

Dealing with the past and transitional justice: building peace through accountability

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Abstract

Based on her experience as a member of the South African and the Sierra Leonean truth and reconciliation commissions, the author formulates guiding principles and looks at the circumstances in which a truth and reconciliation commission constitutes an appropriate instrument to deal with transitional justice issues. The author also identifies possible contributions that truth and reconciliation commissions can make during a period of transition.

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Introduction

Having been a commissioner on two truth and reconciliation commissions in two post-conflict countries, South Africa and Sierra Leone, and having consulted at a number of others, I find this thematic issue opportune.

* This article is based on a presentation given at the conference *Dealing with the Past and Transitional Justice, Creating Conditions for Peace, Human Rights and the Rule of Law*, which took place on 24–25 October 2005 in Neuchâtel, Switzerland, and was organized by the Political Affairs Division IV of the Swiss Federal Department of Foreign Affairs, the Center for Peacebuilding (KOFF) — swisspeace, and the International Center for Transitional Justice (ICTJ).

In the short term, are we as practitioners making a difference through the work we do or are we short-changing victims? I vacillate on the answer depending on whether I am lamenting my own government's decision not to proceed to prosecutions expeditiously as they promised, or jubilation because they finally established a unit to deal with disappearances. Likewise, in the context of Sierra Leone, I experience a sense of accomplishment on the publication of a good report and deep disappointment at the weak white paper issued by the government on the recommendations.

In the long term, does transitional justice contribute to building democracy and a culture of respect for human rights? Should we even use the term “transitional justice” as this implies an end in itself?

Transition to what? When does a transition begin and when does it end? Can a commission operate in a country where there has not been a cessation of hostilities?

In examining the question of ownership, the issue of what I call the “space ship” approach must also be explored. What happens if all the political parties are not committed to a peace-building process and to the institution of a truth commission? In countries ravaged by conflict, in which donors' agendas prevail, is this ultimately in the long-term interest of the country? How does this issue impact the truth commission and its ultimate goal of building credibility for its findings and recommendations? Will the report be accepted by all? Has it instilled a sense of ownership with the domestic government sufficient to ensure that its recommendations are implemented? This is an important aspect if there is to be acceptance of the findings of the commission. Ownership of the process is linked to such acceptance, which in turn provides the impetus to implement the commission's recommendations.

A pertinent example is provided by the Democratic Republic of the Congo, where a truth commission has been established against the backdrop of ongoing violent conflict and under pressure from peace brokers. The commission itself has members who are associated with warring parties and, as such, do not qualify as impartial, and it is hampered by the fact that the conflict does not permit it to engage in any meaningful activity. Under these circumstances, can such a commission function with credibility?

In attempting to grapple with these questions, I will formulate a few guiding principles based on my own personal experience.

Guiding principles

At the outset, we need to accept that we are dealing with deeply flawed processes and trade-offs. Given the particular circumstances that exist at the time of the negotiated settlement, it may represent the best possible deal for civil society. The point is that any process should be adapted to the local conditions and context. One size cannot fit all.

In this regard, we should be aware that:

- Transitional justice should incorporate a rights-based developmental approach that provides for:
 - Participation of all parties, particularly civil society
 - Accountability to civil society with an emphasis on the victims of violence, ensuring that both statutory and administrative measures are put in place to achieve the goals set
 - Non-discrimination — all of the parties are treated justly irrespective of the side they come from
 - Empowerment of local actors and civil society
 - Linkages to other democratic initiatives and institutions;
- Transitional justice must take place within the context of a shift to democracy, so as to avoid a recurrence of the causes that gave rise to the initial conflict;
- Transitional justice cannot and should not be considered an end in itself;
- Ownership of process — there should be buy in from all;
- Public participation.

Transitional justice in the context of a shift to democracy

Transitional justice mechanisms are not established in a vacuum. They are established to deal with human rights abuses emanating from past conflicts. In many countries, while negotiated settlements may give rise to peace, the transition to democracy has the potential to be scuttled by diverse interest groups who remain a threat to peace. Most conflicts, however, are not only about victims and perpetrators; they include the beneficiaries (i.e., those who benefit from the unjust political and economic order prevailing before and during the conflict) as well as other actors.

