



**Toward a framework of Transitional Justice in Israel/
Palestine**

**Workshop with Zochrot, Christian Aid and the
Transitional Justice Institute of Ulster University:
summary lessons paper**

November 9th to 12th 2015

Christian Aid Ireland in partnership with the Transitional Justice Institute of Ulster University organised a workshop to develop the work of Israeli NGO Zochrot and to bring wider lessons from the conflict and transition in Northern Ireland to the challenges faced in the Israel/Palestinian context. The overall aim of the three day workshop was to support Zochrot in their development of a transitional justice approach to their work in Israel/ Palestine. Zochrot's transitional justice programme aims to lead research, development and implementation of unofficial transitional justice mechanisms by civil society in Israel/ Palestine, including their work to address memory and commemoration. The Transitional Justice Institute is the leading research and policy center addressing complex and interconnected issues of transition and conflict management. The workshop was held over three days and explored the key concept of transitional justice, examined Northern Ireland as a relevant case study, along with the role of civil society in transitional justice, addressed how gender equality was pursued during the transition in Northern Ireland, as well as the relevance of the model of transformative justice and Zochrot's broader strategic planning.

The key lessons and reflections:

- In practice transitional justice has many modalities or conceptual frameworks, priorities and different ways of implementation. Transitional justice often involves a political pact with compromises on issues of justice and accountability, because the state in question may be too fragile, resistant or unwilling to deliver justice. Transitional justice requires flexibility, multiple intervention points, and a recognition that transition is neither a speedy nor linear process.
- The UN Special Representative on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, has criticised transitional justice models that cherry pick components of transitional justice and has advocated for holistic transitional justice. In reality, political and practical demands may mean it is necessary to go with what is possible. The ideal is holistic transitional justice in which all relevant measures are integrated and complementary.
- The international community has much influence on which aspects of transitional justice are part of a transitional "deal."
- Transitional justice has proven to be a circular phenomenon rather than a one-off initiative. This notion should guide parties in choosing the most effective transitional justice strategies.
- It is extremely difficult to enforce transitional justice when a conflict is ongoing and when there is not an established end to violent conflict. However, preparations for transition can begin far in advance, and can be very effective. Often the key to preparing for an anticipated and future transition is creating spaces where meaningful victim, civil society and political encounter can happen and exchange of views can take place amongst opposing sides.
- Practice shows that transitions are only successful when certain decisions are procedurally and substantively made in the pre-transition phase. For example, long before transitional justice had entered the lexicon in Northern Ireland, families held unofficial inquiries on the deaths of their beloved ones. These easy informal steps created an environment in which accountability was sought and expected, and changed the terms of the wider political debate.
- In formally democratic contexts there is an illusion of the normality and legitimacy of the state which emboldens the state to deny the existence of conflict and/or its own role in the

conflict. Moreover, where functioning state institutions are already in place evidence indicates that these institutions are often more resistant to change in the post-conflict stage than in a contexts where no state structures exist. Democratic states in transition pose particular challenges. Specifically, democracy is assumed to be self-corrective. However, the anti-democratic and non-human rights compliant actions of the formally democratic state can be extremely challenging to unpick in the context of transition. Many institutions consider themselves rule of law observant and therefore do not see themselves as in need of structural repair when the transition occurs. As a result, institutions in democratic settings can be highly resistant to change.

- The success of transitional justice is dependent on several conditions and factors. Often the state is fragile and state forces do not effectively control the totality of their territory. Non-state actors and other actors can remain powerful throughout and even after the transition has occurred.
- Power-sharing deals between different groups in the post transition phase have not tended to deliver for human rights and justice (see e.g. Northern Ireland, Bosnia). Instead, they have rewarded ethnic elites and enabled further and deeper ethnic political consolidation.
- Societies in transition continue to have micro-negotiations decades after the initial peace deal. The challenge for NGOs and victim groups is their ability to stay engaged due to limited resources and fatigue. The government does not have the same resource limitations. There is inequality of arms between civil society and the government which has more ability and resources to stay on top of the negotiations and more influence over the agenda and structure of negotiations.
- The conflict over the narrative of the conflict is often as big as the actual violence. The meta-conflict tries to construct the actual conflict. A key lesson from Northern Ireland is that we should not force victims into artificial relationships with one another. The key to applying transitional justice in societies which disagree about the legacy of the conflict is having respect for counter narratives, accepting that there are multiple truths, in addition to the unique forensic truth and clear accountability for human rights violations.
- Where transitional justice mechanisms have worked in Northern Ireland it is because they have been coupled with traditional legal mechanisms and strategies in the human rights field such as advocacy and litigation.
- In Northern Ireland there is huge local ownership of transitional justice. What we have learned is that importing externally crafted solutions does not work without local ownership.
- The Women's Coalition in Northern Ireland was successful at the negotiation table because they had overcome the division in their own constituencies before taking part in the broader negotiations. However, gender challenges were real and their members were greatly vilified and subject to personal and collective slander while participating in the negotiation process. This Coalition managed to be inclusive within its own ranks and to create space for inclusion in the broader negotiation process. Their key lessons were that *exclusion breeds insecurity, and the importance of bringing marginalised parties into the political process from the cold.*
- Proposals on transformative justice are challenging transitional justice modalities. Transformative justice draws upon a range of approaches- peace building, human rights based approaches to development, conflict transformation and gender equality and addressing intersectionality. In contrast to many transitional justice models transformative justice is not pre-determined or time bound. Transformation can occur at the micro or

macro level. Transformation has the power to change something which appears to be stuck, e.g. introducing discussions around the right of return in the Israel/Palestine context could be transformational.

- Establishing an inclusive language is important for encouraging dialogue in Israel/ Palestine. Palestinian parties tend to reject 'transitional justice', as it is seen to erode something essential in the quest for justice. Israelis activists, including academics, are more comfortable about talking about peace and reconciliation, while the term 'justice' is often ignored.
- Given the failure of implementation of human rights law to address human rights violations in Israel/ Palestine the language of transitional justice can potentially offer a new discourse to address violations. Another consideration for Zochrot is if they wanted to focus on transformative justice and move beyond looking at truth, reparations, institutional reform and seek transformative change. In addition 'pre-figuring' modalities of transition is important prior to the cessation of hostilities.

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