

From a development and peace-building practitioners' network point of view: FriEnt's Tour d'horizon of the inclusion of Economic and Social dimensions into Transitional Justice

By Sylvia Servaes, Misereor/ Working Group on Peace & Development (FriEnt)

Essex Transitional Justice Network, Colchester, Seminar, September 8-9, 2012

"Towards a Conceptualization of the Economic and Social Dimensions of Transitional Justice"

Coming from development and peacebuilding work we at the Working Group on Peace and Development (FriEnt) have long been arguing for an inclusion of social and economic issues into transitional justice. By retracing our voyage of doing this I would like to present you some of the issues for discussion as to what there might be in it in terms of further research questions. The basis is a series of conferences and workshops that we organized over the past years – that brought together colleagues from our member organizations and from our respective partner organizations as well as from specialized organizations with practical experience in different countries and regions. We thus assembled and encouraged exchange on experiences and lessons learned, but also on challenges and new ways.

From Nuremberg ...

Our first such public appearance was at the international conference "Building a Future on Peace *and* Justice" that the German government organized in Nuremberg in 2007. We co-organized a workshop "Looking Back and Moving Forward – The nexus between justice and development" where linking legal and socio-economic dimensions of peace and justice figured as one of the central issues of our panel and the ensuing discussions. This allowed us to bring into relief three different dimensions of justice:

- *Rectificatory* justice: Rectifying the injustices that are direct consequences of the war (i.e. past human rights abuses, war crimes);
- *Legal* justice: (Re-)establishing the rule of law and providing access to justice for previously marginalized groups.
- *Redistributive* justice: Addressing socio-economic injustice, stemming from structural injustices and distributional inequalities that are often causes of conflict.

This is a distinction that goes back to Rama Mani and that was presented by her in the workshop panel discussion. In order to facilitate "looking back and moving forward", all three dimensions of justice have to be addressed, participants held. "Even perfect judicial processes will not prevent violence from flaring up again if basic social, economic and political injustices are not addressed", summarized Rama Mani. A concentration on human rights issues to the detriment of the social and economic dimensions might preserve the status quo, entrench major social inequalities, and even contribute to deepening social injustices rather than bringing about necessary change.

Here we were one with John F. E. Ohiorhenuan, then Senior Deputy Director, Bureau for Crisis Prevention and Recovery, UNDP, who declared at the opening panel of the Nuremberg conference, “Post-conflict economic recovery poses distinctive developmental challenges. Civil wars are often the product of developmental pathologies like weak economic governance, inequality, exclusion and unemployment. Sustainable peace and recovery require that these structural deficiencies are addressed.”

That is, a consideration of socio-economic dimensions does not only allow to work from a more holistic justice concept, but also to take into consideration the causes rather than just the symptoms of violent conflict -and thus to build a more solid basis for conflict transformation.

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

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

Also, in practice a consideration for the social and economic dimensions presupposes an open eye for actors, local and international: Very often, even new actors on the political scene may be part of the old elite and may not be interested in initiating essential economic, political and social changes. Or, the international community often sidelines important civil society groups for fear of becoming engaged with groups that might be considered too political, such as victims’ and ex-combatants’ associations.

Again, an inclusive understanding of justice and peace – it was argued by several participants in the Nuremberg workshop – also has to look at the international responsibility for social, economic and political injustices. Examples of responsibilities for recent economic injustices on a global level were mentioned and it was suggested to explore to what extent they should be included in demands for the establishment of truth and reconciliation processes in particular countries and regions.

Another observation relevant to our discussion here that came out of a study commissioned by FriEnt and was presented at the Nuremberg Workshop was that there is a growing trend within the international donor community to prioritize “technically” oriented security approaches such as Security Sector Reform (SSR) or DDR. By comparison, there is much less support for reparations – and FriEnt has taken up this point in discussion with UNWOMEN and UNDP at a workshop earlier this year. This means that the international community spends more thought and money on those responsible for atrocities than on those who survived them. A similar concentration may be observed with the focus on legal or truth finding mechanisms that prioritize civil and political rights over mechanisms geared towards social and economic change.

