

Peacebuilding Commission -Working Group on Lessons Learned

Justice in Times of Transition

Tuesday, 29 February 2008
Trusteeship Council

Chair's Summary

1. In order to enrich the understanding of the members of the Peacebuilding Commission on the challenges of peacebuilding, the Working Group on Lessons Learned convened a meeting on justice in times of transition. The meeting was chaired by the Ambassador of El Salvador, H.E. **Carmen María Gallardo Hernández**, and included presentations by expert panelists, **Mr. Paul van Zyl**, Executive Vice President of the International Center for Transition Justice (ICTJ) and former Executive Secretary for the Truth and Reconciliation Commission in South Africa; **Dr. Jennifer Llewellyn**, Associate Professor at Dalhousie University Law School; **Mr. Mark Salter**, Senior Programme Officer at the International Institute for Democracy and Electoral Assistance (IDEA) and Co-Editor of "Traditional Justice and Reconciliation after Violent Conflict,"; and **Mr. Ngonlardje Mbaidjol**, Director in the UN's Office of the High Commissioner for Human Rights. Mr. Juan Mendez, President of the International Center for Transitional Justice could not participate.

Overall lessons learned

2. All of the speakers stressed the importance of a **comprehensive, holistic approach** to justice during times of transition. They agreed that any one process or mechanism is insufficient if pursued on its own; instead, transitional justice requires a holistic approach. Designing such mechanisms must carefully balance the demands of justice with the realities of what can be achieved in the short term. In some situations, there are some justice mechanisms and processes that are ready to be pursued, while other processes may have to wait until the appropriate moment to pursue them. Carefully **sequencing** the processes and determining the **right timing** are important factors. The mechanisms used should be **complementary** to one another and not compete.
3. It is important to **keep specificities and situational context in mind** as well when designing transitional justice mechanisms, and no one-size fits all approach should be applied to a post-conflict setting. Given the range of cultures, there is no universally accepted model of justice.
4. The establishment and design of any transitional justice approach must be based on **extensive consultations** with all actors in all parts of society. **National ownership** is critical.
5. All processes must be pursued with **due regard to women's needs** and they must be gender sensitive, as during conflict, women are disproportionately harmed. Handling confidentiality of abuse of women and girls is important. Recruitment processes should include women.
6. A **coordinated strategy** for transitional justice mechanisms is critical for success. All UN actors, donors, international organizations, NGOs, and the government as well as local actors must all work together to support the process. Adequate funding and support must be provided.
7. The **independence** of those carrying out transitional justice processes must be ensured.

8. Transitional justice should **not be justice only for victors**. Justice is not a zero sum game.
9. The legacy left from pursuing transitional justice is a crucial point – these processes leave something behind and strengthen local system.
10. Each of the presenters discussed a different aspect of transitional justice and some of the main ideas and **lessons learned that emerged** were the following:

Transitional Justice Elements

11. **Accountability and prosecution** of those responsible, though only a partial response to systemic violations, is vital to ending impunity, which is a major cause and sustainer of conflict. It should be kept in mind that criminal justice systems are designed for societies in which the violation of the law is the exception and not the rule. Furthermore, the UN should not endorse amnesties in peace agreements; in Sierra Leone, this provided the UN with the moral and legal foundation for establishing the Special Court.
12. **Truth commissions** help to establish an official truth about the past and can help inoculate further generations against revisionism and empower citizens to recognize and resist a return to abusive practices. They can give victims a voice, help to restore public trust in the new governments, and can provide a diagnosis and roadmap for reform of institutions to ensure that violations do not happen again. Mr. Mbaidjol mentioned the importance of allowing the TRC in Sierra Leone to make binding recommendations to the government.
13. **Reparations** can allocate billions of dollars and provide pensions, health care, housing subsidies, and access to psychological support. Provision of reparations can be synchronized with goals for development and can generate a victim-sensitive approach to development planning. States bear an obligation under international law to provide reparation to victims of gross human rights violations. Developing a comprehensive reparation policy is often technically complex and politically difficult; it must take into account the full resources and decision facing the state in a post-conflict situation.
14. **Institutional reforms** can change institutions that are responsible for violations into being institutions that promote and protect human rights. Security forces are of particular concern, so mechanisms should be established to identify and vet members of the police force to ensure that they should be responsible for exercising police powers.
15. **Reconciliation** in societies is about hearing from victims and seeking accountability from perpetrators, not about forgiving and forgetting; reconciliation processes should seek to engage the past rather than subordinate the demand for accountability. Reconciliation also often requires that leaders from both inside and outside government take proactive steps to demonstrate the importance of peace. Past experience has shown that while there may be instances where bringing victims and perpetrators can help to achieve psychological closure, there are as many instances where reconciliation does not. Sometimes victims are not ready to forgive, and they should not be forced to do so. Sustainable development is an essential part of reconciliation by creating a more equal and just society.

