

Peacebuilding Commission - Working Group on Lessons Learned

Concept Note “Justice in Times of Transition”

**26 February 2008 10:00 AM to 1:00 PM
Trusteeship Council**

Objectives and Rationale

Transitional justice has emerged as a critical issue on the agenda of the UN Peacebuilding Commission (PBC). The prominence of justice issues in the discussions of the strategic frameworks for the first countries on the PBC agenda underscores the urgent need to address past human rights abuse in order to build durable peace. The discussions around transitional justice in other countries, including in Sierra Leone, have demonstrated that while efforts to pursue accountability for past abuses can create tension, transitional justice processes can also actively contribute to stabilization efforts, advancement of the rule of law, and the reconstruction of civic trust.

This session will focus on a comprehensive approach to transitional justice that emphasizes not only judicial mechanisms, such as tribunals, but non-judicial mechanisms and restorative approaches, such as truth-seeking, reparations programs, and institutional reform. By creating an opportunity for PBC members and others to engage with experts and discuss case studies and good practices, the Working Group on Lessons Learned seeks to contribute to an informed debate and to outline creative strategies for the integration of justice claims into the work of the PBC.

The meeting will explore the following key questions:

- What is a comprehensive approach to transitional justice?
- How can different transitional justice mechanisms support each other and contribute to building durable peace?
- What are the contributions of restorative justice theory to a comprehensive approach to transitional justice?
- What are the lessons learned and good practices for pursuing transitional justice in post-conflict environments?
- How can these lessons learned and good practices guide the Peacebuilding Commission’s support for timely and effective establishment of transitional justice mechanisms in Burundi?

Background

The Secretary General’s 2004 Report on *The rule of law and transitional justice in conflict and post-conflict societies* (S/2004/616) defines 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.” The UN has supported and contributed to the development of international legal frameworks that advance transitional justice by upholding the obligation for governments to investigate human rights crimes, and recognizing the right of victims and victimized communities to pursue truth and reparation.

Significantly, amnesties for acts of genocide, war crimes, or crimes against humanity are no longer recognized by the UN and other international actors. Furthermore, the emergence into force of the International Criminal Court in 2002 creates a powerful tool for fighting impunity. These enhanced international and regional norms raise the profile of transitional justice mechanisms as important tools in peace negotiations and post-conflict peacebuilding. The current talks between the Government of Uganda and the Lord's Resistance Army, for example, demonstrate the evolution that has occurred within the history of peacemaking. Instead of discussing *if* there will be an accountability mechanism, the focus is on what kind of mechanism it will be.

Discussions about transitional justice frequently revolve around criminal justice mechanisms, such as the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Sierra Leone Special Court, or the Extraordinary Chambers in the Courts of Cambodia. Criminal punishment through prosecutions is considered by many to be the most effective insurance against future human rights crimes. Such proceedings aim to create a deterrent effect, to offer public denunciation of criminal behavior, and to provide a direct and individual form of accountability for those perpetrators most responsible for mass atrocities. They also seek to contribute to an increase in confidence in the government's willingness to implement the law.

Indeed, governments have an obligation under international law to ensure that those responsible for serious international crimes are prosecuted, tried, and duly punished. Yet transitional justice encompasses more than punitive judicial accountability meted out through prosecutions. In post-conflict situations, prosecutions as a measure of transitional justice can face specific obstacles, such as inadequate human or financial resources, a corrupt or weak and ineffective judicial sector, a perception of victor's justice, and the challenges of sheer numbers when the pool of potential victims and perpetrators is in the hundreds, thousands, or hundreds of thousands. But even if these challenges were successfully met, *prosecutions alone would be an incomplete form of justice*. Peacebuilding contexts require a broad conception of transitional justice that offers many avenues for accountability and justice.

A comprehensive approach to transitional justice also includes non-judicial and restorative approaches to justice, often through mechanisms such as truth commissions, reparations, and institutional reform. These primarily non-judicial approaches aim to recognize and address the needs and interests of victims, to understand and take action to prevent the recurrence of patterns of past abuse, and to establish an accurate historical record of events. All transitional justice mechanisms also seek to be restorative, meaning they aim to repair the damage that has been done by wrongdoing. Restorative justice is a theory of justice that focuses on the restoration of relationships. Processes that exercise restorative justice theory seek to engage those who are harmed, wrongdoers, and their affected communities in search of solutions that promote repair, reconciliation, and the rebuilding of relationships. While the principles of restorative justice have primarily been applied within domestic criminal justice systems, they are also relevant to transitional justice in post-war contexts. Indeed, many experts have acknowledged the importance of rebuilding and repairing relationships to the success of peacebuilding efforts. Restorative justice theory enhances a broad concept of transitional justice that sustains a broad concept of peace, not just as an absence of violence, but as an investment in the building blocks of a just and democratic society.

Format and Structure

The meeting will be held from 10am to 1pm on 26 February 2008 in the Trusteeship Council. It will involve short presentations (10 minutes) by several panelists and a facilitated dialogue by the Chair of the Working Group, H.E. Mrs. Carmen María Gallardo Hernández, Permanent Representative of El Salvador to the United Nations.

Panelists

Mr. Juan Mendez, President, The International Center for Transitional Justice (ICTJ), and former UN Special Advisor for the Prevention of Genocide

Dr. Jennifer Llewellyn, Associate Professor, Dalhousie University Law School

Mr. Mark Salter, Senior Programme Officer and Programme Manager for “Traditional Justice and Reconciliation after Violent Conflict,” International IDEA

Mr. Paul van Zyl, Executive Vice President, ICTJ, former Executive Secretary, Truth and Reconciliation Commission, South Africa

Expert from the Office of Legal Affairs, United Nations [TBC]

Expert from the Office of the High Commissioner for Human Rights [TBC]

Output

A Chair’s summary report will be publicly available after the meeting.

Background Documents

- Background summary of a few transitional justice case studies, 2008.
- Introduction/backgrounder on traditional justice mechanisms.
- An Introduction to Restorative Peacebuilding. The Restorative Peacebuilding Project, Paul McCold, Jennifer Llewellyn and Daniel Van Ness, 2007.

Key UN documents:

- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005)
- OHCHR Rule of Law Tools for Post Conflict States. Available at <http://www.ohchr.org/EN/PublicationsResources/Pages/SpecialIssues.aspx>
- Secretary-General’s Report on The rule of law and transitional justice in conflict and postconflict societies, UN Doc. S/2004/616, 3 August 2004.
- Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res.2000/14, Adopted 27 July 2000.