Inc. (BMFI) pointed to the historical dimension of land problems dating back to colonial times: "The dispossession of lands and the marginalisation of the indigenous communities can be considered as among the biggest unresolved historical injustices." Longstanding violent conflicts are also linked to this situation. Peace processes are under way in which the BMFI has been involved for some time. BMFI's strategy is to include land reform – and linked with this – agrarian reform that also allows access to natural resources, finances, technology, infrastructure and other components without which land reform would not be effective. BMFI tries to ensure this by way of a bottom-up peace process that includes the poor and landless

"Our work with the indigenous peoples has taught us that justice is not about punishment but about atonement and restoration."



communities on the one hand and, on the other, the military and rebel forces. "Enemies have to be won over, not defeated" said Manlupig and continued: "Such empowered communities are the real foundation of peace". The major challenge is, however, to overcome the feudal consciousness, behaviour and structure that still prevail.

But these processes are not part of a 'classical' transitional justice intervention. Manlupig was sceptical, in his presentation as well as in the discussions, about positions that hold that "the reason why we have not moved forward as a country is because we have not dealt with our past properly". Also, he explained, the closure that transitional justice is considered to contribute to "is often equated with punishing the perpetrators of the injustices committed. Our work with the indigenous peoples has taught us that justice is not about punishment but about atonement and restoration".

Issues and Periods

George Wachira, Senior Researcher with the Nairobi Peace Initiative (NPI), drew attention, in commenting on the two cases presented, to a number of issues: How far do we have to go back in history in order to deal with injustices and violations of rights? He complemented the picture by giving the example of the Kenya Truth and Reconciliation Commission: it goes back to 1963, not to 1859 when the colony

was established and land was first taken by European settlers. A second question for him was who the victims are. As shown in the case of Cambodia, new injustices occurred after Khmer Rouge violence. So in Cambodia those who are today victims of land injustices are not necessarily linked to the Khmer Rouge period.

Wachira's last but not least point concerned the question of restitution of land as a mode of livelihood. Land, he argued, is a finite resource that is at risk of running out as a basis of living in many countries. So the question for transitional justice would be "are there other forms of restitution that can replace land"? Here, the ensuing discussion circled around the question to what extent the perspective should be broadened from land rights towards "right to food", food sovereignty and livelihood. This would not only facilitate the discussion in contexts where talking about land rights would be politically sensitive, but also facilitate an empowering approach.

Land Tenure Reform

A further issue concerned the link between land tenure reform and transitional justice. It is connected to the two preceding questions of timing and what to restore. Participants held that transitional justice cannot deliver land reform. However, what should be done in cases where it is land ownership patterns that precipitated the violence and re-establishing such patterns might lead to renewed violence? Here, it was pointed out, transitional justice mechanisms, rather than delivering reform, could play a role in drawing attention to the need for land tenure reform.

Participants in the workshop suggested that other sites than transitional justice mechanisms could be established, such as a commission to deal with past economic crimes. And, participants further suggested, the extent to which regular justice mechanisms already in place can be applied or further developed to deal with issues of land tenure reform may be examined.

"Transitional justice mechanisms could play a role in bringing local and international attention to the need for land tenure reform."

FriEnt's Favourites for Further Exploration

- 1 | Under what conditions is there a need and an opportunity to include injustices relating to land in transitional justice mechanisms? When would it be important to deal with it on other sites of restitution and repair?
- 2 | Peace processes: To what extent can issues relating to land be meaningfully included in order to ensure sustainable peace? To what extent is it important to consider transitional justice mechanisms relating to land issues?
- 3 | What effects do transitional justice interventions have on development processes in which land issues play a role? How can development programmes support redress programmes in which land plays a role?



Blind Spots: How to Deal with Conflict Resources and Economic Crimes?

Natural resources play a crucial role in many armed conflicts around the world. Illegal armed groups often exert control over natural resources in order to fund their war effort, and many authoritarian regimes abuse a country's resources to maintain their hold on power. It is common to find that war-torn societies suffer from high levels of corruption and that the revenues of public goods are embezzled to the benefit of the elite. A number of instruments have been developed to control the exploitation of natural resources and to stop economic crimes. However, these particular crimes have not, until now, been systematically included in transitional justice mechanisms after the end of armed conflicts or the fall of authoritarian regimes.

