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TRANSITIONAL JUSTICE AND CIVILIAN CONFLICT TRANSFORMATION

CURRENT RESEARCH, FUTURE QUESTIONS

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1 We distinguish between TJ intervention and the processes. We use the term *intervention* for any directive measures and *process* to describe what *emerges* in the situation, both resulting from the intervention and beyond. We prefer not to use the term ‚mechanism' which we feel suggests a ‚plan-able' functionality that it often cannot deliver on.

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– EXECUTIVE SUMMARY –

This study looks at the current state of transitional justice literature, research and practice, with a special focus on the non-judicial interventions in the field. The authors explore potential future research questions from a practice perspective and based on their own insights as practitioners. Using experiences from development and conflict transformation/ peacebuilding work they seek to embed transitional justice interventions in a holistic view of social transformation processes after violent conflict. In particular the paper offers a sharpened focus on the so-called 'soft issues' of transitioning - the social, cultural and psycho-emotional phenomena often seen as peripheral but, in fact, central to making or breaking the success of transitional justice interventions.

Starting with a brief history and overview of the aims and definitions of transitional justice, the authors outline the conventionally mentioned non-judicial instruments of transitional justice such as truth commissions, reparations, restoration and social repair as well as institutional reform. They expand in some more depth on insights from critical trauma work, memory work and dialogue/encounter work making links to the long-term German experiences of dealing with the past. The study further explores a range of crosscutting issues - conflict contexts and the conditions of peace processes; global norms and local agency; the role of local resources, neo-traditional approaches and questions of identity, subjectivity and gender - thus tracing potential synergies between the fields of civilian conflict transformation and transitional justice.

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UNDINE KAYSER-WHANDE, STEPHANIE SCHELL-FACON

TRANSITIONAL JUSTICE AND CIVILIAN TRANSFORMATION

Introduction

This study presents the reflections of the authors as both practitioners and scholars in the field of transitional justice (TJ). It was conducted based on desk top research between December 2007 and May 2008. The paper draws on our experiences of working in and researching transitional justice projects and processes in South Africa since 1996 and on our ongoing research and practice within German processes of dealing with the past since 1990. It also draws on our long-standing experience and engagement in dialogue and encounter work in conflict ridden societies as well as the recent experience of training an audience of outgoing "civil peace workers' of the German government on transitional justice issues.[1] Influential on our way of viewing the transitional justice field is also our experience in intercultural exchanges with young people and with professionals, which were one of the German approaches to engage with its past and seek reconciliation with former enemies. Our backgrounds in Social Anthropology and Science of Education add to these perspectives.

Strategically, this paper aims to contribute to the establishment of an interdisciplinary Graduate School of Transitional Justice at the University of Marburg, which will support German efforts at supporting transitional justice interventions internationally with knowledge and competencies that are directly relevant to practice in future.

1 See also Kayser (2005, 2001, 2000a, 2000b, 1999) and Schell-Faucon (2004, 2001a, 2001b, 2000, 1999).

The Study looks at the current state of transitional justice literature and research, with a special focus on the non-judicial interventions in the field. Starting with a brief history of TJ as a field of action and inquiry (1), we continue with an overview of aims and definitions of TJ and its relation to concepts such as justice and reconciliation (2). Chapter three touches on some of the conventionally mentioned measures and processes of transitional justice such as truth commissions (3.1), reparations, restoration and social repair (3.2), institutional reform (3.3) as well as trauma work (3.4), memory work (3.5) and dialogue/encounter work (3.6).

The study further explores a range of crosscutting issues that are beginning to emerge such as conflict contexts and conditions of peace processes (4.1), global norms - local agency (4.2), the role of local resources and neo-traditional approaches (4.3), questions of identity and subjectivity (4.4) and gender (4.5).

Finally, the study seeks to open up new perspectives and ways of looking at the field of transitional justice by embedding it in the context of current conflict transformation research, known in Germany as 'Civilian Conflict Transformation' or also as 'Civilian Conflict Management' (ZKB)[2]. Raising important current research questions between the two fields - transitional justice and the broad

2 The German term 'Zivile Konfliktbearbeitung' (short ZKB) developed from the mid-1990s in response to international debates on conflict resolution, management and transformation in the Anglophone world. The German understanding of the field retains its strong emphasis on *civilian* conflict transformation and peacebuilding measures; hence we use the translation Civilian Conflict Transformation here.

field of civilian conflict transformation - we aim to sketch the tensions and contestations in the current debates that emerge between pragmatic politics, TJ intervention practice and research projects (5).

1. Brief history of Transitional Justice

Transitional Justice and Civilian Conflict Transformation are both relatively recent fields of scholarship that have evolved from the practices of dealing with conflict after the end of the Cold War and that have increasingly received attention in the past twenty years. Interestingly, both practices and theoretical discourses of these fields have evolved differently and relatively separate – if not isolated – in Germany compared to the international arena. German debates were long focused especially on Germany's own ways of dealing with the Third Reich, while international debates drew on a variety of more recent examples in Latin America, Asia and Africa. This, however, is currently changing. Below, a brief history of Transitional Justice is provided in order to better understand the origins and roots of today's discourses.[3]

Structured political efforts at engaging with political transitions and the aftermath of brutal and oppressive regimes are nothing new as such. Elster (2004) traces transitional justice back to Athens 411 and 403bc and shows respective discourses during the French restorations, 1814 and 1815. Such historical processes are, however, rarely mentioned in current TJ debates that particularly like to keep their focus on the present. In part following the genealogy of Ruti Teitel (2003) we distinguish the following three different phases in the recent international history of transitional justice:

Phase 1: Post War Transitional Justice[4] (1945-1980s):

For the first time international laws are developed to deal with former regimes in countries emerging from dictatorship and oppression. The Nuremberg trials (1945-49) are often cited as the "birth moment' of transitional justice. Here, for the first time, an international body was taking to task perpetrators of war crimes and genocide in the name of humanity. From here efforts sprung to devise principles of international law that would apply across nations in future (Ferencz 1999).

As military dictatorships were crumbling in Greece and Latin American countries in the late 1970s and 1980s, the field of transitional justice emerged more visibly when legal perspectives and political science research on transitions from authoritarian to democratic regimes came together. The question of combating impunity and amnesia in the aftermath of atrocity was central. As new nation states were often unable to do so in light of the political realities of the day, the question was also about the role and assistance of externals - dubbed "the international community' - and the development of international legislation that would allow such interventions (e.g. Orentlicher 2007: 11-13).

Phase 2: Post Cold War Transitional Justice (late 1980s -late 1990s):

TJ or 'Justice in Transition', as it was initially called, becomes an official term and concept as a variety of actors from different disciplines discuss the implications of peace agreements for the (legal) prosecution of gross human right violations.

A seminal works of scholarship was Kritz' (1995) publication 'Transitional Justice: How Emerging Democracies

3 For an overview of the history and current research questions of civilian conflict transformation (ZKB) as a field of action and research in Germany see e.g. Weller (2007).

4 Note that the term Transitional Justice was applied retrospectively to this era. Before, the same activities were associated more broadly with developing the basis for international human rights law.

Reckon with Former Regimes', which assisted to widely popularise the term transitional justice. Following a brief spate of papers on the transitions in Eastern Europe in the 1990s (Rosenberg 1995, Kritz 1995), the field expanded into discussions on how to deal with gross human rights violations and violations of international humanitarian law after peace agreements had been struck in various African and Asian countries. This was not least also influenced by the situation in the Balkans and the eventual setting up of the International Tribunal for former Yugoslavia (ICTY 1993) and later Rwanda (ICTR 1994). In post-agreement situations, however, it was not only the securing of a new democratic order that was at stake, but a broad-scale conflict transformation process, of which peace agreements often only marked the beginning (e.g. Roht-Arriaza 2005). Wide-ranging political change was often, though not always, part of such developments. In the beginning stood a set of overarching questions that marked the nature of the field as one framed by both normative-legal and empirical-pragmatic demands:

- How can potential resistance against a new order from the side of implicated elites be prevented?
- How can these elites be integrated while at the same time a credible rule of law is (re)established and past injustice is dealt with?
- Should a politics of reconciliation come first and how far does this entail amnesty provisions? Are prosecutions still possible, now or in future?
- Should they be made possible even if there is a cost to processes of conflict transformation that run parallel?
- Should the aim be that TJ interventions are accepted by all (victims, perpetrators, bystanders, beneficiaries, etc.)?

Phase 3: Comprehensive Transitional Justice (late 1990s until today)

Since the later 1990s an expansion and 'norming' of the Transitional Justice concept can be observed to now include non-judicial concepts as well as neo-traditional and other locally grown approaches to making amends after conflict.

With increasing practical experience, in particular through the widely-publicised experience of the South African Truth and Reconciliation Commission (1996-1998), a deepening appreciation for the multi-faceted nature of transitional justice processes emerged. The South African experience also led to the appearance of a vast literature on 'reconciliation' and to the unprecedented political currency of concepts such as forgiveness and apology (Barkan/Karn 2006). Other elements that received frequent mention from hereon were a 'victim-focus', the idea of 'restoring dignity' and the benefits of 'storytelling'.[5]

Non-judicial mechanisms and their special contribution to transitional processes were increasingly acknowledged. Especially truth commissions that had hitherto been seen as a kind of 'second best' to prosecutions (Orentlicher 2007: 16) were now acknowledged for their impact at a range of levels of society. The positive picture from South Africa created high expectations, soon giving way to a more nuanced and sober assessment of possibilities and limitations (Hayner 2001), not least in South Africa itself (Henry 2000; Wilson 2001). More and more the need for social repair and restoration was also seen, not only the imperative of retribution leading to a more differentiated view of the socio-economic or distributive 'justice' at stake in TJ (Mani 2002).

Through the (legal) justice interventions that were instituted to deal with the Rwandan genocide, a multi-layered

5 On the South African discourse see the following: Asmal et al. (1997), Bell/Ntsebeza (2001), Boraine/Levy (1995), Boraine et al. (1997), Chubb/Van Dijk (2001), Hamber/Wilson (1999) Minow (1998), Posel/Simpson (2002), Villa-Vicencio/Verwoerd (2000), Wilson (2001) and others.

structure was developed between an international tribunal, the national courts and an adapted version of local justice - the 'neo-traditional' Gacaca courts. Local traditions, or rather often re-invented neo-traditional versions, were also emerging in other settings such as Sierra Leone, Uganda or East Timor. They gained remarkable currency in international TJ discourses, posting the evolution of global norms since the late 1990s with the signing of the Rome Statutes and the establishment of the International Criminal Court (ICC) in 2002 against increasing calls for local agency and in-country determination of transitional justice processes. What also evolved increasingly - in light of critiques of the ICTY and the ICTR as institutions 'removed' from the realities of those they were meant to benefit - was a concern for 'victims' matters (Kiza/Rathgeber/Rohne 2006).

What evolved is today's view that one should take an approach that is as comprehensive as possible to address past abuses. Interventions like trials, truth commissions, reparations programmes and institutional and economic reform are now seen as interdependent parts that could be drawn on to 'tailor the right TJ package' for any situation drawing from the range of measures now available and 'tested' (Boraine 2004; Roht-Arriaza/Mariezcurrena 2006). The implicit assumption seems to be that we have a 'TJ tool box' that can be brought to any situation once a peace agreement is signed, and that will ensure a better process of peace building and democratic nation-building. It is even discussed if this 'tool box' can be used while the conflict is still in full flare. However, this approach is also being critiqued as we speak. The question of designing broad scale interventions not least becomes a contested ground between local and international actors, an issue that will be picked up in more detail in chapter 4.

Altogether, the current field of TJ is infused by a kind of 'actionism', an urgent drive to 'do something'. As Teitel (2006: 111) notes, the idea is that 'action, whether by individual or collective actors, could have changed the course of history: that somehow, something could have been done. The liberal line implicitly being recognised is that, at this moment, from the vantage point of history, there is hope that things will be different.'

However, it is also clear that no intervention can fully do justice to all dimensions, needs and aspirations in a given TJ scenario. So far, there has not been any comprehensive TJ process that has punished perpetrators, rehabilitated and compensated survivors, discovered the truth behind (all) violations, managed to offer sufficient trauma work and spaces for mourning and for the comprehensive transformation of collective identities as well as constructive education for oncoming generations that would actually prove a prevention effect in future.

Looking at the rather scarce literature on the longer history of Transitional Justice, one can conclude that devising a kind of 'archaeology' of transitional justice efforts from other past societies in order to see what questions and insights might be gleaned for current scenarios could be an interesting undertaking. Furthermore, the above history and the current focus on 'action' implicitly show that theory building for the field is still in its infancy.

Selected Readings

John **Elster (2004)** is one of the few scholars who in his book 'Closing the Books' looks at transitional justice from a historical perspective tracing past societies.

A seminal works of scholarship are Neil **Kritz' (1995)** three volumes 'Transitional Justice: How Emerging Democracies Reckon with Former Regimes', which assisted to widely popularise the term transitional justice. The compilation brings together the collective experience of numerous countries and cultures over fifty years.

For the history of transitional justice over the arc of the

past half-century Ruti **Teitel (2003)** provides an overview in her article 'Transitional Justice Genealogy'.

As one of the former prosecutors at Nuremberg, Fernando **Ferencz (1999)** gives a fascinating personal account of the emergence of the field of international human rights law.

Roht-Arriaza and Marriezcurrena's **(2006)** 'Transitional Justice in the 21st Century: beyond Truth versus Justice' constitutes a recent collection of case studies that give a practical account of the institutions and processes that can be employed to achieve the goals of transitional justice.

An important recent book that goes beyond and engages many of the shortcomings of the TJ field that we identify in this study is: 'After Mass Crime. Rebuilding States and Communities' edited by **Pouligny, Chesterman and Schnabel (2007).** In our view, it is a must-read for those interested in TJ work and research in future.

2. Transitional Justice and Civilian Conflict Transformation

Transitional Justice and Civilian Conflict Transformation have emerged concurrently as distinctive fields in the past. However, there is some overlap between these two concepts and fields, especially with regard to ideas of building a future of sustainable peace. To some, TJ is a part of the broader field of Civilian Conflict Transformation, for others it is vice versa - dealing with the past is a necessary ingredient in sustainable peacebuilding.

At the same time, the terminology used in both fields is far from congruent, which causes some confusion and incoherence. Also, the discourses in other countries, outside the dominant English-speaking arena, such as in Germany or in the Spanish-speaking world have set different emphases and brought their own historical, cultural, political and social dynamics to bear on their ideas and discourses of both, Transitional Justice and Civilian Conflict Transformation. Hence the following section provides our attempt at defining these fields and outlining their dynamics we find especially relevant for the German context.

2.1 Definitions and Aims of Transitional Justice

A range of definitions of transitional justice exists. To mark the ends of a spectrum two examples are provided below (see boxes). Overall, as indicated already in the historical phases, there has been a continuous expansion of the concept of transitional justice, both as activity (as in transitional justice practices) and as inquiry (as in transitional justice research). We can also observe increasing cross-disciplinary engagement and first signs of mutual enrichment around transitional justice issues between different disciplines.

Narrow definition

'Transitional justice can be defined as the conception of justice associated with periods of political change characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.' (Teitel 2003, 69)

Wide definition

'At its broadest [TJ] involves anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations, from changes in criminal codes to those in high school textbooks , from creation of memorials, museums and days of mourning, to police and court reform, to tackling the distributional inequities that underlie conflict.' (Roht-Arriaza/Mariezcurrena 2006, 2)

The following insights about the limitations of the narrower definitions may have played a role in this process:

- The realisation of the high degree of complexity and dynamic nature of TJ processes.
- The limitations of prosecutions and of universal normative legal approaches in light of the needs and the pragmatic realities of

peace processes (i.e. some degree of political accommodation as precondition for change).

- The realisation of a temporal dimension: even when transition ends the process of dealing with the past does not end. Issues and questions of the past return to the public and political spheres in cycles over generations. Some prosecutions and searches for truth only begin when the transition is advanced or even over as far as the transformation of institutions is concerned (Spain, Germany, Cambodia).

Some actors, therefore, prefer to speak of "dealing with the past' as the broader term or conceptual frame (i.e. FriEnt, Forum ZFD and KOFF/swisspeace). Yet other actors would look at the broader field through the lens of "reconciliation' (i.e. the Centre for the Study of Violence and Reconciliation (CSVR) and the Institute for Justice and Reconciliation (IJR)). All of them tend to conceive of Transitional Justice as a more narrow justice-related set of actions.

