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Beyond Transitional Justice

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Beyond Transitional Justice?

1. Introduction

During the last decade, the term 'transitional justice' has become a kind of buzzword. It is extensively used within the UN system as well as within many International NGOs and national governments to describe a wide range of measures of how to deal with a violent past. Interestingly, the concept of transitional justice was coined and elaborated mainly outside the academic context. While closely linked to academic debates, many features of the concept are actually a result of developments in the field and on the political level. Moreover, during the last 20 years the meaning of transitional justice has been broadened, something made explicit by the Kofi Annan Report *The rule of law and transitional justice in conflict and post-conflict societies* from 2004, where not only a variety of judicial, but also non-judicial mechanisms are proposed (Annan 2004). Hence, one of the first questions that arises is precisely whether there are any normative, institutional, psychosocial or social strategies that are not covered by the notion of transitional justice.

One major problem of such an inclusive definition of transitional justice – not the least for academics – is that its analytical value is quite limited. This amorphous notion might be seen more as a proxy for an ambiguous and messy compilation of almost any measure, method or other approach of coping with massive violence in a country. If this is so, why bother using the concept at all? The answer, in short, is that such an influential concept employed by powerful organisations becomes itself – irony aside – a battlefield where meanings are constructed, imposed or sanctioned. Thus, looking at what the debates on transitional justice are and, even more importantly, at what lies beyond, becomes not only a formidable academic

task but also necessarily an exercise in analysing political power. This latter assertion is exactly the opposite of what some proponents of transitional justice would espouse.

With this volume we want to present a small but hopefully meaningful contribution to the discussion on transitional justice. Each contribution is based on extended periods of fieldwork and/or direct involvement in the processes – and problems – of transitional justice at the local level. Although the charge of a certain eclecticism can be levelled against this volume, nevertheless, the geographical range of the examples is fairly wide. More importantly, the topical coverage is broad. What is most important though, is that there is a common leitmotif linking the articles: namely, the question of what lies beyond the notion of transitional justice and how that can elucidate the processes of transitional justice.

2. The two histories of transitional justice

Before discussing the main assumptions, approaches and contradictions inherent to transitional justice, it is certainly helpful to look at the history of the concept. The first major question that arises in this regard is probably that of how old the concept might really be. As with many other concepts from the multilateral or bilateral security and development policy context, transitional justice, much like other concepts such as Good Governance or Sustainability, seems to have been always there.

Going by age, transitional justice can be considered as a young adult. The first explicit mention of the term dates back some 20 years, to the early to mid 1990s. While this seems to be a quite long time-span, especially given the dynamics of the international policy discourse, it has to be taken into account that transitional justice at that time had a very different meaning compared to nowadays. In fact, it might even be advisable to speak about two histories of transitional justice; histories that, on the one hand, share some important similarities, but, on the other, deal with different contexts and challenges.

The 1990s history of transitional justice is intrinsically linked not only to the fall of the Iron Curtain and the democratisation processes in Eastern Europe, but also to the end of military dictatorships in Latin America and

Asia. During the 1980s, the US policy apparatus developed the concept of 'democracy promotion' as one of its main approaches in foreign affairs (cf. Robinson 1996: 73ff) The democratic transitions in Argentine and Chile became the first test cases on the American continent and, via instruments like truth commissions, also the first occasions when the democratic transition became linked to the concept of transitional justice (cf. Stotzky 1993: 187ff).

Of course, the Nuremberg Trials, which held accountable leading figures from Nazi Germany after their defeat in World War II, served as the key background against which these new processes unfolded (cf. Teitel 2002: 373). Mainly relevant in that regard was, as Thomas Carothers (2002) has called it, the 'transition paradigm': the process of (re-)democratisation in the sense of the denazification (historically) or demilitarisation (in Latin America) of domestic politics through the instruments of the judiciary.

