



Obstacles and Opportunities for Transitional Justice: Truth and Reconciliation Commissions

DPI Working Paper





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Foreword

DPI aims to create an atmosphere whereby different parties share knowledge, ideas, concerns, and suggestions facing the development of a democratic solution to key issues in Turkey and the wider region. The work focuses on a combination of research and practical approaches to broaden bases for wider public involvement by providing platforms for discussion in the form of roundtable meetings, seminars, workshops and conferences. This is being carried out in order to support and contribute to existing work on Turkey whilst also extending to the wider region.

DPI's work will incorporate research and discussions on a wide range of strategic and relevant topics including constitutional reform; preparing for constitutional changes in conflicting societies; post conflict societies; freedom of expression and association; cultural and language rights, political participation and representation; women's role in resolving the conflict; access to justice and transitional justice including truth and reconciliation commissions.

DPI aims to facilitate the creation of an atmosphere whereby the different parties are able to meet with experts from Turkey and abroad, to draw on comparative studies, as well as analyse and compare various mechanisms used to achieve positive results in similar cases. The work supports the development of a pluralistic political arena capable of generating consensus and ownership over

work on key issues surrounding a democratic solution at both the political and the local level.

Transitional justice plays a major role in helping a society move from the post-conflict phase towards a stable, peaceful and democratic future. Truth and Reconciliation Commissions have become one of the most widely-recognised mechanisms of transitional justice. This report examines case studies from across the world and identifies some of the main issues raised by Truth and Reconciliation Commissions, including the complex relationships between key stakeholders in society, the role played by the international community, and the tension between the compromise needed for stability and the public desire for justice.

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DPI

London, June 2012

Introduction

‘Truth hurts, but war hurts more.’ This slogan on an awareness-raising poster for Sierra Leone’s Truth and Reconciliation Commission (TRC) rather neatly invokes both the aims of TRCs and some of the issues associated with them. The fundamental argument in favour of TRCs is that the legacy of the past must be dealt with in order for a country to heal itself and avoid a return to conflict. As the slogan implicitly acknowledges, this can be an extremely painful process. While some see this as a necessary evil that is offset by the benefits gained, others argue that re-opening the wounds is a dangerous provocation during a delicate stage of recovery and transition.

The tension between justice and stability is at the root of the debate in the advantages and disadvantages of establishing TRCs in states that have recently endured internal conflict or are emerging from authoritarian to democratic government. The particularities of these situations have led to a recognition of the need for specialised mechanisms to deal with them. Collectively, these mechanisms (of which TRCs are one) are known as *transitional justice*.

Transitional societies have to deal with a unique legacy of damage to their human, institutional and social resources. This poses problems for a peaceful and stable outcome that are difficult to resolve with a conventional judicial approach. Instead, compromises must be made that acknowledge the political and practical constraints in play. In cases where violent acts have been endemic, either on

the part of the government or non-government actors, it is often neither practical nor politically desirable to bring all parties to criminal justice. Political sensitivity and a lack of resources make mass prosecutions an unwieldy option. The other extreme is to offer blanket amnesties for all acts that take place during the conflict. However, in cases where gross human rights violations or war crimes have taken place, such an amnesty may contravene international law. In addition, blanket amnesties can be indicative of a culture of impunity that undermines faith in the credibility of new democratic institutions and casts doubt on their commitment to human rights.

TRCs, which focus on memory and testimony rather than an exclusive reliance on punitive justice, are seen as a third way that offers transitional states a chance to deal with their past while also rebuilding social bonds. TRCs come in various forms, but the essential design involves a small number of commissioners, supported by a larger administrative and research staff, who have been tasked with investigating the causes of a conflict and rights violations that have taken place within it. The mandate may also include provisions for allocating reparations and making policy suggestions to prevent a recurrence of conflict. A major aim is to protect the human dignity of victims by giving them a chance to testify about their experiences, thereby ensuring that their suffering is acknowledged and treated with the respect it deserves. Another goal is to promote reconciliation – proponents of TRCs argue that a society (and opposing groups within that society) will never be fully at peace until the past has been acknowledged publicly. Any

pain that arises from this is cathartic, according to this view. Those guilty of crimes related to the conflict are given the chance to come forward and acknowledge their mistakes, and in return are granted amnesty. Instead of being at odds with peace and stability, the culture of inclusion, remembrance and accountability encouraged by TRCs is seen as being integral to long-term social cohesion.

