

What Do We Know about Post-Conflict Transitional Justice from Academic Research: Key Insights for Practitioners

Summary

Societies that have experienced violent conflict face considerable challenges in building sustainable peace. One crucial question they need to address is how to deal with their violent past and atrocities that were committed – for example, whether perpetrators should be held accountable by judicial means, or whether the focus should be laid on truth telling and the compensation of victims. Transitional justice (TJ) offers a range of instruments that aim to help societies come to terms with their history of violent conflict. Systematic, empirical analyses of TJ instruments have been emerging over the last years. This Briefing Paper summarises the policy-relevant insights they provide regarding the main TJ instruments: trials; truth commissions; reparations for victims; and amnesties. Reviewing academic literature on the effects of transitional justice in post-conflict contexts, three main messages emerge:

- Initial evidence suggests that transitional justice can help to foster peace. Contrary to concerns that actively dealing with the past may deepen societal divisions and cause renewed conflict, most statistical studies find either positive effects or no effects of the various instruments on peace.
- Research indicates that amnesties can help to build peace, though not as a response to severe war crimes. Contrary to strong reservations against amnesties at the international level (especially on normative grounds), several academic studies find that amnesties can statistically significantly reduce the risk of conflict recurrence. However, the most extensive and recent study also shows that this effect varies depending on the context: amnesties can contribute to peace when

they are included in peace agreements, but have no effect after episodes of very severe violence.

- To effectively foster peace, trials should target all perpetrators involved in the conflict, not only the defeated party. A likely explanation for this finding from a recent study is that otherwise domestic trials can be used by the victorious party to punish and repress the defeated side. More generally, donors should be aware that if a political regime is able to instrumentalise a transitional justice process, for instance after a one-sided victory or in an undemocratic environment, the process is often not conducive to peace.

Reviewing the literature also makes clear that important, open questions remain:

1. Can transitional justice contribute to a deeper quality of peace that goes beyond the absence of violence? TJ should be able to foster reconciliation and mend broken societal relationships. However, if and how TJ can affect social cohesion after conflict needs to be better understood.
2. How do various transitional justice instruments need to be combined? Both the academic literature and policy documents suggest that it is important to find the right mix of instruments, but more systematic analyses of successful combinations of TJ instruments are necessary.
3. What role does donor support play in processes of transitional justice? Although transitional justice can be strongly domestically driven, such as in Colombia, donor funding often facilitates these processes. However, we still know too little about the effectiveness of such support.

Introduction

Addressing past crimes and injustices through transitional justice has become a main pillar of peacebuilding. In 2010 the UN Secretary-General defined transitional justice as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.” The concept and practice of transitional justice originates from democratic transitions and how countries that underwent a regime change deal with the legacy and crimes committed under the previous autocratic rule. Yet, by now it has also become widely employed in countries that have experienced violent conflict. The main rationale behind transitional justice in post-conflict contexts is that dealing with the past is necessary in order to overcome a country’s violent history and mend the social fabric. Thus, it is seen as a way to strengthen peace by re-establishing trust in the post-conflict regime as well as within society. The increased focus on transitional justice in post-conflict situations is also reflected in academic research on the topic: while many scholars have concentrated on the effect of transitional justice on democracy and human rights, more recently systematic comparative research on post-conflict justice and its effect on peace (narrowly defined as the absence of violence) is emerging. This Briefing Paper summarises the main insights for practitioners that can be drawn from these comparative, empirical studies on post-conflict transitional justice.