It was in the early 1990s that these processes of transitional justice in Latin America were linked to the transition processes in Eastern Europe. Neil Kritz (1995: xxix) for example recalls a conference in Salzburg, Austria, in March 1992, where politicians, journalists and other members of the civil society from Latin America (e.g. Uruguay, Argentine) and Eastern Europe (Hungary, Bulgaria, Lithuania, Czechoslovakia) met to discuss how "to cope with the legacy of that ousted system" (ibid.).

It was one of the first occasions when contemporary problems of transitional justice – who is to be seen as a victim, or what to do with the mass of 'little' perpetrators – were addressed and systematically discussed. Additionally, questions about the financing and the internationalisation of such processes came into play. It is not by chance that the publication of Kritz's three volumes on *Transitional Justice* from 1995, based on research results from a multi-year project on transition processes at the US Institute for Peace, was the first occasion when the term was explicitly mentioned in the scientific discourse in a more prominent way.

While the focus on democratic transitions in Latin America and Eastern Europe was rather straightforward, the inclusion of the then-relevant case of Ethiopia (after the fall of the Mengistu-regime, cf. Kritz 1995: xxxvi) already offered a case were such a transition was not so clear-cut. At first, in the heyday of the democracy promotion paradigm, cases like Ethi-

opia were understood in the context of democratic transition. As Carothers critically points out, by the end of the 1990s nearly 100 countries worldwide were defined within the transition label by US policy actors – what Carothers sees as a sign that "the transition paradigm has outlived its usefulness" (Carothers 2002: 6).

In foreign policy terms, particularly regarding the United States, Carothers' statement might be right or wrong – it proved to be irrelevant in any case, since the promotion of democracy, with the primary test cases of Afghanistan and Iraq and a renewed focus on this since the onset of the Obama presidency, with its focus on 'fragile democracies', has remained a highly relevant raison d'être for international (military as well as civilian) interventions from the early 2000s until now.

Nevertheless, the de-linking of the concept from the democratic transition context was the start of the second history of transitional justice. In that regard, the genocide in Rwanda acted as the main watershed, since it confronted the concept with unforeseen and in fact unimaginable challenges. It was not primarily the number of victims and the inconceivable cruelties of the event, rather, it was the high number of perpetrators (tens of thousands of people, a significant part of the post-genocide population in the country), together with a completely depleted political and in fact non-existent juridical system that caused the difficulties.

While Nuremberg also played an important part as a historical precedent in this case (although not mainly in terms of denazification, but more because of its way of dealing with the crime of genocide), it was obvious that the sheer number not only of murders, but especially of immediate perpetrators of acts of concrete violence, called for new approaches in dealing with the potential judicial consequences.

At that point, transitional justice comes into play as a process not (or at least not only) for dealing with the judicial consequences of a process of democratisation, but mainly as a way of elaborating and linking the various avenues in the post-conflict transition from war to peace, with its main focus on perpetrators of mass violence in often internal and asymmetric civil wars on the periphery. This shift had two important consequences for the concept: firstly, it was opened to other forms or systems of justice that promised at least the possibility of dealing with the huge number of perpetrators (and the complex intertwining between perpetration and victim-

hood in many situations) in a more pragmatic way. In particular, it was Rwanda and the remarkable success of the so called Gacaca courts which paved the way for the integration of Traditional Justice mechanisms into the realm of transitional justice.

Secondly, the question of financing and internationalisation came back on the agenda since from Rwanda onwards the main focal points of Traditional Justice were moved from comparably rich regions of soon-to-be EU-members in Eastern Europe and the more successful economies in South America to poor countries in so-called underdeveloped regions, often devastated by long periods of warfare or violent conflict. Consequently, transitional justice became one of the main sectors of international development cooperation with such countries, alongside related challenges like Disarmament, Reintegration, Security Sector Reform and wider measures in the context of 'Rule of Law'. Transitional justice's inclusion as part of the donor agenda has had important consequences for its content, approaches and vision, as we will show in the discussion of some of its main contradictions below, and as some of the papers will demonstrate with specific case studies.

