



Transitional Justice

KEY FINDINGS

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Transitional Justice

Transitional justice refers to the process of designing and implementing a range of mechanisms centred on how to deal with the past conflict, as part of a transition process. According to the United Nations, the four key pillars of transitional justice are truth, justice, reparation and guarantee of non-recurrence.

The Political Settlements Research Programme (PSRP)'s work has centred on four main dimensions of transitional justice:

- **Victims**
- **Relationship between constitution making and transitional justice**
- **Use of amnesties**
- **Gender and transitional justice**

In each of these areas we attempted to move beyond the 'peace versus justice' debate to understand better how to navigate issues of inclusion. This document sets out the key findings from our research in each of these four areas.

For key PSRP publications related to transitional justice, visit our website at www.politicalsettlements.org/key-findings.

Key Findings

Overview

Transitional justice measures are often put in place as part of a peace process, but are often developed and institutionalised sometime after the key peace agreement is signed in an implementation period that is seldom linear and can move back into conflict as well as forward.

For some, the term transitional justice means 'a set of tools for accountability', for some it means any measure to deal with the past post-conflict, and for some it means a mechanism of reconciling demands for accountability with the need to 'move on' through a creative approach.

PSRP research indicates that it is important to the design and implementation of transitional justice measures to understand the political contestation around 'the past', and also the need to deal with 'the past' in some way, because it raises a set of important issues which will continue to affect the politics of the present.

See further:

- [Navigating Inclusion in Transitions from Conflict: The Formalised Political Unsettlement](#)
- [The Fabric of Transitional Justice: Binding Local and Global Political Settlements](#)
- [PSRP Infographic: Peace Processes](#)
- [PSRP Amnesties, Conflict and Peace Agreement \(ACPA\) dataset](#)

Victims

A definition of victims that includes those who have experienced structural oppression as well as physical violence or abuses should be encouraged.

Those designing inclusion policy should think in creative ways around how victim and perpetrator definitions are provided for. Approaches should leave the door open for different forms of participation and a variety of narratives to emerge.

Inclusion efforts often centre around categorising victims based on gender, age, ethnicity or group belonging. This approach does not engage with the fluid social and political identities of the victims or the groups and individuals who represent them and may operate to constrain rather than empower victim participation.

Victim identities should be approached in a receptive and intersectional way. These approaches should understand how the different political positions and gender and socio-economic backgrounds of individuals shape inclusion efforts.

See further: [Victims' Inclusion and Transitional Justice](#)

Relationship between constitution making and transitional justice

Truth commissions and constitution making bodies often operate simultaneously, and in different ways both seek to generate narratives about the substantive wrongdoings during the country's past and what future remedies should look like. These narratives must reinforce rather than contradict each other.

In many post-conflict or democratic transitions, transitional justice and constitution-making are in one instance shaped by and result in a 'pacted transition' based on compromise between the opposing groups at the centre of conflict. Transitions are not linear but are ongoing processes. Both should be understood both as a response to the contestation of the conflict, and as vehicles which are part of the ongoing debate and political bargaining over the nature of the state.

Transitional justice and constitution-making should be better integrated during transitions. The following areas require attention:

- Sharing of information and experiences between transitional justice and constitution-making communities. International donors, member states of key organisations and international organisations should all engage in more cross-over opportunities at policy level.
- Ways to co-ordinate political and financial support at the top policy level. Part of this should involve attempts by national and country level donors to create and design mechanisms or institutional bodies which coordinate support for transitional justice and constitution-making.
- Addressing overlaps between the processes, ensuring they reinforce each other rather than undermine. International partners should ensure their efforts in both processes do not become disconnected (see examples of Ministry of Justice in The Gambia and Ministry of Peace and Reconstruction in Nepal in PSRP's key publication for this section).

Timing and sequencing. Mechanisms from both processes can complement or undermine one another, there is no right answer as to the order they should be implemented in – this should be resolved in context. For example, truth seeking processes preceding constitution building may help set out injustices and form an agenda for reform. Conversely, constitution building can be used as an impetus to actors involved in past events, providing them a guarantee and encouraging their political buy in to transitional justice processes.

Momentum. Compromise and negotiation between processes are important for maintaining transition momentum. Part of this requires recognition from both processes of their shared political nature and origins in the political settlement which underpins the country's transition (see examples of Indonesia and Nepal in PSRP's key publication for this section).