FriEnt & Transitional Justice

One of FriEnt’s objectives is to support conflict-sensitive approaches in the work of member organizations by making use of their different levels and perspectives. “Transitional Justice” has been one of its subjects where this concern has been central.

Cf <http://www.frient.de/en/home.html> for general information and <http://www.frient.de/en/transitional-justice-and-development.html> on Transitional Justice.

The declaration that came out of the Nuremberg conference called on development actors to “be sensitive to dealing with the past when designing post-conflict development strategies and take into account the relevant recommendations of accountability mechanisms”. At the same time, it required transitional justice strategies to give early consideration to the socio-economic dimension of justice.

... to Berlin

The international conference “New Horizons. Linking Development Cooperation and Transitional Justice for Sustainable Peace” that FriEnt organized in early 2010 took up these points and aimed at examining in more detail in which way development cooperation and transitional justice can take into consideration the full range of injustices that are at the root of war and violence. Here we put social and economic issues squarely at the center of concern with an understanding of “past atrocities” to include social, economic, and cultural injustices.

However, the task is not one of simple inclusion, Nahla Valji from CSVR/ UNWOMEN insisted on in her statement in the opening panel to the conference: “It is not enough to broaden transitional justice and simply include economic, social and cultural rights. Rather, the focus should move beyond a narrow legal individual rights paradigm to define the justice we seek in transition as one of social justice.” Her example to underscore her argument comes – again – from South Africa: South Africa, Valji continued, was not about a handful of political and civil rights violations. “It was fundamentally about the wholesale marginalization, underdevelopment and social and economic oppression of a population.” And so “the limited focus of the Truth and Reconciliation Commission (TRC) which spoke only to the violent individual excesses of the apartheid system did not speak to the vast majority of victims – that is, victims of a system that was itself a crime against humanity”.

So, Valji concluded: “If we do not expand the definition of transitional justice and allow it to be context-driven we simply risk being irrelevant. - Apartheid was structural injustice. The redress required therefore equally needed to be structural”.

Interestingly enough, she pointed out, there have been other sites of redress in South Africa apart from the TRC, such as the constitution, new political institutions and redistributive justice policies like land restitution. However, these have resulted in restitution and reform within the broader framework of a neo-liberal economic agenda that has in fact entrenched pre-1994 property rights and a focus on commercial farming at the expense of smaller land-owners, she argued. So the limited definitional mandate of the TRC contributed to ongoing fractures and injustices that continue to plague the country.

The Berlin conference then explored social and economic dimensions “field by field” in their interplay between transitional justice and development: Under the title of “Linking Development Cooperation and Transitional Justice Interventions: Experiences and Perspectives” we had a series of five workshops considering:

- land issues as a matter of deeper-rooted justice in post-conflict societies where we dealt with experiences from Kenya and Cambodia;
- conflict resources and economic crimes, where we explored questions of asset recovery and possibilities for reparations payments and, with examples from Liberia, looked at natural resources as a “natural connecting point” for post-conflict development and transitional justice with truth commissions probably winning over tribunals as the transitional justice mechanism to turn “conflict resources” into “peace resources” being able to focus both on individual responsibility as well as on institutional or structural injustices at the root of abuses or violence;

- education and remembrance as a basis for laying the ground for new generations with examples from Northern Ireland, Guatemala and the Western Balkans which each looked at a different range of experiences and status of the education sector in dealing past atrocities and injustices.
- healing and health needs of survivors as challenges for health systems and communities starting from experiences in South Africa that clearly showed a connection between discriminatory health politics under the apartheid regime and people's health conditions in Post –Apartheid South Africa and going over to Kenya where the WAKI commission dealing with the aftermath of post election violence in 2008 came across, fairly inadvertently, health issues while they were prepared to deal with issues of security and mobility only;
- the economic dimension of justice considering sustainable and inclusive private sector development as central where socio-economic marginalization and economic deprivation belong to the root causes of a conflict and which was discussed with the example of Nepal.