Today's most relevant definition of transitional justice was delivered by UN's Secretary General Kofi Annan in his report *The rule of law and transitional justice in conflict and post-conflict societies* in 2004. Here, transitional justice is explicitly placed in the context of peace and state building interventions in a post-conflict setting. Its aim therefore is to deal with the "legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (Annan 2004: paragraph 8). The measures and methods proposed clearly demonstrate the evolution of the concept beyond the democratic transition context; thus, not only judicial, but also "non-judicial mechanisms" are to be included, "with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (ibid.).

Annan's overview indeed highlights all relevant focal points of contemporary discussions of transitional justice as a concept and the implications it already has, should have or should not have. In particular, there are three critical challenges and contradictions – also shown by the contributions in this volume – that demand further discussion: the relationship of

justice, truth seeking and peace building; the, as Annan has called it, level of international involvement, in particular in its relation to traditional justice, but also in regard to the current rise of international criminal law; and the question of reparation, especially in its relation to the question of victimhood, personal as well as structural.

3. What about truth? And justice? And peace?

From the 1970s on, but mainly during the 1980s and 1990s, especially in Latin America, the so-called truth commissions were all the rage in transitional democracies. Today, they number more than 40. In hindsight, one safely assumes with the Annan Report that truth commissions could now be considered part of a transitional justice programme. The simple fact stated there is that "[i]t is now generally recognized, for example, that truth commissions can positively complement criminal tribunals, as the examples of Argentina, Peru, Timor-Leste and Sierra Leone suggest" (Annan 2004: paragraph 26).

However, this was not always the case, as truth commissions were held to be only second best options as compared to actual prosecutions (cf. Kaiser-Whande/Schell-Faucon 2008: 11). Nevertheless, since Uganda 1974 truth commissions have had a respectable career as tools in reconciliation processes, engaging closely with society. These truth commissions are working more on the level of reparative and restorative justice than on the level of (penal) retribution.

Surprisingly, and in spite of being heralded as a self-evident tool for overcoming civil strife or mass atrocities, there has not been much empirical evidence of the importance of truth-commissions for furthering the peace processes (cf. Fletcher et al. 2009). Mendeloff elaborates 17 assumptions inherent in the reasoning of defenders of institutional truth telling and truth seeking (Mendeloff 2004: 364). Coincidentally, it can be argued that these claims sum up most assumptions of liberal peacebuilding. For convenience broken down into three groups (Psychological, Identity, and Institutional and Normative assumptions), they constitute the core claims of any truth-seeking, truth-telling mechanism. After dismantling or dismissing all of them, Mendeloff concludes that there might still be

some value for peacebuilding in truth commissions, although such value is likely to be overestimated.

It is then hardly astonishing that when examining handbooks dealing with peace or conflict resolution, the term transitional justice hardly shows up. Neither the *Handbook of Peace and Conflict Studies* (Webel/Galtung 2007) nor the *Handbook of Conflict Analysis and Resolution* (Sandole et al. 2009) contain a chapter on transitional justice, but what is even more significant, is that not even the indexes of these books give any reference to this concept. The only exception is *The SAGE Handbook of Conflict Resolution* that features one single article on *Peace vs. Justice – and Beyond* (Albin 2009), where the concept of transitional justice makes it into a short chapter.

4. Levels of justice – levels of involvement

Since its first use – in fact dating back to the Nuremberg trials – transitional justice has been characterised by a sometimes complex interplay of different levels. This is not least due to one of the main rationales behind transitional justice: that it comes, or has to come into, play if or when the national systems of justice are overwhelmed by the scale of violations (cf. Simpson 2008: 74). It was also after Nuremburg, but at the latest during the emergence of the international ad-hoc-tribunals in the 1980s that such powerlessness was not only interpreted in a quantitative way, but also qualitatively, in the sense that a national justice system might not be willing to prosecute mass scale perpetrators, mainly for political reasons.

Following this line of argument, international involvement seems to be a logical step. Such a step could and should assist the national and the local levels in multiple ways, like offering neutral localities where courts and tribunals could be established, by bringing in neutral judges as well as legal expertise, or by offering financial assistance, thus significantly lowering the national costs of any process of transitional justice.

