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Development and Legitimacy in Transitional Justice

Report from workshops co-organized by the Working Group on Development and Peace at the conference "Building a Future on Peace and Justice", Nuremberg, 25 to 27 June 2007



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PEACE AND JUSTICE - BATIR LA
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Preface

For the past three years, FriEnt, the German Working Group on Development and Peace, has been focussing on the subject of transitional justice. This approach, with its wide range of truth seeking and justice mechanisms, lends itself to being promoted within a network of organizations like FriEnt. It has access to numerous actors – state and non-state – working on different levels and in various fields of society. FriEnt has organized a series of roundtable discussions for its member organizations, provided expertise and advice and has published a guidance paper on transitional justice and dealing with the past.

Based on this experience, FriEnt was invited to co-organize two workshops for the conference “Building a Future on Peace and Justice”, which took place in Nuremberg, Germany, from 25 to 27 June 2007. In cooperation with the German Federal Ministry for Economic Cooperation and Development, FriEnt prepared one workshop on the nexus between transitional justice and development. The second one, jointly organized with the Swiss-based Center for Peacebuilding (KOFF) – swisspeace, addressed justice mechanisms and questions of legitimacy.

In order to prepare the workshops and deepen the knowledge on both topics, several studies were commissioned. Furthermore, FriEnt provided a link to civil society organizations working on development, peace building and transitional justice in their respective countries and FriEnt member organizations invited representatives from their partner organizations to participate and share their experience in the discussions.

This report aims to share some of the ideas and major findings of the two workshops. It was made possible by the support of the German Federal Ministry for Economic Cooperation and Development. FriEnt thanks all individuals and institutions that contributed to the success of the workshops in many different ways.



Historical Nuremberg, Photo: Nuremberg Convention and Tourist Office



Conference opening in the historical courtroom 600 in Nuremberg, Photo: Ostermeier

The Conference in Brief



Photos (3): Ostermeier

The close links between peace and justice were at the centre of the international conference "Building a Future on Peace and Justice". Its main objective was to promote a sustainable peace concept that comprises key elements of justice, security, development and institutional reforms. In peace negotiations and post-conflict peace building, tensions between peace and justice frequently arise. The conference contributed to a better understanding of these tensions and pointed out ways of dissolving them.

Around 350 experts and top-level officials from 80 countries participated in the event, which was jointly organized by the Federal Government of Germany, represented by the Foreign Office in cooperation with the Federal Ministry for Economic Cooperation and Development, the Republic of Finland, the Hashemite Kingdom of Jordan, Crisis Management Initiative (CMI) and the International Center for Transitional Justice (ICTJ). In addition, seven cooperation partners, including FriEnt, contributed to the success of the conference.

The facets of the relationship between peace and justice are numerous and made the conference programme a pool of first-hand experience from

countries like Uganda, Sierra Leone, Guatemala, Nepal and the former Yugoslavia. Mechanisms discussed ranged from the International Criminal Court (ICC) to traditional approaches to dealing with the past in Mozambique. Human rights, reconciliation, mediation and legal frameworks were only some of the additional topics discussed by policy makers, civil society representatives and academics.

The conference results will be the foundation of the Nuremberg Declaration on Peace and Justice, which will set out political recommendations and ensure a long-lasting political impact. An expert team under the supervision of the President of Costa Rica, Oscar Arias, will present a first draft in 2008. The Nuremberg Declaration will build on the same holistic approach to peace which the entire conference programme embraced and will take equal account of peace, justice, development and institutional reform.

In addition, detailed conference proceedings will be published in 2008. They will contain not only summaries of the workshops and panel discussions but will also include background papers prepared for each conference workshop.

"We all know that peace, justice and development are interdependent But we also know that there is no master plan showing us how to help societies damaged by conflict find their own path, to link together peace and security, justice, reliable institution-building and the re-establishment of trust within a society."
Frank-Walter Steinmeier,
Federal Foreign Minister of Germany



Looking Back and Moving Forward – The Nexus between Justice and Development

The Workshop

Context and Aims

This workshop explored how development work and transitional justice mechanisms can mutually reinforce the process of overcoming socio-economic as well as political inequalities and contribute to sustainable peace and justice. It looked at ways of supporting sustainable processes through appropriate resource allocation and complementarity of actors, and considered the potential of, and challenges for, the design and implementation of transitional justice mechanisms and development programmes. The workshop was chaired by Dan Smith, Secretary General of International Alert, London.

Presentations

Ingrid Samset, researcher at the Chr. Michelsen Institute (CMI) in Norway, presented key findings on resource allocation for different transitional justice mechanisms in post-conflict Guatemala and Rwanda between 1995 and 2005. More particularly, she looked at (a) the variety of mechanisms funded, (b) follow-up mechanisms, and (c) the complementarity of actors.

