



Thematic Overview

The objective of this paper is to give an introduction to the concepts of transitional justice and reconciliation and provide examples of Sida's experiences and opportunities for engagement. The overview provides guidance based on Swedish and international policy commitments and priorities, successful practical experiences as well as lessons learned in providing conflict-sensitive support.

In violent conflict affected individuals and communities are often subject to gross injustices, including violations of human rights, destruction of livelihoods and the loss of friends and family members. These grievances create deep feelings of mistrust and suspicion between communities and destroy the social fabric that holds societies together. The recreation of trust is fundamental both for sustained peace, and to create conditions for sustainable development. Justice for the victims of conflict is a precondition for increased trust, and in turn depends on a functioning rule-of-law.

Origins of violent conflicts are frequently related to contest over economic and natural resources or social, political and economic inequalities and exclusion. This means that to avoid recurrence of the violence transitional justice processes must go hand in hand with efforts to address root causes. It also means that socioeconomic development programs in post-conflict societies need to make sure discriminated groups and/or victims of the conflict are included.

Reconciliation and transitional justice are related to the building of trust in the context of inclusive peace building after violent conflicts or authoritarian regimes. Both seek to address the legacies of violence and human rights abuses to compensate for past wrongs and promote social healing. There is often a normative association made between reconciliation and transitional justice, but it is important to separate the two concepts. Even if they are integrally interlinked and interdependent they do not automatically lead to each other nor come hand in hand. The following sections will discuss this further.

Supporting transitional justice processes in conflict-affected countries constitutes a priority for Swedish development cooperation. According to the Policy Framework for Swedish development cooperation and humanitarian support "Sweden will work for transitional justice that incorporates the right to combat impunity, the right to know the truth, the right of victims to compensation, guarantees of non-repetition of human rights violations, and humanitarian law."ⁱ

WHAT IS TRANSITIONAL JUSTICE?

Some of the measures associated with transitional justice, like war crimes tribunals, have a very long history.ⁱⁱ However, the term itself is of recent origin. It was developed from the 1980s as a response to political dilemmas faced by countries with a legacy of gross human rights violations in their transition from authoritarian rule towards representative democracy. Later it was extended also to post-conflict situations. Transitional justice refers to initiatives taken by states and societies to re-establish the respect for human rights and the dignity of the victims of violations.

The UN commitment to transitional justice was first outlined by UN Secretary General Kofi Annan in 2004 and defined as "... 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."ⁱⁱⁱ

Since then, transitional justice has become a key component in the UN framework for the strengthening of Rule of Law during transition phases and in post-conflict countries.

Agreement on the format and responsibility for a transitional justice process is often negotiated and agreed upon in a peace agreement and normally implemented by the State as duty-bearer, with involvement of Civil Society to a larger or minor extent depending on the context. Donors

or other foreign stakeholders cannot prescribe or implement a transitional justice process, but they can support nationally owned efforts and the additional resources provided can be critical for the process. Also, donors can provide support by bringing in lessons learned from other transitional justice processes.

Transitional justice is based on four complementary pillars that are mutually reinforcing: the victims' rights to truth, justice, reparation and guarantees for non-recurrence of violations. Until some years ago, UN documents emphasized that the pillars should be implemented in an integrated manner.^{iv} However, during the last years there has been a growing critique against the integrated approach as fostering a too narrow set of measures to be applied uniformly whenever widespread human rights violations have occurred. Instead of this "template approach", the local context must be taken into much greater consideration. It may not be possible to implement transitional justice processes in fragile post-conflict states the same way as in the stronger post-authoritarian states where the concept first was developed. The institutional context, the nature of conflict and violence, the political context and the underlying socio-economic and structural problems are factors to be considered. This newer and more context sensitive view is reflected in the latest reports by the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff.^v

Pablo de Greiff has also underlined the centrality of the victims in the transitional justice processes. The victims are the right-holders. The visualization of the victims – all different groups of victims, not just one group - and the acknowledgement of their voices is the most important advance in transitional justice:

"Through different means, transitional justice helps victims occupy a space in the public sphere that they lacked before. Functionally, that space becomes for society the grounds of solidarity, a basis of justice and ultimately of social integration. For victims, it becomes an arena for claims-raising, the core of the idea of rights-holding."^{vi}