Such technical support seems to be rather self-evident and unanimously supported and it would probably be perceived that way if it limited itself to only this technical dimension. However, like most other forms of technical support on an international level, such self-limitation remains a delusion. We have to take into account here that most processes of transitional

justice in the past two decades have taken place in so-called development countries, thus placing international support for such processes within a donor-recipient-relationship. It particularly because of this relationship that the interplay between the various levels – the local, the national, the international – becomes not only complex, but also complicated.

Furthermore, there is a truly global dimension to this internationalisation of transitional justice, connected to what Ruti G. Teitel (2002: 360) has called a new "humanitarian regime" against the background of a "global rule of law" that "both enables and restrains power in today's political circumstances in order to manage new conditions of political disorder through the rubric of law" (ibid.: 371). Such management, along with the transformation of the international order since the end of the Cold War, now no longer stops at state borders but instead demonstrates a "heightened enforcement of the expanded norms, which are directed beyond states to persons and peoples" (ibid.: 363).

Transitional justice thus becomes an integral part of a 'global rule of law' regime that is transforming the much older global regime of Human Rights into a more concrete, interventionist endeavour. Consequently, this new global rule of law regime goes along with the creation of various levels of international institutions that "range from the international courts to nongovernmental organizations" (ibid.: 363). These new groups of actors are designed to constitute and execute a global regime, but – and this is their most important feature regarding transitional justice – they are executing it in most cases not on a global level, but rather negotiate and implement it on the local and national levels.

Such transformed implementation of a global regime on a local level by international institutions, partly on their own, partly via the funding and guiding of local and national institutions, carries various risks. Of these, the main problem might be what we call the 'double simplification' of internationally implemented processes of transitional justice.

The first process of simplification is mainly due to the international/local divide and the inevitable particular interests of the respective institutions. For example, the intervention of the International Criminal Court (ICC) in Uganda – the case against the leadership of the Lord's Resistance Army (LRA) – became a highly contested issue since it interfered with regional attempts to start a peace process between the Ugandan Govern-

ment and the LRA. As a consequence, various concerns and criticisms of the court were raised (cf. Allen 2006: 96ff). Such local criticism soon became an international problem and a serious concern for the court, since it was its first high profile case and was initially regarded as quite uncontroversial. Therefore, stepping back was not an option, and Chief Prosecutor Moreno-Ocampo got engaged in a highly political debate, not only about the crimes of the LRA, but also about their (according to him, non-existent) political agenda and the prospects of peace talks.

Besides the obvious problem that the Chief Prosecutor had now become practically associated with the ICC as a whole in the public debate in Uganda, Moreno-Ocampo was in no way, either through his position or his expertise, able and/or qualified to seriously comment on such issues. His political interventions hence proved to be counterproductive, not only for the situation on the ground, but also for the ICC itself –because of the simplifying and, for the informed public, sometimes embarrassing statements but also because of the fact that, against this background, the potential war crimes of the Ugandan government in their fight against the LRA (but also in the course of their interventions in the DRC) became neglected in the juridical debate. Later, the court tried to correct this mistake with extensive outreach programs to the communities in Northern Uganda.

Secondly, the specific discourse of criminal law was also designed to present a simple rationale. What is a general feature of criminal law, and of the main arguments of criminal law experts in their calls for the self-restraint of the discipline, takes on a special flavour when combined with the global rule of law regime and the complexity of conflict or post-conflict situations. "The discourse of global criminal law that informs ICC interventions embodies a specific epistemology that interprets situations of violence through certain categories – namely, the criminal, the victim, and the transcendent judge" (Branch 2007: 190). Obviously, the room for manoeuvre in terms of political negotiation processes turns out to be rather slim when applying such categories to the various actors. This not always proves to be detrimental though, given that groups accused of such crimes might indeed change their behaviour in order to get back to (or at least increase their chances of) negotiations.