Many of the transitional arrangements in Africa over the last decade have given rise to a truth recovery process either in the form of a truth commission or, in some instances, to a truth commission operating side by side with a criminal justice mechanism, taking the form of a special “hybrid” court, which has both a domestic and an international character.

Transitional justice in the context of a democratic option cannot be addressed simply by talking about truth recovery mechanisms or criminal justice options. If the opportunity provided by the transition is not squandered the potential exists to begin the process of building the institutions of a democratic state based on the rule of law.

Exercise of caution in choosing options

Over the past decade truth commissions have become the most common instrument chosen during the negotiated settlement to deal with issues of transitional justice. Yet, we should be careful to ensure that truth commissions do not become the new panacea to address all the ills of the past.

Ownership of the process

Ownership of a transitional justice process is also a huge factor in countries ravaged by conflicts. In a number of African countries, specific approaches have been accepted because the peace process was influenced by external actors who helped to bring about the cessation of hostilities and who, therefore, were able to influence the instruments and institutions that go into the peace agreement.

This can translate into a latent hostility by those in government who now have to implement the agreement. In these circumstances, the government may be indifferent to whether these institutions are established and properly funded. It may also result in the appointment of commissioners who have deference to the ruling party or faction and who are not committed to the work of the truth commission. This can have devastating consequences for such a commission.

Another phenomenon that is experienced mostly in Africa is what I term the “space ship” parachuting in to rescue the local community without understanding the context or the dynamics in which they are operating. Once the institution has come and gone, local actors are left to deal with the negative consequences. This is not meant to denigrate or diminish the contribution of the international community, but should rather serve as a caution to ensure that national institutions and actors are integrated into any process.

Public participation

Truth and reconciliation commissions that have been established through wide public participation processes have been effective vehicles for change. Civil society, if involved in the decision-making process from the outset, will have the opportunity to influence the law-making process, including the formulation of the commission’s mandate and the selection of its commissioners, and will be well positioned to hold the commission and government accountable.

Two examples of this are South Africa and Liberia. In South Africa, a powerful network of civil society organizations succeeded in removing “secrecy clauses” that had been inserted by politicians from the major parties into the legislation for the commission. They influenced the public process by which commissioners were selected and monitored the work of the commission, thus holding the commission accountable. The “public” nature of truth commission proceedings, a standard set by the work of the South African Commission, has become a benchmark for the work of all other commissions in Africa.

Liberia, in the past 12 months, has seen a strong group of civil society activists do the same thing with a similar impact. They have driven the law-making process and have conducted intense lobbying and advocacy activities, thus ensuring that the legislation would pass through the interim parliament. The Truth and Reconciliation Commission is the first democratic institution to be established in Liberia since the removal of Charles Taylor’s regime. Although Chairman Bryant appointed commissioners prior to the legislation being enacted, the efforts of civil society have succeeded in ensuring that all of these

commissioners were compelled to undergo a similar vetting and public scrutiny process. In the run-up to the election, all of the political candidates for presidency publicly expressed their support for the truth commission, recognizing its importance for Liberia. This bodes well for ownership and accountability to the nation.

Circumstances in which a truth commission is the appropriate instrument to deal with transitional justice issues

In determining whether a truth commission is the appropriate structure to deal with transitional justice in any country, there are key issues that must be considered:

- Nature of the violence and human rights abuses to be investigated;
- Nature of the political transition;
- Extent of the dominance and power of perpetrators after the transition;
- Focus on justice, healing and reconciliation;
- Public support for a truth commission;
- Contribution to building a culture of respect for human rights, democracy and the rule of law;
- Potential for participation, accountability and empowerment.

Nature of the violence and human rights abuses to be investigated

In countries in which there have been human rights abuses, it is important to pay attention to the circumstances in which the abuse took place when developing the mandate of a truth commission. In the case of a repressive regime, when the perpetrators are mostly on one side, there is less likelihood of a contestation. In connection with a civil war in which all sides share responsibility for the abuse committed, however, there is always the likelihood that a commission may be compromised by accusations that the crimes committed by the other side(s) have been neglected.