A Natural Connecting Point

Emily Harwell from Harvard University declared that natural resources are a natural 'connecting point' for post-conflict development and transitional justice. Just as much as natural resources may fuel and support war, they may also "play a major role in the economies of many post-conflict countries and contribute to the wellbeing and the livelihood of local populations – both directly as a means of subsistence or providing labour opportunities, as well as indirectly by funding state capacity to deliver services", she continued. What has to happen to ensure this switch from conflict to peace resources? How can transitional justice mechanisms play a role here?

Truth Commissions over Judicial Procedures?

Harwell showed how, more particularly, Truth and Reconciliation Commissions (TRCs) have an advantage over judicial procedures in their

ability to focus both on individual responsibility as well as on institutional or structural injustices at the root of abuses or violence. TRCs can ask broad questions of how and why abuses occurred, while trials ask only if individual charges have been adequately proven. They may help address questions of why particular people were targeted and what circumstances enabled the violence to take place, and this may raise public awareness and stimulate debate about the issues of economic injustice in ways that help generate the political will for reform. However, these opportunities have very often been underutilised by truth commissions, which have generally focussed their investigations narrowly on civil and political rights.

Turning Conflict Resources into Peace Resources

Furthermore, Harwell illustrated the useful link between transitional justice and development cooperation by giving the example of the Liberia Forest Initiative (LFI). It was formed to address the links between conflict and forests and involved the Liberian government as well as multi-stakeholder participation of donors and civil society, including human rights and community justice activists. The Initiative looked, inter alia, at new resource management and resource tenure laws and regulations and also developed a graduated vetting policy for those involved in the forest industry which was related to the security sector reform under way in Liberia. In practice, it was the development agenda which, after some time, it turned out to be competing against: Development organisations pressed for increased logging and mining possibilities in order to generate foreign investment and job creation in the name of

"Natural resources are a natural 'connecting point' for post-conflict development and transitional justice."

poverty reduction, ahead of strong governance institutions!

The ensuing discussion was summed up with the question: "What happens to the cash and can we have it – for reparations? For development issues?"

What Happens to the Cash?

This gave the floor to Nelly Calderón Navarro, former Peruvian Attorney General and Advisor to the World Bank's Asset Recovery Initiative. The main task of this initiative is to locate money and recover it. Sometimes the recovery takes years of investigation; international cooperation helps, based on international conventions. It is important work as it is also linked with compensation for victims, although often, there is very little left to support the wellbeing of victims and their villages.

The Broader Picture Needed

Ruben Carranza from the International Center for Transitional Justice (ICTJ) complemented these two inputs with a series of further thoughts and examples on the pursuit of economic crimes as part of transitional justice. Thus he considered with respect to the Timor Leste Truth Commission that holding hearings on economic rights violations meant that it was possible "to establish a far more truthful account of the Indonesian occupation than would have had been possible had it limited itself to physical integrity, e.g. that a large number of people died

of hunger and illness rather than being killed outright or forcibly disappeared."

The concluding discussion again highlighted questions of the relationship between reparations and development cooperation. It was pointed out that, yes, individual reparations would be perfect but even in the best of all systems may be almost impossible. Open acknowledgement would, however, be necessary in any case – as a right.



FriEnt's Favourites for Further Exploration

- 1 | Natural resources as the natural connecting point for post-conflict development and transitional justice – where exactly does this connecting point lie?
- 2 | The nexus between transitional justice, more particularly aspects of reparations, and asset recovery: How to make it work? Who should be involved?
- 3 | Which transitional justice mechanisms seem to lend themselves more than others to exploring the role of natural resources in (violent) conflict?

"A key question is what happens to the cash and can we have it for reparation and development?"

"Do we support interethnic tolerance in education programmes or rather positive recognition, respect, and acceptance of the society's multiethnicity and multiculturalism?"

"The education system itself has to overcome its own persisting indifference, neglect, and even racism and discrimination against the indigenous majorities."



Education and Remembrance: Laying the Ground for New Generations

Education is a sector that allows us to observe a range of phenomena, otherwise invisible, that remain at the root of many violent conflicts. It engages (and feeds) directly into opinions, attitudes, behaviours and narratives that serve to shape (and potentially freeze) identities instead of allowing for more fluid multidimensional identities and subjectivities. Education also seems to be located at the intersection between transitional justice interventions and more organic and ongoing ways of dealing with a past of atrocity and injustice. It reveals the interconnections between the public and the private realm. Moreover, education policy and strategy are potential conflict sources and an arena for dealing with the past.