Nevertheless, such a strict criminal-victim divide is of course unable to deal comprehensively with processes of mass violence. The re-disco-

vering of the local in the context of peace-building in the mid 1990s (cf. Mac Ginty 2008: 140) offered a potentially rewarding road to follow by including traditional methods of justice and reconciliation in processes of transitional justice. The above-mentioned Gacaca courts in Rwanda proved to be remarkably successful in this regard, thus leading to the increased popularity of traditional justice, particularly within the donor community. Nevertheless, the problems of simplification also remain significant in that regard, as Tim Allen (2006: 138ff) showed in the case of the perceptions of traditional justice methods (the so called *Mato Oput* in Northern Uganda, cf. also Buckley-Zistel 2010: 113) and the attempts of achieving an international criminal prosecution of the LRA leadership. The perceptions and also the expectations of the people living in the area were mixed and showed no clear preferences whatsoever.

Nevertheless, traditional justice at times was offered as the panacea of transitional justice by sections of the donor and NGO community, a phenomenon that Roger Mac Ginty (2008: 142) has explained by referring to a certain shared interest of the actors involved: "At a superficial level, this 'popularity' may reflect a prosaic and mutually beneficial relationship between local and international actors: the former may be motivated by a desire to secure any resources and kudos the latter can offer, while the latter may regard traditional and indigenous actors as a means of achieving donor-driven conditions on local participation and acceptance."

Such aspects show that the various levels of transitional justice are in no way coherent or complementary from the outset. Any international involvement leads to severe problems, on the ground as well as on the structural level, while on the other hand the local level in most cases is simply unable to deal with the challenges that accompany any post-conflict-situation. Hence, conclusions are difficult to draw, and the call for self-restraint, in particular in the case of international actors, might be the only option possible. Any process of transitional justice will consist of negotiations between different groups of actors, acting on different levels. A pragmatic approach seems to be the best way to move forward in that regard, notwithstanding the fact that such a "pragmatic approach (often embedded in negotiated processes) is testing the boundaries of how much justice is enough to satisfy the obligations of international law" (Simpson 2008: 79).

5. Reparation and victimhood

A central theme running through all forms of transitional justice is the reparation for victims of mass atrocities, war crimes, and human rights violations in general. These reparations are awarded in varying modes, but these modes share one condition: they are given to victims. Victimhood is thus ontologised. It is also elevated onto a moral pedestal. The construction of victimhood, especially beyond the individual case, becomes a political power game, both on the side of national and international actors.

Interestingly, there have been changes in perspective during the last decades. Meister (2002) illustrates this by analysing a major change in the definition of a perpetrator and a victim for the period of the Cold War and after. During the Cold War many revolutionary groups resorted to violence as the only promising means of gaining political power and deemed this choice of method as just, as a "weapon of the weak" (ibid.: 92). After the transition to democracy and especially after 9/11 all political violence is called terrorist and terrorism becomes a bad thing in itself and has to be prosecuted. The 'good terrorist' has irrevocably become an oxymoron. The victim in the 21st century has to be an innocent victim.

While individualising guilt has grown into a major concern for international courts dealing with violent pasts, such as the ICTY and the ICC (cf. Leebaw 2008), victimhood has become a lump category for all who have lost their lives, families, homes. Unsurprisingly, the problems that arise from both lumping together all sorts of victims and at the same time insisting on the innocence of these victims can turn into a mission that is hardly manageable. Not only is the line between the perpetrator and victim in many cases a thin one – forcibly recruited child soldiers are a prime example – but the changing political climate may change the perspective on a violent conflict (see above) and thus alter the meaning of perpetrator and victim completely. Additionally, the category of gender has only recently received closer attention (cf. Buckley-Zistel/Oettler 2011).