No matter what one calls the "umbrella', it is striking that many definitions comprise primarily of a list of mechanisms (e.g. truth commissions) or - at best - of processes (e.g. truth seeking). The various elements mentioned are however oftentimes combined, separated or distinguished in different ways. A comparision of the definitions and/or systematisations of three different institutions active in the field (United Nations Development Programme (UNDP)[6], International Centre for Transitional Justice (ICTJ)[7], Institute for Justice and Reconciliation (IJR)[8]) shows that while all three seem to agree that TJ includes prosecution, truth seeking and reparation, not all mention trauma work, institutional reforms or reconciliation as part of Transitional Justice.

Still, there is a common ground in TJ defitions; they all regard

- the engagement with human rights violations as central, assume that
- a wide ranging (often political) change and transformation process is taking place and mention (rather vague)
- visions of a democratic, just and/or peaceful future.

In addition to that, there are several common assumptions about the effects of Transitional Justice:

- In much of the TJ literature it is mentioned that the effects of TJ interventions are difficult to measure, highly unpredictable and influenced by internal and external factors. Shared hope is that TJ interventions can contribute to higher goals: strengthening the rule of law, reconciliation and conflict transformation.
- In the more activity and practice-oriented literature it is assumed that the interventions can reach 'planable' goals and results (confidence in linear cause-effect thinking and existing project bureaucracies). At the same time there is a high degree of consciousness that each situation is unique and that instruments have to be adapted to contexts and, increasingly, that contexts may devise totally new or hybrid versions of TJ interventions.
- It is assumed that TJ interventions can prevent a culture of impunity and can assist in preventing violent conflict in the long-term (guarantee of non-recurrence).
- One basic idea is that by confronting the negative and destructive events and experiences of the past, new/strengthened institutions can

6 UNDP (2006): UNDP and Transitional Justice: An Overview

7 ICTJ (2006): What is Transitional Justice, www.ictj.org/en/tj

8 Cape Town Institute for Justice and Reconciliation (2004): Pieces of the Puzzle: Key Words on Reconciliation. The above listed sections are not explicit parts of a definition but subchapters in a booklet that wants to inform briefly about Transitional Justice and Reconciliation.

be built and constructive ways of dealing with conflict can be tested and, at best, internalised as a result of the same process. It is hoped actors can use the TJ process to engage in non-violent forms of conflict resolution.

- In most cases TJ practitioners who constitute part of a lobby for peace are propagating a kind of "ideal' society in the long-term (based on reconciliation, democracy, peace). While some see this as a process, it is an end result for others. Though all would concede that it takes a process, the later idea of eventually arriving at some state of finality and stability seems to have more purchasing power. At best it is hoped, such a vision can impact positively on the ways a transitional society sees itself and its future and support more peaceful modes of engagement.[9]

Selected Readings

Scientific literature in the field of Transitional Justice increases rapidly, and it is hard to keep up and provide a complete overview. Looking at the greatly varying definitions above, it is not surprising that almost all publications tend to start off by defining their underlying notion of TJ and by drawing boundaries. Sometimes publications on TJ are immediately geared to very specific target groups, such as the recently published 'Transitional Justice Handbook for Journalists' by the BBC World Service Trust (2008).

The following TJ databases provide extensive overviews of the existing literature:

Institute of Justice and Reconciliation

http://www.ijr.org.za/publications/copy_of_data/index_html/?searchterm=bibliography

University of Wisconsin-Madison (with over 2800 entries since the 1990's): www.polisci.wisc.edu/tjdb/bib.htm

2.2 The Justice in Transitional Justice

When the field of Transitional Justice gained momentum the focus was initially on criminal justice with an emphasis on human rights promotion. As such the historical roots and the name "Transitional Justice' have been heavily influenced by proponents of law and legal professionals (Kritz 1995). The basic idea or assumption was, and still is, that the role of law and legal institutions in situations of transition is critical yet different from that during other times. Universal conceptions of 'justice' became the major platform on which transitional justice was premised (Mani 2005b, 2002).

It is no surprise then that many still tend to associate Transitional Justice especially with legal questions, procedures and processes that are particularly dealing with human rights abuses and international human rights and humanitarian law. Informed by the worldwide democratisation shift, we saw, however, a shift in focus of transitional justice in the course of the 1990s (Mani 2002, 2005a/b). Especially the South African example made clear that international law cannot turn a blind eye to the fact that it might not always be prudent or possible to demand prosecutions (Van Zyl 2000). A new field of political studies in democratisation (some call it 'transitology') emerged and nurtured the transitional justice discourse: Innovative strategies were sought to strengthen new democracies and to comply with moral and legal obligations at the same time. The initially quite polarised debate of peace versus justice and human rights versus conflict management (Parlevliet 2002) is today of less relevance. Many experts agree that peace and justice are irrevocably interconnected and mutually reinforcing (Hazan 2007b; Okello 2007; De Greiff

9 Scholarly analysis of the long-term prospects may take a more solemn view though it is striking that here, too, we find the subscription to outcomes of ‚peace' that remain little defined (e.g. Roht-Arriaza/Mariezcurrena 2006).

2007; Mani 2006; Hughes/Shabas/Thakur 2006).

Accordingly, the justice discourse has tremendously expanded and evolved. Nowadays many terms are used for different definitions and approaches to justice: We find distinctions such as legal, rectificatory, reparative, retributive, restorative, distributive and transformative justice. Some are more common than others and many are overlapping. Their basic concepts can, however, only be adumbrated very briefly here.

Restorative justice – referring mainly to a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour through cooperative processes including all stakeholders – is generally nothing new to societies; it has existed for thousands of years (Zehr 1990; Wilkinson 1997). Since the end of the 20th century restorative justice has, however, become more popular and is now a large field of scholarship on its own with growing expertise, even entering into the mainstream justice system (Sullivan/Tifft 2006; Elliott/Gordon 2005; Zehr/Toews 2004).

The term of 'transformational justice' is brought up by the Quakers (Morris 2000) as well as Sullivan and Tifft (2006) as an expansion of the current restorative justice approaches gearing towards structural change. These interesting reflections, however, seem to have not yet entered into the mainstream discourse of Transitional Justice at large:

> Transformative justice uses a systems approach, seeking to see problems as not only the beginning of the crime but also the causes of crime, and tries to treat an offence as a transformative relational and educational opportunity for victims, offenders and all other members of the affected community.[10]

A number of the other above mentioned distinctions of justice have been explored in-depth by Rama Mani in her book 'Beyond Retribution' (2002). The author criticizes peace building practitioners and philosophers alike for not being sufficiently aware of the fact that most societies emerging from war and violent conflict in which pressures for justice exist are also very poor and marked by high inequality. Drawing from the experiences of El Salvador, Haiti, Namibia, Mozambique, Cambodia, Rwanda, South Africa, and Guatemala she shows how peace builders have failed to conceive of post-conflict justice as entailing three interrelated aspects: legal justice (referring to the rule of law); rectificatory justice (referring to restorative capacity of transitional justice); and what she terms 'distributive justice'. As Mani explains distributive justice is by far the most neglected:

> [It is] stemming from structural and systemic injustices and distributive inequalities that frequently underlie the causes of conflict. Several of the causal theories for internal conflict that proliferated after the end of the Cold War emphasized ethnic and religious factors, or, more recently, poverty and illiteracy as causes for war. However, studies show that it is group inequalities within a particular society that creates the fertile ground for grievances that can be manipulated by leaders to foment war, on the ostensible basis of group identity such as ethnic, religious, caste or other factors. Thus, it is both the experiences and the perceptions of exclusion and unjustifiable inequality of certain groups rather than poverty or ethnicity per se that underlies conflict (2005a: 26).

Mani concludes that, unless all three dimensions of justice are considered in an integrated and holistic way, social justice will be more difficult to realize. Departing from a rather narrow definition of transitional justice, Mani (2006, 2005b) argues in more recent articles that 'reparative justice' (instead of transitional justice) underscores more appropriately the requirement of a broader, more realistic framework to respond to the diverse needs in post-conflict societies.

While there is already a lot of contestation between all these different types and conceptions of justice in the dominant

10 See: Wikipedia http://en.wikipedia.org/wiki/Transformative_justice

Western discourses, we need to be extremely mindful of other enculturated ideas and practices of serving justice that are rooted in local contexts and that experience their own dynamic developments when engaged with the Western conceptions and variations of the concept of justice. As Mani (2002, 185) points out 'peace builders often failed to integrate communitarian values inherent in local culture' (e.g. Huyse 2008).

This brief section cannot do any justice to the many layers and also polarisations of the current discourses. However, it seems important to us that the 'justice' in Transitional Justice reminds us of the necessity to build a just society and just peace in order to address the atrocities of the past in a sustainable manner. The German differentiation of '*Gerechtigkeit*' and '*Rechtswesen*' is helpful in this context. Any intervention in this field will have to think about its connection to and the relevance of (distributive or social) justice (*soziale Gerechtigkeit),* irrespective of the fact if it is concerned with legal justice procedures (*Rechtswesen*) or not.

Selected Readings

Mark **Drumbl (2007)** offers the most recent scholarship on the human rights discourses that shape the TJ field in his book 'Atrocity, Punishment and International Law'. Comprehensive and recent reflections on the relationship of justice and peace, and on a range of other current TJ issues and questions, are provided on the website of the **International Conference 'Building a Future on Peace and Justice' 2007** in Nuremberg: http://www.peace-justice-conference.info/documents.asp

An influential study seeking to reach out beyond the confines of legal thinking on justice issues was Marc **Osiel**'s **(1997)** work 'Mass Atrocity, Collective Memory and the Law'. The literature on restorative justice has grown tremendously: Recent publications from **Zehr/ Toews (2004)** and **Elliott, E./ Gordon, R.M. (ed.) (2005)** reflect upon new perspectives and critical issues of Restorative Justice. Another comprehensive 'Handbook on Restorative Justice' with a global perspective has been published by **Sullivan, D./ Tifft, L. (2006)**.

Rama **Mani (2002)** raises profound awareness that justice is 'at once philosophical and political, public and intensely private, universal in its existence and yet highly individualized and culturally shaped in its expression'. Her book 'Beyond Retribution. Seeking Justice in the Shadows of War' is of special interest for the civilian conflict management and peace building community.

2.3 Transitional Justice and Reconciliation

As mentioned above a number of actors would look at the broader field of Transitional Justice through the lens of "reconciliation'. The main difference in the literature that places 'reconciliation' at the centre seems to be that aspects of relationship are emphasised more, while the justice lens remains more structurally-oriented. Oduro (2007: 48) who presents a detailed review of the recent literature on reconciliation states:

> Reconciliation is ... healing the wounds of survivors, exacting some form of retributive and restorative justice, instituting truth-telling mechanisms to promote historical accounting; and the provision of reparations and other psychological support. [...] In short, reconciliation ultimately connotes the practice of democracy.

International IDEA (2005: 9) proposes in its Handbook for Parliamentarians:

> Reconciliation is understood as a process where perpetrators for crimes are prosecuted and held to account, where the facts are openly investigated, where apologies are made and compensation, through reparations, is paid, and where abusive institutions are reformed.

These definitions sound surprisingly similar to the ones we have seen for TJ. There seems even a certain yearning

for a single decisive definition of both reconciliation and TJ, and yet authors always arrive at the same state of inability in agreeing to one. Hence, it remains an amorphous and malleable field, a dynamic and moving idea that can take a large variety of forms. This may be where its powers are drawn from. Roht-Arriaza and Mariezcurrena (2006: 12) emphasise that "[d]efinitions of reconciliation are still contested and murky, and the individual, community and policy aspects of such processes are still not well understood.'

We feel it is helpful for understanding TJ to know how the reconciliation discourse explains the interdependency of the many processes that TJ would like to trigger with its diverse interventions. In this regard, we found Lederach's (1997, 28ff) ideas both influential and useful. He speaks of the difficult search for a balance between

- TRUTH (i.e. acknowledgement, transparency, revelation, clarity),
- JUSTICE (i.e. equality, right relationships, making things right, restitution),
- PEACE (i.e. harmony, unity, well-being, security, respect) and
- MERCY (i.e. acceptance, forgiveness, support, compassion, healing).

The place where these four elements come together, he calls "reconciliation'. It is at once a place of encounter and a social space, a "locus where 'people and things come together'. Lederach emphasises in this context that we are dealing with a set of paradoxes which have to be thought together. Or we might say these are *fields of tensions*, paying respect to the potentially productive, potentially destructive energies within. In TJ processes these different elements - truth, justice, peace and mercy - are foreground at different points in time.[11]

11 Sometimes justice first takes on a central role. Like in Rwanda, the ICTR was set up and only later did elements of a reconciliation discourse also appear, though much weaker (the Gacaca process follows and a Unity and Reconciliation Commission is founded).

The agreement in much the literature that Oduro (2007: 29-30) identifies is that reconciliation is a process and may be also an outcome. Reconciliation is not time bound, it needs to be voluntary and conditional, and it involves a series of actions between people, and between people and states. Reconciliation also strives for an outcome (most often restored relationships, economic wellbeing and unified society). He suggests that the outcomes-oriented version is the one with more purchasing power (Oduro 2007: 5), maybe because the tendency is to measure and results and desired end-states matter more than open-ended processes that stay too vague and always only reflect a moment in time.

Selected Readings

One of the early and still influential authors on reconciliation is Hizkias **Assefa (1993)** who did much to shape the current definitions of the concept in the field of peacebuilding**. Lederach's (1997) '**Building Peace. Sustainable Reconciliation in Divided Societies' is a classic, on which much of current intervention practice around re-building social fabric and making amends after violent conflict rests. Desmond **Tutu**'s **(1999)** 'No Future without Forgiveness' reflects the Christian discourses on the matter and gives insight into the concepts advocated by him as former head of the South African TRC and one of the most well-known proponents of reconciliation. Franklin **Oduro (2007)** devised his recent and comprehensive online literature review on reconciliation for a workshop on measuring outcomes of transitional justice processes. The **IDEA Handbook** (2003) 'Reconciliation after Violent Conflict' is a guide for practitioners looking at roles, processes, instruments and the role the international community can play in fostering reconciliation after violent conflict.

More **recent publications** include 'Reconciliation in Divided Societies. Finding Common Ground' by Erin **Daly**, Jeremy **Sarkin and** Jeremy **Sarkin-Hughes (2007)** and

Scott **Veitch's (2007)** edited volume 'Law and the Politics of Reconciliation' that brings together contributions mainly by legal practitioners on issues such as 'Reonciliation as Domination', the 'Risk of Reconciliation' and 'Transitional Law and Societal Memory'. **Barkan and Karn (2006)** in 'Taking Wrongs Seriously. Apologies and Reconciliation' present a collection of articles with special focus on the role of apology and forgiveness in transitional processes. They also look at questions of remembrance and mourning.

2.4 Transitional Justice - Dealing with the Past - Reconciliation – Civilian Conflict Transformation and Peacebuilding

Overall, it strikes us that there is a tendency to broaden the idea of TJ so far that it includes everything to do with justice, retrospection, democratisation, conflict transformation and peacebuilding in the attempt to gather all the complexity and be holistic. But that also means that, in the end, the discussion at times becomes diluted and distinctness is sacrificed in favour of inclusiveness.

In light of these thoughts we would like to make the following distinctions:

Dealing with the past and the "**Politics of Memory'** are always existing, but potentially invisible or unconscious processes that take place in all societies and cultures - independent of concrete experiences of violence and explicit change processes and TJ measures.[12]

Transitional Justice on the other hand is always concerned with a conscious strategic and political process to deal with injustice during and after political change.

The perspective that places "**Reconciliation**' at the centre of transitional justice processes is concerned with a broader process aimed at individual and social transformation that involves a range of social dimensions. The element "reconciliation' appears in various formations in most TJ literature and debate.

Civilian Conflict Transformation is a comprehensive process of building and transforming relationships, interests, discourses and also structures. It also aims to transform the methods of operation of social and political institutions that support the continuation of violent conflict (Miall 2004). This approach differs from conflict resolution approaches that focussed merely on the political level to resolve the problems. The attempt is to also change the behaviour and attitudes that determine how people deal with acute conflict. These changes may need to address long-held believes and deep-rooted mistrust of the 'Other'. As such there are a lot of overlaps and interfaces with Transitional Justice discourses.