This paper will use a comparative approach to assess some of the major strengths and weaknesses associated with TRCs. By drawing on the wealth of knowledge available through case studies of transitional societies, obstacles and opportunities for TRCs will be identified. The influence of international organisations such as the UN will also be taken into account. These elements will be used to draw up a framework of generic issues associated with TRCs that, when applied with cultural and historic sensitivity, will help to explain the varying degrees of welcome and success that this mechanism of transitional justice has been met with.

Case Studies

The purpose of these case studies is not to give an exhaustive account of every incident but to draw out the particular elements of each that contribute to our understanding of the dynamics of TRCs and that draw attention to the key opportunities and challenges that they present.

The **South African TRC** followed years of political violence and systemic human rights abuse under the apartheid system of government. South Africa's democratic transition was marked by a concerted effort to address the legacy of the past in a peaceful and constructive manner. This was embodied in the 'rainbow nation' policy of political inclusion for all groups, a broad Disarmament Demobilisation and Reintegration programme, a new constitution, and of course the TRC itself. A major focus throughout was on dealing with the past without seeking vengeance.

The TRC was established in 1995, with a mandate to: investigate the nature, causes and extent of gross human rights violations that occurred from 1960 and 1994, to restore the dignity of victims by allowing them to testify, to grant amnesty under specific circumstances, and, to make recommendations to the President and Parliament on reparations and other rehabilitative measures to be undertaken. The TRC's mandate was to investigate acts that were illegal under the apartheid system, rather than investigating the system itself. Nonetheless, this remit covered the behaviour of the armed forces, police, paramilitaries and political parties (including

the African Congress as well as the pro-apartheid National Party). This TRC had a much larger budget, powers (search and seizure, ability to issue court-backed subpoenas and the right to grant individual amnesty) and size than its South American predecessors. In the course of its investigation it took over twenty thousand statements from victims. It held public hearings that generated a massive amount of media interest in its proceedings.

This is not to say that the TRC was universally welcomed. Many were unhappy with the idea of granting amnesties and the implicit rejection of legal trials for many offenders of the apartheid era, seeing this as a dirty compromise with the former ruling party that actually diverted justice. Nelson Mandela and (Commission Chairman) Archbishop Desmond Tutu played a major role in legitimizing the TRC through their vocal support of it. Tutu especially emphasized the need for a third way between national amnesia and criminal prosecutions. There would be no blanket amnesty, but only amnesty for those guilty of politically motivated crimes who made a full public confession before the Commission.

Critics of the South African TRC point to its disproportionate emphasis on violence against non-blacks. This was a result of Tutu's insistence that the recognition of the country's suffering as a whole be recognized, rather than that of a particular community or group. The TRC was also criticised for having a narrow focus on gross abuses of human rights rather than (the arguably equally destructive role of) structural violence such as economic injustice. The finite amount of time available to the Commission may have

been a factor in their decision not to pursue this aspect of apartheid's legacy. Despite the post-apartheid government's early success in recognizing the importance of the gender rights as an integral aspect of human rights, the TRC initially came under criticism for its handling of the gender-sensitive aspects of its investigation. While both women and men suffered direct violence, the TRC's focus on killings, beatings and torture meant that the indirect victimhood of women (and the role of poverty therein) was not recognized. There was a tendency for women to testify about the suffering endured by male relatives, rather than their own experiences - only 17% of their testimonies related to abuses suffered by women.¹ This issue was addressed by holding special hearings dedicated specifically to women's experiences.

The Commission heard more than twenty thousand statements from victims in the course of its investigations, giving a broad cross-section of South African society the chance to testify to the brutalities of the apartheid regime. Not everyone, however, found it to be a cathartic experience. A poll taken after the TRC finished its work reported that two thirds of South Africans felt angrier after it than before, and also felt that it had contributed to the worsening of race relations. Some relatives of murdered victims were upset that those responsible for the deaths of their loved ones would not be brought to trial (although incidents of relatives and victims being extremely forgiving are also common). This led Archbishop

¹ Graybill, Lynn (2001), 'The Contribution of the Truth and Reconciliation Commission Towards the Promotion of Women's Rights in South Africa', p8

Tutu to emphasise that the purpose of the TRC was “promoting” reconciliation rather than achieving it outright.

