

The objective of this technical note is to give an introduction to the concepts of transitional justice and reconciliation and provide examples of Sida's experiences and opportunities for engagement.

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 and experienced trauma can create deep feelings of mistrust and suspicion between communities and destroy the social fabric that holds societies together. The recreation of trust is fundamental for achieving positive and sustainable peace and creating conditions for sustainable development. Justice for the victims of conflict is often a precondition to re-establish the trust in society and functioning rule of law.

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 closely interlinked, one does not automatically lead to the other. The following sections will discuss this further.

WHAT IS TRANSITIONAL JUSTICE?

The term transitional justice was developed in 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 to also include conflict and 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 extensive human rights violations.¹

In 2004 the UN Secretary General defined transitional justice 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.”² This definition is still in use and is quoted in a Guidance Note that the United Nations Secretary General adopted in June 2023.³ The Guidance Note calls for a people-centered approach to transitional justice that aims for transformative impact for people and communities. It goes on to say that this “requires connecting transitional justice support to a broader peacebuilding and preventive agenda that addresses the structural causes and contributions to conflict and violations.”⁴ Transitional justice is central to human rights, international humanitarian law, the rule of law, as well as to peacebuilding and conflict prevention.

The design of and participation in the transitional justice process can be negotiated and agreed upon in a peace agreement or decided upon by the government after a conflict. It is important that the processes is implemented by the state as duty-bearer, with involvement of the broader population often through civil society organisations. Donors or other foreign stakeholders cannot prescribe or implement a transitional justice process, but they can support nationally or locally owned and locally rooted efforts aimed at a more *inclusive* ownership and participation. The additional resources provided by external actors can be critical for the advancement of the process. Also, donors can provide much needed political support to the process and bring in lessons learned from other transitional justice processes.

THE FOUR RIGHTS OF TRANSITIONAL JUSTICE

Transitional justice is often presented as based on four rights/principles that are mutually reinforcing: the right to truth, the right to justice, the right to reparation and guarantees for non-recurrence. Previously UN documents emphasised that the four rights should be implemented simultaneously and in an integrated manner.⁵ However, there has been a growing critique against this approach as fostering a too narrow set of measures, which tend to be applied uniformly

1 Jon Elster (2004), *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge University Press, 2004, p 310

2 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.

3 Guidance Note on Transitional Justice: A Strategic Tool for People, Prevention and Peace, 2023, p 2.

4 Ibid, p 11.

5 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.

whenever widespread human rights violations have occurred. Instead of this “template approach”, it is important that the local context is allowed to shape the process. 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 all factors to be considered when designing a transitional justice process. There is also a growing recognition of the need to focus more directly and systematically on integrating a broader range of mental health and psychosocial support (MHPSS) approaches throughout the design of transitional justice processes, for them to be more holistic, effective and sustainable. Tackling the distress and psychological injury caused by mass violations, at individual and community level, as well as issues that perpetuate suffering, can have positive impact on aspects from individual well-being, access to and meaningful participation in transitional justice processes, preventing the risk that grievances are passed on to future generations and reducing the risk for future violence.⁶

The victims of the conflict and /or the wide spread human rights violations are the main rights-holders of the transitional justice process. The term “survivor” is often preferred instead of “victim”, to avoid re-victimisation in the process of psychological rehabilitation. Survivors/victims often constitute a driving force to move transitional justice processes forward. The identification of survivor/victims groups is however often complex not least due to the fact that in conflicts, people can be both victims and perpetrators of violations. As stated in the report by the first UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, transitional justice can, through different means, help victims/survivors occupy a space in the public sphere that they lacked before. That space becomes the ground for solidarity, a basis of justice and ultimately of social integration.⁷ The four rights of transitional justice are outlined below.

The right to truth

Victims/survivors as well as other groups of the population that have been affected by the conflict have the right to truth about what happened. This includes that victims are able to seek and obtain relevant information concerning: a) alleged violations; b) the process and conditions that enabled the alleged violation and

c) the whereabouts of the victim in cases of disappearance. The violations must be recognised in order for the dignity of the victims and trust in society to be restored. There is no specific article in international law that establishes the right to truth, but several other rights include elements that together become the right to truth, including the procedural rights related to the right to a remedy and the right to a fair trial.⁸

Tools for truth-seeking are for example truth commissions, international fact-finding missions, the establishment of archives documenting the past, and support to forensic anthropology. In some countries historical research has been an important part of finding the truth. Memorials and monuments are in many cases also seen as truth-seeking tools since they contribute to maintain memory about what happened and thus make the truth known also for future generations. Women, men, girls and boys have often been subjected to different types of violations during conflict, which needs to be recognised and made visible through the truth-seeking process. Particular care should be taken to include specifically targeted and marginalised groups, such as for instance ethnic or religious minorities, political opposition groups, or persons living with disabilities.