In some contexts, the term "survivor" is preferred instead of "victim", to avoid victimization in the process of psychological rehabilitation. Not seldom have survivors/victims been driving actors to move transitional justice processes forwards. Also, in the complex conflict patterns of today people can also be both victims of and perpetrators in a conflict, for example in the case of child

soldiers. The four pillars of transitional justice seen from victims'/survivors' perspective are outlined below:

1. The right to truth

Victims/survivors have the right to truth about what happened. According to Pablo de Greiff this means victims are able to seek and obtain relevant information concerning a) the alleged violation; b) the process that enabled the alleged violation and c) the whereabouts of the victim (in cases of disappearance). The violations must be recognized if dignity is to be restored. There is no specific international convention on the right to truth, but other conventions have elements that have been used by courts and judicial bodies to establish the right to truth for victims and their families as part of the broader right to remedy.^{vii} Tools for truth-seeking are for example truth commissions, international fact-finding missions, archives documenting the past, and forensic anthropology. In some countries historical research have been important parts of finding the truth. Memorials and monuments are in many cases also seen as truth-seeking tools since they contribute to maintain truth and memory about what happened. Women, men, girls and boys have often been subjected to different types of violations during conflict, something which needs recognition and visibility in the truth-seeking process.

2. The right to justice

In this context justice means criminal justice. Criminal responsibility for human rights violations is established through judicial procedures.^{viii} The right to justice does not mean that all human rights violators will be brought to court. Depending on context different ways of prioritizing who to prosecute have been made; focusing first on symbolic cases, the most serious crimes, those that are most responsible or on low-hanging fruit. Usually it will only be the leading and responsible perpetrators that are prosecuted. In many post-conflict contexts these kinds of criminal prosecutions are considered fundamental steps to establish Rule of Law and the confidence of victims and other citizens in the State. However, in some contexts criminal prosecution for war crimes is impossible because of political constraints. Gender-based violence needs special attention in the fight against impunity and criminal prosecution in post-conflict situations. According to international legislation, transitional justice, including prosecution of war crimes, should be handled at national level. The International Criminal Court, ICC, is only the last instance. This is regulated in the Rome Statute in which states commit themselves to include war crimes in national legislation.

3. The right to reparation

The right to reparation for victims/survivors is established in numerous international and regional conventions. The objective is to restore the dignity of the victims. This can include official apologies, individual or collective material and economic compensation, as well as physical and psychical rehabilitation. It may also include spiritual reparation connected to religion, culture and burial ceremonies. Victims' rights also include the right to participate in the design of the transitional justice process and other reform processes. The rights of specific groups such as women, girls and boys require specific consideration. Careful and responsive management of victims' expectations in relation to material and economic compensation is critical for the perceived legitimacy and fairness of the process.

In general, external actors do not fund reparation to victims, but only gives technical support, since it is important that the State repair the damage as an act of recognition of the suffering of the victims. One exception, funded by Sida, is ICC Trust Funds for Victims, which works with reparations and assistance to the victims of crimes judged by the International Criminal Court.^{ix}

4. Guarantees of non-recurrence

This means measures to guarantee that the human rights violations are not repeated in the future. Usually it means a preventive function. It may include reforms of justice and security institutions to transform into democratic, efficient institutions, as well as addressing root causes of conflicts and preserving the memory in school curriculums. It may also include reforms of legislation and constitution and an array of other kinds of measures.^x

Transitional justice and UN Security Council Resolution (UNSCR) 1325 and Agenda 2030

The UN Secretary General emphasized in 2010 the importance to guarantee the perspective of the children, the women's rights and the central role of the victims in the design and implementation of mechanisms and processes for transitional justice.^{xi} UN Women and UNDP have published a number of documents on gender and implementation of the Security Council's resolutions on women, peace and security in relation to transitional justice.^{xii}

The international Women, Peace and Security agenda, through for example the SCR 1325 and 2122, emphasizes the

responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and ensure that transitional justice measures address the full range of violations and abuses of women's human rights, and the differentiated impacts on women and girls of these violations and abuses. However, as the Global Study on the implementation of SCR 1325 shows, because waging wars and negotiating peace agreements have been, and continue to be, predominantly male affairs, post-conflict justice mechanisms generally still lack a gender perspective. The Swedish National Action Plan for Women, Peace and Security focuses on survivor's right to truth, reparations, access to justice, adequate healthcare, trauma counselling and services.