While the TRC may not have healed communal wounds to the extent hoped for, it did provide a forum where the past could be addressed in a non-violent manner. As much as anything, this set a precedent for the type of peaceful interaction crucial to stability. The TRC has been credited with the lack of revenge killings in South Africa since it began its work.² It is worth noting that the South African TRC took place under a much wider reform process that encompassed the judicial system, security sector and political institutions.

The **Guatemalan Civil War** ran between 1960 and 1996, claiming 200,000 lives. The war was preceded by a series of military coups and violent tension between right wing authorities and left-wing agitators. This political divide continued in the civil war, but equally important was the gap between the indigenous Mayan peoples, who made up over half the population at the beginning of the conflict, and the ruling elite. The war was characterised by brutality and systematic human rights abuses, in which the Mayan people suffered disproportionately. Peace talks sponsored by the UN eventually led to a ceasefire in 1995 and the declaration of peace in 1996. One stipulation of the peace accords was the establishment of a Historical Clarification Commission, known as the CEH.

² Tupperman, Jonathan (2002), ‘Truth and Consequences’, Foreign Affairs, p145

Compared to the TRC in South Africa, Guatemala's CEH had significantly fewer resources and powers. It had no right of search and seizure or power to issue subpoenas; it held no public hearings; it did not name perpetrators; and, even before the CEH began its work, a series of blanket amnesties were given for all but the worst human rights abuses.

These seemingly in-built weaknesses were justified by the fragile nature of the peace, which raised fears that a more robust investigation could lead to a renewal of conflict. The mandate of the CEH was to "clarify" the rights abuses and acts of violence that occurred throughout the war, to compile a report on their findings, and to make recommendations to the government to encourage national harmony.

Many criticised the Commission's inability to name names as this limited the scope of investigation, while others pointed out that such limitations in fact allowed the CEH to focus on broader social, political and cultural factors that may have contributed to the outbreak of violence in the first place.

The Guatemalan military was criticised for not being entirely cooperative in assisting the CEH with depositions and the provision of documents. Given the Commission's findings, which heavily criticised the military for their role in atrocities, this reticence is hardly surprising.

A final criticism of the report was that it downplayed violence perpetrated against the Ladino population, which some felt

undermined the Commission's credibility. The focus on the sufferings of the Mayans may have been a reaction to the genocidal nature of the attacks on their community.

Despite the limitations of its set-up and resistance towards its investigation, the CEH produced a damning report that placed majority of blame for 200,000 deaths in the civil war on the State and military. State forces were found to be responsible for 93% of violations.³ The report also drew particular attention to the disproportionate suffering of the Mayans. The report's recommendations included the introduction of a national holiday for mourning the war dead, the construction of monuments, a national reparations programme, the strengthening of democratic institutions, reform of the military and prosecutions of key perpetrators. However, the government of President Arzú was not particularly welcoming of the report, and was replaced less than a year later by a new president with links to some of those implicated in the civil war abuses. Successive Guatemalan governments have failed to fully implement the recommendations of the CEH. Despite the severity of the report's findings, very few prosecutions have followed. These have largely concerned junior officers, with limited exceptions such as the 2011 prosecution of former General Ríos Montt over his part in fifteen massacres. Other attempts to prosecute senior-ranking officials have been obstructed by the Ministry of Defence. Efforts to gather information about 'disappeared' victims have been stymied, as have attempts to implement the report's reparation recommendations.

3 Final Report of the CEH

Northern Ireland provides an interesting counterpoint to the previous case studies, as no TRC was established. The reasons for this shed light on some of the tensions surrounding transitional justice, while the way in which the past has been dealt with in Northern Ireland illustrates some useful alternatives (or complements) to a TRC. Following the partition of Ireland in the 1920s, Northern Ireland experienced intermittent violence in the decades that followed. This violence escalated rapidly from 1968, which marked the beginning of the period known as the Troubles. Repeated attempts to find peace faltered until the eventual success of the Good Friday Agreement, signed in 1998, which ended hostilities between the major groups of combatants. While there have been occasional violent disturbances in the intervening years, Northern Ireland has largely enjoyed a period of stability unprecedented in the last half-century.

There has been a large amount of public debate about the legacy of the Troubles. The key issues have revolved around the release of Republican prisoners, weapons decommissioning, confessional equality, policing and how to deal publicly with the legacy of the past. This last issue is of particular relevance to our subject. Whether to deal with the past commemoratively, through monuments and remembrance, or through formal investigations has been contentious.