This was certainly true of both South Africa and Sierra Leone, where the side no longer in power and individual perpetrators expressed the view that the commission would be a witch hunt against them. In both instances, it was important for the respective commission to demonstrate publicly that it intended to deal with the violations committed on all sides.

This can be addressed, of course, by ensuring that the legal definitions of “perpetrators” and “victims” are politically neutral. While this can result in the identification of some persons as both perpetrator and victim, it should not be seen as a dilemma, as it is a question of upholding values rather than an adversarial approach that holds one party being right and the other in the wrong.

In articulating mainly a reconciliation agenda, a commission may become embroiled in focusing overly on this issue while not exploring the morality of the

one side's taking up of arms against the other. In the case of South Africa, while the legislation provided for the commission to examine and investigate violations carried out by both sides, the commission's interpretation of its mandate as being "even handed" resulted in many observers and members of the liberation movements feeling that the commission had criminalized the resistance they regarded as a "just struggle" given the situation in South Africa. While the commission sought to draw a distinction between a just war and a just cause, this was not easily understood by ordinary people in South Africa.

A lesson perhaps for any commission is that it should announce, quite early on in its work, its intention to scrutinize the manner in which the conflict was conducted. This will ensure that there is never a potential for a culture of impunity, even if you were ostensibly on the side of those who had "just cause".

In Sierra Leone, the Civil Defence Forces (CDF) were seen in most quarters in the country as the legitimate force that had protected the larger community against the Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC). This is the reason for the outrage expressed by many when Chief Hinga Norman, the erstwhile Minister of Defence, was indicted for his role in the conflict as the head of the CDF. While many people could identify with the indictment by the Special Court of members of the RUF and AFRC, the indictment of Hinga Norman was widely perceived as unjust.

Nature of political transition

The manner in which a prolonged violent conflict is brought to an end has a huge impact on the choice of approach to be employed during a transition. A military victory by one side over the other will usually allow for a criminal justice mechanism. A negotiated peace agreement that initiates a transition to democracy on the basis of a voluntary transfer of power will result, in most instances, in a truth commission being established.

Extent of the dominance and power of perpetrators after a transition

A third crucial factor to consider is the continuing power of perpetrators to influence the transition. In most countries where perpetrators have the potential to create fear and bring about further violence that may destabilize the country, the negotiated settlement will usually result in some form of amnesty. Often the amnesties may have been negotiated or legalized before the old regime left office.

It is important to take into account how this factor will constrain the work of a truth commission. It certainly limits the scope of the investigations particularly in regard to the security institutions such as the military and intelligence structures.

South Africa instituted a conditional amnesty that helped contain the role of the security forces. The legacy of this, however, is that the new government lacks the political will to begin prosecutions, which it pledged to do in respect of those who had not applied for amnesty. This is causing huge anger and bitterness in the

country, particularly among victims who feel the commission benefited perpetrators.

Focus on justice and healing

In establishing a truth commission, although healing and reconciliation are important, justice for victims should be given priority by ensuring that it is part of its core mandate. Otherwise the success of the commission will be at risk. Justice should include truth recovery, recognition, reparations, as well as the restoration of civic trust and the building of social solidarity or cohesion.

Public support for a truth commission

Unless there is widespread public support for a truth commission, which includes the broader public, political parties, the political elite and civil society, it is unlikely that the commission will enjoy cooperation or achieve success. Public support is a crucial factor in establishing a truth commission and should not be underestimated.

Possible contributions of a truth commission during a period of transition

Having considered the circumstances under which truth commissions are established, it is useful to frame the positive aspects that they may achieve if properly managed:

- Helping to build democracy;
- Acknowledgment;
- Dealing with the denial of the past;
- Responding to the needs of victims;
- Reparations;
- Reconciliation;
- Building a common narrative of the country's past and thus ensuring a common set of premises from which to build for the future.

Helping to build democracy

Transitions from oppressive undemocratic regimes to democratically elected governments, if properly managed and monitored, offer a window of opportunity to rebuild the institutional framework necessary to ensure the sustainability of democracy, build a human rights culture, and advance the rights of women, all of which are necessary for sustainable peace.

