

Transitional Justice

An Overview



At the end of the conflict...

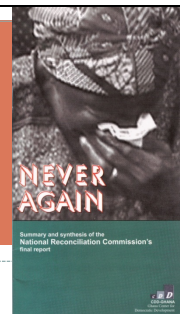


Why Confront the Past?

- Learn from past to prevent conflict
- Establish accountability
- Build rule of law
- Establish respect for human rights
- Build participatory democracy
- Create new society based on tolerance & understanding



What is Transitional Justice?



Definition:

CONFRONT LEGACIES OF PAST HUMAN RIGHTS ABUSES & ATROCITIES TO BUILD STABLE, PEACEFUL, & DEMOCRATIC FUTURE



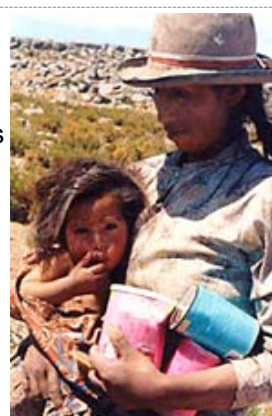
What to do?

- Do nothing - deny the past
- Prosecute
- Give amnesties
- Investigate & report
- Remove/ bar from public office
- Reconcile, forgive, apology
- Memorials for victims
- Recover bodies for families
- Reparations for victims
- Reform Institutions
- Do some/ all of above



Examples of TJ in History


- Nuremberg, Tokyo tribunals
- Cold war.....little progress
- 1980s Latin America: Commissions- disappearances
- 1990's- ICTY & ICTR
- Truth & Reconciliation Commissions
- Hybrid Courts
- International Criminal Court



TJ Approaches to Dealing with the Past

- Prosecutions
- Truth-seeking
- Reparations
- Institutional reform

Truth-seeking	Prosecutions
Reparations	Institutional reform



Prosecutions




- Domestic prosecutions
- International prosecutions
 - Ad Hoc Tribunals
 - ICC
- Hybrid courts
 - Sierra Leone, Bosnia, Cambodia, Lebanon
- Universal jurisdiction





Prosecutions

INTERNATIONAL	NATIONAL
<p><i>Historical:</i></p> <ul style="list-style-type: none"> • Nuremburg, Tokyo etc • The ICTY, ICTR • The International Criminal Court- The Rome Statute <p><i>International Crimes</i></p> <ul style="list-style-type: none"> • Crimes Against Humanity, • Genocide, • War Crimes • (and Aggression) 	<ul style="list-style-type: none"> • Domestic criminal law and criminal code • International Crimes included in domestic law. • Use of international jurisprudence



Limits to Prosecutions

- Focus on few perpetrators
- Only evidence relevant to crime admissible
- Cannot focus on entire conflict period, or background, patterns, causes, impact.
- Will not answer 'Why?'
- Cannot focus on lessons learned, make recommendations etc.
- Limited victim participation
- Limited public access

Truth-seeking



- **Truth commissions**

- More than 30 TRCs, incl. South Africa, Timor-Leste, Sierra Leone, Peru

- **Unofficial truth projects**

- Broader civil society efforts (oral history projects, etc.)
- Documentation of violations,
- unofficial investigations- civil society led
- NGO reports, media
- Documentaries
- The arts, theatre, songs etc



Why a Truth Commission



- **Provide objective account of**
 - antecedents and causes &
 - history of conflict
- **What, who, how & impact**
- **Provide measure of accountability through findings**
- **Bring victims voices/ experiences into public arena**
- **Make recommendations for**
 - reform of abusive institutions
 - redress wrongs suffered by victims
- **Promote reconciliation**

Truth Commissions

ACTIVITIES

- Investigations/ research
- Statement taking
- Interviews/ public Hearings
- Victim support
- Events to promote reconciliation
- Public awareness





The Truth and Reconciliation Commission of South Africa



Pictures courtesy of Google


Challenges facing a TRC

- Relationship with government & factions
- Relationship with other TJ bodies
- Independence & autonomy
- Selection of appropriate commissioners/ staff
- Funding, resources, skills
- Analyzing mass of information
- Naming names- hearings, report
- Standard of proof for findings
- Confidentiality / transparency
- Witness Protection
- Accessibility to public / victims
- Use immunity / amnesty
- Sexual violations / violations against children
- Follow up after TRC





Why reparations?