Authorities rejected the possibility of a TRC for a variety of reasons. Around the time of the Good Friday Agreement it was felt that such an exhaustive investigation into the past could be destabilising

to the newly-won and fragile peace. Others have suggested that because there was no real break in power structures the British government may have been hostile to the idea of a TRC which could question the legitimacy of existing institutions.

Another reason is the mistrust between the major groups in Northern Ireland and the fear that a single, exclusive narrative of the past would be the result of a TRC. Those in the Loyalist community feared that a TRC could be hijacked by Republicans in an attempt to rewrite the past and absolve themselves of responsibility for atrocities.

The public outcry over the early release of Republican prisoners, made as a gesture towards peace, is evidence of the uneasy tension between peace-building necessities and the demand for justice. On the other side of the communal divide, those in Catholic and nationalist communities feel that the state's role as a perpetrator has been forgotten and that a 'sanitised' official version of events has been created. It has been estimated that the state was responsible for 10% of deaths during the Troubles, while some have accused the state of collusion with Loyalist paramilitaries.⁴

Dissatisfaction with official remembrance has led to a number of independent, grass-roots organisations being set up to deal with the past in their own way. These include victims and justice organisations, oral history groups and memorials created by community groups. Such local activism has taken place within

⁴ Lundy, Patricia and McGovern, Mark (2001), 'The Politics of Memory in Post-Conflict Northern Ireland', *Peace Review*, p28

both nationalist and Unionist communities. While these groups have achieved some notable successes in bringing victims together, limited resources necessarily curb their impact. They also have a comparatively limited scope, and tend to focus primarily on direct victims, unlike broader transitional justice mechanisms like TRCS that focus on the society as a whole.

Northern Ireland has seen a number of commissions established to investigate individual incidents. The best-known of these is probably the Saville Inquiry into the 1972 Bloody Sunday incident, in which British soldiers killed several unarmed civilians. The report found that the attack was unjustifiable and unprovoked. The report's findings, and the ensuing apology from Prime Minister David Cameron, were welcomed by the victims' families.

Given restrictions on time and resources, however, the capacity of such individual investigations to deal comprehensively with issues of truth, justice and reconciliation is limited.

Another attempt to address the past has been the establishment of commissions to address victims' issues. These have met with varying degrees of welcome and success. In 1997, a Victims Commission was established which produced a report emphasising the need to ensure victims' access to relevant services. It also raised the possibility of constructing memorials in honour of victims of the Troubles and raised the possibility of a TRC (this was suggested by some of the victims consulted). However, the Commission was criticised for a perceived anti- Republican bias, and for the fact that

its Commissioner was a long-standing and senior civil servant of the regime implicated in the conflict.

A more recent Victims and Survivors Commission has focused on raising awareness of issues relevant to victims and ensuring their access to services, rather than investigating the past. Finally, Northern Ireland has also dealt with its past by instituting a substantive reform process which has addressed many of the issues that previously caused friction.

An independent commission to oversee police reform was established, as were a Human Rights Commission and Equality Commission, a Bill of Rights enshrining an egalitarian normative approach to human and civil rights was produced and cross-community structures were built to encourage peaceful interaction between Catholic/Nationalist and Protestant/Unionist communities.

That the past remains a highly divisive topic affecting events on both sides of the border is undeniable. This was recently demonstrated in the 2011 Presidential elections in the Republic of Ireland. The fact that Martin McGuinness (Sinn Féin politician and formerly a senior figure in the Provisional IRA) stood for election showed how far the normalisation of North-South politics has come, but intense popular and media focus on his Republican background was clear evidence of the continued political relevance of the past. The tension between the post-Good Friday Agreement political settlement and the failure to fully address the legacy of the past could not have been made clearer. Northern Ireland has made great

strides in the last fifteen years, but the process of dealing with its past is far from over.

Recent decades have seen a trend towards the internationalisation of some aspects of transitional justice and the growing **role of international organisations**. The Nuremberg and Tokyo trials were forerunners of both internationally-sponsored trials and the idea that crimes against humanity constitute a fundamental breach of moral norms regardless of national law. Many of the atrocities of the Holocaust were technically legal under Nazi law, meaning that key perpetrators were charged instead under international law, with crimes against humanity and other charges, which had primacy over national law.