In the closing panel the question of including social and economic issues into transitional justice processes brought up three central questions:

- Does the inclusion of social, economic, and cultural injustice into transitional justice interventions mean overloading mechanisms or does work in transitional justice risk to become irrelevant if it does not include these areas?
- Do certain transitional justice mechanisms lend themselves more to dealing with past social, economic and cultural injustices than others? (E.g. Truth Commissions rather than Tribunals?)
- Do alternative sites to deal with past injustices in these fields suffice or does this lessen the impact for moving forward as the South African example seems to suggest?

Also it seemed important to include into transitional justice interventions two elements that have been applied in development cooperation and peace building for some time: (1) empowerment of those who did not have opportunities to participate in the political, social, economic, and cultural affairs of their state and society and (2) the inclusion of a broad range of stakeholders into transitional and development processes.

Of course, all along there were also strong voices of caution, not the least Juan Mendez whose keynote to our Berlin conference evening event is mentioned in the invitation to this seminar. In this key note speech he seems to relegate social and economic matters to development work, legal matters to transitional justice proper, although he also concedes that other mechanisms than tribunals might be helpful in coming to terms with the complexity of mass atrocities. Or Pablo de Greiff who urged, again in the opening panel to the Berlin conference – and with good reason, not to overload transitional justice mechanisms with the examination of social, economic, and cultural injustice of the past - tasks they were originally not made for!

However, we have to ask to what extent this view is in itself connected to a particular setting/ context and to what extent it holds in the very different contexts that we deal with now: from dictatorship with fairly clearly identifiable and a “limited” number of acts of murder, torture etc to mass violence with much more wide spread and “divided” responsibilities, with blurred lines between victims and perpetrators; from a context with an elite fairly rooted in the “western” traditions of Christianity and human rights and a lively civil society to a context that is much more varied in terms of value background and understanding of a “civil society”; from a context with usually functioning even though at that moment dysfunc-

tional institutions to contexts where political and judicial institutions had not been very thoroughly established beforehand; from a context with, yes, a large part of a poor population to a context of, however, much more generalized poverty. In this context Nahla Valji's remark about becoming "context driven" cited above certainly becomes very vital and basic.

Each of these workshops provides ground and material for further exploration.

Zooming in: health issues as issues for transitional justice

Within the FriEnt context we have, for now, taken up issues around "health and Transitional Justice". We have done so with a further FriEnt workshop in May 2011 as well as by participating in a GIZ workshop in Rwanda in November 2011 and a workshop organized by *medicus mundi international* (mmi) in October 2012. Issues included an exploration to what extent different transitional justice mechanisms may take up aspects of health care the starting point being that war and violence do not "only" create their own health challenges, but also include challenges of access to health care at their root.

First and foremost: health issues like gender based violence are acknowledged as a "violation of human rights" and can thus be prosecuted before *tribunals*. And: access to health is laid down as a human right and can be legally claimed in trials and before tribunals. However, tribunals may not in fact be the best place for negotiating sometimes quite sensitive health issues like, again, gender based violence as the stigmatizing effect of hearings will in some contexts be bigger than what people and especially women hope to get out of it¹. Victims' vulnerability, and more particularly, women's victims' vulnerability has only been relatively recently taken into account by provisions made for trauma counseling, protection of identity or special trainings for interrogations in order to avoid retraumatization when examining women on cases of gender based violence.