See further: [Moving Beyond Transitions to Transformation: Interactions between Transitional Justice and Constitution-Building](#)

Amnesties

Amnesties are an important tool in conflict, peace and transition settings. Our data reveals that:

- Hybrid or authoritarian regimes are more likely to grant amnesties than democratic states.
- They are most common in ongoing conflict, with no peace or transition negotiations ongoing.
- Amnesties are less frequent in early pre-negotiation stages of a peace process, becoming more common as the process develops.

In the later stages of the peace process, the legal effects of amnesties are likely to become increasingly lenient to their beneficiaries. Following the pre-negotiation phase, temporary amnesties relating to prisoner releases and sentence reductions are more likely.

When tied to a negotiated peace settlement, amnesties are likely to have a positive impact on the sustainability of peace. It is less clear whether this applies to amnesties more broadly, or only to amnesties that are either carried out in authoritarian settings or that exclude serious violations.

Where possible, when granted to combatants, amnesties should not be standalone measures but are better when tied into the broader peace process.

37% of amnesties between 1990 and 2016 were unconditional. State actors are more likely to benefit from unconditional amnesties than non-state armed groups, widening the risk of impunity.

Assisting with setting up amnesties in the post-conflict setting should be approached carefully as amnesties enacted at this time can offer widest level of impunity.

The design of an amnesty will shape its capacity to contribute to sustainable peace and influence inclusion and exclusion. Amnesties should be evaluated in terms of their:

- Legality (are they passed by law?)
- Legitimacy (were they democratically passed?)
- Feasibility (are all the required mechanisms in place to deliver the amnesty lawfully, effectively and fairly?)

Ensuring these mechanisms should involve detailed technical decisions, such as which categories of persons and crimes are covered, the types of conditions attached and the legal effects.

See further: [PSRP Amnesties, Conflict and Peace Agreement \(ACPA\) dataset](#) and the report based on this data, [Amnesties and Inclusive Political Settlements](#).

Gender and transitional justice

Among the most substantive commitments in these early stages are issues relating to support for victims and amnesty.

Most pre-negotiation ‘talks about talks’ remain extremely exclusive and inaccessible, reserved for prominent political or military figures who tend to be men, but help to shape how the ‘past’ is dealt with. There is a need for more focus on how women can be present and influential in these early discussions which help shape the trajectory of transitional justice.

In a majority of the ‘past-focused’ provisions arising from these early pre-negotiation agreements, which secure early commitments addressing accountability, women are still predominantly framed as victims (see Transitional Justice and Peace Negotiations with a Gender Lens).

Out of 992 peace agreement provisions between 1990 and 2016 addressing transitional justice at the framework/implementation stage, only 4% address gender in some form. Most of these address women as victims, some move beyond this encouraging women’s participation in policy design or implementation of core transitional justice mechanisms (see examples from Colombia, Joint Report of the Dialogue Table between the Government and the Revolutionary Armed Forces of Colombia and Yemen, National Dialogue Conference Outcomes Document).

A majority of the transitional justice mechanisms set out in the provisions of peace agreements are designed as non-judicial or quasi-judicial investigative and truth telling bodies. Within 102 peace agreements between 1990 and 2016 which included some sort of institutional mechanism or body to ‘deal with the past’ (combining all the peace process states), a truth-seeking mechanism was provided for in 44 agreements and inquiry commissions were part of 26 agreements (see Jamar, forthcoming in Transitional Justice and Peace Negotiations with a Gender Lens).

Women and men who provide testimony in truth-seeking mechanisms may require special protection measures as part of ethical, empowering and effective truth-seeking within transitional justice. This could be assisted by:

- Consideration of witness protection in early design stages.
- Security risks to participants being continuously reassessed.

- Continuous recognition for the need for transitional mechanisms to promote the active participation of women (see further, UN Women, A Window of Opportunity: Making Transitional Justice Work for Women).

Asserting the link between gender and transitional justice in the peace agreement may be an important first step to remedying a lack of attention to gender in the eventual measures of transitional justice (see Transitional Justice and Peace Negotiations with a Gender Lens).

PSRP Key Findings Series

This is part of PSRP's Key Findings Series. Key findings from all of our research themes are available at www.politicalsettlements.org/key-findings, including gender, constitution building, power-sharing, elections, and transitional justice.

For more information on the Political Settlements Research Programme, visit www.politicalsettlements.org.

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