This principal was later developed as a result of the **Yugoslavian conflict**, when in 1993 the UN Security Council ruled that gross human rights violations are a threat to international peace and stability. This provision has been used to justify international interventions in civil conflicts, and also as a basis for internationally-sponsored tribunals such as the indictment of war criminals responsible for atrocities in the former Yugoslavia and **Rwanda**. The Rwandan and Yugoslavian tribunals were both established by UN Security Council resolutions. In 2002, the International Criminal Court (ICC) was established to provide a permanent mechanism to deal with genocide, crimes against humanity and war crimes. However, not all states are signatories to the ICC and so do not fall under its jurisdiction, including the United States, China, India, Israel and Turkey.

One of the key arguments in favour of international transitional justice initiatives is the idea that international actors may be more impartial than local actors. The collective moral and political legitimacy of bodies like the UN can lend itself to transitional justice mechanisms through international involvement. The Guatemalan case study demonstrates how local agendas (in that case the agenda of the military) can limit the scope and ability of legal mechanisms to deliver justice. It has been suggested that the UN presence in **Guatemala** was what ensured that the indigenous people's experience of the conflict was so sensitively handled.⁵ In **El Salvador**, anxiety over the potential biases of local actors meant that international figures were chosen to lead its TRC, with the UN again taking a leading role.

International organisations, including the UN, EU and other regional organizations, also make a substantial contribution to transitional justice through funding for TRCs and other transitional justice mechanisms. Regional organisations can use their foreign policy and political leverage to encourage cooperation with transitional justice measures and to build momentum for a transitional justice process in states where these issues have not been addressed.

The importance of transitional justice to peace and stability is widely recognized by the leading international organisations – in a guidance note in 2010, for example, UN Secretary General Ban Ki Moon asserted that transitional justice should be taken into

⁵ Newman, Edward (2002), 'Transitional Justice: The Impact of Transitional Norms and the UN', *International Peacekeeping*, p31

account during peace negotiations.

Some have criticized aspects of international transitional justice, pointing out that international norms of justice, while supposed to be universal, may be in conflict with local norms of justice. The idea of local ownership of the transitional process has been identified as a key factor of success, which international processes may undermine. Clearly it is important that local judicial mechanisms develop the ability to deal with the legacy of the past – international involvement should not be used to the detriment of local capacity.

In some cases, international justice norms may conflict with local justice mechanisms. This is particularly relevant to the dispensation of amnesties through TRCs, which may violate international legal requirements to prosecute those guilty of genocide, war crimes and gross human rights violations. International tribunals tend to focus on a handful of key perpetrators. While this is understandable due to time and resource constraints, the narrower focus does not contribute as much to a holistic rehabilitation of society that the broader nature of TRCs aims at.

Sierra Leone provides a useful example of how international organisations affect transitional justice. Its transitional justice process took place in the wake of decades of violent conflict and misrule. A series of military coups, internal conflict and consummate governmental corruption destroyed the country's political, economic and social infrastructure. Violence reached its apex during the civil war that ran from 1991 to 2002, which

involved government forces, the Revolutionary United Front (RUF, with support from Charles Taylor) and in later stages the Armed Forces Revolutionary Council (AFRC). Atrocities against civilians were particularly brutal, including murder, mutilation, rape and the forcible recruitment of child soldiers. The complicity of the national army and government officials in predation upon civilians greatly undermined trust in state institutions.

In 1999, the Lomé peace accords were signed between the RUF and government. It included provisions for a TRC and also granted a blanket amnesty for combatants for activities occurring from 1991 onwards. Although the UN was a co-signatory to the agreement, they did not accept the principle of amnesty for genocide and gross human rights violations. The TRC, which ran from 2002- 2004, was established by parliamentary statute with a mandate to create a historical record of atrocities, to address the issue of impunity, to respond to the needs of victims, to promote healing, reconciliation and to prevent such atrocities happening again. Civil society helped to define the mandate during consultations with legislators.

The TRC's seven commissioners were all chose by the country's president, but three of them were non-nationals. The UN Office for the High Commissioner of Human Rights (OHCHR) coordinated the Commission's activities and helped with fundraising and administration. In this case, international involvement helped to balance the close ties between the Sierra Leonean commissioners and the ruling party (which was problematic given the government's involvement in some of the activities under review). While

international representatives played an extremely large part in the TRC, local input ensured that the particularities of Sierra Leone's conflict were reflected in the Commission's design, including a focus on child victims and perpetrators.