Truth Commissions may provide survivors with a more important forum to share their experience of suffering and survival – a process that may in itself have a healing effect. The Timor L'Este Truth and Reception Commission provides an example where gender is laid down as one of five guiding principles. Exploration of gendered experience of violence like gender based violence, stigmatization, the special experience of widows as household heads as well as in particular, women's participation in the transitional justice processes and in pressing for women's rights are at its core². However, as the example of the South African Commission has shown, hearings before such commissions may also lead to flash backs and follow up problems within communities. So cases of particular sensitivity like gender based violence – which does not only apply to women! - need special protection also in this forum.

Reparations are seen by some as the "most female oriented transitional justice mechanism"³ (in contradistinction to DDR programs that are seen as predominantly male oriented) as more particularly women, as survivors, have to claim reparations in order to secure survival for themselves and the children at their charge. Providing health care, including trauma healing may be an important part of reparations. At the same time this may provide an important means for empowerment as the example of the Peruvian Truth Commission shows. The Commission brought out the horrendous psycho-social consequences of the twenty

¹ A colleague reported from the DRC context that „women who were raped would certainly like to see the perpetrators brought to justice. But for the Congolese women, the reality is different [...] The criminal prosecution of the perpetrators [can easily] become a punishment for the suffering women themselves – for in situations in which rape becomes public knowledge and results in social ostracism, women will do their utmost, out of desperation, to keep their experience secret [...] even if their tormentor goes unpunished as a result. [taz, 03.09.2005, printed version; author's translation].

² Cf Wandita et al. in Rubio Marín (ed) 2006.

³ Cf UNWOMEN Kampala Report 2010.

year war in Peru. It recommended reparations that also included a mental health component that was formulated in terms of a „Right to Reparation“. The ensuing „Reparations Plan“ became a central advocacy instrument for survivors to vindicate basic services in the health sector. The process was considered to be an important exercise to claim social, economic and cultural rights that had been denied even before the war. However, it also became clear that all relevant actors have to become active including the state in whose responsibility the provision of adequate health services and reparations lie. Otherwise empowerment would lead to frustration of those empowered⁴.

Last but not least there is *vetting* and *lustration* that may be important to consider when setting up transitional justice mechanisms in the aftermath of dictatorship and mass atrocities and at the same time desiring to (re-) build a health system: Medical personal responsible for death and violence has to be screened out of the institution notwithstanding legal prosecution for crimes against humanity. A notorious example are the Nuremberg Medical Doctors' Trials that brought medical doctors to the books who participated in euthanasia programs of the Nazi Regime.

The health sector may be an important entry point for people to find their way back into society and vindicate their rights (to basic services like education and health care) and should thus be linked to transitional justice mechanisms. It is also an important entry point for gender to be more systematically taken into account while at the same time it risks getting stuck in a simple “men/ women” divide.

Summary: The workshop questions

So from this tours d'horizon of practice where are we in terms of the questions put to us for the workshop?

1. *Issues*: Maybe it is less a *question of issues* – a wide range of social, economic and cultural may be “an issue”. Details would depend on careful context analysis. Much more important seem to us questions of (national and international) actors, approaches, mandate (!) and last but not least - political will to put social and economic dimensions on the agenda and into the mandate of transitional justice mechanisms.
2. *Benefits*: A broader understanding of justice seems vital if transitional justice is to contribute – as it claims - to conflict transformation. It is only by including the social and economic dimensions into transitional justice that we get at causes of conflict - without which we do not have a safe basis for conflict transformation!
3. *Potential drawbacks*: Considering social and economic dimensions may take even more coordination, cooperation and political will that already represent a challenge for the more accepted issues of political and civil issues. But in view of the above outline this cannot be a reason not to consider social, economic and cultural issues! Rather we have to see how to deal with these challenges.
4. *How to achieve inclusion*: The human rights based approach may be one entry point as it is based on internationally agreed rules and values and human rights do provide for considering social, economic, cultural issues. A needs based approach may be another option as it brings out the importance of social, economic and cultural issues and the necessity to work squarely on the interface of peace building, development and transitional justice (cp the work by Michelle Parlevliet).
5. *Distinction of transitional justice from general problems surrounding violation of social, economic rights*: This is indeed a central question for practitioners - certainly when it

⁴ CF Lisa Laplante 2011.

comes to reparations which should not be “paid” by development programmes. Depending on the situation it may be vital for further processes of development and conflict transformation not to blur the lines between victims of atrocities and victims of general violation of social and economic rights. A clear analysis, clear mandate and criteria for each are key here; also that development work and transitional justice work hand in hand.