Pablo de Greiff, Director of the Research Unit at the International Center for Transitional Justice (ICTJ) in New York, focussed on the design and implementation of two particular transitional justice mechanisms: Disarmament, Demobilization and Reintegration (DDR) and reparation programmes. Of special interest were (a) the main challenges in conceptualizing and

designing relevant programmes and (b) the impact of the two approaches on the relations between victims and perpetrators.

Arjun Karki, President of Rural Reconstruction Nepal (RRN) looked at prospects for transitional justice and development in Nepal. Major questions were (a) how socio-economic and political justice may be defined in this country, (b) what the main challenges for an integrated approach to transitional justice and development were in Nepal, and (c) what lessons from other experiences seem applicable.

Rama Mani, Director of the International Centre for Ethnic Studies (ICES) in Sri Lanka, analyzed more closely the nexus between development and transitional justice. Her particular interest was to identify links between development programmes and transitional justice mechanisms in order to address not only past atrocities but also deal with root causes of violent conflicts and thus to ensure processes of social justice.

Discussion Highlights

Linking Legal and Socio-economic Dimensions of Peace and Justice

Three dimensions of justice were identified that correspond to understandings – and expectations – of what "peace" and "justice" mean to different actors and communities in post-conflict societies:

- Rectificatory justice: Rectifying the injustices that are direct consequences of the war (i.e. past human rights abuses, war crimes).

"Post-conflict economic recovery poses distinctive developmental challenges. Civil wars are often the product of developmental pathologies like weak economic governance, inequality, exclusion and unemployment. Sustainable peace and recovery require that these structural deficiencies are addressed."
John F. E. Ohiorhenuan,
Senior Deputy Director, Bureau for Crisis Prevention and Recovery, UNDP





Rama Mani, Pablo de Greiff, Photos (2): Ostermeier

- Legal justice: (Re-)establishing the rule of law and providing access to justice for previously marginalized groups.
- Redistributive justice: Addressing socio-economic injustice, stemming from structural injustices and distributional inequalities that are often causes of conflict.

In order to facilitate looking back and moving forward, all three dimensions of justice have to be addressed. Even perfect judicial processes will not prevent violence from flaring up again if basic social, economic and political injustices are not addressed. A concentration on human rights issues to the detriment of the social and economic dimensions might preserve the status quo, entrench major social inequalities, and even contribute to deepening social injustices rather than bringing about necessary change. As the example of Nepal showed, efforts to build peace are often urban-centred and top-down, concentrating on questions of access to political institutions and positions. For rural communities, however, justice and peace means access to health, schooling or drinking water.

In order to bring the different dimensions of justice and peace to bear, it is important to look at who is dominating the discourse and practice on justice and peace in a post-conflict situation. Very often, even new actors on the political scene may be part of the old elite and may not be interested in initiating essential economic, political and social changes. In many cases, partners chosen by the international community do not have a sufficiently broad base in a post-conflict society. The example from ex-Yugoslavia

showed that the international community often sidelines important civil society groups for fear of becoming engaged with groups that might be considered too political, such as victims' and ex-combatants' associations.

An inclusive understanding of justice and peace – it was argued by several participants – also has to look at the international responsibility for social, economic and political injustices. Justice and peace would thus not be a matter of “us” and “them”, but of “all of us”. This was exemplified by European countries like Germany, Norway and Finland, that also had to deal – and are still dealing – with truth and reconciliation after World War II. Additionally, examples of responsibilities for recent economic injustices on a global level were mentioned: Should they be included in demands for the establishment of truth and reconciliation processes?

Lastly, on the conceptual level, participants stressed that the term “transitional” justice should not ignore the fact that needs for justice and peace are very real, expressing the urgent desire for stability after highly volatile conflict situations.

Designing More Holistic Transitional Justice Mechanisms

Very often, the design of transitional justice mechanisms starts from a civil and political rights understanding, ignoring the social and economic dimensions of violent conflicts. The South African Truth and Reconciliation Commission was given as an example falling short of addressing the social and economic injustices of the apartheid system. The commission did not reveal underlying patterns that would have to be changed in order to bring about sustainable peace and justice.

On the other hand, it was argued, that the legal sphere itself provides starting points for a more holistic approach, e.g. in the form of the International Covenant on Economic, Social, and Cultural Rights. This would allow for legally pursuing not only violations of civil and political but also of social and economic rights. At the

same time, a complementary approach that strategically combines different mechanisms would ensure a holistic process: e.g. setting up tribunals in combination with institutional reform that takes into account issues of access to legal institutions for otherwise marginalized groups. Another example would be a systematic analysis of material from lawsuits with a view to highlighting structural aspects of crimes that were linked to social and economic injustices.

Applied in this way, transitional justice mechanisms may provide entry points and open up avenues to societal change and transformation without which, in most cases, justice and peace will not be achieved.

“Holistic”, however, it was suggested, may also be understood in a geographic sense: Conflicts have regional dimensions, so the same may apply to the quest for peace and justice. It is therefore worth considering a more regionally oriented and not just a country based approach when designing a transitional justice strategy. This regional focus would then enable regional patterns of a conflict to be addressed.