Examples of Reparations




- **Monetary Payments**
- **Access to Services**
 - Health, education
- **Symbolic reparations**
 - Museums, monuments



Reparations

Challenges &
Issues



Challenges and issues:

- Can generate high expectations
- Impossible to restore victims to positions prior to violation
- Expensive
- Redress v social welfare?
- Who pays?
- Who benefits?




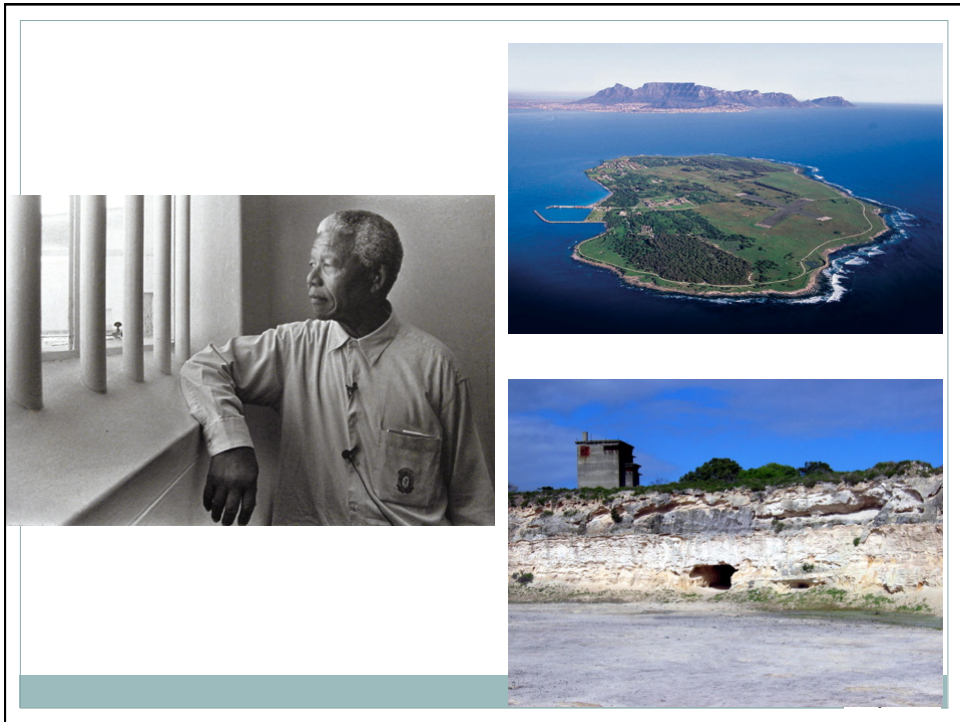
**STILL EXPECTING...
12 YEARS AFTER THE TRC**
OCTOBER 29 CAMPAIGN FOR ACTION TO SECURE REPARATIONS
AND REDRESS FOR SURVIVORS OF APARTHEID CRIMES



**Symbolic
reparations**

- Means to address the past through
memorials/ museums/ monuments
 - Honoring/remembering
 - Reclaiming site of trauma
 - Creating museums and other
educational projects





Institutional Reform





- **Which institutions?**
 - Constitution
 - Military
 - Police
 - Judiciary
 - Parliament
 - Elections
 - Education
 - Media
 - Oversight institutions
 - Land
 - Mineral resources
- **How?**
 - Vetting
 - Legislative
 - Practice, policy & procedure



TJ Cross-cutting Themes

- **Gender**
- **Reconciliation**
- **Impunity/Amnesty**

TJ Cross-cutting Themes

Why focus on gender?




- **Women: significant portion of victims in most conflicts**
- **Singled out for abuse/ gender crimes**
- **Often ignored or overlooked**

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TJ Cross-cutting Themes

Reconciliation

- Should a mandate or decree define reconciliation?
- Should justice, truth, reparations, institutional reform be preconditions for reconciliation?
- How can a TRC promote reconciliation?

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Reconciliation

Complex

Ambiguous

Subjective

Contextual

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TRANSITIONAL JUSTICE

TJ Cross-cutting Themes

Amnesty

- What may justify an amnesty?
- Should a TRC be empowered to grant amnesty?
- Does an amnesty deliver truth?
- What are alternatives to amnesty?
 - Use immunity
 - Recommend cases appropriate for:
 - ✦ Prosecution
 - ✦ Not for prosecution
 - ✦ Pardon
 - ✦ Not to pardon

TRANSITIONAL JUSTICE