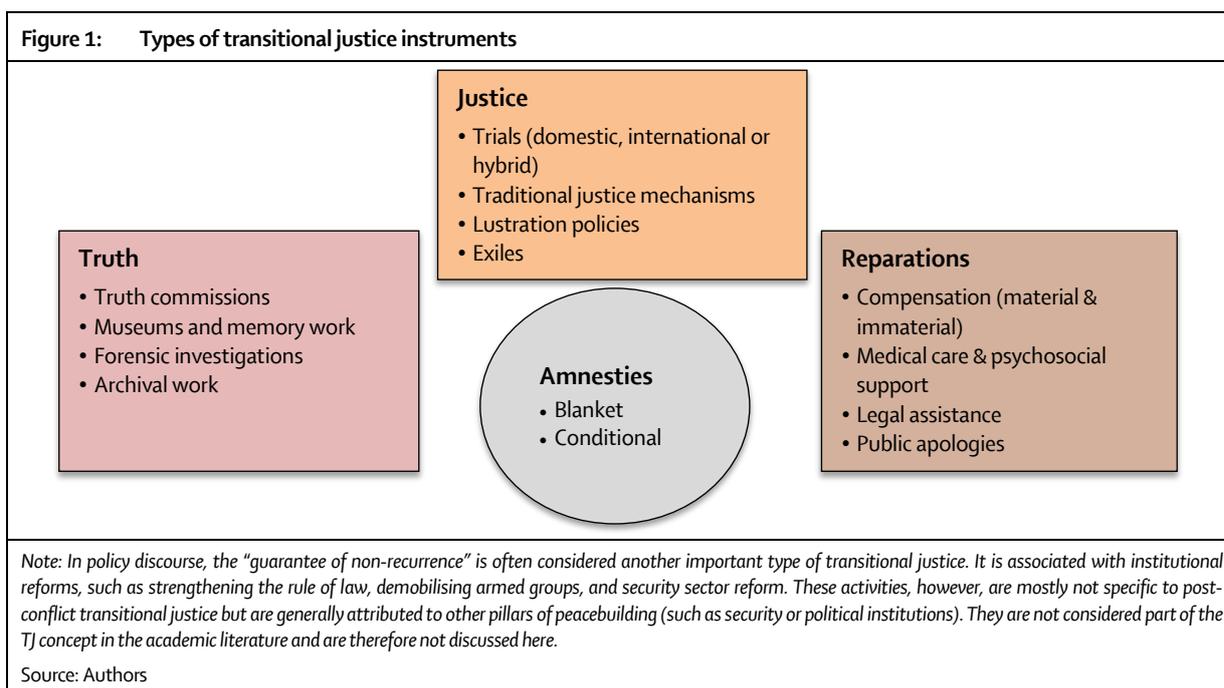
What different transitional justice instruments exist?

Transitional justice encompasses a variety of different instruments, which we group into four main categories – justice; truth; reparations; and amnesties. Figure 1 provides a full list of the various activities pursued under each category.

Instruments in the category of **truth** aim to uncover what atrocities have been committed during the conflict and by whom. **Reparations** offer compensation to individuals for harms and losses suffered, including psychological or physical violence or disappearance of their relatives. **Justice** instruments aim to hold perpetrators accountable for past crimes through prosecution and punishment. Finally, **amnesties** (addressing only some or all perpetrators) represent another policy instrument used to deal with a history of violence. Some researchers do not consider amnesties as TJ, because these follow a different logic: amnesties are a way of actually *not* engaging with the past in-depth but of concentrating on forgiving and moving on. Nevertheless, some do consider them one of the main TJ instruments and they have been addressed by scientific research in the field of transitional justice. Figure 2 presents in how many post-conflict cases each of the four main instruments has been used since 1990. As can be seen, almost all cases issued amnesties, while trials and truth commissions were used in 50 per cent of the cases. Reparations are clearly the least common.

Where are we more likely to see TJ taking place?

Empirically, about half of the post-conflict episodes after 1970 experienced some form of transitional justice, with a significant increase since the 1990s. However, TJ is not implemented in all post-conflict situations. Evidence suggests that the use of TJ is more likely after extreme violence, such as genocide. Also, international influence seems to matter to a certain degree: TJ is applied more often in post-conflict contexts with UN presence. Moreover, scholars have argued convincingly that whether or not TJ is used depends on the balance of power in the respective country. If power-holders were themselves perpetrators during the previous conflict, they are usually less inclined to pursue TJ through account



ability measures. In line with this argument scholars find that trials are more likely after a one-sided victory, while truth commissions and reparations are more likely after negotiated settlements.

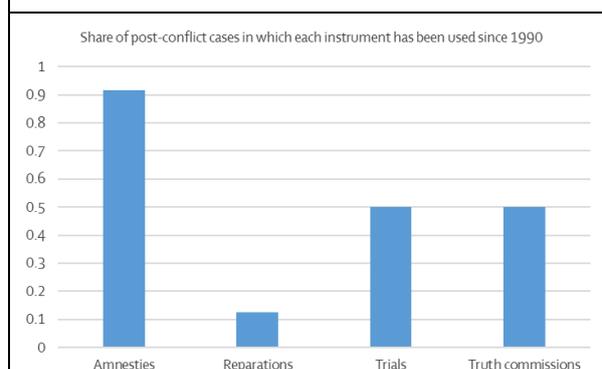
Can transitional justice contribute to peace?

For many years, the scholarly debate on transitional justice circled around the question of whether TJ threatens or strengthens peace. Some argued that TJ is beneficial or even necessary in order to overcome the violent past and mend societal relations by holding perpetrators accountable, revealing the truth, and compensating victims. Others warned that the same instruments contain the danger of reopening wounds, exacerbating societal divisions and increasing tensions, thereby potentially triggering renewed violence. In the past years, several systematic, empirical analyses of the effects of TJ have emerged. Although the evidence regarding the different instruments is not yet entirely conclusive, it is worthwhile noting that scholars either find positive effects of TJ on peace or no effect. There is little academic support for the notion that TJ fuels renewed violence.

What are the effects of specific transitional justice instruments?