Linking Resource Allocation to a Holistic Understanding of Justice and Peace

It became clear that donors' funding practices very often do not take sufficient account of the wide range of transitional justice mechanisms which each have their specific functionality. Thus policy makers and practitioners should not overload one mechanism with too many different aims at a time – often resulting in high expectations – but should strive for complementarity of the different functions.

As seen in Ingrid Samset's study on Guatemala and Rwanda, there is a growing trend within the international donor community to prioritize “technically” oriented security approaches such as Security Sector Reform (SSR) or DDR. By comparison, there is much less support for reparations. This means that the international community spends more thought and money on those responsible for atrocities than on those who survive them. A similar concentration may be



Workshop participants discuss the nexus between justice and development

observed with the focus on legal or truth finding mechanisms that prioritize civil and political rights over mechanisms geared towards social and economic change.

On the other hand it was recognized that important mechanisms like reparations do not get the same level of attention, either nationally or internationally. However, it was also stressed that reparations themselves should not be paid for by international donors. Reparations – expressing a sense of responsibility for injustices committed – should be paid by those who are responsible. This may well include international actors – but should not take place via development aid funds. Development organizations, by contrast, could provide technical assistance for the design and implementation of reparations programmes and support local groups involved in reparations discussions. Indeed, they could also address international institutions and governments with a view to creating the (economic) conditions required for the establishment of a reparations programme that is also supported by those who share the responsibility for the atrocities.

In conclusion, it was agreed that a balanced approach is needed that allows for a combination of transitional justice mechanisms according to the exigencies of time and place. At the same time, this presupposes a long-term commitment as well as actors working in a complementary way, as none could provide resources for a complete process. The challenge is to combine the various aspects, and not to confront people with a choice between justice and development.

Interviews

Rwanda: Fostering Social and Economic Reintegration and Reconciliation

Since 2001, Gloriosa Bazigaga has been working for International Alert Rwanda, an international non-governmental organization that commits itself to the peaceful transformation of violent conflicts. Having worked in Rwanda since 1996 and on justice and reconciliation issues since 2002, Alert accompanied the Gacaca programme between 2003 and 2006 to promote greater engagement by women in all aspects of the Gacaca process.

“In a post genocide context, justice is a pledge and a condition of reconciliation. In Rwanda, too many people were implicated and the crimes committed were too serious to think of a Truth and Reconciliation Commission as in South Africa or to consider an amnesty.

Gacaca was intended to work in two dimensions: It was to counter impunity and to promote reconciliation. It is regarded as a success mainly because it is processing a far greater number of cases than could possibly have been achieved through the conventional justice system. However, the process itself has unavoidably re-awakened raw memories and opened dangers of reviving and refreshing latent animosities. Admission of guilt and public apology are not always valued by genocide survivors as substitutes for retribution. This means that the extent to which Gacaca has contributed to reconciliation is largely unknown.

In this situation, International Alert has recently embarked on a new partnership project with four Rwandan organizations to provide support for appropriate economic development with a view to reconciliation at community level. It aims to contribute to the national reconciliation process by rehabilitating and reintegrating vulnerable persons amongst the survivors of the genocide, ex-combatants, and ex-prisoners. An integral part of the project's approach is to engage the energies and creativity of women as much as men in this work, and to promote dialogue between contending groups to im-

prove mutual understanding and identify new solutions to persistent problems.

International Alert initiated this project as we realized that as important as justice mechanisms (Gacaca jurisdictions, the International Criminal Tribunal for Rwanda (ICTR) based in Arusha and the national courts) are to deal with the past in Rwanda, the reconciliation process still needs many more efforts. These have to include trust building and restoration of social relationships.

We have identified traumatization and poverty as major constraints for trust building. Therefore, we include economic development components in our current project, which has the following goals:

- Promoting entrepreneurial skills of vulnerable persons.
- Enabling them to understand the importance of mental health, referring them to trauma centres and encouraging them to help each other.
- Creating space to identify factors of division, to break with stereotypes and to voice opinions in a trustful environment.

The project aims to bring about changes in attitudes, behaviour and structural conditions in Rwanda that shall lay the foundations for peaceful, stable and prosperous social and economic development. In this, Alert recognizes that equitable economic improvement makes a substantial contribution to peace building. This is well illustrated by the example of ex-combatants: Their economic reintegration is still a most serious problem. The majority of those



Gloriosa Bazigaga

Sofia Macher



who benefited from a demobilization package did not use their allowances well. Even those who set up associations to maximize the potential benefits were insufficiently supported to make the best use of their one-off payments. Thus, at community level, there is constant fear that ex-combatants might go back to war. This creates physical and psychological insecurities on the part both of victims and ex-prisoners as well as the whole community. Opportunities for dialogue diminish and the threat of further uncontained conflict looms large.