Three Levels of Concern

Drawing on the example of Northern Ireland, where the Good Friday Peace Agreement of 1998 was considered to have brought about a fundamental change from violence as a means for political change to a commitment to power-sharing and democratic politics, Alan Smith from the University of Ulster presented questions for educators at three levels regarding dealing with the past processes:

- governance and control of the education system: this may change in order to reflect changing power relations, equitable distribution of resources and procurements, and more inclusive representation in the management and control of education services;
- education structures and institutions: possibilities to address former segregation of education; advocate sensitivity to diversity and inclusion of minorities; education reforms in terms of administration;

- educational content and processes: may also be the means by which the new generations learn about recent conflict within their own society and explore possibilities for future transformation or reconciliation.

The preoccupation with education became necessary as "there [was] a real shift in power relations within Irish society and the need for public education that promotes equality, non-discrimination and respect for difference", explained Smith.

Further examples in the workshop considered Guatemala and the Western Balkans and came from ongoing projects. All focussed on the content and processes level.

Content and Processes

Thus the project presented from Guatemala concentrated on 'intercultural education' with a perspective towards interethnic tolerance rather than positive recognition, respect, and acceptance of the society's multiethnicity and multiculturalism as Luis Enrique Lopez-Hurtado from GTZ's PACE programme put it. However, Lopez also stressed the importance for the education system itself to take a situation into consideration where persisting indifference, neglect, and even racism and discrimination against the indigenous majorities have to be overcome. For him, intercultural education in Guatemala ought to be inscribed into a more integral struggle against historical racism and discrimination.

Participants also stressed that outside government efforts, there was an array of civil society and church efforts to offer alternative views,

models, and informal sector education. The challenge was to reach large parts of the population, including youth.

Timing

This is the context in which Kathrin Weber from the Civil Peace Service (CPS) is working: local communities where people have little formal education and in situations where it is still dangerous to talk about human rights topics as they are associated with the guerrillas. One of the key questions here was to determine the right moment to address the past in informal education settings, in communities where victims and perpetrators live next door to each other.

The problem of timing was also mentioned by María Eugenia Carrera Chávez from the Centro de Análisis Forense y Ciencias Aplicadas (CAFCA). The Centre is also doing research on historical memory which includes working with people in the communities. Here too, the question of when to raise the issue of the past with people becomes important, particularly, again, where victims and perpetrators live next door to each other. In its search for truth, this is an important question for CAFCA, which is at the same time working towards combining testimonies with archival material in order to provide evidence for lawsuits, but also to provide a basis for a more complete picture of history, of "what really happened".



Value Change and Justice Done

In the Western Balkans, we are dealing with a different set of challenges as far as content of education is concerned. Nenad Vukosavljević from the Centre for Nonviolent Action (CNA) in Belgrade explained that it is a matter of change of societal paradigm, discovering greatness in peace, shifting from war heroism as a value towards peace as a value as well as learning lessons from violent history and applying them to prevent recurrence. One obstacle to the process he mentioned here were the attempts "to eradicate certain identities or build new ones, rather than supporting the re-definition of existing ones".

As some specific challenges of working on the interface between development co-operation and education participants mentioned: "You don't start such processes knowing what will happen. You will realise you have to invent things in your process even without a clear goal." Another question considered central was: "When do we reach the point where people don't want to be victims any more, and take responsibility?" Because: "As long as victims remember that they are victims, justice is not achieved".

"How to determine the right moment to address the past in informal education settings, in communities where victims and perpetrators live next door to each other?"

FriEnt's Favourites for Further Exploration

- 1 | What contributions can the education sector, including the right to education with its requirements of availability, accessibility, adequacy and acceptability, offer to transitional justice processes?
- 2 | How can formal and non-formal education consciously foster a kind of non-violent conflict-ability that enables the engagement with historically entrenched 'structures of feeling'?
- 3 | What can development work contribute to raise consciousness about the multidimensionality and the dynamic nature of dealing with the past and open up a transgenerational (long-term) perspective?

"The toxic mix of the physical and mental consequences of atrocities of war, poor policies, unfair economic arrangements and marginalisation from structures of governance result in very poor health outcomes for the local population."

"We always talk medicine when we talk about health. A much more structured approach must be taken. We need to integrate top-down and bottom-up approaches to create institutions which support empowerment and participation."

Healing and Health Needs of Survivors: Challenges for Health Systems and Communities

Conflict and divisive government heavily impact on the physical and mental wellbeing of individuals and communities as well as health service infrastructure and capacities. Even though the effects of violence and massive human rights abuses on communities regularly appear in truth commission reports, and access to health care services occasionally forms part of reparation packages, mutually reinforcing linkages between transitional justice interventions and the health sector are still underutilised.