Moreover, there can be parallel processes of reparation that possibly overlap in intricate ways. To give just one example that is also included in this collection of articles, though from another point of view, let us consider Colombia. In that country, many laws for the reparation of victims have been passed, the most inclusive just recently (in June 2011, cf. Wlaschütz

this issue). However, these reparations deal with the injustices of the last two decades at most. Nevertheless, there has been a parallel effort for the reparation for African Colombians to compensate for their historic enslavement (cf. Mosquera 2007). Because of the historical nature of slavery there can be no penal component to this process, but reparative justice measures are heatedly discussed. Unfortunately, for the defenders of reparative measures, the categories get fuzzy. One obvious reason is the historical distance and the fact that no direct survivors of slavery are still alive. The demographic process has lead to complicated identities and the question of who is African Colombian is far from banal. Indeed, it is the locus of academic as well as political disputes (cf. Arocha 2005). The portion of African Colombians varies from around one per cent to up to fifty per cent. Even if these two numbers are extremes, they illustrate well the difficulty of reaching a workable definition of 'Africanness' for an eventual reparation.

To complicate matters even more, the historical claims of African Colombians also compete with the historical claims of the indigenous populations. The land issue in particular is a thorny one, and this despite the existing regulations that try to do justice to the rural populace of both sides; consequently, two collective identities are pitted against each other in the name of victimhood and the various claims this entails.

As Díaz (2010: 300ff) rightly points out, African Colombians have suffered disproportionately from the violent civil conflict of the last decades. They have been made a priority for sped up reparation by national courts precisely because of their historical subjugation. Claudia Mosquera (2007) takes the same line when she argues that African Colombians have to receive reparations both for being 'rescued' from enslavement and having been 'forcibly displaced' during the war. The challenging difficulties of defining who is African Colombian aside, a central problem is that African Colombians also acted on the side of the perpetrators. This is patently clear in the case of the ongoing armed conflict, but it is also true for the historical example. Sergio Mosquera (1997) shows that, although Africans freed themselves by various means such as buying their freedom from their master or running away, when free some resorted to the use of slave labour themselves.

6. Preview of papers

The four articles compiled in this issue deal with the phenomenon of transitional justice from different angles. Though some problems such as the contested political nature of all cases come up more than once, the focus of each text is different, just as each country has a particular history of violent conflict. Another issue surfacing in every text is truth: truth as an indispensable ingredient to reach justice and at the same time its role at the centre of political dispute. The papers also have in common a perspective that extends beyond transitional justice in the normative sense. This new perspective is precisely how this notion – which has degenerated into a buzzword – can reclaim analytical meaning and may once again be a valuable concept and tool for dealing with atrocities.

Sandra Rubli's article, empirically based on her research in Burundi, proceeds to tell the intricate history of conflict in Burundi and the dealings with the violent past there. The case of Burundi could make a neat example of transitional justice were it not for the controversies surrounding this process. Truth is not a neutral matter when political parties compete for power, especially if these parties are all involved in one way or another with past violence. The notion is that whoever wins the power over truth wins political power or, conversely, whoever holds political power avoids dealing with certain aspects of truth about the past in order not to endanger their position.

Any international intervention can then be perceived as meddling with national or local politics and will be challenged in one way or another. Even an internationally brokered accord like the Arusha Peace and Reconciliation Agreement that was signed by parties of the earlier conflict in Burundi has not been implemented, except for minor measures. This might be due to the fact that not all parties concerned were included in the process and thus were reluctant to accede to the Agreement. On the other hand, all parties see different opportunities in the workings of transitional justice and try to influence the process to their advantage. The conclusion is, that in order to ensure that transitional justice can work reasonably well, one has to understand the concerns, motivations, interests and intentions of all the parties (in the broad sense) involved. Otherwise, such a process is doomed to fail.

The contribution written by Susanne Schmeidl sheds light on the case of customary justice in Afghanistan. Despite the fact that Afghanistan features prominently in many academic and political analyses and that the operation of transitional justice there is at the centre of attention of the UN, the rigour of the political situation has dealt harsh blows to many core aspects of transitional justice as laid out by the UN system. Instead of truth for everybody, reparation for the victims and punishment for the wrongdoers, amnesty laws without accompanying mechanisms to reveal the truth have been passed by the national government in order to gain political leverage. Earlier attempts to establish justice and reconciliation also failed miserably because of the meddling of local politicians.