On the other hand, it can be observed that the application of transitional justice mechanisms may have disastrous economic consequences, as with the impact of massive imprisonment on the economic development of households. According to the statistics of the National Service of Gacaca Jurisdictions, approximately 10 per cent of the population could be imprisoned by the end of this year because of their implication in genocide crimes. This is a loss of human resources for economic growth certainly on household level.

In this situation, the role of the international agencies is to help the state's leaders and civil society to make good choices in order to find solutions. It should initially be recognized that court-based transitional justice mechanisms are a right response to the consequences of the conflict and the violence it generates, but not necessarily to its root causes. They must be supplemented by the rule of law – a strong, professional and independent national justice system, human rights advocates, security sector reform and good governance – which builds strong and trustful institutions and promotes inclusiveness, economic growth, and fair distribution of resources.

The international community should make sure in its intervention that there is an appropriate balance between the investment granted to deal with the past and that granted to build the future. The attention should be directed much more to the future, the past being regarded as a source of lessons.”

Peru: How Reparations Contribute to Inclusion

Sofia Macher is a former member of the Peruvian Truth and Reconciliation Commission. She has received several human rights awards and currently works for the Institute for Legal Defence in Peru.

Ms. Macher, what are the most important aspects of the Peruvian reparations programme? The Peruvian Truth and Reconciliation Commission recommended implementing an integral reparations scheme, which includes six programmes addressing individual as well as collective aspects of reparation: Symbolic measures, mental and physical health, education, legal documentation and individual as well as collective payments. Most victims were from the rural areas of Peru and belonged to the indigenous or other disadvantaged parts of the Peruvian population. The reparations scheme has to cover a wide range of human rights violations against these Peruvian citizens.

In 2006, the Peruvian Congress passed a reparations law. Two mechanisms were established for implementing the law: The first one is a Reparations Council, which is in charge of victims' registration and certification. The second one is the High Commission responsible for designing the future Peruvian reparations policy and coordinating other state institutions which are involved in the implementation of this policy.

The reparations programme faces many problems, for instance language barriers and com-

munication between the capital and remote parts of the country. The verification process becomes difficult when victims do not have any kind of identity papers and human rights violations have not been formally denounced. With regard to sexual violence such as rape, many women are ashamed of officially reporting the abuse. In addition, verification becomes impossible or extremely expensive in such cases due to psychological tests etc.

The key question is how to organize a reparations process which respects the dignity of victims and which does not create wrong expectations.

In relation to the implementation of the reparations programme, the greatest challenges are the insufficient management capacities of state institutions. On the one hand, this is a financial problem, considering the number of victims, namely 500,000. But it is also a question of attitudes: Many bureaucrats don't understand the meaning of reparations. This is one reason for the necessity of developing a public reparations policy.

How can reparations contribute to building a peaceful future and to reconciliation in Peru? Reparations are a very powerful tool for inclusion, for restoring dignity and for recognized citizenship. With integration, I mean that reparations are a great opportunity for the state to reach the population in the mountains. If the public recognizes their suffering, they feel that they are being taken seriously by the state, that they are being taken care of.

Another positive effect of reparations can be institutional reform in a way that the relationship between state and victims is improved.

The Truth and Reconciliation Commission played an important role in promoting this change in relationships as it made the victims' voices publicly heard. For the first time in history, there was a change in understanding conflict and in listening to the disadvantaged parts of the population. Reparations also contribute positively to reconciliation, which is a long process and which should help to close the gap between indigenous and urban populations.

What are the challenges for the long-term success of the reparations programme?

Firstly, it is difficult to cover all crimes in the entire country. Secondly, we have to ensure that all victims are registered and that the same criteria are applied to all cases in order to prevent any kind of discrimination. Time is also an important factor, as many poor victims have been waiting for 20 years for a reparation payment.

How could international development agencies and political actors support the design and implementation of the programme?

We need their assistance with respect to the registration process, which is very difficult and which requires high quality organizational and management skills. The international community could provide us with lessons learnt and best practices from other countries. In addition, assistance with regard to planning the scheme and creating a fund could be very helpful.

How do stability approaches (SSR, DDR) influence the population's perception of peace and reconciliation in Peru?

Institutional reforms are extremely weak in Peru. Four years after the presentation of the Truth and Reconciliation Commission's report, reforms are developing very slowly. However, there are also some positive signs. I will never forget the moment when Congress approved the reparations law. I was there together with many victims, who appreciated that their suffering was finally recognized by the state. They had the feeling that they had received something from the state for the very first time.

Justice is another important element of the process of reconciliation and is a principal pillar of democracy. The Truth and Reconciliation Commission presented the judiciary with 47 cases for investigation. Today, 23 of them have gone to trial; the rest are still under investigation. The Commission also recommended institutional reforms in the sectors of justice, security (military and police) and education. Not much has been done in this direction so far, although institutional reforms are the key to the prevention of future armed conflicts.