The processes adopted during the life of a truth commission are vital for the democratic future and should be accountable, transparent, accessible and

participatory. Given its potential to create a cadre of non-partisan individuals committed to human rights and the rule of law, a truth commission can empower nationals to assume roles in democracy-building institutions, such as human rights commissions, electoral bodies and gender commissions after its mandate has ended (this is not an exhaustive list).

In this context, truth and reconciliation commissions are usually tasked with dealing with impunity, establishing accountability through truth-seeking, focusing on the rights of victims and the right to know, designing an appropriate reparation program and recommending institutional reform ultimately leading to reconciliation.

Acknowledgement and recognition

Truth and reconciliation commissions offer the opportunity for victims to come forward, tell their stories and have the wrongdoing done to them acknowledged by the wider community. The public acknowledgement by an official body contributes to their affirmation and healing. That victims could reclaim lost status through such a process was the opinion argued by Ishmael Mahomed, South Africa's first black chief justice of the Supreme Court, in the Azapo judgment:

“The Truth and Reconciliation Act seeks to address this massive problem by encouraging survivors and dependants of the tortured and the wounded, the maimed, and the dead to unburden their grief publicly, to receive the collective recognition of a new nation that they were wronged, and, crucially, to help them to discover what in truth happened to their loved ones, where and under what circumstances it happened, and who was responsible.”¹

Dealing with the denial

Truth commissions are a powerful tool in dealing with the lies and the myths that surround the conflict and violations committed. It is not that the truth of what happened is not known, but rather that those who benefit from the abuse and the privilege often refuse to acknowledge the truth. In South Africa, given the crucial role played by the media during the apartheid years, it is hardly likely that white South Africans did not know that atrocities were happening in the country. Ironically, during the hearings of the commission, when the victims initially started testifying, many white South Africans claimed that the victims were exaggerating. When perpetrators began testifying about the gruesome crimes they had committed, white South

Africans claimed either that they had not known of the atrocities committed or that the state had been involved in the commission of these crimes.

1 *Azanian Peoples Organization (Azapo) and Others v. the President of the Republic of South Africa and Others* 1996 (8), in Butterworth's Constitutional Law Reports/BCLR 1015 (CC), available at <<http://www.constitutionalcourt.org.za/Archimages/2529.pdf>>. OR www.doj.gov.za/trc/legal/azapo.htm.

The South African truth commission was thus able to counter widespread disbelief and denial by white South Africa that the state had been involved in the commission of gross human rights violations. In doing so, it dealt conclusively with the denial which most white South Africans had lived with almost all of their lives.

In Sierra Leone, many ordinary people did not understand the full complexity of what the chairperson of the commission called the “chameleonic war”. A widely held belief in the country was that in the main the RUF was responsible for the conflict. The commission was able to establish that the January invasion of Freetown was mainly carried out by members of the AFRC, disaffected soldiers who had adopted characteristics of the rebel forces. Contrary to the belief that amputations had been the main violation carried out, the commission was able to establish that, in fact, rape and sexual violence were the most prevalent crimes. Rape had been the silent crime that most women and girls in Sierra Leone had suffered during the conflict.

The creation of a common narrative is crucial for a country to start rebuilding a new social solidarity. Michael Ignatieff puts it most eloquently: “The past is an argument and the function of truth commissions, like the function of honest historians, is simply to purify the argument, to narrow the range of permissible lies.”²

Responding to the needs of victims

Truth commissions can play an important role in addressing the needs of victims, their families and their communities. Many victims are shunned and suffer great stigma in their communities during the period of the conflict. The rest of the community is often afraid of being associated with the victim. Revealing the truth of their experiences assists the reintegration of victims into their communities and facilitates the opportunity to be restored to the status they held before the conflict.

The public affirmation and acknowledgement of wrongdoing done to the victim in the midst of the community is a powerful tool in effecting healing. Revealing the truth about the fate of loved ones, though painful, allows victims’ families to put their uncertainty to rest. Learning the fate of the disappeared brings closure. Public hearings and the publication of the truth are instruments that can contribute to the achievement of this goal.