Although the statute establishing the TRC was enacted in 2000, the Commission did not begin its work for a further two years due to the critical security situation in Sierra Leone. Running concurrently with the TRC was an international tribunal to prosecute those "bearing greatest responsibility" for gross violations during the war. The Special Court (SC) was established following a request from the President to the UN Security Council. It had a much narrower scope than the TRC, covering only events that took place from 1996 onwards.

Its staff was both local and international. This mix was an attempt to gain balance, offset biases and take into account the fact the Sierra Leone's own judicial resources had been extremely damaged by the war. In early 2002, a UN planning mission sent to assess the local conditions for establishing the SC found that local resources for the Court's operation were "non-existent or extremely rare."

While the TRC was based solely on national law, the SC drew heavily on international law. Both Sierra Leone's government and the international community feared that a national trial of Foday Sankoh, the leader of the RUF, would escalate tensions and threaten the country's fragile peace. It was also hoped that the SC would be an improvement on the ad hoc tribunals established to

deal with events in the former Yugoslavia and Rwanda, which had been criticised for their expense, slowness and lack of local input. The more mixed, balanced nature of Sierra Leone's SC was an attempt to reinforce national sovereignty and thereby contribute to the rebuilding of the country's judicial infrastructure.

The SC had primacy over perpetrators accused of being guilty of the worst violations, which many feared would restrict the ability of the TRC to deal with these issues. There was also anxiety that the two courts operating at the same time would lead to duplication, competition and would confuse locals as to the nature and goals of each institution. Initially, perpetrators were reluctant to testify before the TRC for fear that what was said could be used in the Special Court, but when it became clear that their testimony would not be used in this way, a relatively large number did so, eventually making up 13% of all statements gathered.⁶

In 2003, the TRC attempted to gain access to four individuals being held by the SC, hoping to gain a better understanding of the conflict by interviewing them. The SC stated that this would only be possible if the interview was taped and monitored by one of its representatives, which was unacceptable to the TRC. This incident is evidence of the underlying tension that sometimes coloured relations between the two institutions.

In terms of domestic motivations for international involvement, it has been suggested that non-local actors would dispel the impression

⁶ International Centre for Transitional Justice (2004), 'The Sierra Leone Truth and Reconciliation Commission: Reviewing the First Year', p4

of a ‘victor’s peace’ settlement of the post-conflict transition, while at the same time a greater international presence would discourage the RUF and AFRC from further violence. Restrictions on local resources and the nation’s legal statutes limited ability to deal with crimes of such magnitude were also an important consideration.

Other aspects of transitional justice in Sierra Leone relevant to our general understanding of the dynamics of TRCs is the treatment of women and women’s issues. As in South Africa, the Commission held thematic sessions to deal with women’s experiences, with a particular focus on sexual violence. Those testifying had the option to do so in closed sessions, with only female Commissioners and Commission staff present.

Another point of note is that initially the TRC was extremely under-funded, at one point having only a skeleton-staff of two. This obviously restricted its capacity until the funding problem was resolved.

Finally, some have suggested that despite NGO lobbying for a TRC, there was little popular support for it. The fact that the TRC opened old wounds and proactively kept the memory of the conflict alive may have hindered the reintegration of some combatants (especially child soldiers), as Disarmament, Demobilisation and Reintegration was a particularly sensitive issue in Sierra Leone. The TRC’s methodology may have run counter to local understandings of truth, reconciliation and justice.

Other studies point to a growing support among ex-combatants for the TRC over time, as they learned more about the Commission's work. After the TRC published its final report, not all recommendations were implemented. There has been progress in some areas however, most notably in a reparations programme for victims co-sponsored by the UN.

Identifying Opportunities and Challenges for a TRC

These case studies of national and international transitional justice mechanisms have highlighted some of the major issues surrounding transitional justice in general, and TRCs more specifically. These issues will now be broken down thematically in order to identify the major opportunities and challenges that face TRCs.