It may seem an ironic twist when Schmeidl then advocates locally based customary justice practices as a new approach for transitional justice. She argues that customary justice institutions have shown persistence and accessibility and so she, instead, focuses on restorative, not retributive, justice. The latter may also be interpreted as a lack of effective enforcement of legal decisions by customary law institutions, but nonetheless this does not equate to impunity. The perpetrators usually have to ask the victims' families for forgiveness and in many cases have to pay 'blood-money'. However, customary law is not a panacea. There are problems, for instance the fact that the community cohesion must be strong enough in order to resist tensions arising from the processes and judgments. Another problem is the gender bias within traditional institutions. Women tend to be excluded or discriminated against. Finally, the cases may be too many for the traditional system to handle, especially because some of the institutions have already other obligations they must cope with. Schmeidl concludes positively, arguing that such a view, beyond the beaten track of transitional justice practices that have not met with impressive success, might offer new directions of how to overcome a difficult impasse.

Katja Seidel describes local practices of justice in Argentina, one of the classic examples of a democracy in transition. Within a few years after the end of the dictatorship, the country had a tribunal and also a Truth Commission that dealt with the horrors of the military dictatorship. A legal framework that effectively barred attorneys from prosecuting the perpetrators of human rights violations was set up not much later. Despite the fact that the law made it difficult for the national legal system to act against perpetra-

tors, a local practice called 'escrache' developed into an instrument of establishing justice. This exercise is not backed by the state but is anchored in local community practices that not only 'pillory' the culprit but also bring about a consolidation of the community. Again, truth in this context is broken down to very specific individuals, local contexts and histories. The National Commission has no more authority in this particular form of action.

Quite from the opposite side on the spectrum of legal systems comes an initiative that seeks to establish the atrocities committed during the era of the military dictatorship as genocide. From this it could follow that national legal provisions that protect perpetrators from further prosecution could be undermined by International Law. Here again, local interests enter the political arena and a transitional justice process that had apparently ended is re-opened and re-negotiated. The contestation in the Argentinean case comes thus from both the local and the international level.

Finally, Christian Wlaschütz's article is on Colombia. Despite the fact that both countries are located on the same continent, the cases of Argentina and Colombia are quite divergent. Contrary to Argentina, the conflict in Colombia is still ongoing and agreements between parties have only been partial until now. This feature hardly makes it a role model for transitional justice. There has never been a truth commission or a practice comparable to 'escrache' but rather court hearings for the penitent wrongdoers so that they can receive a remission or reduction of a prison sentence. The word 'genocide' has not been frequently used for the Colombian case and would probably not fit the complex history of armed conflict in that country.

The problem that Wlaschütz poses himself is whether transitional justice can contribute anything to a process of reconciliation between victims and perpetrators. His contention is that there is already enough truth around; in other words, it is well known who committed which crimes. However, there is also a lack of political will at the higher echelons of national politics to acknowledge crimes against humanity, mistakes, or even blunders by the official armed forces. The author, in general, detects a certain deficiency in the application of measures against perpetrators. Ironically, the most severe punishments against the political leaders of the paramilitary forces have been imposed on them by the US legal system, albeit for drug crimes barely related to the grave crimes against humanity which are of concern in the Colombian processes.

The cases of Burundi and Colombia also show the difficulties of complex, multiparty peace processes after at least partial agreements have been reached. Argentina and Afghanistan are starting to open an expressly local perspective for transitional justice while at the same time being firmly embedded in the international context. Then there is the ethnic dimension of the population in Burundi as well as in Afghanistan. These intersecting themes open another aspect for possible comparisons and debates among scholars of transitional justice, something that cannot be explored here but which seems a promising option.

References

Albin, Cecilia (2009): Peace vs. Justice – and Beyond. In: Bercovitch, Jacob/Kremenyuk, Víctor/Zartmann, I. William (eds.): The SAGE Handbook of Conflict Resolution. London: Sage, 580-594.

Allen, Tim (2006): Trial Justice: The International Criminal Court and the Lord's Resistance Army. London: Zed Books.

Annan, Kofi (2004): The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General, S/2004/616. New York: United Nations.

Arocha, Jaime (2005): Afro-Colombia en los años post-Durban. In: Palimpsesto 5, 26-41.