Health and Empowerment

In his case study on South Africa, Tshepo Madlingozi, Advocacy Coordinator of Khulumani Support Group, illustrated how systematic socio-economic and political discrimination, poor (health) governance and human rights violations during apartheid continue to determine poor health conditions of large parts of South Africa's population. But violence – be it physical or structural – not only impacts on the wellbeing of individuals and communities; it also results in disempowerment and marginalisation. Hence, workshop participants agreed that health promotion is an important entry point for empowerment in post-conflict societies and that much more emphasis must be placed on linking both. Instead of single-issue approaches, multi-layered top-down and bottom-up strategies are needed to create institutions which support empowerment and participation of marginalised communities.

In this context, Madlingozi stressed the role of bilateral and multilateral agencies as well as international civil society organisations in providing support to the health sector or to empower victims and build capacities of survivor groups.

At the same time, however, he pointed to the negative consequences of unexplored assumptions about victims' needs or of pre-designed programmes, which provide limited space for participation. Referring to the experience of Khulumani, he particularly cautioned against trauma programmes, which tend to promote western approaches, exclude indigenous knowledge and focus on managing individual problems instead of community recovery.

The question of victims' empowerment and participation is also crucial for the design and implementation of transitional justice interventions. Various experiences show that victims are re-traumatised while testifying before truth commissions or war crimes tribunals, and that their expectations – raised by transitional justice interventions – are not met (e.g. poor implementation of reparation programmes).

In concluding the discussion on empowerment, participants called for critical reflection and dialogue on how to integrate western and indigenous knowledge in post-conflict health promotion. Moreover, transitional justice interventions ought to be more sensitive to victims' needs, apply 'do no harm' criteria and pay more attention to psycho-social support and protection programmes to prevent re-traumatisation and disempowerment. Among other things, this implies a structured exchange of experience, knowledge and approaches between the transitional justice community and the health sector.

Identifying Gaps - Strengthening Linkages

Existing gaps and possible entry points to further the interconnectedness of transitional justice interventions and the health sector also

became obvious in the presentation by Milly Odongo from the National Cohesion and Integration Commission, Kenya. According to Odongo, human resources are a decisive factor. Since the Commission of Inquiry into the Post Election Violence, known as the WAKI Commission, was designed and staffed by legal experts, health rights and needs were not considered at the beginning. During consultation processes with civil society, however, women's organisations raised the issue of sexual violence. Hence, a gender specialist was recruited for the WAKI Commission, who was funded by UNIFEM. The Kenyan experience not only provides a good example of civil society participation and the broadening of a previously legally dominated agenda, it also illustrates the supportive role external actors can play in this context. Participants felt that the political "moment and space" created by the setting up of a truth commission could further be used to put health on the transitional justice agenda.

But without appropriate timing, follow-up and coordination mechanisms, it is difficult not only to maintain the political momentum but also to maintain the process and develop linkages between transitional justice interventions and longer-term (development and) reform policies. In South Africa, for example, reform policy in the health sector was already going on when the Truth and Reconciliation Commission (TRC) published its detailed recommendations for this sector.

Victim and Complicit

The vulnerability of the health sector in times of conflict was another topic raised during the

discussion. Health workers felt that they were victims and were confronted with increased pressure from their respective communities during Kenya's post-election violence. Moreover, the need to comfort both parties with new positions within the coalition government of national unity resulted in the division of the Ministry of Health and increased the inefficiency of the sector. Participants therefore stressed the importance of health sector strategies, which address the legacy of past (and ongoing) conflict while taking into consideration scarce resources and capacities.



FriEnt's Favourites for Further Exploration

- 1 | Victims' participation, empowerment and 'do no harm' in transitional justice and health: What lessons have we learnt so far – and how to enhance best practices?
- 2 | Which aspects of health are coming into play in transitional justice and vice versa?
- 3 | How could multidisciplinary approaches and a structured exchange of experience between the transitional justice community and the health sector be developed?

On the other hand, health sector hearings of the South African TRC clearly revealed the complicity of the health system in apartheid and its responsibility for human rights violations. While the health systems' deficits were addressed by policy reform, individual responsibility (and guilt) was never investigated and confirmed by South African courts.

"People who were interviewed talked a lot about their health issues. The WAKI Commission was not prepared for that. The focus was on security and mobility, but health concerns and needs were not an issue."

"Where socio-economic marginalisation and economic deprivation belong to the root causes of a conflict, one of the leading questions is how inclusive economic development can be encouraged."