Justice Mechanisms and the Question of Legitimacy: Concepts and Challenges

The Workshop

Context and Aims

The legitimacy of transitional justice mechanisms is particularly vital for their acceptance in post-conflict societies and thus for their potential to contribute to peace and justice. The classical notion that sees legality of sovereign state power as the sole basis of legitimacy is, however, increasingly challenged by social and cultural sources of legitimacy. The workshop aimed to clarify concepts and dimensions of legitimacy underlying different transitional justice mechanisms, which are used and perceived by different internal and external actors. It was chaired by Ambassador Jürg Lindenmann from the Swiss Federal Department of Foreign Affairs, Bern.

Presentations

Barbara Oomen from the Dutch Roosevelt Academy in Middelburg proposed a model for a basic understanding and definition of legitimacy and legitimization processes of transitional justice mechanisms. Key issues, in her view, were (a) ways and means to establish legitimacy and (b) actors involved and to be involved. She exemplified her model by looking more closely at legitimacy issues of Rwanda's post genocide multi-layered justice mechanisms.

Refik Hodzič, Spokesman for the Registry and Chambers, International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague, concentrated on the changing perceptions of legitimacy in Bosnia and Herzegovina as international justice gives way to the strengthening of the national criminal justice system. Of particular interest were (a) the change in perceptions of the ICTY since the establishment of the Bosnian War Crimes Chamber (WCC), (b) effectiveness and perceptions of the WCC, and (c) challenges linked to legitimacy as well as perceptions of legitimacy.

Pierre Hazan, researcher and journalist in Geneva, presented a summary view on truth seeking and justice mechanisms in Lebanon. His presentation concerned questions of legitimacy

with a view of Lebanon's historical context since the Taif Agreement and the current dynamic of the establishment of the Hariri Tribunal.

Lynn Maalouf, journalist and ICTJ Consultant in Beirut, presented a paper co-authored with Habib Nassar from Human Rights First in Washington that deals with the question of truth seeking, justice and legitimacy in Lebanon with a particular focus on (a) different concepts of legitimacy underlying truth seeking and justice mechanisms and (b) perceptions of different actors or communities and the question of legitimacy.

Discussion Highlights

The Concept of Legitimacy

Panelists as well as workshop participants stressed the importance of legitimacy for the success of any transitional justice mechanism and suggested including issues relating to legitimacy in any comprehensive transitional justice strategy. Legitimacy should, in fact, be established as a criterion in order to assess the value of transitional justice institutions and their potential contribution to sustainable peace at any given time.

It was stated, however, that little conceptual thinking has been done so far. Thus Barbara Oomen's model was much appreciated. It proposes three dimensions of legitimacy:

- the procedural and substantive input into the transitional justice process;
- the voluntary adherence to the authority or entity (demos) that sets up the transitional justice institutions; and
- the output of these institutions.



Barbara Oomen, Photo: Ostermeier



Photo: Ostermeier

According to Oomen, legitimacy can only be established and strengthened in all three dimensions. Furthermore, it demands a communicative strategy geared towards the justification and explanation of the choices made as well as the involvement of all stakeholders in processes of consensual rather than majoritarian decision making.

Since post-conflict situations are often characterized by deeply divided societies and severely delegitimized political institutions, she argued in favour of an empirical, people-centred understanding of legitimacy as opposed to merely assuming legitimacy on a normative basis. This also implies an explicit discussion about the outcome of a specific institution – whether it's truth-telling, reconciliation, or retribution. At the same time legitimacy is a dynamic concept. Assumptions and perceptions change over time and must be continuously monitored. Hence, the establishment and maintenance of legitimacy is itself a continuous process.

Rwanda's multi-layered justice mechanisms exemplify these thoughts: The ICTR was not able to improve or maintain legitimacy on the basis of its international legal foundation because of its costly and slow procedures and through its failure to incriminate members of the Rwandan Patriotic Front (RPF). Domestic courts, on the other hand, gained legitimacy over time by raising numbers of verdicts. At the same time the legitimacy of the authority (demos) which established the courts is challenged because of deep divisions within Rwandan society. And the national Unity and Reconciliation Commission as well as the Gacaca left people dissatisfied by only emphasizing reconciliation at the

expense of individual accountability and emotions like anger and grievance.

Establishing and Maintaining Legitimacy

During the presentations and discussions, several elements were highlighted which should be considered and strengthened over time in order to ensure adherence to transitional justice mechanisms that could contribute to justice and peace:

The inclusiveness of a mandate is crucial: If mechanisms only deal with some atrocities, the outcome may easily be considered as victors' justice. This point was clearly illustrated by the case of Rwanda where a host of transitional justice mechanisms deal with the genocide in 1994 committed by members of the old regime and militia. However, those responsible for war crimes and crimes against humanity committed since 1990 among the now ruling RPF are not systematically called to account.

Processes should be open, according to pre-set norms and values that are acknowledged as universally valid or locally adhered to and explicitly communicated to all concerned. To take again the case of Rwanda: The Gacaca seem to be more widely accepted within Rwanda as they are deemed customary as well as in line with national legislation, making room for some adjustment to modern Rwanda and the exigencies of the post genocide Rwanda with its high number of perpetrators. By contrast, the universal validity of international human rights law as the basis of the ICTR did not seem to have proven itself by not preventing the genocide in the first place, so how could it be reliable afterwards?

