

Human Rights and Transitional Justice

Transitional justice is a multi-faceted response to systematic or widespread violations of human rights. It seeks recognition for victims and promotes possibilities for peace, reconciliation, and just governance. Transitional justice is not a distinct form of justice, but rather is justice that is adapted to societies in the process of transformation after a period of pervasive human rights abuse. Transitional justice emerged in the late 1980s and early 1990s, mainly in response to political changes and demands for justice in Latin America and Eastern Europe. Human rights activists and others wanted to address the systematic abuses by former regimes without endangering the political transformations that were underway.

Common transitional justice strategies involve:

1. **Truth-seeking:** These initiatives seek to establish an accurate record of what happened during the conflict, clarify uncertain events, and lift the veil of silence and denial from contentious and painful periods of history.
2. **Reparations:** Reparations recognise victims' rights and seek to repair harms they have suffered.
3. **Prosecution:** Prosecutions have the potential to reveal how large-scale crimes were committed, and restore victims' dignity and public confidence in the rule of law.
4. **Institutional Reform:** Reforming abusive or negligent security systems and other structures and institutions can prevent recurrence and provide effective and accountable security to communities.

In 2012, the UN Human Rights Council issued a resolution on Human Rights and Transitional Justice that reaffirms many of the principles that have emerged from the field, including "the importance and urgency of national and international efforts to end human rights violations, [and] restore justice and the rule of law in conflict and post-conflict situations and, where relevant, in the context of transitional processes."

This resolution underlines the need to develop transitional justice strategies that prevent the recurrence of human rights violations and ensure social cohesion, institution-building, ownership, and inclusiveness at the national and local levels. It also calls for a comprehensive approach that incorporates judicial and non-judicial measures that include prosecutions, reparations, truth-seeking, and institutional reform in order to ensure accountability, provide remedies to victims, and promote healing and reconciliation. The resolution reaffirms important elements of transitional justice.

1. Truth-seeking processes that investigate patterns of past human rights violations and their causes and consequences are important tools that can complement judicial processes.
2. National prosecutorial capacities based on a clear commitment to combat impunity, that take into account the perspective of victims and that ensure compliance with human rights obligations concerning fair trials, need to be developed.
3. States have an obligation to prosecute those responsible for gross violations of international human rights law and serious violations of international humanitarian law.
4. States have an obligation to ensure that all victims of gender-based and sexual violence have equal access to justice and an obligation to prosecute persons who are responsible for it.
5. Peace agreements endorsed by the United Nations can never promise amnesties for genocide, crimes against humanity, war crimes, and gross violations of international human rights law.
6. Victims' rights include: (a) equal and effective access to justice; (b) adequate, effective, and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and concerning a reparation mechanism.

7. Institutional reform should incorporate a human rights-based approach into vetting processes.
8. Disarmament, demobilization, and reintegration (DDR), and transitional justice processes are interrelated. Coordination among these processes is essential to facilitate their coherence and mutual reinforcement.
9. Justice, peace, democracy, and development are mutually reinforcing imperatives.
10. A process of national consultation contributes to a holistic transitional justice strategy.
11. It is important to give vulnerable groups a voice in these processes and to ensure that discrimination and other root causes of conflict and violations of all human rights are addressed.
12. Victims' associations, human rights defenders, women's organizations, other members of civil society, and a free and independent media play important roles in the realisation of transitional justice goals, the reconstruction of society, and the promotion of the rule of law and accountability.
13. The term "violence against women" in conflict and post-conflict situations is not limited to sexual violence such as rape, sexual slavery, forced pregnancy, and enforced sterilisation, but includes any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women.
14. Sexual and gender-based violence is also committed against men and boys in conflict and post-conflict situations.
15. It is important that transitional justice processes recognise the particular needs of women and children, and the importance of engaging children as well as fulfill the obligation to enable women's full and equal participation in all transitional justice initiatives.
16. The rights of both victims and accused persons must be respected in accordance with international human rights law.

Guidelines on Transitional Justice from the United Nations Secretary General

In March 2010, the UN Secretary-General, Ban Ki Moon, issued a guidance note on the UN's approach to transitional justice that included ten guiding principles "as a critical component of the United Nations framework for strengthening the rule of law". These ten principles that guide the UN's engagement in transitional justice initiatives include:

1. Support and actively encourage compliance with international norms and standards when designing and implementing transitional justice processes and mechanisms
2. Take account of the political context when designing and implementing transitional justice processes and mechanisms
3. Base assistance for transitional justice on the unique country context and strengthen national capacity to carry out community-wide transitional justice processes
4. Strive to ensure women's rights
5. Support a child-sensitive approach
6. Ensure the centrality of victims in the design and implementation of transitional justice processes and mechanisms
7. Coordinate transitional justice programs with the broader rule of law initiatives
8. Encourage a comprehensive approach integrating an appropriate combination of transitional justice processes and mechanisms
9. Strive to ensure that transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights
10. Engage in effective coordination and partnerships.

Sources

- Human rights and transitional justice. Resolution 21/15 adopted by the Human Rights Council, A/HRC/RES/21/15, 11 October 2012; <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/47/PDF/G1217447.pdf?OpenElement>>
- Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, March 2010; <https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf>

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