"We need a broad national debate about the economic model to strive for involving all major stakeholders. This is essential to build a future without violence for our children."



The Economic Dimension of Justice: Sustainable and Inclusive Private Sector Development

There is growing consensus that in developing countries emerging from violent conflict, sustainable and just peace must be consolidated on the basis of social and economic development which meets the needs of the whole population. While many efforts have been made to ensure conflict sensitivity in the field of sustainable economic development, the questions of how to deal with structural economic injustices and crimes of the past and how to address and ensure people's social and economic rights in the future have often been neglected. Likewise, transitional justice interventions often overlook the socio-economic dimension of justice. As a consequence, many people equate human rights violations with violations of civil and political rights. But for the majority of victims in developing countries, the acknowledgement of violations of their economic, social, and cultural rights is just as important.

The Nepalese Example

Catrin Fröhlich working on behalf of the Centre for International Migration and Development (CIM) for the National Business Initiative (NBI) in Nepal, took this as a starting point for her input to the workshop: To her, the guarantee of economic, social and cultural rights is just as much a precondition for a successful transition to an open, democratic Nepalese society as are guarantees of civil and political rights. While she also cautioned that "the discussion on transitional justice in Nepal is mainly donor-led", she also drew attention to the fact that Nepal is one of the few countries whose Comprehensive Peace Agreement is quite extraordinary in including an explicit and targeted focus on economic and social justice. As socio-economic marginalisation and economic deprivation belong to the

root causes of the conflict in Nepal, she continued, one of the leading questions is how inclusive economic development can be encouraged. What is then the importance of dealing with past atrocities, but also with a context which was characterised by economic, social and cultural exclusion? And what is the role of development cooperation?

The Role of the Private Sector

The current situation of ongoing threats, insecurity and impunity put barriers to economic growth and is considered to limit the private sector's capacity and willingness to let issues of unequal distribution be addressed in the time and on the scale necessary. The Nepalese economy is characterised by a monopolistic structure, and most of its members belong to the old elite and thus to the aristocratic and caste system, still connected to feudal thinking and behaviour with exploitative business practices and relations between employer and employees. On the other hand, members of the business sector have not been involved in the peace negotiations. Their early involvement might have been an important first step in opening up the business community to different attitudes and behaviour, as was suggested in the discussion.

Functioning Institutions

Examining mechanisms that might support the task of dealing with past structural injustices, Pablo de Greiff cautioned that a number of functioning institutions is needed, such as the courts, or the ability to organise other mechanisms such as truth commissions. This is especially the case when everyone is affected and

coordination is thus made difficult. In situations where trust in public offices and institutions is low, people will not be encouraged to open up towards others and work with them. Rather, feudal structures will be maintained. So if we want transitional justice interventions to work as a mechanism of social integration, we would have to know much more about which social mechanisms contribute to social integration in post-violence contexts.

Linkages

In the discussions, a number of linkages turned out to be important for further exploration. First of all, linkages were considered between economic development and reparation programmes: Where are synergies and links, where are challenges? How to make reparations viable for victims, but also for overall development processes without conflating the two? Reparation mechanisms, however, are very often designed with a view to individual loss and repair. What concept of reparation should be developed for situations in which we have to deal with socio-economic marginalisation as one of the root causes of violent conflict?

Another set of links was identified between Disarmament, Demobilisation and Reintegration (DDR) programmes and economic development: Reintegration of ex-combatants also has an economic aspect if we consider the reintegration of demobilised soldiers into the workforce. How

FriEnt's Favourites for Further Exploration

- 1 | Where are the links and synergies between transitional justice interventions and conflict-sensitive economic development programmes?
- 2 | What are the existing experiences of sustainable economic development programmes in addressing conflict-related socio-economic marginalisation and gross human rights violations? What are the challenges? Which lessons have been learned?
- 3 | How can donors encourage governments and the private sector to address reparations for the violation of economic rights in the past and policy and structural reforms to guarantee equal economic opportunities for the future?



to account for their violent past while reintegrating them into economic life when, at the same time, their victims living in the same communities have difficulties, linked to the violence lived through, in being integrated back into economic life? What kind of economic life should ex-combatants (and victims!) be (re-?)integrated into, if the economic set-up was one of the root causes of the violence?

And: Can the concept of corporate social responsibility (CSR) be meaningfully linked into transitional justice processes? This raises the issue of the role of the private sector as a partner for just and sustainable development and would concern not only a country's top enterprises but also, and equally, its small and medium enterprises.