Branch, Adam (2007): Uganda's Civil War and the Politics of ICC Intervention. In: Ethics and International Affairs 21 (2), 179-198.

Buckley-Zistel, Susanne (2010): Globale Rechtsprechung, lokale Konflikt. Der Internationale Strafgerichtshof als friedensstiftende Maßnahme in Uganda? In: Bonacker, Torsten/Daxner, Michael/Free, Jan H./Zürcher, Christoph (eds.): Interventionskulturen. Zur Soziologie der Interventionsgesellschaften. Wiesbaden: VS Verlag, 101-118.

Buckley-Zistel, Susanne/Oettler, Anika (2011): Was bedeutet Transitional Justice? In: Buckley-Zistel, Susanne/Kater, Thomas (eds.): Nach Krieg, Gewalt und Repression: Vom schwierigen Umgang mit der Vergangenheit. Baden-Baden: Nomos, 21-37.

Carothers, Thomas (2002): The End of the Transition Paradigm. In: Journal of Democracy, 13 (1), 5-21.

Díaz Gómez, Catalina (2010): Elementos para un programa administrativo de reparaciones colectivas en Colombia. In: Díaz Gómez, Catalina (ed.): Tareas Pendientes: Propuestas para la formulación de políticas públicas de reparación en Colombia. Bogotá: ICTJ, 269-317.

Fletcher, Laurel E./Weinstein, Harvey M./Rowen, James (2009): Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective. In: Human Rights Quarterly 31 (1), 163-220.
Kayser-Whande, Undine/Schell-Faucon, Stephanie (2008): Transitional Justice and Civilian Conflict Transformation: Current Research, Future Questions. CCS Working Papers No. 10. Marburg: CCS.
Kritz, Neil J. (ed., 1995): Transitional Justice: How Emerging Democracies Reckon with Former Regimes. Vol. I. Washington, DC: USIP.
Leebaw, Bronwyn Anne (2008): The Irreconcilable Goals of Transitional Justice. In: Human Rights Quarterly 30 (1), 95-118.
Mac Ginty, Roger (2008): Indigenous Peace-Making Versus the Liberal Peace. In: Cooperation and Conflict 43 (2), 139-163.
Meister, Robert (2002): Human Rights and the Politics of Victimhood. In: Ethics and International Affairs 16, 91-108.
Mendeloff, David (2004): Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm? In: International Studies Review 6 (3), 355-380.
Mosquera Mosquera, Sergio (1997): Afrocitareños esclaizadores y esclavizados. typoscript.
Mosquera Rosero-Labbé, Claudia (2007): Reparaciones para negros, afrocolombianos y raizales como rescatados de la Trata Negrera Transatlántica y desterrados de la guerra en Colombia. In: Mosquera Rosero-Labbé, Claudia/Barcelos, Luis Claudio (eds.): Afro-reparaciones: Memorias de la Esclavitud y Justicia Reparativa para negros, afrocolombianos y raizales. Bogotá: CES, 213-276.
Robinson, William I. (1996): Promoting Polyarchy. Globalization, US Intervention, and Hegemony. Cambridge: Cambridge University Press.
Sandole, Dennis J.D./Byrne, Sean/Sandole-Staroste, Ingrid/Senehi, Jessica (eds., 2009): Handbook of Conflict Analysis and Resolution. London/New York: Routledge.
Simpson, Grame (2008): One Among Many: The ICC as a Tool of Justice During Transition. In: Waddell, Nicholas/Clark, Phil (eds.): Courting Conflict? Justice, Peace and the ICC in Africa. London: Royal African Society, 73-80.
Stotzky, Irwin P. (ed., 1993): Transition to Democracy in Latin America: The Role of the Judiciary. Boulder: Westview Press.
Teitel, Ruti G. (2002): Humanity's Law: Rule of Law for the New Global Politics. In: Cornell International Law Journal 35 (2), 355-387.
Webel, Charles/Galtung, Johan (eds., 2007): Handbook of Peace and Conflict Studies. London/New York: Routledge.