

What is Transitional Justice?

In societies that try to rebuild and move on from a violent history marked by serious human rights violations, important questions arise around how to acknowledge violations, satisfy demands for justice, prevent recurrence, establish the rule of law, restore the social fabric of communities, and build sustainable peace. Transitional justice is a way to provide recognition to victims of past human rights violations; enhance trust and promote reconciliation amongst people and between the people and the State; and prevent future human rights violations from occurring.

Transitional justice covers a range of processes that attempt to address the legacy of large-scale past human rights violations, through ensuring accountability, justice, and reconciliation. Transitional justice consists of both judicial and non-judicial processes, including dialogue and consultations, truth-seeking, prosecutions, reparations, measures to prevent the recurrence of rights violations, and memorialization efforts. Victims must be at the centre of each of these processes.

Pillars of transitional justice

Truth-Seeking

The right to the truth about gross violations of human rights and international humanitarian law is an inalienable right linked to the State's duty to protect human rights, conduct effective investigations, and guarantee effective remedies and reparation. Truth-seeking bodies include truth commissions, commissions of inquiry and fact-finding missions. These can be established to look into past serious violations of international human rights and humanitarian law to help realize the victims' and their families' right to know the truth, including the causes of the violations and the reasons for their victimization. Victims, their families, and society in general also have the right to know the truth about the identity of the perpetrators, and, in cases of enforced disappearance, the whereabouts of victims.

Perhaps the most well-known truth-seeking exercise is South Africa's Truth and Reconciliation Commission (TRC). It was established in 1996 to deal with the aftermath of apartheid. The TRC invited victims of human rights violations to give statements, some publicly. People who committed crimes and human rights violations could also give statements and request amnesty from prosecution under some circumstances. The TRC emphasized reconciliation rather than punishment.

Prosecutions

Ensuring accountability for perpetrators of serious crimes and other gross violations of human rights, and providing remedies for victims and affected communities are obligations of the State under international law. States are required to undertake prompt, thorough, independent, and impartial investigations of alleged violations, and take appropriate measures against the perpetrators by ensuring that those responsible for serious crimes under international law are prosecuted, tried, and duly punished. A victim of a gross violation of international human rights law or international humanitarian law has the right of equal access to an effective judicial remedy. Perpetrators of serious crimes under international law should not benefit from amnesties and other clemency measures, even when such measures are part of a peace

agreement. Prosecutions for serious human rights violations can be undertaken by domestic, hybrid or international courts like the International Criminal Court.

As part of a 2015 peace agreement to end more than 50 years of armed conflict, Colombia established a “Special Jurisdiction for Peace” (“JEP” in Spanish) to try rebels and members of the armed forces for crimes during the war, including serious human rights violations. The JEP aims to center the process on victims. Defendants who did not commit serious crimes and who admit and take full responsibility for their crimes can benefit from lighter sentences. As a result, thousands of former guerrillas submitted confessions for the JEP to review and responded to victims’ queries.

Reparations

Victims have a right to reparation and remedy under international law. Reparation must be adequate, effective, prompt, and should be proportional to the gravity of the violations and the harm suffered. Reparations do not have to be exclusively monetary, or even material; they can be symbolic acts such as apologies and recognition of the suffering of victims through construction of memorials. State verification of the facts and recognition of the truth are also important reparation measures. Collective reparations can be considered in societies that have a high number of victims. Comprehensive reparations programmes should include both collective and individual measures, as well as both material and symbolic reparations. Preserving memories of people or events is a form of reparation which recognizes and acknowledges the victims of rights violations. Memorialization can include the establishment of museums, commemorating events or days, and including an accurate narrative of the past in school textbooks and public service broadcasting.

In 2006, the government of Canada agreed to a settlement to provide reparation to the survivors of “Indian Residential Schools.” The schools were part of a program that for more than 100 years removed indigenous Canadian children from their families and placed them in residential schools in an attempt to make them assimilate culturally. The \$2 billion settlement acknowledges more than 80,000 victims and includes financial compensation, a truth commission, and support services.

Guarantees of non-recurrence

Guarantees of non-recurrence are important to ensure against future human rights violations and are essential to securing sustainable peace and development. These guarantees involve institutional and legal reforms, for example, justice and security sector reform, a strengthened role for civil society, and steps to protect civil society actors from attacks and harassment.

After the reunification of Germany in 1989, Germans were allowed to view their own secret files held by the Stasi, or the Ministry of State Security. The Special Rapporteur on promotion of truth, justice, reparation and guarantees of non-recurrence has noted that “[a]rchives containing records of mass violations can contribute to prevention. Access to well-preserved and protected archives is an educational tool against denial and revisionism, ensuring that future generations have access to primary sources, which is of direct relevance to history teaching.”¹

¹ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/30/42, 7 September 2015, para. 96