Overall, it was considered vital, in order to ensure a future without violence, that transitional justice interventions in the context of economic injustices should lead to broad national debates about economic models with a view to involving all major stakeholders. This would have to include looking into the role of the members of the business community during violent conflict and/or dictatorship as well as looking into the economic causes of the conflict. Development cooperation would have to consider and support these processes when designing its programmes.

Moving Forward towards New Horizons

Understanding and Defining Transitional Justice

One of the central questions for understanding and defining transitional justice was the question of ownership: who is in the driving seat? Whose definition is being used in specific contexts? Who says that transitional justice processes or certain mechanisms are important in order to move forward, and what are the underlying interests? Who decides on the region of applicability? Is it country-wide? A region within a country? A region across several countries? What power relationships decide on definition and applicability?

"Transitional Justice is about unleashing transformative dynamics, not about creating transformation all by itself."

This raised a series of questions, particularly for external actors: How can we support processes and create space for addressing the past without prescribing processes by labelling too quickly? How can we support the creation of empowering space and processes while being aware that transitional justice is "only" about unleashing transformative dynamics, not about bringing about transformation all by itself?

Social and Economic Injustice

Presentations and discussions in the workshops showed that perspectives to include social, economic and cultural injustices are still contested and experiences are few and scattered. Three important questions were:

- Does the inclusion of social, economic, and cultural injustice into transitional justice interventions mean overloading mechanisms or does work in transitional justice risk to become irrelevant if it does not include these areas?
- Do certain transitional justice mechanisms lend themselves more to dealing with past social, economic and cultural injustices than others? (E.g. Truth Commissions rather than Tribunals?)
- Do alternative sites to deal with past injustices in these fields suffice or does this lessen the impact for moving forward as the South African example seems to suggest?

"The cycle of peace does not fit into the rectangle of the development logical framework."

Linking Actors, Fields of Intervention, and Levels

Participants insisted that recommendations of transitional justice interventions have to be put into practice within a broader development agenda in order to contribute to a more sustainable peace. Three overall issues became clear from the examples and discussions of the two days of conference:

- there is a need for a long-term commitment and context-specific approach on both sides, transitional Justice and development cooperation;
- much more dialogue is needed between the different fields of transitional justice, human rights, development cooperation, and peace building; and
- overall strategic development is desperately lacking and urgently needed. This has to take into account that one of the main challenges is to maintain processes between actors, levels, and fields of intervention.

Also it seemed important to include into transitional justice interventions two elements that have been applied in development cooperation and peace building for some time: empowerment of those who did not have opportunities to participate in the political, social, economic, and cultural affairs of their state and society. Inclusion of a broad range of stakeholders into transitional and development processes was the other element that was mentioned in almost all workshops.

One final aspect came out clearly: Of the cross cutting issues which are all not easy to maintain, it is the gender perspective which is conspicuously absent from the agenda in spite of the reiteration of its importance.

"As long as victims remember that they are victims, justice is not achieved."

In Larger Justice?! Development and Justice after War



More than sixty years ago, "larger freedom" was enshrined in the UN Charter as an important objective. It meant 'freedom from dictatorship' and intended to pave the way to democracy, after the Holocaust and the Second World War. In 2005, Kofi Annan used the term as the programmatic title for his report. He widened, however, its meaning to "freedom from want, freedom from fear, freedom to live in dignity".

Based on the main issues of the conference, FriEnt organised a public panel discussion which aimed at promoting a broader understanding of justice to be pursued after war. In his welcome address, Wolfgang Heinrich from the Church Development Service and Chair of the FriEnt board pointed out, that a narrow understanding focussed mainly on political and civil rights falls short of what is needed in post-conflict contexts. Injustices in the socio-economic field also have to be addressed as they are often at the roots of violent conflict.

Dilemmas arise between justice, peace and development. However, as Juan Méndez, former UN Special Adviser on the Prevention of Genocide, pointed out in his keynote speech, they are not insoluble. The mere fact that they are finally being addressed as issues attests to a maturity in the debate.

Rama Mani from the University of Oxford insisted that in post-conflict settings, various dimensions of justice must be considered. The sequence in which they are dealt with depends on the context, but social and structural injustices should in any event be addressed in a long-term perspective in order to prevent recurrence of violence.