The terms conflict transformation and peace building are largely congruent. While **Peacebuilding** tends to accentuate more process related measures, conflict transformation is more often associated with structurally related measures (Ropers 2002). It is important that both emphasise the need for long term work in order to overcome the root causes of the conflict and to strengthen the relationships and links between the conflicting groups. In practice, often more emphasis lies with grassroots and middle level leadership than with the top level.

McMillan (2004: 1) defines transitional justice as both a field of inquiry and activity. We have used activity and inquiry as two modes of approaching the same phenomenon broadly - a country's effort at engaging with its past of abuse and violation with a view to building a better future. Meanwhile in practice, many activities and inquiries related to transitional justice focus on specific transitional justice interventions. The most popular nowadays are tri-

12 For different ways of using the term dealing with the past in the TJ discourse and community see for example Sisson (2007) and Zupan/Servaes (2007). Note that there are actors who would call neither TJ nor dealing with the past a 'field', but who would say that both are parts of the field of conflict transformation. The boundaries of these fields are therefore fluid and contested.

als and truth commissions. In our view this leads to a one-sided emphasis on these interventions and a perspective that limits a more holistic view of the situation. Instead we propose the following:

- 'Inquiry' - the more reflective domain - needs to look at the different *dimensions* of society and social life and what emerges here (rather than just looking at the processes immediately related to the interventions).
- 'Activity' - the more interventionist domain - needs to look at the *processes* that emerge out of interventions in the different dimensions (rather than just looking for intended outcomes).

Transitional justice scholars need to have in view a broad range of dimensions of society. These dimensions are best captured by the discourses around reconciliation (Kneifel 1999) that suggest engaging:

- the legal-judicial,
- the political,
- the economic,
- the socio-cultural,
- the religious-spiritual and
- the psychological dimensions

These dimensions have a dynamic relationship with each other and together form a moving living social whole. Transitional justice research can benefit from an approach that seeks to holistically envelop all these dimensions when observing processes.

We take as the basis for our reflections here the literature that speaks about the broader processes of dealing with a past of abuse and violation, whether the authors explicitly mention a concern with transitional justice or not.

3. Non-judicial Transitional Justice Interventions[13]

In the following section we introduce most of the conventionally mentioned non-judicial TJ interventions[14], such as Truth Commissions, Reparations and Institutional Reform. We also offer an in-depth look at three fields that we consider critical and that have only recently received more attention as part of Transitional Justice: Trauma Work, Memory Work and Dialogue and Encounter Work, which are often underrepresented in the literature though, in our opinion, they are very important in practice to the success of any TJ intervention and effort at dealing with the past. Since the authors have both particular expertise in these fields of intervention, special attention will be given to them.

3.1 Truth and Investigative Commissions

Priscilla Hayner, who wrote one of the most influential works on the topic, said that initially truth commissions were derived from the field of tension that arose between the hopes of human rights advocates, the experiences of victims and the broader society, and the dilemmas of policymakers (Hayner 2001, 1994). Out of the diverse ideas and needs of these actors, the last 15 years have seen the development of a spectrum of non-judicial strategies in the span between the legal-political and the social and psychological, where before there were only the options of ignoring and silencing or trials.

> 'A truth commission may have any or all of the following five basic aims: to discover, clarify and formally acknowledge past abuses; to respond to specific needs of victims;

13 We distinguish between TJ intervention and the processes. We use the term *intervention* for any directive measures and *process* to describe what *emerges* in the situation, both resulting from the intervention and beyond. We prefer not to use the term ‚mechanism' which we feel suggests a ‚plan-able' functionality that it often cannot deliver on.

14 The judicial side of TJ is subject of another study conducted by Gerhard Werle and Paul Bornkamm (2008).

> to contribute to justice and accountability; to outline institutional responsibility; and to promote reconciliation and reduce conflict over the past' (Hayner 2001: 24).

Hayner's (2001: 25) view is that truth commissions are both process and product of transitional justice. They can make a fundamental contribution in the midst of a difficult transition. Despite inherent limitations, sometimes impossible mandates, lies, denial and deceit, still dangerous truths, and resistance from those in power, truth commissions can fundamentally change how a country understands and accepts some of the most contentious and contested aspects of its recent history. A truth commission is particularly useful to 'get a detailed account of the patterns of violence over time and across regions' and it literally often is able to record a 'hidden history' for the first time and give official and public recognition of past abuses (Hayner 2001: 25). Truth Commissions can give victims additional - though limited and at times distorted - information and they formally recognise a truth victims generally already know - the long silenced facts. Hayner sees this as a chance to 'reclaim history' and 'lift veils of denial': Truth commissions can 'unsilence a topic long too dangerous for conversation, rarely reported honestly in the press and out of bounds of history books.' (Hayner 2001: 25) And citing Ignatieff (1996), she claims: Truth Commissions are at the very least 'narrowing the range of permissible lies'. But Hayner also warns that truth commissions are one TJ intervention that has maybe been overloaded with expectations, i.e. that they could create a 'common narrative' of the past and that they can facilitate reconciliation, which is rarely the case (Hayner 2001: 8).

Rather truth commissions, if they conduct a good public process, open up a myriad of possibilities and spaces for engaging with the past, for important debates and contestations, for a variety of voices and expressions of what was, what is and what should become. We would locate the great contribution of truth commissions to TJ processes in *creating spaces* to accommodate different narratives rather than offering a 'common narrative' of events. Truth commissions can assist in marking a spectrum of right and wrong with space in-between for contestation and conversion, moral and otherwise.

Truth Commissions have become the focus of an enormous amount of research and literature in TJ. Various bibliographies with hundreds of entries exist (see box below). What is more interesting though than the processes of the actual commissions that are the focus of much research, are the wider social processes that evolve around them. It can be useful to look at the way truth commissions open up possibilities and widen the range of conversation about the past in a society. At the same time, it is also important to note where they silence and close down spaces because of their authoritative history making and the power of definition, for instance labelling 'victims' and 'perpetrators' and defining what is a 'human rights violation' and what is not (Grunebaum 2002). It is important to look closely at the ways truth commissions give a language - even if it is a flawed, insufficient, contested one - to the events and experiences of the past (Ross 2003). Or – in other cases – how they fail to have a broader impact on public conversation at all, as was the case for instance with the German truth commissions (Deutscher Bundestag 1995, 1998) that are rarely mentioned even in Germany.

Looking at the more recent evolution of truth commissions we observe that each commission has broken new ground, even in face of the inevitable limitations and political efforts at appropriation Hayner cited above. Even the names of commissions show this evolution and the myriad of combinations and contestations that are emphasised in each individual context. The **Commission for Reception, Truth and Reconciliation** (CAVR) in East Timor, for instance, was the first to conduct a successful

re-integration process for former militia members at local level (Burgess/Doogue 2005; Babo Soares 2004), something the South African TRC was critiqued as having failed to do (Wilson 2001). At the same time, the later joint Indonesian-East Timorese '**Commission of Truth and Friendship**' - set up to deal only with the Indonesian massacres in 1999 at intergovernmental level - is seen to have compromised the achievements of the earlier CAVR by being an 'easy' amnesty mechanism for Indonesian human rights violators (ETAN 2007). After a long process of focusing primarily on justice mechanisms such as the ICTR and later the Gacaca Courts, Rwanda instituted a '**Commission of Unity and Reconciliation'** that was to promote a new Rwandese identity beyond ethnic differentiations, yet that was also critiqued for furthering the new government's agenda of consolidating its own power base with unilateral narratives of a Tutsi-victimhood. The **Sierra Leone Truth and Reconciliation Commission** was the first to deal with trans-national crimes, engaging in truth-seeking with regards to the role illegal trade in minerals and diamonds played in the conflict. The **Liberian Truth Commission** is the first to hold hearings on the soil of another nation, in this case listening to the experiences of Liberians of the diaspora who fled and settled in the USA. Recently, there has also been an initiative planning for a future commission of this nature in Zimbabwe that might be called a '**Truth and Justice Commission'**.

Avruch and Vejarano (2002) state that

> '[m]ost of the truth and truth and reconciliation commissions covered in the literature have worked (when they do) in Christian countries, and have recourse too broadly (if not perfectly) shared Christian values. But any attention to culture should alert us to the recognition that such notions as justice, truth, forgiveness, reconciliation, and accountability—to name a few—are always socially constructed and culturally constituted. […] [Commissions] will certainly face new sets of challenges if and when they seek to work to ascertain truth(s), or to affect reconciliation, in cultural settings different from the ones attempted thus far—and, perhaps even more so, if and when they seek to do their work *across* significant cultural borders.'

Future research on truth commissions could start from the following questions:

- What cultural dynamics and social processes have unfolded in the course of the various truth commissions to date? What can be learned for context sensitivity and future processes?
- When and how did commissions manage to trigger society-wide processes of remembering and engaging with the implications of its outcomes for present and future? Where did they exclude, silence, and omit actors? How did they deal with divergent responses and critiques?

Selected Readings

To us, **Hayner**'s **(2001)** reflection on 'Unspeakable Truths: Confronting State Terror and Atrocities' remains one of the most influential works on truth commissions. Based on examples from around the world, she raises many of the issues and questions that continue to be debated in this field as we speak. Kevin **Avruch** and Beatrice **Vejarano (2002)** offer an overview of the English-speaking literature up to 2002 that is still worth reading. A more recent and practical guide on setting up truth commissions in general is the **OHCHR Handbook on Truth Commissions (2006)**.

In relation to the **South African TRC,** early debates that raised important questions still relevant for future truth commissions include **Asmal et al (1997)**, **Boraine et al (1995), Boraine (2001)** and **Ignatieff (1996).** Writing on the contested issue of amnesty are **Villa-Vicencio and Doxtader (2003)** in 'The Provocations of Amnesty. Memory, justice and impunity.' Former member of the

TRC's human rights violation committee Pumla **Gobodo-Madikizela's (1997)** book is a personal account of her encounter and journey with Eugene de Kok, one notorious apartheid perpetrator who testified to the TRC. Fiona **Ross (2003)** offers an insightful and sensitive ethnography of the TRC with a particular focus on questions of gender and processes of giving testimony in general. 'Looking Backward Reaching Forward' is a good collection by Charles **Villa-Vicencio and** Wilhelm **Verwoerd (2000**) that addresses the complexity of truth-seeking and works with the different genres of truth that arise: historical truth, moral truth, factual or forensic truth, personal or narrative truth, social or dialogue truth, and healing and restorative truth. Richard **Wilson (2001)** provides a kind of counter-ethnography to the abundance of enthusiastic literature on the South Africa TRC. He traces the impacts of the TRC at micro-level in one of South Africa's townships and finds a range of contrasting discourses to do with vengeance, retribution and the complexity of local and interpersonal politics pitted against the ideals of nation-building and reconciliation. One of the more recent summative works on the TRC is **Chapman and van der Merwe's (2008)** 'Truth and Reconciliation in South Africa. Did the TRC deliver?' Marc **Sanders (2008)** launched a recent critique that the TRC foreclosed mourning in 'Ambiguities of Witnessing. Law and Literature in the Time of a Truth Commission.'

3.2 Reparations - Restoration - Social Repair

When speaking of reparations, the dimension that is most immediately visible is the level of state reparations, paid to various 'victims' of a past regime. Also, we tend to think of material reparations and individual grants first. In earlier times after World War II, much emphasis was put on the idea of reconstruction and on first repairing the damages to physical infrastructure. Meanwhile, the idea of repairing the impact of the wrongs and harms of the past spans a broad and complex spectrum of measures and interests, reaching from the direct exchange of compensation between violator and violated to symbolic acts of states such as public apologies, naming holidays or designating public spaces for remembrance and mourning. Of late, we can also observe the emergence of a more nuanced understanding of social repair (Fletcher/Weinstein 2002: 576; Das et al. 1997) that can benefit the enormously complex task of providing comprehensive, complete, coherent and appropriate reparations programmes (Greiff 2003-2007: 6-12).

Reparations have an immense impact on the perception of the legitimacy of broader transitional justice interventions. For many survivors living with the psycho-social consequences of the violations and under the deprivations and stresses of a transitional situation, such measures are an urgent matter of survival. In addition, reparations have huge symbolic value for those violated in the course of a broader discriminating state system: they show that the new state is different, 'caring', and able to take action for the needs and interests of its citizen. To survivors reparations verify change in real terms. In the case of South Africa, for instance, the fact that the recommendations of the TRC on reparations met little political will and affected only a partial, weak implementation did much to undermine the public view of the ability of the TRC to successfully conduct and complete its work (Meredith 1999; Kneifel 2002; Ramphele 2006)

Greiff (2003-2007: 13-14) in the recently published 'Handbook of Reparations' calls for more attention to the conceptions of 'justice' that underlie reparations efforts. He distinguishes between countries where there is a basically operative legal system and transitional situations, in which the state made possible systematic patterns of abuse

and, hence, the legal system needs to be reconstructed or built up from scratch. In the former, it may make sense to proceed on an individual case by case basis, but in the later where there was often massive abuse, 'an interest in justice calls for more than the attempt to redress particular harms suffered by particular individuals.' A more complex conception of socio-economic and other forms of justice (i.e. addressing structural and cultural violence) is needed. However, the case of South Africa shows that more levels, individual and collective, may need to be addressed. In South Africa there are now calls for a more complete process for those that went through the proceedings at the TRC as well as for a much more comprehensive process to include all those excluded from the proceedings of the TRC and their descendants (www.khulumani.net).[15]

An important background context to reparations programmes is to see them in close connection to the other TJ interventions taking place (especially those aimed at justice, truth-seeking and promoting mercy/reconciliation) and to the larger social process that emerges. It is also important to look at the nature of the peace process that facilitated the transition.

- What kind of 'deal' is given to those deemed perpetrators, in particular to those that were part of past political elites and wealth?
- Are they prosecuted or given amnesties?
- Are they removed from public office and in some way 'shamed', or are they given 'golden handshakes' to retire while survivors battle to make ends meet?
- What kind of 'deal', politically and economically, was made with those wronged by the system in exchange for holding off on vengeance and retributions?
- Did survivors have to give up their civil rights to sue for compensation in exchange for state reparations?
- How are reparations tied to questions of restitution (often of land and property, in situations where there is little or no documentation and title deeds) and compensation?

Greiff (2003-2007: 14) lists the following 'unexplored issues' with regards to reparations:

- the relationship between material compensation and symbolic reparations;
- the seemingly emerging trend of including the provision of mental health care in reparations benefits;
- the complicated set of questions around the treatment of victims of sexual violence by reparations programs;
- the possibilities of establishing productive links between reparations benefits and micro financing plans, so as to increase the impact of even modest benefits and to give them some sustainability particularly in economically deprived contexts, and
- a comparative analysis of how to finance massive reparations programs [...].

Finally, there are questions of understanding social repair as a much more long-term process of repairing damaged social fabric, of rebuilding communities and enabling a kind of 're-humanised' community out of relations where the 'Other' was deemed inhuman (Theidon 2006; Fletcher/Weinstein 2002). Such processes of social repair include culturally embedded 'social and economic institutions' and 'networks of familial and intimate relationships that provide the foundation for a functioning community' (Fletcher/Weinstein 2002: 576). They are not merely concerned with individual redress but with 'resuscitating a 'sick society" as Fletcher and Weinstein (2002: 580) put it. They ask: 'If we do not comprehend the processes of civil

15 The large majority of victims in the systemic sense (of structural and cultural violence) was excluded because they did not qualify under the narrow definition of victimhood or because they chose not to participate on ideological grounds, or because of logistical reasons. Also, many freedom fighters rejected the term 'victim' for its connotations of passivity and dependency.

destruction in the broader, ecological context, how can we identify and address the crucial aspects of civic reconstruction?' (Weinstein 2002: 580)

'Healing' is a term that features prominently in the literature on reparations, but is rarely elaborated on or described in detail. Often the language is one of 'healing of a nation' or 'healing society' and, at times individual, very organic processes of recovery seem to be conflated metaphorically onto political processes of nation-building, and these, too, are deemed linear. What often happens is that truth, reconciliation, retribution and reparations are put together (e.g. Oomen 2007: 11). In current debates the tone is that amnesties are deemed unacceptable and that the request of survivors to reconcile is tied to the exchange for 'some punishments, some truth, and some reparations' (Oomen 2007: 11).

Institutional Reform is also often mentioned as part of the broader spectrum of reparations. It links to reparations, not only because sound and resilient institutions provide a basis for the kind of state that can effect and ensure the 'repairs' at stake, but also in that institutions have their own internal 'social fabrics' that, not unlike that of communities, need to be built, re-built and transformed.