A communicative strategy that explains why at a certain point in time specific mechanisms are put in place and enforced is key. The example of Bosnia and Herzegovina is a case in point: For too long, the ICTY had looked at the issue of legitimacy only as far as it concerned the international community and not with respect to the local constituency. At its beginning, the ICTY was very poorly explained to the population. An outreach programme was only put into place after the legitimacy of the ICTY was

severely undermined in the region. By contrast, the WCC directly started out with such a programme including a network of NGOs acting in the communities through outreach and witness support.

The transition from internationally driven mechanisms to local ownership should be part of any strategy for legitimacy from the outset. It has to be prepared early on and accordingly entails early investment in local structures. Comparing the experiences of Bosnia and Herzegovina and the ICTY with Lebanon and the Hariri Tribunal, Pierre Hazan cautioned against remote and isolated legal mechanisms which are not complemented by political and financial support for other reform processes and initiatives. The need for complementarity of different mechanisms and actors was voiced by several participants. In South Africa, for example, the Truth and Reconciliation Commission subsequently lost credibility because social justice was neglected. Thus, the impact of the political context and socio-economic measures on the legitimacy of individual transitional justice mechanisms should not be underestimated.

Finally, elements like the impact of symbolic and implicit messages contribute to maintaining or losing legitimacy. The WCC for example was set up in a former military court building in Sarajevo where Serb civilians were assumedly tortured and killed during the war. In addition, accessibility in terms of distance and language, the selection of cases, the pace of procedures, and their cost-effectiveness are vital for a comprehensive legitimacy strategy.

Whose Legitimacy? – The Legitimacy of Internal and External Actors

Whose perception of legitimacy will constitute the basis for building justice and peace – under the circumstances of a divided society and dysfunctional institutions? Referring to internal actors, participants stressed the importance of broad ownership; a wide range of stakeholders should be included – particularly marginalized groups, women, youth and victims' associations – and mechanisms should be devised that allow for a continuous inclusion of others. However,

the voluntary compliance to the authority does not exist or is very difficult to establish in fragmented societies with mutually excluding memories and "truths" about the violent past. In Lebanon, Lynn Maalouf explained, generally two different perceptions about the Hariri Tribunal prevail: One part of the political elite and society considers the Tribunal a tool to finally introduce the rule of law, whereas the other part regards the Tribunal as an illegitimate politicized instrument. In Bosnia and Herzegovina, there was a similar (ethnic) interpretation of the Tribunal. As Refik Hodžić put it: "The 'popularity' of the Tribunal was inversely proportionate to the number of those indicted coming from the ethnic community in question".

As regards international actors, their legitimacy may be challenged because of their role in the conflict, own interests or double standards. Even where the legal basis for legitimacy of the international community is accepted, it is often contested on moral grounds. Rwanda, Bosnia and Herzegovina, and Lebanon are cases in point: Since the international community failed to adhere to its own standards, did not prevent genocide and gross human rights violations and implemented Security Council Resolutions selectively, its norms and values as well as the instruments established upon these norms are perceived as "fig leaves" or "tools of the West". Moreover, the point was made that international actors often impose their own agenda on a local situation by defining needs without taking into account historical processes and presenting false dichotomies between peace and justice.

Thus, the legitimacy of internal and external actors could be defined as fragile for different reasons. Nevertheless, investing in national and local structures at the very beginning is crucial, since accessing, identifying with and adhering to those entities will (re)shape the everyday life of communities. The international community as a legitimate entity for setting up transitional justice mechanisms remains rather abstract and remote for large parts of affected societies. However, in a situation of divided societies or a context of ongoing discrimination and deprivation, legitimacy might be difficult to maintain. Additional elements are important then as a principled commitment to socio-economic justice.

Interviews

Bosnia: Legitimacy of Truth Seeking and Justice Mechanisms

Adnan Hasanbegović works for the Centre for Nonviolent Action in Sarajevo. The Centre offers training in peace building, produces documentaries and organizes public forums with ex-combatants from Bosnia-Herzegovina, Croatia, Serbia and Montenegro.

Where does Bosnian society stand today?

Bosnians talk about the war; the war is part of public discussions – but they talk about it in a wrong way. People are still occupied with justifying war crimes. They for instance defend bombings as part of a necessary defence strategy or even excuse Srebrenica as a needed revenge for other crimes.

Too often, the truth is either ignored or trivialized. Every conflict party polarizes – emphasizes only its own problems. Collective narratives focus on victimizing their own population. On the grassroots level, we can recognize positive change: People from different sides are starting to communicate. But the political elite still uses “muscle rhetoric”.

How does the Centre for Nonviolent Action contribute to truth-seeking?