The importance of transitional justice is somewhat recognised in agenda 2030, especially the Global Goal 16.3, "Promote the rule of law at the national and international levels and ensure equal access to justice for all". However, the concept and process of transitional justice is foremost upheld and supported by a number of international legal instruments, principles and resolutions.^{xiii}

WHAT IS RECONCILIATION?

Reconciliation is extensively discussed in the academic literature and there is no consensus on how to understand the concept. It is frequently seen as connected to forgiveness. But according to some opinions, forgiveness within a reconciliation process should not be taken for granted. Forgiving is a power only held by the victims, therefore reconciliation is sometimes labelled as "coexistence" or "social reconstruction" when elements of forgiving are not necessarily included.^{xiv} Reconciliation is sometimes seen as a process and sometimes as a goal.

In local contexts the views on reconciliation may be influenced by culture and religion. Religious traditions and religious leaders have different opinions concerning the meaning of reconciliation. The concept can also be attached to different meanings in accordance with, for example, local language, customary law and cosmovision.

Reconciliation may be viewed as the process of building or rebuilding relationships damaged by violent conflict, between individuals or groups within the society, or between the population and the state/institutions. The reconciliation process can take place within a state as well

as outside of the state's boundaries. The objective of the engagement in reconciliation processes is to prevent the conflict from re-escalating into violence and create sustainable peace and can be viewed as both a long-term goal and a process.

The reconciliation process is often seen as a bottom-up approach dealing with the grievances that were not dealt with during the political top-down, settlement.^{xv} However, all levels of society need to be simultaneously engaged with. Reconciliation efforts must pay attention to the "connecting tissue" or "social fabric" that connects and integrates the different entry points. The role of intermediaries, with the ability of listening down and speaking up, must be highlighted. Reconciliation is not limited to post-conflict social reconstruction. It may start in the absence of a peace agreement. A reconciliation process could in fact have a positive impact on the conflict and create a demand for a peace process. But narratives of the root causes and structural conflict dynamics could be harder to agree on or even discuss without a peace agreement and an official end of the violence. However, not engaging early could also mean that a vital opportunity is missed.^{xvi}

The activities that stimulates reconciliation is seldom labelled as such. They represent the normalisation of social relations within a society. Activities that would have been done separately, or with bias and exclusion, is being done with an inclusive approach. For example, cultural and economic cooperation and inclusive social and health policies. Reconciliation is a political question, and one needs to be aware of who is promoting it, at what moment, for what purpose, and from what perspective.^{xvii}

Depending on context, one may encounter very different views on reconciliation and all of them could be relevant. From a Sida point of view it is important that the human rights based approach is integrated in reconciliation initiatives. The role of the state as duty bearer must be clear. Reconciliation should not be imposed as a burden on the victims/survivors. For them a reconciliation may not be meaningful without recognition and acknowledgement of war crimes.^{xviii}

TRANSITIONAL JUSTICE VERSUS RECONCILIATION - CONTRADICTING VOICES?

Is there a contradiction between transitional justice and reconciliation? One of the most debated topics concerns amnesty for human rights violations during a conflict. Some argue that it is impossible to achieve peace and

reconciliation without amnesty, since perpetrators of human rights violations never would hand in their weapons without guarantees to not be prosecuted. Others argue that amnesty enforces a culture of impunity and that the establishment of rule of law requires criminal prosecution.

On the policy level, from the UN as well as Sweden, the message is very clear however. Reconciliation can never be achieved at the expense of human rights. The rights of the victims are enshrined in international human rights legislation, humanitarian law and international criminal law. In practice the issue sometimes is more complex. How to best guarantee the rights of the victims may be very different depending on context. Transitional justice as it has been applied in post-authoritarian states may not work in fragile post-conflict states with lack of capacity and resources.

Transitional justice and reconciliation are two different approaches that can be used in a complementary way. But the relation between them will be different depending on local contexts and local understanding of the two concepts.

Program for Transitional Justice, PAJUST, in Guatemala

Sweden's long-term engagement for transitional justice in Guatemala was initiated after the signing of the peace accords in 1996. It started with support for the Roman Catholic Church's project REMHI to document the human rights violations and to the UN Truth and Reconciliation Commission, the Historical Clarification Mission CEH. The support for the Government's Human Rights institutions and Peace Secretariat was also part of Sweden's integral support for the implementation of the Peace Accords. Since 2010 Sida has supported UNDP's transitional justice program PAJUST which includes support for civil society efforts to document human rights violations through interviews and forensic anthropology, empowerment of victims/survivors, the historical police archive and to the unit at the Prosecutor's office dealing with violations committed during the armed conflict. The sentence in 2016 in the Sepur Zarco case against two militaries for crimes against humanity, forced disappearances and for keeping 15 women from the Maya Q'eqchi group as sexual and domestic slaves was a milestone for the right to justice, particularly in that it addressed the often-neglected violations committed against women during the conflict.