Reparations

The principles of reparation are well established in international law. The work of Professor Theo van Boven has been helpful to those of us who have had to work with this complex issue. Reparation programs in the context of a transition from an unjust regime to a legitimately elected government often pose a challenge. The

2 Michael Ignatieff, “Overview: Articles of Faith”, *Index on Censorship*, Vol. 25, 1996, p. 113.

new government is almost always faced with conflicting demands, as the reconstruction and development needs of all citizens compete with the need for an appropriate reparations program for victims of human rights violations.

The guiding principles of a proper reparations program are meant to acknowledge the wrongdoing done to victims, to improve the quality of their lives, to afford recognition through affirmation and acknowledgment of the harm suffered, and to build civic trust and solidarity. Yet, reparation is often the point at which most countries and governments squander the opportunity to restore civic trust by not acknowledging victims through an appropriate reparations program.

In a paper as yet unpublished at this time,³ Pablo de Grieff makes a cogent observation when he explores the thesis that the responsibility of a state in designing a program of reparations in this context must satisfy conditions of justice. In addressing this question, he argues that the search for justice in a period of transition will involve efforts to punish perpetrators of the worst human rights abuses, to understand and to clarify the structures of the violence and the fate of victims, to reform institutions in order to neutralize the causes that might have contributed to the violence and finally to repair victims.

Efforts to “repair victims” must therefore be seen as an essential element of a holistic transitional justice package. A powerful argument that he raises is that “a well designed reparations program contributes to justice precisely because reparations constitute a form of recognition — the materialization of the recognition that citizens owe to those whose fundamental rights have been violated.”⁴

Negative experiences where governments and truth commissions have failed on this issue underscore this important point. Truth commissions, which recognize and acknowledge that victims have been treated unjustly, have the most chance of success. Reparation programs that take this factor into account achieve the most social coherence.

Key questions that have not been dealt with are the obligations of illegitimate governments taken over by successor states, the dilemma that in many cases large cross-sections of citizens may constitute victims and the issue of how to measure suffering where large communities of victims exist.

Reconciliation

In dealing with this issue, there are a few observations that must be made:

- One cannot and should not legislate for reconciliation and especially not for forgiveness. It should be seen as part of a process;
- Reconciliation, like reparations, must be understood in the context of a holistic set of objectives. These include:

3 Pablo de Grieff (unpublished paper), “Reparations Efforts in International Perspective: What Compensation Contributes to the achievement of Imperfect Justice”, p. 34.

4 Ibid., p. 35.

- Justice for victims;
- Accountability of perpetrators;
- Clarification of the truth relating to the causes of the violence and conflict;
- Establishment of democratic institutions and rebuilding of those destroyed through the conflict;
- Dealing conclusively with the factors that gave rise to the conflict;
- Elimination of the fear of living together;
- Rebuilding of trust in government and its institutions;
- Building social solidarity amongst citizens.

All of these objectives together constitute a holistic transitional package that contributes to rebuilding democracy.

Different levels of reconciliation

There are different levels of reconciliation to which a commission can contribute. At the national level, the cessation of hostilities and the restoration of a peace, which allows citizens to live without fear that they will be the subject of attack or harm, is an important aspect of reconciliation. In countries where living with violence on a daily basis is the norm, the cessation of hostilities and an accompanying peace process have a value in themselves that should not be underestimated.

At the community level, the restoration of one's status and the clarification of the truth relating to the conflict also foster reconciliation. The most significant intervention that can be made, however, is the creation of conditions that enable former enemies to live side by side in the certainty that one side will not be harmed by the other. While people living together do not have to like each other, mutual respect as the basis for future interaction builds social cohesion.

An observation on the work of the truth commission in Sierra Leone serves to illustrate this point. Laura Stovel, who spent six months in that country conducting research on reconciliation in 2003, writes: "In sum, the TRC report contributes to reconciliation in four ways. First, by creating an impartial and detailed historical record it humanizes the conflict, exposes and destroys myths and empowers the population. Second, it affirms values and standards of democracy and human rights. Third, it recognizes that crimes are enabled and interpreted within a social context and cannot be assessed outside that context. The report made recommendations to deal with social structures and laws that enabled violence or hindered reintegration on just terms. Finally, the report made recommendations on reparations, future directions and legal changes that would better protect women and children from violence."⁵ While one may disagree with

5 Laura Stovel, "When the Enemy Comes Home: Restoring Justice after Mass Atrocity", Paper prepared for the Restorative Justice Conference in Vancouver, 1-4 June 2003, available at: <<http://www.sfu.ca/cfrj/fulltext/stovel.pdf>>.

the point that “crimes cannot be interpreted outside the context of a particular country” given the universality of a human rights discourse, the contribution is a valuable one to the debate.