Selected Readings

A most recent and influential collection is Pablo **de Greiff's (2003-2007)** 'Handbook of Reparations' that provides an entry to a vast range of issues and questions tied to reparations. An article that argues eloquently against any simplistic view of the 'healing powers' of reparations and redress is **Fletcher and Weinstein's (2002)** 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation'. Comprehensive information on the practical issues around reparations in South Africa and links to other websites can be found on the site of the **Khulumani Survivor Support Group** (www.khulumani.net). In a recent article Ruth **Rubio-Marin and** Pablo **de Greiff (2007)** tackle the underexplored gender dimension of reparations programmes.

3.3 Institutional Reform

Everyone agrees that reforming state institutions is a vital part of assuring the *justice* in transitional justice. OSCE has invested considerable energy into exploring this field, particularly with a focus on security sector reform (OSCE 2007a, 2007b). A number of people even argue that it might be more effective for the broader population emerging from conflict and repression to invest on a large scale in the reform of the justice and security sector instead of spending millions of dollars for international tribunals for a few chief perpetrators (for Rwanda see Hazan (2007: 13)).

Vetting

It strikes us in this context that much of the literature on institutional reform in the field of Transitional Justice mainly addresses the question of vetting or lustration. This has led to substantial expertise and recommendations in this sub-field in recent years - including the setting up of very helpful operational guidelines for the 'Vetting of Public Employees in Post Conflict Settings" (Mayer-Riekh/ Greiff 2007: 546-564) and also the OHCHR Rule of Law Handbook on the topic (OHCHR 2007).

As the examples of de-nazification in Germany and many other processes up to today show, however, screening and 'purging' staff from implicated institutions is by no means an easy task. More often than not, it is bound to be a fragile, partial and imperfect process of trying to remove from public office those most closely linked to past abuses. A lot of political will is necessary for vetting processes to be successful. And even if this will is given, the state is often

in direct need of its core body of civil servants to avoid a severe governance gap. Hence, people implicated at various levels are often found in the system, comfortable and benefiting, years and at times decades later (Mayer-Riekh/ Greiff 2007). Even in the case of East Germany, where screening by the Gauck Authority took place on a large scale and the governance gap was less of a critical issue, almost two thirds of those vetted negatively remained in the public service and in their jobs (Ash 2000; Wilke 2007).[16] We need to keep in mind that vetting processes are only one measure for reform among others. As Mayer-Riekh (2007: 492, 510) put it:

> 'A holistic and coherent approach to institutional reform in post-conflict or post authoritarian settings will not only address shortcomings at the level of individual members of public institutions but will also look into structural deficiencies. Moreover, a holistic reform approach will situate the institution within its environment and possibly lead to changes in the institution's role and functioning, as well as in the institution's relationships with other actors.'

Security Sector Reform (SSR) and Demobilisation, Disarmament and Reintegration (DDR)

When speaking of institutional reform, another significant focus is placed on the reform of the security sector and the legal system (e.g. Mayer-Rieckh/Greiff 2007). Often this discussion runs parallel to the questions and challenges of disarmament, demobilisation and re-integration (DDR) of former soldiers and combatants. This focus explains itself by the urgency that, without a reasonable functioning of law and order and the (socio) economic re-integration of former 'fighters', there is little hope to overcome the culture of violence and impunity that most societies have experienced over many years and keep suffering from. One has to ask, however, whether and how these two parallel processes could be better linked. It is a contradiction at present that policies of vetting implicated personnel in an institution are implemented, for instance in the police force, but it is also assumed that the very same institution can successfully absorb and integrate former combatants at the same time. This is still suggested quite frequently in peace accords (e.g. Nepal at the moment). Such integration processes be used more consciously as a window of opportunity for institutional transformation. Concepts for the long-term accompaniment of institutional transformation processes are still scarce, particularly when it comes to dealing with the human relations that then unfold inside such institutions.

Altogether, the integration of ex-combatants into the security sector is today seen much more critical than perhaps in the 1990s. A lot of lessons have been learned due to the fact that such programs have rarely proven very successful. It is, for instance, acknowledged today that the specific characteristics of a liberation movement (in contrast to a state army) and the psycho-social dimension of the re-integration process have to be taken into account much more (Cilliers (1998, 1995) for South Africa; Lindorfer (2008); GTZ et al (2004)). Often there is the phenomenon of self-organisation of ex-combatants in small groups, in which former fighters discuss on their own terms how to overcome current difficulties, how to plan for the future and how to build new lives. The time and scope that it takes to enable a meaningful re-socialisation process for ex-combatants is often underestimated. For survivors from all walks of life the tremendous energy and self-motivation it takes to find a place and purpose in the new society are not to be underestimated.

16 By 1996 almost one tenth of the East German population had been 'gaucked'. Employers received a summary of the evidence on the individual's file from the Gauck Authority and then made an individual decision. As Ash highlights 'here the strict, procedural equality may, in fact, conceal a deeper structural inequality. East-German employees are being subjected to tests that West-German employees would never have to face' (Ash 2000: 294-314).

According to experts working in Training Institutes such as the Peace Support Training Centre in Kenya or the Kofi Annan International Peace Keeping Training Centre in Ghana, there seems to be a growing demand for information and training on DDR processes. More research and work is needed also on new concepts and approaches to DDR that keep on emerging. Is it possible to start DDR processes already before having come to a peace accord, is a frequent question for example. Here the case of Colombia where the state attempts a highly sensitive (if not problematic) DDR process with only one paramilitary group and without a broader conflict transformation process might provide some new lessons to be looked at (Paes 2007).

More research into how far past DDR processes were (not) linked to significant institutional transformation processes might bring important insights. Important questions in this context are:

- What are the needs of ex-combatants in the situation?
- Who are they? How are they organised/ organising?
- What are the needs of those they violated?

A Wider Understanding of Institutional Reform

In the long run institutional reform and transformation have to be taken far beyond the above mentioned processes, sectors and actors. All major state and non-state entities – not only the public service (including the large field of academia and education) but also the business community, religious institutions etc. - need to be drawn into a reflection and transformation process. Essentially, transitional justice needs to deal with the question of how to deal with 'guilty' institutions that have played a role in creating and perpetuating the suffering of many, the very people they are 'normally' meant to serve and protect. This may go far beyond obviously incriminated institutions, such as the security structures. For instance, the German railway, Deutsche Bundesbahn, has only in 2007 seen the development of an exhibition on the role of the former *Reichsbahn* in the deportations of Jewish people to the concentration camps. Recently, teachers in the former East German states have been accused of promoting a kind of 'nostalgia' for the former German Democratic Republic (GDR). The German debates convey how far reaching institutional reform actually is, and also how difficult.

Institutions are structures filled with life and meaning by the people within, who were and are faced with choices everyday that shape the institution, its legitimacy and image as well as its capacities to do good or harm. Transitional justice processes aim to support institutions in their efforts to transform (i.e. in the context of the South African TRC, where several universities in South Africa held internal hearings about past wrongs committed in their own midst). Where new institutions are built, TJ can help create institutions that are at once legitimate, accountable and credible and that build their resilience for future times when the social stability and integrity they are meant to provide is again under threat.[17]

While it is clear that these processes often do take place (internally driven as well as externally prompted), the field of Transitional Justice is in need of more practical experience and research on the details and dynamics of long-term processes of institutional reform and the social developments that surround them (especially beyond the security sector). There are other actors and sectors that have expanded knowledge and experience on institution-

17 This may go as far as choosing historical spaces and redesigning them, as was done with the Constitutional Court building in South Africa. These decisions are, however, highly sensitive results of their time and may be critically questioned by a next generation. One of the extreme examples might be the case of *Neuengamme*, a concentration camp of the Nazis, the remains of which were demolished by West German authorities in the 1950s in order to use the same space to 'showcase' a 'modern' youth detention centre (adhering to human rights)..

al reform, which are yet little explored by transitional justice experts and research. One such field is, for instance, international development work and cooperation. Especially the state funded, bilateral economic cooperation has experience in advising governments on their internal transformational processes.

One should explore:

- What processes actually engender people's trust in reformed or new state institutions?
- How is legitimacy fashioned and maintained?

It could also be interesting to look at the change processes inside an institution over some time during the course of a TJ process taking place, i.e. the Department of Education or the Police or to trace something like Urban Planning and land allocation processes at local and middle level government authorities.[18] The work with people in institutions shows (at micro-level) just how difficult it is to make a clean cut with the past, or to even speak about the 'pre-' and the 'post'-conflict eras. Working with institutional reform reveals how much the old and the new are entangled. It shows how much transformation is also a 'battlefield' over images and perceptions where the people working inside the institutions deal with their own pain, loss, insecurities and ambitions whle trying to build something new.

Selected Readings

Mayer-Rieckh/ Greiff 2007 offer a recent comprehensive work on the processes of vetting/lustration with 'Justice as Prevention. Vetting Public Employees in Transitional Societies'.

The OHCHR Rule of Law Tools for Post-Conflict States (2006) 'Vetting: an operational framework' sketches 'Conditions for personnel reform' and gives 'Operational Guidelines' for vetting processes.

The **GTZ et al. (2004)** report on 'Disarmament, Demobilisation and Re-integration. A practical field and classroom guide' gives an outline of what ideas inform the current practices around DDR.

A reflection by **Beara and Miljanovit (2006)** shows the impacts of transition on ex-combatants in the Balkans: 'Oh, where have you been, my blue-eyed son? An existentialistic contribution to the understanding of war trauma and PTSD' Novi Sad: Centre for Trauma (see also www.wartrauma.org.yu).

Paes (2007) offers a recent analysis on the unusual DDR process in Colombia.

Sa'adah's (2006) 'Regime Change. Lessons from Germany on Justice, Institution Building, and Democracy' is one of few English texts that take a look at the diverse and long-term processes of institutional transformation in Germany.

3.4 Trauma Work

What is trauma work?

In the 1980s the term trauma (Greek: injury or wound) was still mostly part of the psycho-medical vocabulary. Since the 1990s, however, trauma research and practice have been on the rise in the context of humanitarian aid work. Dealing with trauma has also become a permanent feature of conflict transformation and long-term reconciliation efforts (Sommer/Fuchs 2004, Mehler/Ribaux 2000). As such the relevance of trauma and trauma work has also been on the rise in the field of transitional justice, especially truth and investigative commissions have often made the link (Herman 1993; Hayner 2001).

Traumatic experiences are rooted in single incidents or a chain of events that threaten a person's physical and psychological integrity. The feeling of being at the mercy of

18 This was particularly instructive in the post-apartheid context where in 2003 white civil servants were doing urban planning for township areas who had, in fact, never been to a township.

another in this case goes far beyond the existing cultural norms in a particular setting. Trauma can destroy a person's sense of connectedness to a previous (pre-trauma) identity. It can also damage the general ability to relate to others. Trauma work accompanies the process of re-building both a sense of self and a feeling of trust in others. Healing trauma, in the narrow sense of a complete recovery, is impossible according to psychotherapists. There will always be traces and scars (Sironi 1997; Perren-Klingler 1995; Herman 1993). Healing in the wider sense means to "reconcile' with past experiences so that the traumatised person is no longer blocked or - as psychologists would say - that the presence of the trauma has been de-activated (Sironi 1997: 56). The integration of the trauma into one's own life story and the regaining of trust widen the possibilities for action. It is commonly assumed that this is also a foundation for processes of reconciliation or a first important step in that direction.

The form of trauma work that is still most prevalent in the TJ context is based on (Western) psychotherapy. This usually means therapy in an individual or family setting. There is a range of therapeutic measures to deliver trauma therapy, among them medical treatment, techniques for dealing with stress and achieving relaxation, debriefing, exposition and psychosocial advice. Trauma work may commonly encourage remembering and a confrontation with painful memories - though this is not necessarily always the case, as is often assumed (Scherg 2003: 25; Becker 1992).

Insights and lessons learned by "critical' trauma work and "critical psychology'

By now the so-called "critical psychology' and "critical trauma work' have pointed out clearly the limitations and dangers of Western trauma work, in particular in other cultural settings (e.g. Becker 2000, 1992; Holdstock 2000; Honwana 1999; Hook 2004; Medico International 1997; Perren-Klingler 1995). Key insights concern:

The privatisation and de-politicisation of suffering: Critics warned that victims are being "pathologised' and their suffering is privatised (e.g. Henry 2000). In this way, the social, political and historical context of the trauma is ignored, the oppression of victims continues - under a different pretext - and the political discourse is diluted in the psychological discourse (Merk/Gebauer 1997) The so-called 'testimony therapy', originally developed by Chilean human rights organisations for victims of political violence tried to counter this problem, laying important foundations for the thinking that has also played a role in some later truth commissions. The aim of this therapeutic form is to write a comprehensive report about the traumatic experiences that is signed by the person who experienced the trauma as the complainant and by the therapist as witness. Here, to give testimony in therapy at the same time becomes explicitly part of human rights work (Scherg 2003: 27; Herman 1993: 257).

Cultural and group resources: Further critique relates to unreflected or blind action by international aid and development workers in disaster and post-war situations. Apart from the fact that it is often impossible to give trauma counselling to large sections of a population, it is also not proven that short-term interventions in this respect are efficient (Scherg 2003). Critical voices in the discipline find it problematic that the social context is neglected in individual therapy and that there is no connection to culturally-specific forms of mourning and dealing with death, pain and suffering (Honwana 1999, 1998; Lindorfer 2008). Trauma, it is said, does not just concern the individual but impacts on the communication structures inside families, the participation in community life and - in the case of a traumatisation of large parts of a society - on the broader public and social discourses (Honwana 1999, Summer-

field 1997). When participants in group trauma workshops were asked about the impacts they rarely mentioned personal healing in terms of an end of flashbacks, etc. Instead they spoke about the strength the workshop gave them to re-connect to family and community members and re-build some of the former relationships (Sinani 2004). On a similar line, Mel-Madrona (2006) who has explored aboriginal approaches rejects Eurocentric concepts and emphasises that relational trauma has to be healed by relational means. In this respect "critical trauma work' asks to mobilise the cultural resources of a group, making clear that we are not talking of static systems and that the use of traditional and indigenous approaches is not always appropriate for *all* contexts and groups within one society or country. This form of trauma work, with its orientation towards a group and socially-oriented approach, is overlapping with some forms of memory work and educational approaches (Schell-Faucon 2004; Métraux/Fleury 1995; Straker 1995; Perren-Klingler 1995).

Implications and questions for Transitional Justice

Critical Trauma work is highly relevant for the aims and approaches of transitional justice. The main participants in trauma work are also the same groups that TJ interventions generally aim to reach: from child soldiers and ex-combatants to the many other survivors, victims and perpetrators of political violence, from refugees and internally displaced persons to relatives of people who disappeared and others. From this perspective it is obvious why many texts about TJ also place emphasis on the necessity to deal with trauma. Interestingly, however, some countries where the psychological dimension has been centre focus, are often not even mentioned when we speak of Transitional Justice processes. For instance, in the case of Mozambique local rituals were and are being used to deal with the past, to facilitate the re-integration of child soldiers and ex-combatants, and to counter the "return' of memories of violence, for instance through vengeful spirits, even years later (Honwana 1999; Steudtner 2001; Igreja/Dias-Lambranca 2008).

Worthwhile for Transitional Justice processes is also the inquiry into the use of creative and artistic expression to deal with traumatic experiences. Poetry, drama, music, painting, sculpture modelling as well as various physical exercises and experiences are used with children in refugee camps, for the re-integration of child soldiers in their communities, militarised youth in townships as well as with adults, especially in group therapy (Straker 1995; Remmert-Fontes 1997; Schell-Faucon 2001b; Kayser 2000a). A great benefit when using these methods lies in the fact that they reach - in a holistic manner - people's hearts, minds, souls and bodies and allow for a non-verbal, metaphorical way of dealing with the inconceivable events of the past.

Another important issue that matters in the recent discourses on trauma work is the question of timing. Many experts emphasise that people who are still living in situations of ongoing danger are often better assisted with practical personal support and forms of bolstering survival and coping strategies. It is often advised to begin with trauma work when people are out of immediate danger, have a higher guarantee of a minimum of security and stability, or at the least, to work towards security and stability while at the same time opening up spaces to engage with the past and traumatic events (Kayser 2005; Lindorfer 2004; SINANI/Meintjes 2003). Lindorfer (2004: 32)suggests for example for Burundi that trauma work has to first of all work towards stabilisation of society. Due to many problematic 'trauma' interventions in the Balkans in the 1990s Weine et al. (2002) developed ethical guidelines for mental health training and psychosocial intervention

in trauma-exposed populations.