We produced several documentaries, which were broadcast on Bosnian, Croatian and Serbian television. The most recent documentary portrays the relationship between Serbs and Croats and



is called “All wish to cast a stone”. Ten years after the end of the war, ordinary citizens, former combatants, victims and refugees self-critically examine their painful histories and discuss unresolved issues which have arisen from their violent past.

Instead of meeting directly, their dialogue is simulated through the film: Participants independently ask each other questions and provide answers to them. Some of the questions addressed are: What is justice? How can we reconcile? Who is responsible and how can society contribute to peace building and dealing with the past?

How is the shift from international to national justice mechanisms perceived in Bosnia?

Around 6,000 war criminals are still not being prosecuted, including many “big fish”. War crimes and their investigation are very present in Bosnian politics; recently discovered graves and the trials at the International Criminal Tribunal in The Hague dominate the news. But people are tired of this news, especially because many politicians make use of war crime history within their nationalistic political agenda.

The International Criminal Tribunal in The Hague is often perceived as a danger: People believe that the Court prosecutes their national heroes. In Bosnia, many people react extremely emotionally when an accused Serb is found not guilty. Then the victimization pattern is activated again: “The West and the entire Christian world are against us!”

But at the same time the newly established national War Crimes Chamber is rejected by a large part of society. The reason is the same as for the Tribunal in The Hague: National heroes are prosecuted for having committed war crimes. The solidarity with the offenders should not be underestimated. As long as it exists, it will be difficult to create broad acceptance for a tribunal – regardless of whether it operates on a national or international basis.

How do you see the role of the international community?

External actors play a crucial role in the Balkans. The international community itself has been

Adnan Hasanbegović

Lokman Slim



part of the conflict, because it has influenced the war in many different ways – deliberately or unintentionally.

Apart from the Tribunal in The Hague, the international community supported us with regard to reconstruction and to the making of our constitution. It was important that the international community forced our national politicians to avoid suppressing any minorities.

However, the role of the international community should also have its limits. Some even call for the international community to change our constitution. But we cannot expect others to take over our own responsibilities. We need to take our destiny in our own hands – in a peaceful manner.

Lebanon: Civil Society Needs to Strengthen Legitimacy of Truth Seeking

Lokman Slim and Monika Borgmann founded Umam Documentation & Research in Beirut in 2004. This association for cultural and artistic exchange houses an archive on the Lebanese civil war and organizes roundtables and exhibitions about civil violence and war memories.

How do the Lebanese people perceive the Lebanese civil war, which took place from 1975 to 1990?

The civil war is a taboo in Lebanese society. More than 15,000 people disappeared during the 15 years of war, but no one talks about them. The political elite does not have any interest in seeking the truth and Lebanese civil society is too weak.

The question of dealing with the past has provoked further divisions within Lebanese society, with the post-war regime calling for forgiveness and “closing the files” of the past, and a minority insisting that superficial forgiveness can only lead to further violence, explicit or latent, and therefore anything but a truly peaceful future.

Truth seeking is usually reduced to issues of everyday politics. It is a real challenge for Lebanese society to reach or to maintain a certain level of questioning which will genuinely contribute to truth seeking.

How does your work contribute to truth seeking?

We have set up a documentation centre about the civil war. It is the first collection of a civil society organization and the only one that addresses victims as well as victimizers. During the war in summer 2006, parts of this unique archive were destroyed. Therefore, we have started to digitalize the collection in order to prevent it from any further damage.

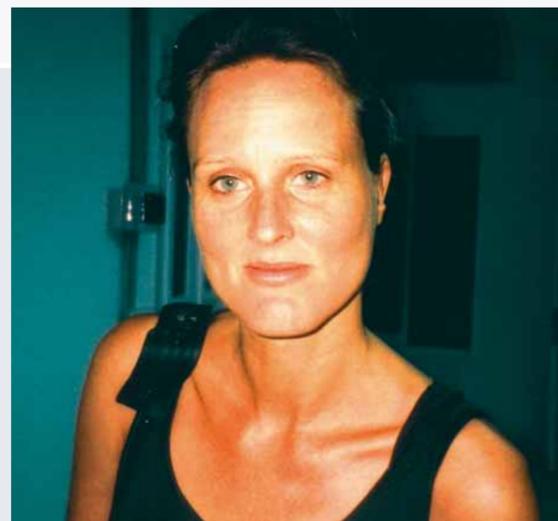
We also organize events related to violence and memory in our Hangar in the suburb of Haret Hreik, where the Hezbollah headquarters are also situated. We believe in direct action and host roundtable discussions and exhibitions.

How did the murder of President Hariri affect truth seeking?

After the assassination of Mr. Hariri, the Lebanese people, for the first time in history, demanded the truth. This was a good opportunity to start a deeper truth seeking process, but the Lebanese people so far have not seized this chance. The dynamic was also lost due to the war with Israel in 2006, when many people were mostly interested in the truth about this most recent war.

Will the Hariri Tribunal have any effect on dealing with civil war crimes?