In conclusion, we acknowledge that there is, of course, also a very critical view of the discourse on “reconciliation”. Without going into any detail, we quote Horacio Verbitsky, a Chilean journalist, who makes the following point regarding the process of reconciliation in his own country: “Reconciliation by whom? After someone takes away your daughter, tortures her, disappears her, and then denies having ever done it — would you ever want to “reconcile” with those responsible? That word makes no sense here. The political discourse on reconciliation is immoral, because it denies the reality of what people experienced. It is not reasonable to expect people to reconcile after what happened here.”⁶

Contributions of truth commissions in dealing with issues of gender

There are a number of key issues that a truth commission can address in the area of gender and women’s empowerment:

- Disaggregating data relating to gender component;
- Drawing specific attention to crimes against women, such as rape, sexual enslavement and other gender-based crimes;
- Addressing the consequences of sexual crimes to assist in restoring status, reintegration in society and material support of women victims who suffer ostracism and the stigma of having been associated with perpetrator groupings, especially if they have children as a result of their experiences;
- Empowering women survivors through an affirmative participatory process to deal with the issues listed above;
- Adding a gender component to any dispute resolution, peace negotiation, reconciliation and democracy-building project;
- Dealing with gender-based violence through law reform and the building of a human rights culture;
- Improving demobilization and reintegration programs through a gender focus;
- Ensuring a gender-specific component to a reparation and rehabilitation program;
- Addressing the role of peacekeepers.

Gender-based violence and crimes of sexual violence are a major focus of the recent conflicts in Africa. While gender-based crimes normally increase during periods of armed conflict, it is the low social status that women have in general — even during peace time — that makes them especially vulnerable to sexual violence by almost all of the protagonists in conflict situations. Although women are

6 Horacio Verbitsky in an interview conducted by Priscilla Hayner, quoted in Priscilla Hayner, *Unspeakable Truths — Facing the Challenges of Truth Commissions*, Routledge Press, New York and London, 2002.

perceived as playing a lesser role in armed conflicts, we should also recognize that there are many women who take up arms and engage in conflict in order to survive. Rape has been used as a tool of war indiscriminately by all sides in conflicts.

A truth commission, if it does its work properly, has a huge potential for promoting legal reform with respect to gender-based violence and the advancement of the rights of women during the transitional period. In formulating its recommendations, a truth commission can address a variety of legal issues in this regard, including laws to ensure that sexual violence is prosecuted, that the legal age of marriage for girls is in line with CEDAW standards, that women are treated equally under the law, and that cultural and traditional practices conform to a human rights culture.

Challenge of integrating women and girls in demobilization programs

In most conflict countries women and girls experience discrimination in the way in which demobilization and reintegration programs are implemented. In addressing these issues, I would like to make the following recommendations:

1. Proper planning for demobilization, re-integration and rehabilitation;
2. Education to deal with the stigma attached to the victims of sexual violence;
3. Skills training appropriate to the girls;
4. Access to economic opportunities;
5. Integration of victims and perpetrators.

Role of peacekeepers in protecting women and girls

A recently highlighted problem is the violation by peacekeepers and those in charge of displacement camps of young girls under their protection.⁷ Although peacekeeping troops on duty in conflict countries remain a key challenge in dealing with the exploitation of women and girls, the rules applicable to troops stationed in Sierra Leone represent advancement in the policy and procedures to prevent such exploitation. These policies and procedures need to be expanded upon and included in the rules for all peacekeeping missions. In addition, those in charge of displacement camps should be properly screened so as to ensure that any person who has been involved in the violation of the rights of women and girls should not be employed in key positions of power over those who are vulnerable.

Action should follow swiftly where violations have been uncovered and punishment should be speedy.