Altogether, insights from critical trauma work are still rarely part of the mainstream repertoire of TJ. The nexus between critical trauma work (especially at micro-level with groups and communities) and various other TJ processes has been under-explored so far. More research on the impact of group trauma work on both political possibilities and collective healing processes is also needed.

- What do the insights from critical trauma work imply conceptually as well as practically for many of the TJ-interventions that often demand that they should be closely followed up/supported by trauma work (e.g. prosecutions, truth commissions)? What does this mean for a context like Burundi where both criminal courts and a truth commission are in preparation simultaneously?
- How can insights on transgenerational processes and on different holistic methods (e.g. artistic expression) and approaches - engaging body, soul, heart and mind of people - be used for other TJ processes, too (esp. memory and dialogue/encounter work?)
- What can we learn from critical psychology and trauma work about appropriate methods how to conduct research on such sensitive issues as trauma and dealing with the past, mindful of the possibility of causing further harm in the research process (Colvin 2004)?

Selected Readings

Groundbreaking work on transgenerational processes has been done by Dan **Bar-On (1999, 1995, 1989)**. Working with theatre in the context of oncoming (post-Shoah) generations is also Björn **Krondorfer (1995).**

A critical series on the idea of the social complexity of violence and traumatic experience are the three volumes by Veena **Das**, Arthur **Kleinman** and others **(1997, 2000, 2001)**

One of the more recent books on trauma work in the context of transitional justice has been edited by Nancy Nyquist **Potter (2006).** 'Trauma, truth and reconciliation. Healing damaged relationships' unites articles from different psychological-philosophical angles. Simone **Lindorfer**'s **(2008)** shares experiences from Eastern Africa in her recent book: 'Sharing the Pains of the Bitter Past.' Working on the question of cultural appropriateness of trauma interventions is **Honwana (1998/ 1999)** and taking into account the role of narrative in healing are **Gobodo-Madikizela and van der Merwe (2008)** in 'Narrating our Healing. Perspectives of working through trauma'.

For the German speaking public the **Medico Report 20 (1997)** 'Schnelle Eingreiftruppe Seele. Texte für eine kritische Trauma Arbeit' is still a very worthwhile and critical account of the rise of trauma work (including articles from Becker, Honwana, Sironi and Summerfield whose work is known in the English-speaking arena).

The recently published book by Heidrun **Girulat et al. (2007)** 'Systemische Erinnerungs- und Biografiearbeit' provides an innovative approach to shift focus onto how the personal aspects of trauma work closely impact onto the political and public sphere and vice versa. The authors also cast an eye on transgenerational processes of memory and trauma work in Germany, based on their experiences as therapists dealing with second- and third-generation pathologies which they trace back to the times of World War II.

3.5 Memory Work

What is memory work?

Memory work is something known to all societies. It is a complex process of remembering, forgetting and learning

to live with unbearable aspects of the past. Personal memory work generally has a purpose in and of itself - to remember and mourn past atrocities, grievances and losses of life by those who survived. In many cases memory work transcends the personal and also intends to envision a new future for the communities and the society concerned. It contains a moral component with wishing that similar atrocities may never happen again.

Memory culture and memory politics

The idea of 'memory' has experienced an unprecedented rise in the past three decades.[19] This can be seen in countless scientific disciplines that are concerned with the past. This can be seen in terms such as the 'politics of memory', 'memory culture' and the 'pedagogy of memory' (Assmann 2006; Arenhövel 2000; Rüsen/Straub 1998; Kiesel et al. 1997; Reichel 1995). Large parts of international research and practice in this field are still mainly concerned with the individual and collective ways of engaging with the Holocaust and National Socialism and only recently a new body of 'memory literature' is beginning to evolve in the TJ field. The question whether and how memory work is done, possible and necessary in the immediate aftermath of violent conflict, only started to be discussed more intensively in the mid to late 1990s. Today, and especially in the context of Transitional Justice, it is increasingly believed that collective and public memory work is an important ingredient for sustainable peace. Hence, the current debates seem to be less about the 'whether' and more about the 'what' and 'how' of such memory work (Schell-Faucon 2004, 2001a).

This consensus may astound, especially if one considers that historically the idea of 'closing the books' and the conscious elimination of conflict and war memories have been a common by-product of social transformation and revolution. Also, a number of rituals of remembrance and their mythical re-narrations of victimhood and heroism can be particularly problematic for building sustainable peace. Psychoanalyst Vamik Volkan (1994) speaks of the 'chosen traumas' and 'chosen glories' of a group that impact on its collective consciousness in a way that allows the group to develop a sense of a common fate and destiny which has often turned out to be a source for renewed violence. Conflict transformation and social and political science research also argues that a correlation between memory culture and democracy can be observed. In short, it is assumed that multiple and controversial discourses within a society about its past allow the 'democratic demos' to actually evolve. Therefore it is deemed necessary for societies to work constructively on their historical grievances and the injustices of the past (Arenhövel 2002/2000; Ropers/Debiel 1995).

In this line of thought the need for memory work might sound rather logical, yet it is much easier said than done in practice. Initiators of memory work have found it extremely challenging to devise adequate ways of addressing the past after violent conflict without getting locked into further vicious cycles of mutual exclusion due to the 'chosen traumas' that that develop out of both recent and more distant pasts (Gehrmann 2006, Lederach 1997, Volkan 1996). At the same time, practitioners of memory work have to be aware that it is - with each of its activities - always contributing to social construction processes of the past. Its discourses are often influenced by the present official 'politics of memory', but also by less obvious blind spots, silences and a mostly unspoken 'politics of forgetting' (e.g. Salazar-Volkmann 1999, Reichel 1995). Germany is probably the country with the most extensive research on this kind of '*Vergangenheitspolitik*[20]' (Knigge/Frei 2002;

19 Assmann (1999: 11) sees three reasons for this: the cultural revolution of electronic media with unlimited storage potential; the weakening of trust in the sense and purpose of the present in a high-paced post-modern society; and the shift in the mode of remembering, especially with the ending of living memory of the Nazi crimes.

20 Literally: politics of the past

Reichel 2001; Dubiel 1999; Kleßmann et al. 1999; Herz/ Schwab-Trapp 1997; Frei 1996)

For the various Transitional Justice processes it is helpful to distinguish between two different categories of memory work, public memory work and memory work in closed/ safe spaces. The two are bound to have a different impact on the micro and macro levels of the respective context (e.g. Schell-Faucon 2004):

Public memory work

This may include a broad range of official initiatives from excavations, funerals, memorial services and speeches to literature and art displays, from the initiation of commemoration days, memorial openings and ceremonies to public exhibitions and museums at memorial sites. The intention of these public days, events and places may be to

- allow people, individually and collectively, to mourn and commemorate the losses during the violence;
- acknowledge the atrocities and develop a mutually acceptable baseline narrative and common ground acknowledging the wrongs of the past;
- provide space and time for individual and collective healing processes to start;
- "remind and caution' people that similar atrocities should never happen again;
- foster further investigation and documentation of historical events (e.g. oral history)

While commemoration days and excavations are often state driven initiatives, all the above activities can also be initiated by civil society and by individuals. More often than not memorial stones are first laid down and sites of remembrance are created by individuals or groups who wish to mourn and commemorate certain events and victims of violence. The state may then decide to make them part of its official memory work and politics or, as is common, it may attempt to deny and silence those voices that threaten its power and legitimacy base while sponsoring others that consolidate it (for Germany Reichel (1995), for South Africa Grunebaum (2002)). The larger the public event and the more prominent the participants or initiators of memory work are, the more it is also deemed to have impact on the macro level discourses of dealing with the past. At the same time, it is also clear that the more a public event is driven by the state and its particular interests in remembrance and forgetting, the less it is owned by the people, and it may kindle disappointment and rejection when certain aspects or actors of the past will get more recognition than others.

Memory work in "closed' safe spaces and Memory work with specific groups/ communities

Memory work at meso- and micro-levels includes a broad range of activities such as intercultural learning and human rights education for special groups, school children who visit memorial sites or public and private museums; projects with youth or other selected target groups "digging' into the recent past and "searching for traces' of the past in their own families; as well as dialogue and healing of memories workshops for people of different backgrounds. Such memory work also includes the setting up of various survivor support groups who assist each other. In general, it is group work aiming at

- individual and collective healing (see also 3.4);
- providing safe space for sharing and fostering dialogue, exchange and community reconciliation (see also 3.6);
- encouragement to learn from the past for the present and future (from historical education to civic and human rights education);
- supporting people in mourning and the commemoration of those who have suffered

from past (and present) violence;
- supporting activists - to a limited extent - in their income generation efforts;
- lobbying for the rights of various survivor groups to be acknowledged

When looking at the broad range of objectives, it becomes evident that many projects developed to provide 'safe' spaces can also, at a later stage, enter into the public sphere. For example, members of groups might decide to publicly show a film or theatre play, or display their art. Memory work also contributes to the development of exhibitions, literature and other forms of documenting the past. A very different example of memory work that could enter the public sphere is one where survivor groups lobby and pressurise their government to recognise them as survivors, liable for compensation.[21]

Methods and approaches

Out of many methodological approaches storytelling is one way of sharing the experiences people have undergone during violence that is used frequently. This type of eye witness sharing of stories and testimony can be found in the context of a safe group space, and also in public spaces such as museums (Kayser 2005, 2000a, 2000b; Colvin 2000; Schell-Faucon 2004). Another method is the recording and documentation of different forms of testimonials in archives and oral history projects. There are also the alternative city tours visiting sites of oppression and resistance (developed in Germany in the 1980s) or the memory township tours that have been offered by ex-combatants in Cape Town, South Africa since the late 1990s.

In particular small organisations such as DACPM tend to argue for "new' and "alternative' histories and counter-histories to the emerging "new' official history (Grunebaum 2002). At the same time this work allows them to look after the basic economic needs of the former comrades and community members involved in the work. This initiative shows how memory and trauma work, dialogue and encounter, education and re-integration of ex-combatants and not least basic economic upliftment efforts may merge meaningfully into a single self-driven intervention.

Insights and lessons learned from memory work

One big challenge of memory work lies in consciously recognising and critically questioning the current politics that shape the memory culture of a country. To a certain extent memory work and memorial places are always a result of their time and include the making and re-making of different old and new myths about the past. Their focus and contents are constantly in a process of change, responding to particular political environments, needs and themes of the time.[22] In order to not simply reproduce a currently dominant memory culture and political memory discourse, we have to keep on asking the question of legitimacy in this work:

- How do we deal with the fact that there are conflicting stories of the past?
- What/who gets attention and acknowledgement and what/who does not? Why is that so?
- Which parts of the past are consciously remembered and what is invisible, silenced, 'forgotten'?
- What kind of myth-making is happening?

21 In South Africa the Khulumani Survivor Support Group, for instance, has a strong public profile. During the time of the TRC they staged a critical forum theatre to actively engage the township population in the question whether or not they should engage in the TRC process. More recently they lodged a case in a New York court against international businesses and banks that supported the apartheid regime (Kneifel 2002; Colvin 2004, 2000).

22 The German history of memorial sites in East and West Germany indicates how almost all historical sites in both parts of Germany were altered several times for specific purposes of remembrance and forgetting (Schell-Faucon 1999, 2001a; Reichel 1995).

What taboos remain or develop?

- How do processes of narration and re-narration evolve against the frames of the people's present circumstances and the politics of the day?

Especially in cases of genocide and severe atrocity that affected large parts of the population, memory work is confronted with the insoluble task of embodying the incomprehensible and inconceivable of what happened, while at the same time doing everything in its power to allow some degree of understanding so that the same does not happen again.

For the Germany of today, educational scientist Micha Brumlik (1997, 2000, 2004) therefore speaks of two challenges:

(1) There must be – especially for the third and fourth generations – "instruction in commemoration' that is purpose-free and related to the past, where those murdered are remembered out of respect and out of the need for remembrance.

(2) Following Adorno's request for 'education after Auschwitz', historical and political learning is needed. This second kind of memory work has evolved into civic education rooted in human rights. It has to critically analyse and process the political and economic conditions as well as the different motivations that lead to dictatorship and genocide.

While this seems to be a feasible discourse in Germany, one may ask what it implies for countries still much closer to the conflict.

Some question if human rights education can or should grow out of memory work. Lenhart (2006) is convinced that memory work divides too much when the conflict is still fresh in people's minds. Human rights education should rather focus on the future and the possibility of constructing it anew as common basis for society.

In Germany, with increasing distance to the Third Reich, we observe further paradigmatic shifts in memory work. In the field of education this paradigmatic shift translates into moving away from moralising, lecturing didactics towards more open and enabling didactics oriented toward the lives of people (Brumlik 2004; Fechler et al. 2000; Wittmayer 1997). This is reflected in didactic premises such as:

Activating participants instead of appealing to emotions: The more memory work concentrates on emotional aspects, the greater is the need of the 'affected parties' for distance and rationalisation. Among adults this frequently leads to tacit suppression, as quickly as possible. Young people by contrast, may resist this monopolisation.The goal of memory work should hence be empathy and the development of solidarity with those who suffered or survived suffering, not identification. The main thing is to allow access to the past that does not play off emotionality and rationality against each other. Memory work often brings forth emotional reactions such as fear, anger and grief. It is important to work through them by means of rational forms as well.

Including the perspectives of by-standers and perpetrators: Changing perspectives is crucial for learning from history and for building long-term peace and enabling reconciliation. The polarisation of 'passive victims' and 'inhuman perpetrators' needs differentiation. It prevents us from looking at the many grey areas of action, where we all in our lives can become passive bystanders, perpetrators or choose to resist in everyday life.

Implications and questions for Transitional Justice

Much more research on the many formal and informal practices of memory work in post conflict and post dictatorship societies is needed. So far, extensive research on

the connection of memory politics and practical memory work – be it reinforcing or counteracting to the mainstream politics - is only available for Germany and South Africa. For many other countries memory work research is often still restricted to descriptive documents of various initiatives.

Many of the German developments and experiences of conceptual and practical memory work have been quite thoroughly investigated and documented. Surprisingly, especially some of the educational discourses and discussions on memorials have been very little absorbed and discussed in the larger field of Transitional Justice.

While the research should not overlook that the Holocaust is unique and also afforded a unique response attempted by the specific memory culture in Germany, the recognition of this singularity has to work alongside the simultaneous recognition that unfortunately dictatorships and genocides have returned in the 20th century and beyond.

Looking at the changing features of memory work over time, as well as its possible long-term impacts, the multifaceted development of public and semi private memory work in Germany offers many learning opportunities for Transitional Justice. It shows for instance how dealing with the past may transcend several generations and reappear in waves. The different ways of dealing with the past in East and West Germany indicate significantly how memory work can change (or not) in relation to the political settings that frame it and interactions between people. With ever fewer people alive who have experienced the Nazi era, Germany is also an example for the transition from 'communicative memory' to 'cultural memory' (Assmann 1999) where passing on memory is no longer through conversation based on experience but rests on a variety of cultural products, ranging from history books and memorial days right up to street names. Additionally, the population structure changes: Germany has de facto become a multi-cultural society. Ever more people living there bring very different historical and political experiences and perspectives into the historical awareness of the German context. The question arises whether oncoming generations still tie in to the collectively formed historical responsibility of previous generations (Georgi 2003).

Similar questions with regard to the fluidity of migration and generational turnovers and their implications for Transitional Justice interventions and processes have to be raised, especially since generational and societal shifts may arise more often and earlier in many developing countries where the average population dies much younger, such as for example in Cambodia. It also has to be inquired how far, for instance, the return of refugees after many years of civil war impacts on memory work.

Memory work is always characterised by conflict as competing narratives of the past co-exist in the same public sphere. A critical question for successful memory work is how it engages this conflict potential, even uses it to nurture more constructive modes of conflict and debate. It is important to acknowledge that, especially when it comes to dealing with recent memories where perpetrators and collaborators are still alive (if not also in government), memory work of any kind is a challenging endeavour. Often in transitional justice contexts, we are also dealing with a present that is far from stable or non-violent. Memory work has to be particularly mindful of its potential to do further harm rather than heal, both at individual and the societal levels:

- If social realities of the present are constructed and re-constructed in people's narrations and exchanges - what are the interrelations between TJ interventions and processes of memory and remembrance and what does that in turn mean for the politics of memory that evolve (political will to confront the past often alternates with periods of

denial and/or wilful amnesia of political elites)?