The right to justice

In this context justice means criminal justice. Criminal responsibility for human rights violations is established through judicial procedures. To ensure access to justice for victims as well as participation in the justice processes, criminal prosecutions should mainly take place on the national level. The International Criminal Court (ICC), should only be used as the last resort if the national justice system fails to deal with the perpetrators in accordance with international law and obligations. That includes international human rights law and international humanitarian law.⁹ State parties to the Rome Statute, which establishes the ICC, have committed to include war crimes, crimes against humanity and genocide in national legislation.¹⁰

The right to justice does not, however, mean that all human rights violators will be brought to court. National justice systems are often not capable of dealing with the full scale of perpetrators and it is therefore necessary to prioritise certain cases. Usually the prosecution will focus mainly on the

⁶ See Brandon Hamber (2021), [Transitional Justice, Mental Health and Psychosocial Support: Renewing the United Nations Approach to Transitional Justice](#).

⁷ Report from SP Pablo de Greiff to the Human Rights Council 7 August 2017, [A/HRC/36/50/Add.1](#), pp.7-8.

⁸ United Nations General Assembly (2017), (A/HRC/36/50/Add.1, Human Rights Council, Thirty-sixth session, 11-29 September 2017, pp.11-12.

⁹ See also Sida's Technical Note [“Human Rights Based Approach and International Humanitarian Law”](#), June 2022

¹⁰ Sancho, H. (2014), Development Trends: [Using Transitional Justice to Promote Development](#), Sida, April 2014.

military and civilian top leaders that carry a broader criminal responsibility. The establishment of criminal responsibility and punishment of key perpetrators also play an important role as a fundamental step to re-establish Rule of Law in the country and a break with the previous regime under which the violations took place. However, in several cases, political constraints limit the possibility to carry out criminal prosecution for certain or all types of war crimes and grave human rights violations in practice. Always try to ensure that gender-based violence is given the required attention as part of the criminal prosecutions in post-conflict situations. This is an area that often does not get the required attention in contexts of limited political support and/ or limited institutional capacity.

Conflict-related sexual and gender-based violence was for long a neglected crime globally, but has progressively received more attention, for example, through key UN Security Council Resolutions on Women, Peace and Security. The ICC's recent policy on gender persecution also represents a step to advance accountability for the crime against humanity of persecution on the grounds of gender.¹¹ While women and girls are more exposed to conflict-related sexual and gender-based violence, not all victims are women and girls. Stigmatisation because of sexual violence can sometimes be even worse for boys and men than for girls and women. Prosecution of sexual violence against persons with disabilities and support to these victims may require special considerations.

Apart from national legislation and the ICC, special tribunals are sometimes established to secure the right to justice for international crimes.

The right to reparation

The right to reparation for victims/survivors is established in numerous international and regional conventions. The overall objective of reparation is to seek to replace the loss of the victims where this is possible. In practice the focus is often on restoring the dignity of the victims and limit the damage that they have suffered. Reparations can include official apologies, individual or collective material and economic compensation, as well as physical and psychological rehabilitation. By integrating MHPSS approaches, reparation measures can also be more effective in terms of non-recurrence.¹² Reparations may also include more collective healing and symbolic approaches connected to religion, ritual and culture, for example through burial ceremonies, days for collective memory or monuments. 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.

Example: Sida's support to the International Criminal Court (ICC) Trust Fund for Victims

The Rome Statute, which entered into force in 2002, tasks the International Criminal Court (ICC) with investigating and prosecuting the most serious crimes of concern to the international community; the crime of genocide, crimes against humanity, war crimes and the crime of aggression. Article 79 of the Statute provides for the establishment of the ICC Trust Fund for Victims (ICC TFV) for the benefit of victims. The mission of the TFV is to give effect to victims' right to reparations, which may take the form of restitution, compensation or rehabilitation, for example, facilitate the implementation of awards made by the Court against convicted persons and undertake initiatives for the benefit of victims and their families. Sida has supported the fund since 2010 under the global strategy for sustainable peace. To date, the TFV portfolio covers three court-ordered reparation programmes in the Democratic Republic of the Congo (DRC), one in Mali and one reparation proceedings in Uganda, where a reparations order is expected. Assistance programmes cover the DRC, the Central African Republic (CAR), Côte d'Ivoire, Georgia, Kenya, Mali and Uganda. Additional assistance programmes are being considered. As of 2023, situations under the jurisdiction of the Court also include Afghanistan, Bangladesh/Myanmar, Burundi, Darfur (Sudan), Libya, the State of Palestine, the Philippines, Venezuela and Ukraine.