The tribunal could be used as a precedent for other cases. But it is in many ways exploited for power politics – the opposition accuses the tribunal of undermining Lebanese sovereignty



Monika Borgmann

slates of former warlords. Therefore, legal prosecution of war crimes is no longer possible. Instead, we have to turn our efforts to other mechanisms of dealing with the past.

What does Lebanese society need in order to deal with its past in a more open and healing way?

Lebanese media need to be more independent. Today they are primarily monopolized by those in political power. So the chances of raising transitional justice issues in a sustainable way are small.

Secondly, the laws regarding the right of association need to be revisited. It is still far too difficult to obtain the status of a non-governmental organization (NGO), an important prerequisite for civil society commitment.

Lastly, civil society needs to promote an open debate about legitimacy as well as the necessity of truth seeking.

and the Hariri establishment influences the public debate with strong public relations campaigns. Many see the tribunal as a tool of revenge rather than as a neutral legal instrument.

In 1991, an amnesty law was passed by the Lebanese Parliament and officially cleaned the



Exhibition in the Hangar, Beirut

Looking Forward: Further Work for FriEnt

The results of the two workshops touch upon several of the conference themes of building a future on justice and peace. These include (a) the importance of a broad-based understanding of justice and peace, (b) a process oriented approach that is empirically grounded, people-centered and socially inclusive, and (c) a balanced, long-term strategy with complementary activities on different levels and with various state and civil society actors.

A transitional justice approach understood in these terms provides FriEnt member organizations with an opportunity to explore much more in depth the interface of their work in human rights, peace building, institutional reform and socio-economic development. In order to support this exploration, FriEnt will continue to work on transitional justice and is planning various activities for the coming year. Two are already taking shape:

The Nexus between Transitional Justice and Development

Building on the studies and the workshop discussion, FriEnt will focus on the nexus between transitional justice and development and will further explore how development programmes and transitional justice mechanisms can mutually reinforce the process of overcoming socio-economic as well as political inequalities and contribute to sustainable peace. As a first step, FriEnt will participate in an international advisory group to a research project on transitional justice and development, carried out by the International Center for Transitional Justice. FriEnt will support dissemination activities, feed back results to its member organizations and provide advice on ways of adapting and operationalizing the research findings in their work.

Engaging with Victims and Perpetrators

Engaging with victims and perpetrators is probably one of the most sensitive and complex issues for external actors working on development and peace building: It starts with defining certain groups as victims or perpetrators in highly politicized contexts. It not only involves legal questions and moral dilemmas, but sometimes also touches on the vision an organization is striving for. What are the options for agencies having an explicit victim oriented approach? What concepts are needed to better ensure a balance between victim oriented approaches and the security approaches (SSR, DDR) often pursued by international donors? How do transitional justice mechanisms take into consideration victims and perpetrators as two – sometimes heavily intertwined – and in any case essential social groups in post-conflict societies? FriEnt intends to organize a workshop in 2008 to explore some of these issues and their importance to its member organizations as well as other actors.

Discussions which started during the workshops will be continued, Photo: Ostermeier



Further Reading

Conference Website

Conference "Building a Future on Peace and Justice"
<http://www.peace-justice-conference.info>

The documents section of this website contains background papers on all workshop topics.

Studies prepared for the Conference Workshops

Pablo de Greiff: Contributing to Peace and Justice. Finding a Balance between DDR and Reparations
http://www.frient.de/downloads/Greiff_Contributing%20to%20Peace%20and%20Justice_2007.pdf

Barbara Oomen: Justice Mechanisms and the Question of Legitimacy. The Example of Rwandas Multi-layered Justice Mechanisms
http://www.frient.de/downloads/Oomen_Justice%20Mechanisms%20and%20Legitimacy_2007.pdf

Iavor Rangelov and Marika Theros: Maintaining the Process in Bosnia and Herzegovina Coherence and Complementarity of EU Institutions and Civil Society in the Field of Transitional Justice
http://www.frient.de/downloads/Rangelov%20Theros_Maintaining%20the%20Process%20in%20BiH_2007.pdf

Ingrid Samset et al., Maintaining the Process? Aid to Transitional Justice in Rwanda and Guatemala, 1995-2005
http://www.frient.de/downloads/CMI_Maintaining%20the%20Process_2007.pdf

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Natascha Zupan and Sylvia Servaes: Guidance Paper Transitional Justice & Dealing with the Past
http://www.frient.de/downloads/FriEnt_Guidance%20Paper%20Transitional%20Justice_2007.pdf

FriEnt Website Transitional Justice Pages
<http://www.frient.de/en/topics/justice.asp>

Interviews Background Information

Centre for Nonviolent Action (CNA)
http://www.nenasilje.org/cna_e.htm

Instituto de Defensa Legal
<http://www.idl.org.pe/>

International Alert's work in Rwanda
http://www.international-alert.org/our_work/regional/great_lakes/rwanda.php

Umam Documentation and Research
<http://www.umam-dr.org/>

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