6. *Research needed:* From a peace building and development practitioner’s point of view the issues in points 1., 2. and 4. seem vital in order to better understand and find more easily entry points for action.
7. *Other:* One important point that has been conspicuously absent from all these discussions – and here Valji is one of the few to insist on – is the consideration of *gender inequality*: As Valji again put it in the Berlin opening panel, this most pervasive and universal inequality which gender inequality represents is exacerbated by conflict and its impact on the ground of post-conflict societies. Yet beyond a focus on women as victims of sexual violence gender, gender power relations in particular and the need for gender equality and justice have largely been ignored by transitional justice mechanisms to date. Much more needs to be done here.

References

- FriEnt: Development and Legitimacy in Transitional Justice – Workshop Reports, 2007, Susanne Reiff, Sylvia Servaes, Natascha Zupan. <http://www.frient.de/publikationen-service/dokumente/library/development-and-legitimacy-in-transitional-justice.html>
- FriEnt: New Horizons - Conference Report, 2010, Sylvia Servaes & Natascha Zupan. <http://www.frient.de/publikationen-service/dokumente/library/new-horizons-linking-development-cooperation-and-transitional-justice-for-sustainable-peace.html>
- FriEnt: Health System in (Post-) Conflict Situations. Workshop Report, May 2011, Sylvia Servaes. <http://www.frient.de/publikationen-service/news-details/article/gesundheitssysteme-in-post-konfliktsituationen.html>
- FriEnt: Gender, Reparations and Development. Workshop Report, January 2012, Natascha Zupan. <http://www.frient.de/publikationen-service/news-details/article/gender-reparationen-und-entwicklung.html>
- Reparations, Gender, and Development. Report of the Kampala Workshop, Dec 2010, UNWOMEN & UNDEP. http://www.unrol.org/article.aspx?article_id=164
- Lisa J. Laplante: Linking Peace Building and Health in Post Conflict Settings. FriEnt Essay Series 2011. <http://www.frient.de/publikationen-service/dokumente/library/linking-peacebuilding-and-health-in-post-conflict-settings.html>
- Learning to Engender Reparations in Timor-L’este: Reaching out to Female Victims. Galuh Wandita, Karen Campbell-Nelson; Manuela Leong Pereira. ICTJ 2006. Ch 6 in Ruth Rubio-Marín (ed): What happened to the women? Gender and Reparations for Human Rights Violations.

http://www.ssrc.org/workspace/images/crm/new_publication_3/%7Bd6d99c02-ea4a-de11-afac-001cc477ec70%7D.pdf

- Parlevliet, Michelle: "Rethinking Conflict Transformation from a Human Rights Perspective," and "Holding Concurrent Realities. Reflection on the Responses," in: V. Dudouet and B. Schmelzle (eds.), *Human Rights and Conflict Transformation. The Challenges of Just Peace*, Berghof Handbook Dialogue Series No. 9, Berghof Conflict Research (Berlin), 2010, pp. 15-46 and 105-113. <http://www.berghof-handbook.net/>

Imprint

Working Group on Peace and Development (FriEnt)
c/o BMZ, Dahlmannstr. 4
53113 Bonn
Tel. +49-228-535-3259
Fax. +49-228-535-3799
frient@bmz.bund.de
www.frient.de/en

Responsible under German Press Law: Natascha Zupan

Author: Sylvia Servaes

The contents of this Coinference Paper reflect the views of the author, not necessarily the opinions of the FriEnt member organisations.