Vulnerable Groups, including women and children, often face psychological and practical obstacles to engaging with TRCs. They may feel that there will be negative repercussions if they testify or are seen to upset the status quo. This is further complicated where a sense of shame or fear of social condemnation may prevent or inhibit women from testifying about sexual violence. Where women's place in society is inferior to that of males, their willingness to testify, or the manner in which they testify, is likely to be affected. For a TRC to be useful, it must include testimony from a broad cross-section of society; for half of the population to be excluded or disincentivised from participating would significantly reduce its impact. This issue can be addressed by having special hearings dedicated to women's experiences. Such sessions should be handled

tactfully by offering assurances of anonymity, by using female staff and by taking into account culturally sensitive gender issues during investigation and questioning.

Public Reception: how the public receives and engages with the TRC is clearly crucial to its success. The quality of relations between community groups can seriously affect this. As is demonstrated by the case of Northern Ireland, a lack of trust and communication between groups can limit the chances of a TRC being established in the first place. For a TRC to be successful it must not be seen as a mechanism that will whitewash the past or portray a one-sided view of events. Experts have pointed to the difficulty of a single narrative being identified and accepted as ‘the truth’. To avoid this, TRCs must be seen to be as objective and impartial as possible, which should be reflected in their staffing, mandate and manner of investigation.

State bodies and institutions (including the military) greatly influence how a TRC is treated - an atmosphere of transparency and cooperation is likely to enhance the likelihood of success.

Public or Private Hearings: whether or not to hold public hearings is a matter for the Commissioners. Holding them in the open can give a greater sense of transparency and public involvement, but can also lead to tension as the scale and nature of the conflict is revealed through testimony. Private hearings can avoid this, although privacy may lead to a sense of secrecy or even the suspicion of cover-ups that is unhelpful if public trust in the

TRC is not strong. Ultimately, which option would be preferable is dependant on a range of factors (including public opinion, the nature of group politics and the role of the media) that must be taken into account when the TRC is being designed.

The Role of the Military: as a major pillar of the state, the role of the military in TRCs cannot be ignored. The Guatemalan case study illustrates the fact that the role of the military is not necessarily a constructive one. Where the military is a powerful presence in society, it would likely need to be convinced that a TRC would not simply be used as an excuse to make them (or any group of actors) a scapegoat.

The Role of International Organisations: the involvement of international organisations or international actors in TRCs requires a delicate balance to ensure that a sense of local ownership is maintained and that proceedings reflect local norms and values. However, where it is difficult for local actors to be entirely unbiased, or at least to be perceived to be unbiased, the presence of outside actors can diffuse tension and stress the importance of an objective approach. The existence of communal tensions can make this particularly useful. Having one or more international members of the Commission can help make a TRC more acceptable to all parties involved.

Amnesty or Prosecution: the issue of a blanket amnesty prior to a TRC is unlikely to be helpful to its work. The major aim of a TRC is to promote reconciliation and identify the causes and

dynamics of a conflict. A blanket amnesty suggests a culture of impunity and a lack of commitment to substantive reconciliation. At the same time, a TRC that is seen to be nothing more than a witch-hunt could be equally damaging. Compromise is a necessary though sometimes awkward aspect of transitional justice. South Africa's stance on this issue was one of the more successful examples, with its focus on reconciliation without retribution and building bridges between communities, while still making sure that gross violations or rights abuses were not ignored.

Scope and Powers of the TRC: the success of a TRC will depend on its internal structure, including its mandate, funding and staffing. The details will depend on whatever compromise is reached between a given country's stakeholders and who is given the responsibility of establishing it (the president, parliament or through a peace agreement). These can include not just the government and major institutions like the military, but also non-ruling political parties and NGOs. A broad, transparent consultation process prior to a TRC is likely to strengthen the sense of inclusion it generates. The better the lines of communication between the groups consulted, the more constructive this process is likely to be.

A TRC's power, as defined by its mandate and the subsequent cooperation of those in authority, will decide its long-term impact. TRCs weak from their inception, such as Guatemala's, have difficulty in effecting substantive, positive change in the short to medium term. Stronger TRCs which have the support of a broad

range of actors and actively try to include a wide cross-section of society, such as South Africa's, are likely to be more effective (although, as South Africa shows, their immediate reception may not be universally positive).

It is also worth noting that TRCs have been criticised for focusing on individual transgressions rather than broad, structural problems. The focus on communal reconciliation through individual forgiveness may draw attention away from systemic problems that exacerbate conflict within a society. As such, a TRC should be complemented by a wider reform process that takes such factors into account, as shall be expanded upon below.