Further research is also needed into the inter-generational transfer of memory - spoken and unspoken - and the processes through which such memory has meaning and can kindle action in future - positive and negative.

- What would TJ interventions look like that have a transgenerational perspective at the core?
- What happened in situations where "nothing' happened (at first sight)?

Selected Readings

The German literature offers a number of landmark books written after the unification, such as Peter **Reichel**'s **(1995)** 'Politik mit der Erinnerung' or Norbert **Frei**'s **(1996)** 'Vergangenheitspolitik'. Jan and Aleida Assmann have written for many years about remembrance culture and cultural memory, most recent is Aleida **Assmann**'s **(2006)** 'Shadows of the past'. Regarding the internationally less known educational aspects of memory work, many books of Micha **Brumlik (1997, 2004)** are recommendable, also a number of publications that reflect the didactical and conceptual approaches of memory work, such as Bernd **Fechler et al. (2000)** or Manfred **Wittmeier (1997)**. Alfons **Kenkmann** and Hasko **Zimmer (2006)** set German and international memory work more clearly into the context of Transitional Justice.

Picking only a few crucial works from the vast literature on Holocaust memories that offer ideas for the TJ field, we appreciated Shoshana **Felman and** Dori **Laub**'s **(1992)** 'Testimony. Crises of Witnessing in Literature, Psychoanalysis and History', and also the work of Lawrence L. **Langer** (1993) in 'Holocaust Testimonies. The Ruins of Memory' as particularly insightful. Steve **Crawshaw (2004)** provides an overview on the German dealing with the past for the English reader in 'Easier Fatherland. Germany in the 21st Century'. On Storytelling in the context of memory work, Michael **Jackson**'s **(2002)** 'The Politics of Storytelling. Violence, Transgression and Intersubjectivity' is one very useful attempt at theorising the field.

In the South African context Sarah **Nuttal and** Carli **Coetzee**'s **(1998)** 'Negotiating the Past. The making of memory in South Africa' brought together the first important and still worthwhile collection of articles on memory. Since then, the collections, practical books and research studies, for example on oral history making in various museums or memory work in the context of the TRC, has steadily grown and many references can be found above (see also www.csvr.org.za).

3.6 Dialogue and Encounter Work

What is dialogue and encounter work?

In societies affected by protracted conflict and the existing relationships and social structures have been extremely challenged and profoundly changed. The effect is often a form of de-humanisation of the "Other', the reversal of which is neither quick nor simple. Mistrust, strong feelings of anger, hatred, despair, inferiority, shame, guilt and indifference severely impact on the way people think, act and interact beyond the conflict. The work of re-building or newly weaving this social fabric involves the long labour of (re-)connecting people to themselves and to one another.

In all societies ravaged by violent conflict we will find a small number of people who feel, at some point in time, the need and desire to bridge the divides and reach out to the enemy. Often driven by their intuitive feeling that one should meet, listen and speak to the "Other', they establish some sort of dialogue and encounter work with a similarly open group of people from the other side (e.g.

Lederach 2005). Sometimes these initiatives are started already during times of high violence, more of them then develop in times of transition. But – as we can see in the case of Germany – such efforts may also come with great delay and mainly involve the second and third "post-conflict' generations.[23]

In the context of transitional justice we are, however, in particular interested in encounter and dialogue work that has a focus on engaging experiences of the past and their meaning for the present situation and desire for transformation. We are talking of dialogues and encounters that 'seek for innovative ways to create a time and a place, within various levels of the affected population to address, integrate, and embrace the painful past and the necessary shared future as a means of dealing with the present' (Lederach 1997: 35; Kayser 2005).

Dialogue and encounter in the context of ongoing violence

Several forms of "dialogue seminars' have been developed that are dedicated to explicitly engage with the past between selected representatives of hostile groups. Such encounters often take place while the conflict is still being waged violently. The participants are often key people in the middle and upper leadership levels. The following four examples provide theoretical and practical insights and lessons learned based on long-term research:[24]

1.) One example are the 'psycho-political dialogues' of Vamik Volkan (1998, 1999, 2000). Volkan is particularly interested in the processes, rituals, and the assertion of blame and historical injury that dominate the respective groups. His seminar series involves about 30 people from all conflicting parties in a comprehensive process run over several years. This process aims, firstly, to reduce tensions and 'poisoned emotions' between the participating conflict parties. Secondly, it is meant to lead to the planning of joint projects and assist institution building (Volkan 1999: 222). This so-called 'Tree-Model' process grows gradually and, ideally, branches out more and more into society. Of special interest for Transitional Justice are the recurring patterns of behaviour that Volkan observes in all groups. Aside from classical phenomena such as projection and the identification via projection, he also identifies indicators of change in personal stories and the need for mourning, especially when hardened positions and opinions have to be given up (Volkan 1999: 226; 2000).

2.) Another type of dialogue seminar was initiated by Israeli Dan Bar-On. Bar-On's approach is rooted in long years of experience with a dialogue group of descendants of victims and perpetrators of the Holocaust that he brought together for the first time in 1992 (Bar-On 1999; Albeck/Adwan/Bar-On 2002). After years of memory and encounter work among the group, the idea arose to explore the use of the jointly-developed concept in acute conflict contexts. This concept included sharing one's life story in a context of trust-building. In short, Dan Bar-On sees a continuous storytelling process with a steady group, comprised of participants from all conflict parties, as a chance to 'loosen' the hardened 'monolithic' identities in conflict and make dialogue possible (Bar-On 2001: 17).

3.) An important effort to create authentic and more egalitarian dialogues between Palestinians and Jews was initiated in 1976 by the School for Peace in Neve Shalom/ Wahat al Salam, a joint model village set up in 1972 by a group of Jewish and Palestinian Israelis. The school started with an approach where encounter between young Palestinians and Israelis itself was the main objective. Over time, the School realised that cordial contact may provide a good

23 Germans of the second and third generation got more and more engaged in encounters with Israeli, Polish and French people etc. Initially, small groups of engaged individuals started such processes. The German state subsidised various forms of encounters as well as joint study visits of memorial sites only from the 1960s and 1980s onwards.

24 Surprisingly, the three initiatives do this work without reference to each other.

feeling but solves nothing, rather preserving or even fortifying the status quo. Hence, they created an approach that sees encounter as meeting between two national identities. The goal is to examine and construct one's own identity through the encounter with the other. These encounters - and this sets the approach apart from much of what we have found in transitional justice - are not searching for harmony nor do the facilitators expect the group to go apart as friends. They insist, however, on a proper closure of the deep self-inquiry process. The school considers encounter work as a profession and conducts research on its work and offers a special training for people who want to work in the field (Halabi 2004; Wolff-Jontofsohn 1999).

Encounter and dialogue work in a context of transitional justice: The Healing of Memories process in South Africa

4.) About halfway into its operations, the South African TRC was critiqued for not engaging the beneficiaries of apartheid. The idea was that victims and perpetrators represented a small political elite on either side, while the majority of South Africans were either victims or beneficiaries in the broader systemic, political and economic sense (Mamdani 1997).[25] A process called the 'Healing of Memories' (HOM) offered one of few explicit opportunities for a broader range of South Africans to engage with their own and others' experiences of the apartheid past.[26] During the Healing of Memories workshops that were developed, about 30 people from all walks of life met for a weekend retreat, during which personal life stories and experiences of apartheid were recounted using artistic means in addition to storytelling. While initially the project used a language of 'reconciliation' with an outlook of harmony, it soon became much more realistic and concerned with 'facilitating encounters' that would enable conversation and understanding, and at times also hold the necessary confrontations that emerged. (Kayser 2005).

Insights and lessons learned on and by encounter and dialogue work

Reconciliation as objective of encounter and dialogue work: A large amount of the existing encounter and dialogue work tends to be very optimistic about its impact on reconciliation and harmony in communities through mere contact and encounter (Halabi 2004: 7; Schell-Faucon 2004: 484). It is often emphasised that "reconciliation', in any case, is not an adequate term since it implies a return to earlier times as if they had been harmonious (Kayser 2001b, Bar-On 2001). The challenge of (re-) building social networks lies in not simply reproducing previous power structures, which often were structures of inequity and abuse. In light of the lack of redistribution and socio-economic change in South Africa, for instance, it is not surprising that the term ‚reconciliation' is critiqued by large parts of society. Against this light many initiatives search for a terminology such as, for instance, trust building (Kayser 2001b: 7, Bar-On 2001: 231). According to Bar-On, dialogue and communication are the most important processes in order to build trust. Following this line, we also prefer to speak of 'encounter' and 'dialogue' rather than reconciliation, as a more secular terminology. Encounter work in the immediate aftermath of protracted conflict is not so much about reconciliation as about 'knowing that things could be different' (Kayser 2000a, 32) and fostering the possibility of "imagining a joint future' (Kayser 2005: 143, 217). As such, we suggest that encounter and

25 We use the term 'beneficiaries of apartheid' to signify those rendered superior by colour of skin and subsequently privileged by the apartheid's system - being largely, but not exclusively, concurrent with 'white' South Africans. The terms of beneficiary and victim are used with consciousness of their limitations.

26 Most other NGO-facilitated processes of that time concentrated their interventions on 'victims' or on 'disadvantaged communities', political activists, ex-combatants, ex-political prisoners and survivors of torture (Hamber 1995; Kayser 2000a, 2000b; Schell-Faucon 2001b; Colvin 2000; Neumann 2001).

dialogue should be open-ended processes without trying to pre-determine results or outcomes. It is of utmost importance that the participants have ownership and definition power over this process.[27]

Based on this reflection, we would like to foreground three basic insights

Reconciliation processes develop in non-linear and asynchronous ways, with different things happening at different paces, yet simultaneously. Qualitative research studies in South Africa indicate that, in the case of protracted conflict, memory and reconciliation work are needed between multiple actors and groups, which speaks to a variety of simultaneous efforts and developments that may emerge (Schell-Faucon 2001b, Colvin 2000). Some South African groups of survivors emphasised that what matters primarily to them is reconciliation work *within* the family and community, not between black and white. They said that it is too early for reconciliation with white South Africans in light of the unchanged living and livelihood conditions they experience (Colvin 2000). Palestinian activists also speak of the need for "reconciliation with oneself' and with one's own internal contradictions springing from life in a violated and oppressed community before thinking about reconciliation with the Israeli neighbours.[28] Such local conceptions and wishes need to be respected and supported. Local reconciliation work within communities that, at first sight, seem to be "united in their victimhood' means paying attention to the complexities of identities and ideas of 'Self' and 'Other' that persist. This is important, even though, in the bigger picture, sustainable peace in the long run depends very much on structural changes that impact on society at large (Ramphele 2006, Schell-Faucon 2004). The latest outbreaks of violence in South Africa's townships in May 2008 speak eloquently of the failure to address the structural and cultural dimensions of transformation for the majority of poor (black) inhabitants.

Dialogue and encounter do not mean identification with the 'Other' and afford the recognition of limits. For transitional justice interventions it is important to be mindful that subjectivities are not universal (Werbner 2002, 2). Fanon warned against the assumption that experiences inside a black and a white skin, especially experiences of suffering, could ever be the same or comparable (Fanon 1963). He pointed to the dangers of idealising identification with the 'Other'. Crying together does not mean shedding the same tears, and laughing together does not give that laughter the same meaning. Empathy is rendered meaningful in so far as it entails a recognition of suffering as well as the acknowledgement, respect and willingness to personally bear witness to another's experiences and pains without claiming understanding (adapted from Kayser 2005, 163-5). The moral-political dimension of empathy demands that we reject any simplification of the processes involved (SchellFaucon 2004: 471-2).

Reconciliation efforts need to orient themselves towards a long-term horizon of social development that takes several decades and generations. All institutions and authors mentioned above aim to achieve long-term societal change and peace with their approaches. Bar-On makes most clear that such a process can span across more than one lifetime.[29] Most approaches nonetheless have the hope that the process can be shortened and that the transfer

27 The entire discussion needs to be mindful that a change of terminology alone may mean little and that any term can become polemic or 'worn out' if used in an inflationary way while social reality does not reflect the expected changes (e.g. Ropers 1990 regarding the term 'Völkerverständigung').

28 Noah Salameh from the Center for Conflict Resolution and Reconciliation, personal communication 2006

29 Bar-On differentiates between ‚primary' and ‚secondary' reconciliation along the lines of generations. While the former was not possible to realise in the German-Jewish relations, the later became eventually thinkable because the descendants had ‚*worked through* the silence' and ‚accepted the traumatic and murderous parts of their family history'. (2001, p. 223; emphasis in original, translation by authors)

of trauma, anger and hatred to the next generations can be avoided. Hence, dialogue and encounter work (as well as memory work) cannot do without defining a kind of "horizon' of reconciliation. The idea becomes problematic when such a vision for society at large is applied directly to the level of the individual in dialogue and encounter work. Reconciliation has to remain self-initiated and -driven. Encounter work can only create a frame and favourable conditions for building trust and engaging in conversation about the past. Aiming at greater understanding across past divides, it should engage with the following two questions and their multi-facetted answers in specific conflict contexts:

- Who speaks of reconciliation, why and with what power or leverage?

  Often reconciliation is seen as a need of the perpetrators and bystanders/ beneficiaries, as a kind of effort at forgetting. Meanwhile the new state and new political elites may have similar interests. It is important to ask what power the advocates of reconciliation have in their society and what claim they themselves can lay to the memories of suffering.
- Who rejects reconciliation, why and with what power or leverage?

Implications and questions for Transitional Justice

The terms and concepts of encounter and dialogue work are more commonly ascribed to the field of civilian conflict transformation and peace building than to Transitional Justice. However, the expectation that some kind of engagement between former enemies could contribute towards a broader societal reconciliation effort is often mentioned in TJ literature. Consequently, a lot of 'reconciliation work' - that mainly consists of encounter and dialogue - is also supported at national and local level in TJ programming. There is a need to incorporate the experiences and lessons learnt by the likes of Dan Bar-On and Vamik Volkan more carefully into TJ interventions. Also, the longstanding experiences and vast research on intercultural exchanges - for instance in Germany - that have recorded many lessons about their possibilities and limitations (Thomas 2007, 1994, 1985; Hofstede 2004) could be tapped into more systematically by experts in the field of transitional justice. Approaches such as the 'School for Peace' that have critically questioned a simplistic contact hypothesis as the basis for encounters, offer a useful critique of the (somewhat simplistic) mainstream approaches to dialogue and encounter work that we commonly find in TJ interventions to date.[30]

For future research, the following questions and lessons are particularly interesting:

- What "learning and communication culture' have participants/ large parts of society been exposed to? Are people, for example, used to having open discussions and also dissent? If not, what does this mean for the spaces of encounter that are possible and for the expectations of the participants?
- How can we make encounters holistic experiences with activities beyond verbal engagement that speak to the minds, hearts, souls and bodies of people? As the research on intercultural exchange highlights, we have to be very mindful of cognitive approaches, especially of the power of language and the language of power. Who speaks the language of power and social promotion? Who learns whose language? What language barriers might exist if all participants speak the same language? Who will be or feel 'silenced'? (Halabi 2004; Wenzel/Seberich 2001).

30 Similar work was done by member organisations of the International Network Education for Democracy, Human Rights and Tolerance (Wenzel/Seberich 2001; Dunn et a. 2003; Georgi/Seberich 2004).

- While the reflection processes that meaningfully link gender and violence and seek new spaces and forms of encounter are growing in the arena of practice,[31] this still remains a very important area of exploration and inquiry for future TJ scholarship.
- The conscious reflection of the challenges and chances of encounter and dialogue work between different generations is only in the beginning stages. It is important for war-torn societies where roles and responsibilities have been severely upset, with whole generations missing, to give thought to this dimension: How has the relationship between the generations been impacted on by the conflict? How can encounter and conversation between generations be facilitated?

Selected Readings

For a look at the debate on encounter and dialogue work (including its relation and contribution to reconciliation), we recommend especially the recent publications by Dan **Bar-On (especially 2004, 2001 and 2000)**. Many insights into the collective psyche of conflicting groups and its impact on dialogue, and also on memory work at large, are provided by Vamik **Volkan** (see the more recent publications **2004 and 2006a/b**). For the connection and mutual reinforcement between reconciliation and encounter initiatives at local level and Transitional Justice processes at national level, we recommend looking at the South African experience. Extensive research has been initiated and followed up by the **Centre for the Study of Violence and Reconciliation (CSVR)** in Johannesburg (http://www.csvr.org.za). Most of their articles are online. Online is also the practical work of the **Direct Action Centre for Peace and Memory (DACPM)** in Cape Town (http://www.dacpm.org.za), the **Institute for Justice and Reconciliation (IJR)** (http://www.ijr.org.za) and the **Institute for Healing of Memories (IHOM)** (http://www.healingofmemories.co.za).