In general, external actors do not fund reparation to victims, but only give technical support, since it is important that it is the State that repair the damage as an act of acknowledgment of its responsibility and recognition of the suffering of the victims. One exception, funded by Sida, is ICC Trust Fund for Victims, which works with reparations and assistance to the victims of crimes under the Rome Statute.¹³

The right to guarantees of non-recurrence

Guarantees of non-recurrence include measures to prevent that the human rights violations are repeated in the future. It may include broader reforms of justice and security, as well as addressing root causes of conflicts or preserving the memory in school curriculums. It may also include legislative reforms or constitutional changes and an array of other kinds of measures.¹⁴ Targeted measures to offer mental health and psychosocial support can have direct relevance to non-repetition.¹⁵

Addressing root causes to violence is of course a key aspect of building sustainable peace and avoiding the recurrence of large scale human rights violations.

¹³ See [Trust Fund for Victims](#) for more information.

¹⁴ See United Nations General Assembly (2017), [\[A/HRC/36/50/Add.1\]](#), Human Rights Council, Thirty-sixth session, 11-29 September 2017, pp.14-15 for a discussion on the different interpretations of guarantees of non-recurrence.

¹⁵ Brandon Hamber (2021), *Transitional Justice, Mental Health and Psychosocial Support: Renewing the United Nations Approach to Transitional Justice*, p 12.

¹¹ Policy on the Crime of Gender Persecution | International Criminal Court ([icc-cpi.int](#)), December 2022

¹² Brandon Hamber (2021), [Transitional Justice, Mental Health and Psychosocial Support: Renewing the United Nations Approach to Transitional Justice](#), p 12.

However, even though a transitional justice process can be one of several key measures addressing root causes related to the Rule of Law it should be noted that the whole spectrum of root causes to violence is often much broader.

The centrality of victims' rights in all transitional justice processes have already been pointed out, and a key aspect of this, that cut across the four other rights, is the right to meaningful participation of the victims in all processes that concerns them. This includes the preparation and design of the transitional justice process itself. An important part of adjusting the transitional justice process to the local context is to ensure that the different groups affected by the conflict and the mass violations of human rights, including women, boys and girls, are allowed to shape the process so that it takes their specific needs into consideration. The inclusion of marginalised groups in transitional justice processes after a conflict can also constitute an important general shift towards more inclusive decision-making and as such support sustainable peace.

WHAT IS RECONCILIATION?

While reconciliation is extensively discussed in the academic literature, there is no consensus on how to understand the concept.

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. How reconciliation is understood in local contexts tend to be influenced by culture and religion, and may therefore vary between different local contexts. The objective of the engagement in reconciliation processes is to contribute to sustainable peace and prevent the conflict from relapsing into violence. This can be viewed both as a long-term goal and a process. The term is closely related to "social reconstruction" and "peaceful coexistence".¹⁶

Reconciliation is frequently seen as connected to forgiveness. But forgiveness within a reconciliation process should not be taken for granted. Forgiving is a power only held by the victims, and victims should not have to feel that they are pressured or forced to forgive. Reconciliation can be both a social and political question, and one needs to be aware of who is promoting it, at what moment, for what purpose, and from what perspective.¹⁷

The reconciliation process is often seen as a bottom-up approach dealing with the grievances that were not dealt with during political top-down settlements, such

as peace accords.¹⁸ But reconciliation is not limited to a post-agreement phase, and 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. Not engaging early could mean that a vital opportunity is missed.¹⁹

The activities that promote reconciliation may not be called "reconciliation", and may come in many forms. For example, cultural and economic cooperation and inclusive social and health policies, when done in a deliberately inclusive way can contribute to rebuilding and healing relationships (and therefore reconciliation) in situations where such activities have earlier been done in a biased and exclusionary manner. 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 can 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.

PEACE VS JUSTICE OR PEACE & JUSTICE?

In the long run peacebuilding and human rights support one another. In the short term difficult dilemmas may arise that seem to put justice against peace. For example, the need to get the parties of a conflict to the negotiation table and the victims' need for justice is often presented as contradictory and as a tension between peace on the one hand, and justice on the other. But describing it in that way is partly misleading. It is true that accepting amnesty in exchange for an end to violence may entrench a culture of impunity. But a culture of impunity is not in the interest of either human rights work or peacebuilding, and hence it is not a contradiction *between* them. The perceived tension between human rights and peace is very often more accurately described as difficult trade-offs between objectives within each of those fields. One way of dealing with such dilemmas is to strategise about what needs to happen in the short-term and what can be postponed and addressed in the more long-term in order to support both peace and human rights.