The International Commission on missing persons (ICMP) in Bosnia-Herzegovina

The International Commission on missing persons (ICMP) is a treaty-based NGO that was established in 1996 as part of the post-war reconciliation efforts in Bosnia-Herzegovina. Sida has supported ICMP since 2002 with a total of 38.5 MSEK and EU with over 11 MEURO. Over the more than two decades the commission has existed it has contributed to the identification of 23 000 out of the 31 000 missing persons, to strengthen legal medical capacity in Bosnia Herzegovina and to increase the public awareness about missing persons. Through its work, ICMP has contributed to thousands of survivors' right to truth, and to the right to justice by bringing evidence and material to courts such as the International Criminal Tribunal for the Former Yugoslavia, ICTY.

ICC Trust Fund for Victims

Through the Rome Statute in 2002 the International Criminal Court and the ICC Trust Fund for Victims (ICC TFV) were established. The purpose with ICC TFV was to encourage restorative justice through provision of assistance to the victims of crimes that fall within the Court's jurisdiction. ICC TFV promotes justice for victims through a twofold mandate: 1. Reparations (implementing awards for reparations ordered by the Court against the convicted person) and 2. Assistance (provide victims and their families in situations where the Court is active with physical rehabilitation, material support and/or psychological rehabilitation). The assistance mandate has to this date been implemented in Northern Uganda, DRC, but decision has been taken to expand to Cote d'Ivoire. Expansion to other countries is planned. In DRC a lot of focus has been on girls and women, victims of sexual violence, their rehabilitation and reintegration- physically, psychologically and economically. According to an external evaluation the ICC TFV's physical rehabilitation services had resulted in an extensive degree of healing and contributed to social reintegration of victim beneficiaries, and the psychological support services would most likely achieve sustainable impact. Sida has supported the fund since 2010 with a total amount 66 MSEK.

KEY LESSONS IN SUPPORTING TRANSITIONAL JUSTICE

- Transitional justice and reconciliation initiatives cannot be designed from outside. Donors can only support initiatives with strong broad **ownership** in the country. **Civil society engagement** together with the **political will** from within the Government are critical for success of a transitional justice process.
- Transitional justice and reconciliation are about **long-term processes** or goals. It may take a generation to fully implement a transitional justice process. While visible results in the short-term perspective may be important to create the trust in the process, a too heavy focus on quick results may harm the process.
- Avoid the check-list character or template approach to transitional justice. Donors can only support what is possible and sustainable in a certain context, and need to understand that the possibility to advance in different pillars of transitional justice may differ **depending on context**. Some actors may not support or directly work against transitional justice or reconciliation. Therefore, it is of critical importance that programs in support of transitional justice processes base on a thorough understanding of the conflict context and are designed in a **conflict-sensitive** way. It is important that the communication activities in and around the transitional justice process are well-thought through.
- **The victims/survivors** and their rights should always be **at the centre** of transitional justice. What are the perspectives of victims/survivors, what is most important for them in a certain context? Are they organized? Are they included as participants with voice in the transitional justice process?
- **Conflict-related sexual and gender-based violence** was for long a neglected war-crime, but has recently received more attention for example through key UNSC Resolutions. However, while women and girls are more exposed, it is not a violation that only affects women and girls and it is not the only violation women and girls are subjected to during violent conflict. Stigmatisation because of sexual violence can sometimes be even worse for boys and men than for girls and women and their situation must also be addressed. Applying a **gender perspective** in transitional justice and reconciliation means to make sure a gender analysis is present and gender issues addressed and the perspectives of women and girls included at all stages of the transitional justice process.^{xix}
- Transitional justice and reconciliation initiatives can be **connected** to other kinds of **development programs**, for example to ensure that victims/survivors are included in development efforts. Not seldom are the

root causes of conflict interlinked with the patterns of grievances during conflict, and the grievances during conflict are added upon a long line of other grievances for people living in poverty and vulnerability. Therefore, transitional justice measures need to be seen as a part of the integral effort of addressing root causes of conflict, and laying the ground for and long-term sustainable and peaceful development and poverty reduction.