31 Impressive in this regard is some of the masculinity work with former combatants and township youth started recently by DACPM in Cape Town and SINANI in KwaZulu-Natal.

4. Crosscutting issues

4.1 Conflict contexts and conditions of peace processes

In light of the discussion when TJ interventions should begin (i.e. the debate about the ICC intervention into the conflict in Uganda) and who begins (externals/internals), a closer look at the *processes* of peace negotiations and at the nature of peace agreements is useful (e.g. Zupan/Servaes 2007):

- Were the negotiations led primarily internally or with the use of external support/pressure/force?
- How far can we speak of a locally led peace process (an example for strong internal engagement would be South Africa, an example for strong external intervention would be the Balkans)?
- What influence do these preconditions have on the development of later TJ processes?

The difference between external and internal agency and leadership in the peace process lends itself to the further questioning of TJ processes. Many TJ scholars would say that all interventions are context-bound. What could be interesting is to look comparatively at countries that had similar conditions in their peace processes (i.e. strong external, even military intervention or locally dominated negotiations). Do we find similar processes and patterns of development in the generation of TJ interventions and impact of TJ processes?

One may also ask why TJ did or did not receive attention or gain political purchasing power in a particular situation. This leads to the question:

- Who brings and implements TJ and at which point?
- If there is an agreement among the "internationals' that TJ is a necessary and worthwhile intervention and, hence, increasing pressure is put on countries to deal with the past soon after (or even during) conflict, how is this view and the (possibility of) external intervention shared, welcomed, resisted, and debated locally?
- How, for instance, did the shift come about in Germany between external (Nuremberg trials) and internal TJ processes (Auschwitz trials)?
- A look at the contested and long negotiation over prosecution of the Khmer Rouge in Cambodia might be insightful - what were the issues arising in the negotiations over a hybrid international/local structure?

Selected Readings

For the German context two basic introductory texts that link conflict transformation and development issues to Transitional Justice are **Buckley-Zistel's (2007)** 'Handreichung Transitional Justice' and the 'Leitfaden' (Guidance Paper) by **Zupan and Servaes (2007)** that also raises a broad range of questions for analysis and sensitisation that development and peace practitioners working in TJ contexts need to ask, among them critical questions about conflict contexts and peace processes.

Further insights can be found in a recent Centre for the Study of Violence and Reconciliation **(CSVR) and** International Development Research Centre **(IDRC) report (2007)** called 'Evaluating Experiences in Transitional Justice and Reconciliation: Challenges and Opportunities for Advancing the Field' sketches the first fruit of a project on 'Outcomes Mapping' for TJ interventions, which is also located on the useful African TJ Network website: (http://www.transitionaljustice.org.za)

Lederach et al (2008) have just published 'A Planning, Monitoring and Learning Toolkit' called 'Reflective Peacebuilding' that sets out to revolutionise our current approach to analysis and monitoring of conflict, also in so-called post-conflict scenarios (that are often post-agreement but

far from being 'post'-violence and 'post'-instability). This approach will also prove critical to TJ practitioners in the future and TJ scholars can do much to anchor such efforts in the field with better theoretical grounding and deeper reflective analysis steeped in real experience.

4.2 Global Norms und Local Agency

Roht-Arriaza and Mariezcurrena (2006, 8-9) describe the strong influence of global norms and actors on TJ processes:

> '[N]ational and international human right groups saw ending impunity as key part of their agenda, and were quite capable of exerting pressure. Many of the governments, moreover, had international observers, missions, administrators or advisors present, and these people generally urged attentions to transitional justice issues.'

Much TJ writing keeps emphasising the importance of taking local conditions, values and cultures into account, and advocates the use of local understandings of the conflict itself when designing and implementing TJ interventions. Nonetheless, there is a strong influence of so-called 'global' norms (as in strongly Western-influenced) on local situations, actors and processes, not least generated by financial interventions and resource flows of international donor agencies and governments (Samset et al 2007). This is especially so when international donors move into a situation with a strongly universal and normative approach and demands for human rights, often dominated by the discourse of "combating impunity' and "accountability'. Such discourses act in the name of a 'higher good' that is meant to stand above partiality - the rule of international humanitarian law. At the same time, locally, any intervention (even non-intervention as was the case in Rwanda in 1994) of the international community is still politically charged and reflects current global political and economic inequities.

Programmes supporting TJ efforts, run by international organisations and agencies, are often decidedly partial, for instance when supporting 'victims' only, or by giving voice to certain actors and not others. Some agencies, for instance, provide funding for traditional leaders and other groups, even though these may be contested locally. In this way, TJ work is by default conflicting and can be conflict enhancing. On the ground the desired non-partisanship that characterises conflict transformation and its concepts of third party intervention cannot be (and maybe should not be) claimed for TJ interventions.

It is important to note that global norms, too, are in a process of formation and legitimation. These norms can give stability and leverage for accountability in local situations that have often undergone so much change and devastation in the course of the conflict. They can have important symbolic powers (Orentlicher 2007: 11-13) . But intervention on ground of such norms can also de-stabilise and create conflict depending on how it is conducted. There is not simply a global/local or internal/external dimension, but a kind of complex entanglement between all actors exists with multiple loyalties, alliances and interdependencies: neither does local equal traditional nor some unaltered static entity. International and local actors are part of the same conflict system and conflict continues to emerge in the interactions that polarise between self-other, internal-external, old-new, good-bad. The struggle is often rather about issues such as:

- What kind of justice should/can be sought and by whom?
- v How does this interconnect with other, broader political and social change processes?
- How does (or doesn't) it work together with a broader conflict transformation aim?

Important here are also questions of legitimacy. Oomen (2007: 9) comments on the dynamics of legitimacy as something made, re-made and tested in the everyday. She also says that "the legitimate author[s] of transitional justice strategies [...] have to be re-built as well, through narratives of belonging and day-to-day actions that include all stakeholders' (Oomen 2007: 9). Future research may explore:

- How then do these everyday processes of legitimation (and de-legitimation) take place? What characterises them? What matters to whom? How does it change and why?
- Who is deemed legitimate to implement international human right legislation and what principles and processes should guide external interventions?

By sending international experts and advisors into TJ situations, an intercultural dimension is also created that is not yet a focus of TJ research. While development work has developed its own culture of self-reflection and -critique (Nuscheler 2004) with "do no harm' and approaches of conflict sensitivity, the same questions of a potentially negative impact are not yet asked much in TJ activities, even though there is a consciousness of the sensitive nature of the field. This may prove another interesting dimension for future research.

Such reflections could be directly relevant to practice in the German context, not only for already existing interventions that operate in TJ contexts such as, for instance, a systematic reflection on the role of TJ in the Civil Peace Service [ZFD]. They could also be useful for other new actors and 'instruments' that the German government is using, or thinking of using, in the so-called 'whole of government approach' in future, where government personnel (i.e. Police and Army personnel) will assist with institutional reforms in other countries. How far do these actors (who are usually not directly concerned with TJ implementation) see their work consciously as interdependent with existing TJ processes?

Another important angle to the global/local divide is the economic dimension and questions of distributional justice. Discourses about corruption and broad-ranging small-arms-control (beyond the debate on ex-combatants) seem to be conducted largely disconnected from TJ processes and efforts. These are rarely seen as crosscutting issues. The Sierra Leone TRC was the first commission that also dealt with issues of transnational crime and the role of resources (diamonds, minerals) in the conflict (SL TRC Report 3b). It would be useful to ask further, and of other situations what role so-called "transnational' criminality and shadow economies play in conflict.

Hazan (2007) leaves us with two main challenges in the realm of global agency as TJ interventions have become more or less part of an automatic response by many states and by the UN. One issue is ownership and how to ensure at the national level 'that the society accepts ownership and recognizes itself in the processes that seek accountability for past wrongs' (Hazan 2007: 11). Here he feels international community and NGOs have a crucial observer role, though he does not mention the implicatedness of the international community when pushing for and funding certain mechanisms.

The second point Hazan raises is the erosion of legal norms after 11 September 2001. He cites Afghanistan as one example, where not the least efforts have been made by the Afghan state, the UN or the US to begin 'even the most rudimentary investigations into war crime or crimes against humanity and those responsible. The UN has itself been an active agent in the process of co-opting warlords into the power structure in the name of a political stability that has proved illusory.' (Hazan 2007: 11). He also explains how the UN has suppressed reports mandated by them

on the TJ situation. TJ debates - as for example at the Nuremberg TJ conference in 2007 - tend to skirt around the difficult dilemmas present in Afghanistan and Iraq. From a German perspective research on these difficult issues seems really critical.

It will be important to trace the local effects of TJ interventions such as, for instance, community reconciliation efforts in the long-term and to record the political and social dynamics and complexities that ensue. The work of civil society institutions, for example in countries like South Africa and Germany, can be helpful in this regard and point us to how TJ practice may identify and make use of local resources inherent in the situation, resources that may well be sidelined or 'flattened' by the forces of external interventions and funding.

Selected Readings

Influential human rights scholar Dianne **Orentlicher (2007)** brings the topic squarely into the TJ arena through her article 'Settling Accounts' Revisited: Reconciling Global Norms with Local Agency'. **Samset et al (2007)** have begun a longer-term project of tracing how the flow of international resources (donor pledging) impacts on the course of events in TJ processes

Hazan (2007) offers a recent analysis on questions of external interventions in 'The Changing Nature of the Debate on Peace vs. Justice'.

Thoms et al. (2008) present their ideas in 'The Effects of Transitional Justice Mechanisms. A Summary of Empirical Research Findings and Implications for Analysts and Practitioners'.

4.3 The role of local resources and neo-traditional approaches

One critique of global norms has been that the legal focus on individuals in the internationally more and more standardised TJ interventions serves to ignore local conceptions of the social that may see relationships as more central, and where people may work with more communal and collective understandings of what it means to engage past wrongs and make amends. This, in turn, impacts on how TJ interventions are seen and whether they are perceived to meet local needs or not (i.e. individual prosecutions, reparations programmes that aim at individuals only)

Possibly in relation to some of the critiques of top-down international interventions and the debates on cultural relativism in TJ, there has been an unprecedented rise of neo-traditional approaches that facilitate the making of amends after conflict in TJ practice, largely at grassroots level. Luc Huyse (2008: 1) even speaks of a 'hype' as he describes the 'rise of traditional techniques in peacemaking, transitional justice and reconciliation policies' (Huyse 2008: 1). Many of these have a restorative focus, and they are often presented as a means for achieving reconciliation and at times also justice, at local level.

Studying these local approaches that often comprise of 'rituals' and 'cleansing' ceremonies presents a part of TJ research that is growing rapidly. And yet once again, this runs in danger of fragmenting and separating these practices from their broader social, political and historical contexts, thus romanticising and essentialising neo-traditional approaches by looking at them disconnected from the processes of change that enabled their revival or re-invention over time. We would find the most interesting research here in tracing how such neo-traditions come to be re-invented and legitimised, especially when linking this to the questions raised on the alliances (not just the confrontations) between global and local actors, the influences of funding flows, etc.

Huyse (2008: 7) cautions in this respect that '[t]erminology

is problematic. How justified is the label 'traditional' if the mechanism is susceptible to almost continual change? Are there any satisfactory alternatives? In addition, if the subject of the study is a constantly moving target, where should the focus of the observation be directed? Secondly, many questions of methodological nature appear, such as how to avoid ethnocentrism in developing the key notion that will guide the analysis.' Huyse's approach in the recent book 'Traditional Justice and Reconciliation after violent conflict. Learning from African Experiences' (2008) is to ask only local scholars to write about such neo-traditional approaches. Interesting could also be to take an intercultural team approach in future research on neo-traditional TJ processes that also records the debates and dilemmas that arise from having 'multiple vision' onto a situation. Finally, in some local situations healing activities have evolved that have a consciously hybrid character, combining traditional understandings with insights from disciplines such as psychology and anthropology. One example are the Wilderness Therapy Trails in South Africa in the late 1990s that worked with ex-combatants and urban youth who themselves subscribed to a hybrid, fast-changing melting pot of ideas, believes and traditions (Schell-Faucon 2001). For TJ it remains very important to explore local ideas about healing and social repair, for instance to find out whether, culturally, 'speaking out' is indeed seen as part of healing, since that is the assumption of many Western trauma approaches. In some contexts other cultural conceptions may exist, for example 'speaking' about harm may be seen to re-invoke the 'negative' energies of the event and 'summon evil' rather than release a person from its effects. Here silence may be seen as essential to healing (Honwana 1997).

Questions that have a direct relevance for TJ interventions are:

- What kinds of knowledge are validated and circulated? What kinds of knowledge are dismissed or rendered invisible by centuries of cultural violence?
- What concepts of harm and wrong, of misdeed and evil exist locally?
- What are local ideas of how to engage these human phenomena?

v What are local practices of honouring and mourning the dead? How they are meaningfully remembered?

Selected Readings

This is a fast-growing, yet still underexplored area of TJ research. **Honwana (1997)** was one of the first scholars to point attention to the (inter)cultural dimension of efforts at dealing with the past in Mozambique and Angola. **Babo Soares (2004)** offers an interesting reading of local practices in East Timor in the process of the Commission of Reception, Truth and Reconciliation (CAVR). A recent and comprehensive book on neo-traditional practices and the arising questions for TJ is the collection edited by Luc **Huyse (2008)** that brings together authors from various regions in Africa writing about their own contexts.

4.4 Gender and Transitional Justice

Gender has received some attention in recent TJ literature (see for instance the Special Issue on Gender of the International Journal of Transitional Justice Vol 1.3; see also Du Toit (2007); Lamb (2006); and others). But on the whole gender and TJ is still an arena that requires further research. Important seems the emerging consciousness that gender work is not just about 'women's issues'. The need is seen for masculinity work, especially work on demilitarising and enabling constructive, non-violent masculinities.

Hamber (2007: 386-387) writes that 'a focus on masculinity should not be used to undermine services to female victims or a focus on the needs of women. Yet the lack of rigorous studies, debate and policy direction on the role of men in the perpetuation of violence, political or otherwise, is a threat to the security of women. […] We thus need a more complex understanding of changing masculinities, transitional justice processes and their relationships to transition and post-conflict social reform.'

The other important point, Hamber (2007: 390) makes is about the tendency of TJ processes to be concerned with the public domain and to focus on past/political violence only:

> 'The end of violence and the start of political reform, including transitional justice mechanisms primarily concerned with civil and political rights, are insufficient in dealing with the harms suffered by many women before and after cessation of hostilities. They also do not address how violent masculinities perpetuate these harms. This places an onus on transitional justice processes to move beyond concern only with the public realm, accountability processes, legal and institutional rebuilding or formal equality to consider injustices in the private sphere. The study of masculinity is integral to this shift.'

Looking at the transitional justice realm of prosecutions, Campbell finds that "[l]egal norms and practices instantiate and reiterate, rather than transform, existing hierarchical gender relations.' She views legal norms and practices as "structured forms of social action' (2007: 412) and she suggests that 'to transform the gender of these transitional justice mechanisms will thus contribute to the transformation of the very notion of transition itself' (2007: 432).

Nahla Valji (2007: 11) states that 'gains [of an increasing focus on gender in TJ] thus far have been predominantly concerned with increasing women's representation in existing mechanisms and addressing experiences of sexual violence.' However, she also warns that 'new laws, seen in isolation, reduce women's experiences of conflict to only that of sexual crimes. They do little to challenge the fundamental assumptions of transitional justice mechanisms; the ways in which these assumptions are gendered or the extent to which such mechanisms take cognizance of or strive to further gender equality and justice as part of a 'justice' agenda.' (Valji 2007: 11). Valji (2007: 11) calls for a widening of perspectives: 'Gender justice can only be furthered if there is a focus not just on the crime but its context, motivation, and location within a continuum of violence.'