Traditional Justice

16. Local and traditional processes are important to keep in mind when developing a comprehensive transitional justice process, because if only the state-based mechanism is used, a large portion of the population will be overlooked. Ninety percent of Africans experience justice at the local levels, through traditional justice mechanisms or councils of elders.

17. Traditional justice **must receive support at national levels**, and governments should give greater recognition to the role of traditional justice, especially in designing reconciliation policy and factoring traditional justice mechanisms in establishing truth and reconciliation commissions (this is being attempted in Liberia and can be attempted in Burundi). Caution must be taken not to glorify local practices or to ignore them – ignoring what has worked in the past is not wise, but local processes must also complement new processes in a comprehensive approach to transitional justice.
18. The overall conclusion from an analysis of past traditional justice processes that was recently completed by International IDEA is that these **local processes can have partial legitimacy and partial efficacy** in response to war crimes and genocide. Indigenous conflict tools have some contribution, but we must be cautious, as that contribution is not assured. But tradition based practices have significant dividends. Appropriately used local mechanisms are potentially important tools for peacebuilding and healing and can reconstruct democratic institutions and structures.
19. In particular, in Burundi the *bashingantaha* has a role to play in establishing the Truth and Reconciliation Commission and can prepare social ground and promote ownership for its mandate and activities.
20. International IDEA recommended some **general rules** that should be considered when using traditional justice mechanisms, based on past case studies:
- a. In the aftermath of conflict, do not limit peacebuilding efforts to hard reconstruction (economic stability, security sector reform), but rather attention should also be given to soft reconstruction (restorative justice through informal practices, reconciliation, and restoring the stature of local traditional authorities).
 - b. When adopting traditional mechanisms, be aware that **they are a complement** to national processes, but they should not take over national processes. Furthermore, there are dangers that come with bringing traditional mechanisms under state control.
 - c. Local stakeholders (both governments and NGOs) should understand how well traditional mechanisms can deliver on truth, accountability, and reparations and their comparative effectiveness vis-à-vis criminal justice processes.
 - d. Develop an **outreach strategy** that restores the authority and integrity of local traditional. Traditional institutions have been undermined in conflict and one of the challenges is to restore them to legitimacy in eyes of local population.
 - e. International stakeholders should be **aware of the specific political, cultural, and historical forces** at work in a transitional society, and they should accept that traditional justice processes must be locally owned. They should be sensitive to timing and tempo of local processes.
 - f. The UN and other international organizations should consider establishing an international panel of experts to clarify 1) how traditional justice mechanisms can be recognized under international law, as far as contributing to the right to truth, the duty to prosecute and the right to reparations, and 2) how the Rome Statute that established the International Criminal Court can accommodate traditional justice in the pursuit of truth, justice and reconciliation.
21. One delegation mentioned the importance of not neglecting the structure of power at end of conflict in traditional justice.

Restorative Justice

22. Restorative justice is one way of thinking about justice – what it means and requires. Taking a restorative justice approach starts from one premise – that we are all connected to one another. The harm resulting from wrongdoing flows through the connections between people and has far-reaching effects for societies. As a result, restorative justice requires addressing the harm in order to re-establish relationships that can build lasting peace. Its aim is to restore relationships to ones where all parties can coexist productively and peacebuilding. Restorative justice **requires processes that bring together all those who have been affected** to figure out the harm and rebuild. As such, it brings communities together, not just the elites, and is very democratic. **It seeks restoration of social relationships and helps to bridge the gap between truth and reconciliation.**
23. The **benefits of a restorative justice** approach are that it:
- a. Offers a way to get out of the dilemma of peace versus justice.
 - b. Provides a way to order or sequence justice and security mechanisms in post-conflict states – it makes clear which institutions to start with. Those who are not participating in restorative justice processes can be prosecuted and prevented from causing further harm.
 - c. Deals with past wrongs and moves forward to a new future.
 - d. Builds capacity for just institutions. As restorative justice is pursued, those mechanisms that are used also help to build local and national capacity for justice. Restorative justice also engages women and youth more than in other processes.
24. The members of the Working Group on Lessons Learned concluded that this issue has significant practical relevance to the issues before the PBC and many delegations asked that this topic continue to stay on the agenda for the Working Group and be considered by the PBC. The Chair agreed that there should be another meeting on this issue and **urged delegations to ask further questions** of the speakers. Their contact addresses are:

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At the request of one delegation, the Chair agreed to provide information on a **report on transitional justice** that would be of key interest to the members of the Working Group: **A/62/580** which is a Letter from Permanent Representatives of Finland, Germany, and Jordan to the United Nations, addressed to the Secretary-General, dated 3 December 2007 that forwarded the outcome of a conference entitled “Building a Future on Peace and Justice” that was held from 25 to 27 June 2007.