Resources: the level of funds and manpower available is an obvious determinant of success. These resources must be both available and sustained throughout the TRC in order for it to achieve its full potential. The institutional resources available in a given country (such as a working judicial infrastructure) are also important.

The Wider Reform Process: the TRCs mentioned above had greater or lesser degrees of success. What is striking in the South African example is that it took place as part of a wider reform process that sought to address systemic problems associated with apartheid. This included security sector reform, Disarmament, Demobilisation and Reintegration programmes, the writing of a new constitution and a complete revitalisation of political institutions. This was a transformative process whose ambition

was to change not just the country's institutions, but its political, social and moral norms. The level of mistrust and friction between communities in South Africa made this a political imperative as much as an idealistic project.

Holistic reform can help to restore universal acceptance of a state's legitimacy and the faith that all communities have a stake in its ownership. The case of Northern Ireland illustrates the importance of reforming institutions associated with contention, in that case the police and Assembly. This example also demonstrated the importance of a solid, inclusive peace-process and ceasefire to stability, reform and reconciliation.

The Trust Deficit – Communal and Institutional: in Northern Ireland, a lack of trust between the Nationalist and Loyalist communities was a key reason that the idea of a TRC was abandoned. For a TRC to be workable, a basic level of trust and communication between communities is necessary. During the set-up of a TRC, it is important to make sure that it is not simply a mechanism of 'victor's justice', wherein a single narrative of events will be endorsed to the exclusion of a more inclusive understanding of the past. For example, a perception of too much government or military influence could damage a TRC's legitimacy among some sectors of a community, while conversely a Commission seen to be overly sympathetic to a single communal or confessional group would be unlikely to win support amongst government politicians or parts of the broader population.

Ongoing Violence: implicit in the premise of a TRC is that violence is a thing of the past. Perhaps the most important prerequisite for a TRC is a stable peace agreement respected by all sides. This consideration directly impacts the timing of a TRC. While it may be useful to begin the process of dealing with the past early into a peace settlement, if that peace is fragile or subject to continuing, sporadic episodes of violence, it may be wise to wait.

The Expectations Trap: the South African case study clearly demonstrates the danger inherent in high expectations. The need to communicate a TRC in a positive way to the public can make it tempting to oversell possible benefits. TRCs are not a foolproof, fault-free path to reconciliation and should not be presented as such. As with any other mechanism of transitional justice they can produce tension and are rarely perfectly executed. In deciding whether to establish a TRC, all parties should recognise these possible shortcomings, as well as the fact that there is an inherent tension between ‘truth’ and ‘reconciliation’; compromise and pragmatism will be necessary components of any process.

When communicating a TRC to the public, it is important to get the message across that while pain may be a short-term consequence, any society dealing with conflict or internal tension must find a constructive, inclusive way of dealing with the past.

The Role of Leadership: the South African case study is an excellent example of the importance of inspirational leadership to transitional justice. There, Nelson Mandela and Desmond Tutu

were instrumental in establishing a TRC. They ensured that the tone of the TRC was inclusive, which minimized the perception that the white community was being demonised. This was particularly notable given the long and painful experience both men had of the apartheid system.

Conclusion

Transitional justice takes place in uniquely complex situations, with extremely sensitive political, social and cultural conditions. These particularities are both evidence of the need for specialised justice mechanisms, and the reason why deploying these mechanisms can be so difficult.

Each example of transitional justice used in this paper is unique, with its own historical, political and cultural background. While lessons from one cannot be transplanted directly into another context, a comparison of the issues arising from transitional justice mechanisms in these case studies gives us a deeper and broader understanding of TRCs in all their forms. Key to understanding TRCs is acknowledgement of the fact that there is an inherent tension between stability, justice and reconciliation. Delivering justice in transitional societies necessarily involves compromise.

This compromise, if not balanced correctly, can diminish the positive impact of a TRC. Transitional justice must be approached as the art of the possible. This means that the design of TRCs should explicitly take into account the many obstacles and opportunities to be found in a given situation, from the shape of its mandate, its likely reception amongst the public and key stakeholders, resource availability and communal tensions, to the existence of a wider reform process and the role played by the international community.

Only by acknowledging the obstacles and opportunities that go

hand in hand with TRCs is it possible to deal with the past in a meaningful and constructive way, while also promoting peace and stability.

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