7 A joint report by the UNHCR and Save the Children UK first publicized this abuse in 2002. See UNHCR and Save the Children-UK, *Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone. Initial Findings and Recommendations from the Assessment Mission 22 October–30 November 2001*, available at: <http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/1550_unhcr-scuk_wafrica_report.pdf>.

Crisis of legitimacy for truth commissions

A major issue of concern for transitional justice practitioners must be the failure to have a commission's recommendations implemented.

What is the impact on the legitimacy of a truth commission if its recommendations are not followed through, given that recommendations usually deal with institutional reform and reparation? Over the past five years, a number of truth commissions have had this experience. There has been a failure to implement the recommendations of the commissions in Guatemala, South Africa and Ghana, and Peru and East Timor report that they may face similar problems. In almost all of these countries, reparation programs have experienced difficulties.

The negative consequences attached to the failure to implement are significant particularly in terms of the intended impact of these truth commissions. These negative consequences include the following:

- A failure to address the underlying causes of the conflict by failing to address institutional reforms that are required;
- A failure to implement reparations is a further violation of victims' rights;
- A lack of recognition of victims that may cause further trauma and lead to a sense of re-victimization;
- A feeling of deep betrayal at the behaviour of the political elites who have benefited from the transition;
- The persistence of inequalities;
- The contribution to a new impunity.

Ultimately, the legitimacy of the whole process is called into question. It is certainly not good enough that the commission's work has gone well. If the final aspect of its work is not implemented, it leads to the perception that the process itself must be flawed. This was certainly the view of victims in both South Africa and Guatemala. In post-conflict countries, victims are often told by the successor government that they need to move on. As a consequence, they find themselves left out of the current political dispensation and are out of sync with the new political rhetoric. The problem for most victims, of course, is that they cannot move on, because they are often at the bottom of the pile in society. Their realities have not really changed. Sadly, this is often accompanied by a consolidation of the political elites across the political spectrum.

Conclusions

In conclusion, transitional justice practitioners and the international community need to consider how we deal with the following issues:

- The deficit between norms, principles and the reality on the ground;
- The disjuncture between conflict resolution, peace building efforts and transitional justice mechanisms. On the one hand, there is a need to deal with

warlords and perpetrators out of a necessity to end the conflict. At the same time, it is expected that the international community will invest quite substantially in disarmament, demobilization and reintegration processes in respect of former combatants. At the international level, however, there is not a similar commitment or investment in victims. It is seen rather as a task of national governments to address concerns related to victims, which, of course, often do not materialize.

Given the above, how can we improve the quality of justice for victims and how do we mainstream a rights-based approach into all these processes? In my view, we need to ensure the following:

- Inclusion of accountability mechanisms in peace agreements;
- Inclusion of references to justice for victims in peace agreements;
- Inclusion of civil society in the peace negotiations;
- Emphasis on gender inclusion and accountability for gender-based violations;
- Respect for the national context;
- Remember that one size does not fit all;
- That reconciliation is not at the expense of justice;
- Linking transitional justice to democracy.

The international community should ensure that donor assistance is used as leverage to hold new governments accountable. There is a need to ensure that they also use this leverage to ensure that the recommendations made by transitional bodies, such as truth commissions, are implemented given that they are usually involved in the oversight of the peace negotiations and the ensuing transition.

I will conclude by quoting Filipino poet J. Cabazeres from a poem describing the challenge that we all must face in connection with reconciliation:

“Talk to us about reconciliation
 Only if you first experience the anger of our dying
 The anger of our dying
 Talk to us of reconciliation
 If your living is not the cause
 Of our dying
 Talk to us about reconciliation
 Only if your words are not the product of your devious scheme
 To silence our struggle for freedom
 Talk to us about reconciliation
 Only if your intention is not to entrench yourself
 More on your throne
 Talk to us about reconciliation
 Only if you cease to appropriate all the symbols and meanings of our
 struggle.”⁸

8 Cabazeres J., “Discovering True Peace through sincere Reconciliation” in “Intentional Conversation about Restorative Justice, Mediation and Practicing of Law”, Penelope Hurley and James Coben, *Journal of Public Law and Policy*, Hamline University School of Law, 2003.