New data collection efforts have made it possible to assess the effect of the different TJ instruments through cross-country, statistical studies, complementing existing case-based research. Many of the results are so far mixed, but some indications exist that specific instruments might be more effective than others. However, this only applies to the most prominent transitional justice instruments: amnesties, truth commissions, and trials. Currently too little evidence exists to assess the effects of reparations, lustration policies (discharging perpetrators from public offices), or exiles. More generally, it is important to note that some of the concepts – and how to measure them – remain disputed and that data quality still needs to be improved. While recent advances in the field do make it possible to draw first conclusions on the effectiveness of the various different transitional justice instruments, the results presented here reflect the current state of a dynamic, ongoing discussion.

Figure 2: Frequency of post-conflict transitional justice instruments



Source: Authors. Based on 28 countries that emerged from major violent conflict in 1990 or later, using data from Olsen, Payne, & Reiter (2010)

The strongest, and possibly most surprising, result so far is that amnesties can contribute to peace. Several studies find amnesties to statistically significantly increase the chances for peace, and one study shows that amnesties reduce the risk that post-conflict elections lead to recurrence. The most recent study that focuses exclusively on amnesties shows that timing and context matter. Amnesties can contribute to peace when they are embedded in peace agreements. However, the author finds no statistically significant effect if very grave crimes have been committed. This suggests that after low-level conflict, amnesties might be helpful because they demonstrate a willingness to forgive. However, if the crimes committed are too grave, amnesties are not effective.

The evidence regarding the effect of truth commissions is preliminary, but points toward a positive effect. Truth commissions aim to give a voice to victims, reveal the atrocities committed during the conflict, and start a societal debate on how to deal with the history of violence. In contrast to trials, they can also take the broader context and underlying factors of conflict into account and make recommendations to address these. One statistical study finds that truth commissions are associated with peace; another that they are, but only in democratic contexts. Taken together with comparative case studies the evidence points toward the positive effect of truth commissions within democratic contexts, but these findings need to be corroborated.

Several studies fail to find that holding perpetrators accountable for atrocities by judicial means has an effect on peace. However, a recent study takes a more differentiated approach and indicates that trials are associated with peace if they are comprehensive, which means that they must address both the opposition and the government. Trials that only target the opposition, in turn, do not increase a country's chances of remaining peaceful. This is likely because in such cases trials can be used by victorious governments to punish their opponents rather than holding all perpetrators accountable to overcome the violent past. In contrast to many domestic trials, international trials tend to include both sides, but their impact remains unclear.

What role does international support for transitional justice play?

Scholars are just beginning to investigate where and when international donors support transitional justice processes. One academic data collection effort on international support for trials and truth commissions suggests that donors are more likely to support TJ processes in their former colonies or countries that are geographically closer to them. It also suggests that donors lend more support to trials than to truth commissions.

Case studies and policy documents suggest that TJ support can be effective and should be adapted to the local context, based on local ownership, enable broad-based participation in the process, and include local-level initiatives and extensive outreach activities. Recent DIE research indicates that support for transitional justice needs to be combined with all

other elements of international peacebuilding to effectively prevent renewed violence: support for security, socio-economic development, and politics and governance. But systematic evidence on external support for specific instruments and more insights on whether and how international support geared towards these processes can make a difference is still lacking.

Conclusions

In sum, the emerging cross-country research on transitional justice indicates that dealing with the past through transitional justice does not risk causing renewed violence. Assessments of specific instruments show that amnesties are often effective in fostering peace, and that trials that only target the defeated party are not. Preliminary evidence on a positive effect of truth commissions on peace exists, but these findings need to be corroborated. Finally, research on reparations is currently still too nascent to draw clear conclusions on their effect on peace. Similarly, the effects of international support to the various different instruments still warrant further analyses.

Two further, open questions remain. First, it is not yet clear whether transitional justice can contribute to a deeper quality of peace that goes beyond the absence of violence. Can it help to foster social cohesion in societies that have experienced severe violence? So far the academic literature has focused on TJ's contribution to peace operationalised as the absence of violence (negative peace). However, many assume that TJ can contribute to a more comprehensive peace by addressing the structural causes for conflict and mending broken societal relationships (referred to as positive peace). These effects have, however, not been studied yet, probably due to data constraints. A second open question is how to combine various transitional justice instruments. In the guidance note of the Secretary-General on the United Nations Approach to Transitional Justice, one guiding principle holds that donors should "[e]ncourage a comprehensive approach integrating an appropriate combination of transitional justice processes and mechanisms". One study shows that the combination of trials, amnesties, and truth commissions may be particularly effective, but more systematic analyses of successful combinations of TJ instruments are necessary.

References

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An online appendix with the relevant literature is available at:

https://www.die-gdi.de/fileadmin/user_upload/pdfs/publikationen/briefing_paper/2019/BP_3.2019_Online_appendix.pdf

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