- Transitional justice processes often need political backing as much as they need financial support. Often the manifestation of solidarity with victims, for example by Embassies being present in court during judicial processes may be as important. Thus, one cannot sufficiently underline the importance of **coherency between development cooperation and political dialogue** in support for transitional justice and reconciliation.

SELECTED FURTHER RESOURCES

- [Salter, M. & Yousuf, Z. \(eds\), \(August 2016\), Transforming broken relationships: Making peace with the past, Accord, Insight 3, Conciliation Resources](#)
- [Haider, H. \(2016\), Transitional justice: Topic guide. Birmingham, UK: GSDRC, University of Birmingham](#)
- [Guidance note of the Secretary-General \(2010\), United Nations Approach to Transitional Justice](#)
- [United States Institute of Peace \(2008\), Transitional Justice: Information Handbook](#)
- Various notes from De Greiff, P. on the [Promotion of truth, justice, reparation and guarantees of non-recurrence, Notes by the Secretary-General](#).
- [Helena Sancho \(2014\), Development Trends: Using Transitional Justice to Promote Development](#).
- [IDEA \(2003\): Reconciliation After a Violent Conflict: A Handbook](#)
- [UN Women \(2010\), A Window of Opportunity: Making Transitional Justice Work for Women](#).
- [Martina Fischer: Transitional Justice and Reconciliation: Theory and Practice](#)
- [Swedish National Action Plan for the implementation of UNSCR 1325](#).
- Funding Transitional Justice. A Guide for Supporting Civil Society Engagement. US Department of State and Public Action Research 2015.
- [The EU's Policy Framework on support to transitional justice 2015-2019](#)

ⁱ Government Communication 2016/17:60 Policy Framework for Swedish development cooperation and humanitarian support; p. 27

ⁱⁱ Jon Elster starts his history of transitional justice with Athens in the fifth century B.C. Jon Elster (2004), *Closing the Books. Transitional Justice in Historical Perspective*. Cambridge University Press.

ⁱⁱⁱ Report to the United Nations Security Council (2004), *The rule of law and transitional justice in conflict and post-conflict societies*. S/2004/616, paragraph 8.

^{iv} Updated set of principles E/CN.4/2005/102/Add.1. 8 February 2005.

^v See for example report from SP Pablo de Greiff to the Human Rights Council 7 August 2017, A/HRC/36/50/Add.1.

^{vi} Report from SP Pablo de Greiff to the Human Rights Council 7 August 2017, A/HRC/36/50/Add.1, pp.7-8.

^{vii} See for example A/HRC/36/50/Add.1, pp.11-12.

^{viii} See for example Sancho, Helena (2014), *Development Trends: Using Transitional Justice to Promote Development*

^{ix} See the homepage for more information.

^x See A/HRC/36/50/Add.1, pp.14-15 for a discussion on the different interpretations of guarantees of non-recurrence.

^{xi} Guidance note of the Secretary-General. *United Nations Approach to Transitional Justice*, March 2010.

^{xii} See for example, *A Window of Opportunity: Making Transitional Justice Work for Women*, UN Women 2010.

^{xiii} See: [JusticeReparation/Pages/InternationalInstruments.aspx](#), for a list of Key International Instruments, Principles and Resolutions.

^{xiv} Martina Fischer: *Transitional Justice and Reconciliation: Theory and Practice*

^{xv} Martina Fischer: *Transitional Justice and Reconciliation: Theory and Practice*

^{xvi} Conciliation Resources, *Accord Insight 3: Transforming broken relationships, Making peace with the past*

^{xvii} Conciliation Resources, *Accord Insight 3: Transforming broken relationships, Making peace with the past*

^{xviii} See also the Sida tool HRBA and Peacebuilding for further guiding in this area.

^{xix} See for example Sanne Weber concerning problems when gender is not sufficiently taken to account in transitional justice. Concerning Guatemala: Giving a voice to victims. Toward gender-sensitive processes of Truth, Justice, Reparations and Non-recurrence (TJRNR) in Guatemala. Impunity Watch 2012. Concerning Colombia: From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the need for Public and Private Transitions. *International Journal of Transitional Justice* 21 November 2017.