For George Wachira from the Nairobi Peace Initiative, it is therefore important for transitional justice mechanisms to include economic,

social and cultural rights in their mandates. At the same time, he cautioned against investing high expectations in transitional justice mechanisms. Instead, the interfaces between transitional justice and development cooperation should be strengthened. In light of his experiences in Kenya, it is crucial, to take people's needs for truth and justice as well as development and dignity as the starting point.

Misereor Executive Director Josef Sayer emphasised that it is only by dealing with violations of economic, social and cultural rights and consistently implementing the recommendations of truth commissions that the basis for reconciliation, sustainable peace and development can be established. A wide range of state, civil society and church actors have a role to play here. Sayer paid tribute to the commitment of local groups working for reconciliation and justice.

Ambassador Georg Birgelen, Commissioner for Global Issues at the Federal Foreign Office, drew attention to the 2007 Nuremberg Declaration. It describes a set of principles and recommendations by means of which peace and justice are to be achieved in post-conflict settings. In such settings, it is important to open up the opportunity for the population to articulate their basic needs.

Hans-Jürgen Beerfeltz, State Secretary at the German Federal Ministry for Economic Cooperation and Development, made it clear that development cooperation can help to identify the causes of violence, making it possible to design more complex programmes which allow people to look back at the past and then move forward. He reaffirmed that the BMZ is keen to continue its work with civil society and political foundations within the FriEnt framework on addressing the challenges arising in development-oriented peace work.

Conference Programme

Wednesday, 27th January 2010

08:30 *Arrival of participants*

09:00 – 09:30 **Introduction**

Dr. Ulla Mikota, FriEnt Chair

Welcome Address

Dr. Rudolf Ficker, Church Development Service (EED)

09:30 – 10:30 *Peace? Justice? Truth? Dilemmas of Transitional Justice*

Facilitation: Dr. Stephanie Schell-Faucon, Gesellschaft für Technische Zusammenarbeit (GTZ), Dr. Undine Whande, German Development Service (DED)

10:30 – 11:00 *Coffee Break*

11:00 – 13:00 **Setting the Stage**

Panel Discussion

- *Dr. Pablo de Greiff*, International Center for Transitional Justice
- *Marcus Lenzen*, Department for International Development
- *Nahla Valji*, Center for the Study of Violence and Reconciliation

Facilitation: Natascha Zupan, FriEnt

13:00 – 14:30 *Lunch*

14:30 – 17:30 **Reflecting on Practice**

Dimensions of Transitional Justice in our Work Working Groups

18:30 *Reception*

at the invitation of Federal Ministry for Economic Cooperation and Development

Thursday, 28th January 2010

09:00 – 09:30 **Looking Back**

Summary of the first day by *Sylvia Servaes*, FriEnt

09:30 – 13:00 *Linking Development Cooperation and Transitional Justice Interventions: Experiences and Perspectives*

Workshops

1 | Towards Deeper-rooted Justice: Addressing Land Issues in Post-Conflict Societies

Organised by: EED and Misereor

Resource Persons:

- *Chhit Sam Ath*, NGO Forum on Cambodia, Cambodia
- *Charlito "Kaloy" Manlupig*, Balay Mindanaw Foundation Inc., Philippines
- *George Wachira*, Nairobi Peace Initiative, Kenya

Facilitation: Michelle Parlevliet

2 | Blind Spots: How to Deal with Conflict Resources and Economic Crimes?

Organised by: Bonn International Center for Conversion (BICC)

Resource Persons:

- *Dr. Emily Harwell*, Harvard University
- *Nelly Calderón Navarro*, CINDER, Peru
- *Ruben Carranza*, ICTJ, USA

Facilitation: Wolf-Christian Paes, BICC

3 | Education and Remembrance: Laying the Ground for new Generations

Organised by: DED and GTZ

Resource Persons:

- *Prof. Alan Smith*, University of Ulster, Northern Ireland
- *María Eugenia Carrera Chávez*, CAFCA, Guatemala
- *Kathrin Weber*, DED, Guatemala
- *Luis Enrique Lopez-Hurtado*, GTZ, Guatemala
- *Nenad Vukosavljević*, CNA, Serbia

Facilitation: Dr. Undine Whande, DED

4 | Healing and Health Needs of Survivors: Challenges for Health Systems and Communities

Organised by: EED and medico

Resource Persons:

- *Tshepo Madlingozi*, Khulumani Support Group, South Africa
- *Milly Odongo*, National Cohesion and Integration Commission, Kenya

Facilitation: Dr. Sonja Weinreich, EED, Usche Merk, medico international

5 | The Economic Dimension of Justice: Sustainable and Inclusive Private Sector Development