¹⁶ Martina, F. (2011), *Transitional Justice and Reconciliation: Theory and Practice*, Berghof Handbook for Conflict Transformation, Berghof Foundation.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Conciliation Resources, *Accord Insight 3: Transforming broken relationships, Making peace with the past*

Example: Sida's support to the International Center for Transitional Justice (ICTJ)

ICTJ is an international non-governmental organisation which has received core support from Sida since 2011 under the global strategy for sustainable peace. ICTJ has managed to position itself as a key actor in the field of Transitional Justice, as an expert organisation, a policy development actor, and a partner to civil society, public institutions and governments for transitional justice processes at country level. The importance of participation of women and youth in the design of transitional justice processes and the role of victims of sexual violence in transitional justice processes are some topics that have been developed further by ICTJ. During recent years, ICTJ has also contributed to the global discussion on the role of transitional justice processes in supporting conflict prevention. ICTJ highlights four ways in which transitional justice contributes to sustainable peace-building: (1) addressing the exclusion and other harms that victims experience due to human rights violations they suffered; (2) addressing the exclusion and related injustices that communities and social groups face as a result of targeted violations and structural marginalisation; (3) strengthening the rule of law and making it more inclusive; and (4) catalysing the reform of institutions and laws that have perpetuated violence and discrimination as a means to exclude marginalised groups.

How to best guarantee the rights of the victims may be very different depending on context. For example, although full justice for all is the ideal, more limited focus on prosecuting only prioritised cases may mean that some advances can be made where the alternative is less justice.

KEY LESSONS IN SUPPORTING TRANSITIONAL JUSTICE

- Transitional justice and reconciliation are about **long-term processes** or goals. It may take a generation or even longer to implement a transitional justice process. While visible results in the short-term perspective may be important to create trust in the process, a too heavy focus on quick results may harm the process.
- 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 organised? Are they included as participants with voice and agency in the transitional justice 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**.

- It is of critical importance that programs in support of transitional justice processes are based 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.
- Donors should only support transitional justice and reconciliation initiatives with strong, broad and **inclusive ownership** in the country. Civil society engagement together with the political will from the Government are critical for success of a transitional justice process.
- It is important that a **human rights-based approach** is integrated in reconciliation initiatives. The role of the state as duty bearer must be clear.²⁰
- Applying a **gender perspective** in transitional justice means to make sure a gender analysis is carried out, that gender equality is promoted and the perspectives of women and girls included at all stages of the transitional justice process.
- 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.
- Transitional justice processes often need political backing as much as they need financial support. Often the manifestation of solidarity with victims, for example by embassy staff being present in court during judicial processes, may be as important as funding. Thus, one cannot sufficiently underline the importance of **coherence between development cooperation and political dialogue** in support for transitional justice and reconciliation.

²⁰ See also the Sida's Technical Note on [Human Rights Based Approach and Peacebuilding](#), June 2022.

SUGGESTED FURTHER READINGS

Recommended reports

- [Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace](#), the Executive Office of the Secretary General and the Office of the High Commissioner for Human Rights (2023)
- Brandon Hamber, [Transitional Justice, Mental Health and Psychosocial Support: Renewing the United Nations Approach to Transitional Justice](#) (2021)
- Salter, M. & Yousuf, Z. (eds), [Transforming broken relationships: Making peace with the past](#), Accord, Insight 3, Conciliation Resources (2016)
- [Reconciliation in focus: Approaching Reconciliation in Peacebuilding Practice: briefing paper](#), Conciliation Resources (2021).
- [Women's Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace](#), UNDP and UN Women (2022).
- [Transitional Justice: What Role for the UN Security Council?](#), a research report by the non-profit organisation Security Council Report, (2022).
- The [Peacebuilding Evaluation Consortium Sub sector Review of Evidence from Reconciliation Programmes](#), CDA Collaborative Learning, (2019)

Recommended websites:

- [International Centre for Transitional Justice](#) offers several resources on different topics related to transitional justice.
- [The UN Special Rapporteur on truth, justice and reparation](#) offers several thematic and country reports on transitional justice.
- [Reparations, Responsibility & Victimhood in Transitional Societies](#) offers good resources, including the Belfast Guidelines on Reparations in Post-Conflict Societies.