Organised by: GTZ and DED

Resource Persons:

- *Catrin Fröhlich*, National Business Initiative/CIM, Nepal
- *Dr. Pablo de Greiff*, ICTJ
- *Markus Sterr*, DED

Facilitation: Dr. Stephanie Schell-Faucon, GTZ

13:00 – 14:30 *Lunch*

14:30 – 17:30 **and Moving Forward**

Discussion of the working groups results Comments and possible follow-up within FriEnt by the observer team:

- *Mo Bleeker*, Federal Department of Foreign Affairs, Switzerland
- *Michelle Parlevliet*, consultant specialising in the intersection between human rights, conflict transformation and peacebuilding, Netherlands
- *Camilo Montesa*, Office of the Presidential Adviser on the Peace Process, Philippines
- *Emmanuel Ntakirutimana*, Centre Ubuntu, Burundi

Facilitation: Natascha Zupan, FriEnt

Closing

Katrin Seidel, Heinrich-Böll-Foundation

19:00 – 21:00 **Evening Event**

In Larger Justice?!
Development and Justice after War

Welcome: *Dr. Wolfgang Heinrich*, FriEnt Chair

Key Note: *Juan Méndez*, Former United Nations Special Adviser on the Prevention of Genocide

Panel Discussion:

- *Hans-Jürgen Beerfeltz*, State Secretary, Federal Ministry for Economic Cooperation and Development
- *Ambassador Dr. Georg Birgelen*, Federal Foreign Office
- *Prof. Josef Sayer*, Misereor
- *George Wachira*, Nairobi Peace Initiative
- *Dr. Rama Mani*, Oxford University

Facilitation: Dr. Constanze Stelzenmüller, German Marshall Fund

Reception

Further Reading

The Nuremberg Declaration on Peace and Justice

On 13 June 2008 the Governments of Finland, Germany and Jordan have forwarded to the Secretary-General of the United Nations, Mr Ban Ki-moon, the final text of the Nuremberg Declaration on Peace and Justice.

The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies

United Nations Security Council:
Report of the Secretary-General | UN | 2004

Development and Transitional Justice FriEnt-Special of the Conference:

Building a Future on Peace and Justice
Studies, Expert Papers, Workshop Report, Guidance Paper | FriEnt | 2007

Transitional Justice and Development: Making Connections

International Center for Transitional Justice – advancing transitional justice series
Pablo de Greiff and Roger Duthie eds. | Social Science Research Council | 2009

All available online on

www.frient.de/en/conference2010/index.asp

... and Listening

Podcast and Interviews

In the framework of the international conference "New Horizons - Linking Development Cooperation and Transitional Justice for Sustainable Peace" we have produced a Podcast with statements and interviews of the participants. This Podcast gives an insight into the conference topic and contains the assessments, observations and rich experiences of some of the conference participants.

Additional Interviews are available in full length:

Dr. Rama Mani is Senior Research Associate at the Centre for International Studies of the University of Oxford. Rama has worked for a number of recognised institutions and organisations including the United Nations and Oxfam. Rama developed three dimensions of justice in post-conflict societies and explains these three dimensions in the interview. She also refers to the connection to economic, social and cultural rights and explains, what the different dimensions of justice mean for development, human rights and transitional justice programmes by state and non state actors.

George Wachira is former Executive Director (1996-2006) of the Nairobi Peace Initiative and has spent the last two years researching the role of truth and reconciliation commissions in Africa, focusing on Ghana, Kenya, Liberia, Sierra Leone and South Africa. At the onset of the 2008 crisis in Kenya he co-founded Concerned Citizens for Peace (CCP). In the Interview George talks about CCP and deals with the limitations of a legal approach to justice in post-conflict societies.

Ruben Carranza is Acting Director, Reparations Program of the International Centre for Transitional Justice. He was a Commissioner in the Philippine commission that successfully recovered a significant part of Marcos assets hidden in European and other foreign banks. We have asked Ruben about the relationship among transitional justice, corruption and economic crimes. He also explains how the recovery of stolen assets can be used for development and sustainable peace.

FriEnt is a Working Group of:

Federal Ministry for Economic Cooperation and Development (BMZ)

Church Development Service (EED)

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH

Friedrich Ebert Stiftung (FES)

Heinrich Böll Stiftung (hbs)

Catholic Central Agency for Development Aid/ Misereor

Civil Peace Service Group

Platform for Peaceful Conflict Management/ Institute for Development and Peace (INEF)



Plattform Zivile
Konfliktbearbeitung