Campbell (2007: 411), in her analysis of ICTY practices around gender, also calls for an adequate model "to capture the complex harms of sexual violence, both in terms of the harm that the perpetrator intends to inflict, and the experience of the harm by the victim' (2007: 419). She speak of patterns in which "men testify to conflict' and "women testify to rape.' Ross (2003) observed similar patterns when women testified before the South African TRC: women spoke about violations done to their partners before speaking about harm they experienced themselves. Another point Campbell (2007: 427) raises is how the current practices in the legal field mask the existence of sexual violence against men. "Moreover', she writes, "these relational terms are filled with imaginary content in relation to specific social contexts - in this society, this is what it is to be a man, and this is what it is to be a woman - and the content of these is itself subject to contestation in conflict' (Campbell 2007: 429). She suggests that patterns of sexual violence are best traced through a "policy

of representative prosecutions' to not have the spectrum of violation fall from sight for the own gender bias of the TJ institutions.

Valji (2007: 11) identifies 'two elements necessary in incorporating a gender justice agenda into the transitional justice field. The first requires acknowledging the specific needs of women in a system that has been designed to acknowledge and seek justice for crimes experienced and defined by men, as well as inclusion of women in all processes designed to deliver redress for the past. The second element moves beyond inclusion of women into existing mechanisms and instead seeks to examine the core assumptions of transitional justice form a gendered perspective, opening the field to a reassessment of these assumptions as well as the policies they inform.'

> Engendering the field of transitional justice will entail a fundamental rethinking of the goals, structures and foundational assumptions upon which the field is built as well as the future incorporation of a gendered perspective in all levels of planning and implementation (Valji 2007: 22).

Selected Readings

We cannot do justice here, neither to the scholarly writing on 'gender and peacebuilding' nor to the vast amount of literature on 'gender' and the trends emerging in general. The three recent readings cited above, we find critical in evolving questions around gender and TJ:

Hamber (2007) who raises the question of transforming masculinities;

Campbell (2007) who offers and insightful analysis of the issue of gender in recent legal TJ proceedings, for instance during the ICTY and the ICTR; and

Valji (2007) who calls for a fundamental sea change in how we perceive Transitional Justice issues in light of a new consciousness emerging around questions of gender in the field.

4.5 Identity, Subjectivity and Voice

We give specific attention to this cross-cutting issue, not only because questions of identity, subjectivity and voice are highly complex in TJ settings, but because they are often underestimated, even though they are highly influential on the success or failure of TJ interventions. We have spent many years exploring this terrain and would like to draw the attention of TJ scholars and practitioners specifically to the need for future research and reflection in this arena.

Identities in a conflict scenario are a matter of shifting ground. As the clouds of conflict lift, a new landscape becomes visible, with a complex reality of perceived and self-ascribed identities. There are already polarised conceptions of 'Self' and 'Other' that persist and vulnerable senses of self that may change every day as the transitional context shifts rapidly. In such situations international agents often quickly divide the world into 'victims' and 'perpetrators' in a process that has a dramatic impact on people's lives during and beyond the transition, and that afterwards is rather static when it comes to transforming the negative qualities and consequences associated with such labels[32]. This process of division often takes place without knowing the terrain well and guided by simplistic premises: all who fought and committed violations become 'perpetrators', and all who experienced violence and violation become 'victims', even though this may not be so clear-cut. The focus often given to (gross) human rights violations and direct violence omits the less immediately visible effects of structural and cultural violence and may lead to a 'hierarchisation' of victimhood. Those that disappear from sight are the many 'ordinary' people in between who move in what Auschwitz survivor Primo Levi (1990 [1986]) described as the 'gray zone'. The gray zone houses all who stood by, who witnessed, who did not prevent harm, who

32 We are grateful to Salomao Mungai from ProPaz, Mozambique, who reminded us of this important aspect at a recent workshop in Bonn in February 2008.

feared to risk, who voted and cheered, who participated from the sidelines through varying degrees of complicity and collaboration, of profiting or not rejecting benefit built on the suffering of others, who gave their silences and 'looked away', 'didn't know' and did nothing when in their name everything was done.

In light of such a complex scenario we need to ask how far descriptions of identity that seek to define right from wrong, and hence divide into those that wronged and those that were wronged, can do justice to the messy conflicts and cycles of violence and counterviolence that characterise today's post-conflict scenarios:

- where the lines between victims and perpetrator are not always clear,
- where today's perpetrators may have multiple claims to past victimhood and
- where structural and cultural violence are deeply embedded and their consequences not always immediately evident and visible.

We need to look much more closely at the ways in which experiences of the past shape people's senses of self in the present. We need to ask how memories correspond with possibilities and efforts to remake a broken sense of selfhood: How can survivors muster the hope to envision a future, in which their experiences have meaning and that gives a sense of purpose that is, nonetheless, rooted in the past?

Such questions are often seen as the 'realm of psychology' in TJ literature and debates. Yet the dynamic interrelations between memory, narrative, between ascribed identities and actual, shifting senses of self are *at the core* of how TJ processes unfold (e.g. Lindorfer 2008; Enns 2007). It is a highly charged landscape - one on which there is not yet much research, else we would not find so many happy reproductions in the literature of the seemingly so straightforward division of 'victims' and 'perpetrators' used in TJ interventions. We might also not invest such faith in the ambitious outcomes we predict for and between these 'groups' with so little consciousness of our own complicitness in the ways in which these labels are fashioned and infused with power by our own narratives as scholars.

For these reasons we prefer the term 'subjectivity' to differentiate from conceptions of 'identity' that are less malleable and responsive to the fluidity between naming/labelling and the multitude of ways in which that process is resisted, rejected, accepted, accommodated, welcomed, shaped, reshaped and used by local people. Subjectivity, 'following Werbner (2002), is a signifier for the complex senses of self that emerge at the intersection of the personal, political and moral conditions of a particular time and place' (Kayser 2005: 59).

A myriad of questions ensues:

- Who defines? Who is labelled victim/perpetrator? Who rejects the label? Who accepts it?
- Who benefits from it (amnesty, reparations)? Who does not?
- How does meaning given to the terms change over time and in light of political developments?

Languages of violence and suffering

One way of engaging the emerging complexity is to carefully pay attention to the languages used to describe reality in the aftermath of conflict, not least our own. We need to observe how the official (and unofficial) languages in which to speak about the past emerge and are crafted and by whom. Victor Klemperer's 'Language of the Third Reich' (LTI) has shown how language deteriorates together with civil rights and behaviour in an ideologically charged conflict situation and how central language is to the workings of dictatorship and oppression. He reminds us how difficult it is to repair and restore, and how long a kind of 'contamination' endures (Klemperer 2000). Look-

ing at the languages used in the aftermath of violence, in particular at the local vernacular used to describe things like 'the banalities of evil' (sometimes even in humorous ways), can be insightful when seeking to learn how to contribute towards healing and restoration. What language is chosen to describe post-violence realities? What language is chosen to reconstruct a narrative out of the events of the past? Where does language fail? What is taboo? How do we learn to read absences and silences? Language can also be insightful in tracing how - almost inevitably - old elites reinvent themselves anew: Who disappears from sight, like often top agents and leaders in the security structures? Who reappears (like, for example, the mercenary armies made of former South African Defence Force members in Sierra Leone)?

Other questions are:

- How far do the identity ascriptions in TJ processes do justice to the emerging "subjectivities' of those concerned? Where do TJ intervention "produce' new subjectivities that are conflicting with both old and newly emerging senses of self?
- Where do TJ interventions ignore the rich nuances and facets of old and new senses of self, especially when labels such as "victim' and "perpetrator' are concerned.
- Do the TJ concepts in use allow for a "gray zone' (Levi 1990 [1986]) in between that includes various dimensions of bystander, onlooker and accomplice-ship as well as profiteers and collaborators of varying scale and motive?

Do 'victims' need to tell their stories and how?

One focus of international actors in the situation is often on 'helping' the victims. The language used is that victims need their 'dignity restored', and victims need to 'heal themselves' (SA TRC Report 1998). This approach has been critiqued. Emanating from the South African TRC is also the idea that 'victims need to tell their stories' and victims need therapeutic intervention in form of trauma counselling (SA TRC Report 1998). Cuéllar (2005: abstract), based on his research in South Africa, offers a critique that seeks to show how victim's voices are, in fact, taken away further rather than restored by the well-meaning efforts of trauma experts and social scientists. Cuéllar advocates for a self-reflexive stance for those engaging with transitional justice and memory work: 'If one as an academic is not to reinstall [patterns of power and] violence, […] this […] requires not only a deeper and longer engagement, but a self-reflexive one, […] in other words an ethics of collaboration' (SA TRC Report 1998: 173). This is not to say that survivors do not also benefit from public and semi-public platforms for sharing their experiences (Henry 2000), but it leaves us with a sensitised and careful attempt to not reproduce - with the best of intentions - an often hidden kind of cultural violence and mode of silencing in our work.

Questions that may be useful in this respect are:

- Who is given 'voice' in the TJ processes? Whose voices are silenced or pushed to the periphery?
- Is there a rush to record 'victims' stories' and who is doing so? What stories are not recorded (i.e. those of beneficiaries, etc.)? Who benefits?
- Who has access to the means and publishes the accounts of the past? What impact do international modes of knowledge production and dissemination - our papers, workshops, conferences - have on the ground?

Changing the identities of perpetrators?

The other focus, which we find needs more caution, is on the need to 'change the identities of perpetrators' so that they do not continue to commit violence. This language

betrays an assumption that such change is possible and can be brought about quickly, whether or not the actors concerned wish and chose to do so. There is little consideration how years as a combatant are woven into the essence and fabric of someone's being and what it means to face transition where, firstly, all of a sudden one is reconfigured as 'perpetrator' and 'violent' (where before one's sense of self rested the idea of being a 'freedom fighter' and 'protector of community'). Suddenly, one is not protector anymore but re-narrated and perceived as 'danger'. In addition, there is a host of measures already ready to respond to that danger, to demobilise, demilitarise, re-train and re-integrate in exchange for the renouncing the role of the combatant/fighter/rebel/guerrilla member.

Yet there is no new sense of self ready to be comfortably inhabited, rather the work of changing focus and building a new life is slow, painful and laborious. People always reason for themselves how what they did made sense to them at the time, even if they were torturing and killing their own neighbours. When the outer frame shifts, and there is a new frame that says: ‚What I did was wrong. I am a perpetrator', this is a shock, a loss of a world view. So fundamental is this loss that it also needs to be mourned. In Germany, for example, such mourning of Nazi ideology and what one believed in did not happen. The effects can be traced until today in their impact on the possible identities of future generations, for instance in form of problematic and insecure male identities in the third generation of Germans after the Third Reich (Schollas 2007).

Important questions may be:

- What psycho-social processes come into play in the work with "perpetrators', and how do they impact on the possibilities for change that TJ interventions aim for?
- Who has the power to define mental disorders? Can perpetrators claim freedom from responsibility because of PTSD symptoms? Who has the "right to suffer'?

Questions of guilt and belonging

An underresearched phenomenon in this respect is also the question of guilt. Though much-debated in the German context (Jaspers 1947), discussions of "guilt' and its relation to TJ interventions remain absent from much of the English-speaking TJ literature. We have made the observation in practice that questions of guilt are intimately tied to a sense of belonging and, equally important, define who is granted the legitimacy to claim belonging. This, in turn, has a fundamental impact on post-agreement interpersonal relationships. Silent guilt often turns into unhealthy guilt, which, in turn, breeds anger and stifles possibilities for change. A kind of "healthy' guilt may emerge when belonging is allowed, also to those implicated in past crimes, in particular in the case of beneficiaries. This may motivate people usually silenced and paralysed by being implicated in a shameful past to move towards becoming active agents in transformation. But we know very little so far about how such personal and interpersonal processes unfold, not only in the short term among the first "post'-conflict generation, but with a long-term generational view (Kayser 2005). This would be a fruitful field for future research and also highly relevant to TJ practice.

Questions that may be helpful in this respect are:

- How do we engage with the complexities that emerge in the visions of those belonging to the new political entity? Who feels they do not belong (yet/anymore)?
- Who feels guilt and can admit this in the public sphere? Who may feel guilty silently?
- If these processes are slow and contested - where periods of possibility and experimentation are followed by periods of polarisation and rejection and change is a long slow process of wrestling

with the "Other' inside (Ndebele 2004) - what implications does that have for TJ processes and policymaking around TJ? What social spaces can be created and need to be kept open in the long-term?

What are our conceptions of war, violence and "the human'?

Also needed, in this respect, is a reflection on what concepts of war, violence, aggression and 'the human' underlie our thinking in the TJ field. Do we think of violence as 'primordial lethal aggression, waiting for a political opening to manifest as tribal warfare and ethnic hatred' (Theidon 2006, 10)? Kimberley Theidon proposes that violence is a product and manifestation of culture with no biological component (e.g. Nordstrom 1997). A cultural process is needed for making violence possible and only a cultural process can unmake the possibility of lethal violence. We are speaking of gradual, social and discursive processes that do this: people talk themselves into change in everyday conversations about the situations they are in. Hence, in these conversations moral reasoning and conceptions of justice, reconciliation, truth and mercy also shift and change. They are malleable. This at the same time is a key opportunity for social repair, for forms of social re-construction where those who violated and those who were violated may both become part of the ('human') community again.

In her research in rural villages in Peru, Theidon (2006) traces how ideas of the past and of morality in the present as well as the emotions attached to both are changing over time. She describes how possibilities for the re-integration of former enemies are linked to the sense of being secure, a sense of being in power and control, that allows the community to be more liberal with policing the boundaries of who is enemy and who is not. She cites Nietzsche: 'Mercy remains the privilege of the most powerful man' (Theidon 2006: 445-446). Theidon speaks of a 'gray zone of jurisprudence that left space for porous categories, for conversion, moral and otherwise' (Theidon 2006: 451; Kayser 2005: 35). She cautions though that local efforts to 'stay the hand of vengeance do not imply forgiveness per se' (Theidon 2006:, 453). If there is indeed a *tempora*l construction of emotions and morality and changing moral scripts that inform people's actions - this raises a host of new questions for TJ interventions, many of which seek to 'deal with the past once and for all'.

Questions that need to be traced in this respect are:

- How do social processes work in which people are stripped of their human characteristics?
- How do people who were violated reconnect with their compassion with other humans (even if they are perpetrators or enemies)? How does an enemy become a fellow community member again?
- How do violators connect to and begin to be able to mourn the loss of humanity they experienced?

Selected Readings

Influential on our thinking around these issues has been Christopher **Browning**'s **(1992)** work on 'Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland'. He opened our understanding to the complexity of the 'ordinary' perpetrator. In our view, the writings of Hanna **Arendt (1960)** also remain critical to TJ scholars and practitioners today.

Dianne **Enns (2007)** writes on 'Identity and Victimhood. Questions for Conflict Management Practice' and raises some important questions, also for the TJ field.

Pouligny et al (2007) offer a short but concise reflection

on the same issues in their recent article 'Methodological and ethical problems: A trans-disciplinary approach'.

Kimberley **Theidon's (2006, 2007)** work offers some of the most distinct writing on these issues to date using an anthropological perspective.

A recent international workshop entitled „Engaging with Victims and Perpetrators in Transitional Justice and Peace Building Processes" was held in Bonn by the German group **FriEnt** in conjunction with the **KOFF** (swisspeace) **(forthcoming)**.

5. Conclusion - some themes and questions for the future

The Current State of Transitional Justice Research

Transitional justice is not a new field of action and inquiry - though it is growing steadily with new facets and ideas. The amount of research published since the mid-1990s is enormous[33]. We may well ask ourselves self-critically why TJ has become such a viable 'industry' in this day and age. At the same time efforts at finding common theoretical ground across disciplines are still in the beginning stages. This is especially visible since several streams of discussions that have long since found entry into other fields of research and practice (i.e. conflict sensitivity and cultural relativism debates in development work) are rarely visible in transitional justice discourses or have only recently been discovered "anew', this despite the fact that most transitional justice interventions currently take place in so-called developing countries. International and external interventions and funding for TJ measures are politically sensitive and depend on "success stories' from practice, which makes a critical and holistic view more difficult. Certain contexts are at the centre of focus in international TJ debates, inquiries and activities (i.e. Nepal, Uganda, Cambodia and, most recently, Kenya), while others remain on the periphery, such as Afghanistan and Iraq.

Transitional justice research has so far had a strong emphasis on practice - many of the published studies are interdisciplinary collections of articles with a practice-oriented focus on current or recent situations, with descriptions of interventions and case studies from all over the world, which remain for the most part standing next to each other, more or less disconnected. It is also striking in many recent collections concerned with transitional justice processes that from most country examples only certain, singular aspects of the respective TJ processes are highlighted. In South Africa, for instance, much focus has been on the Truth and Reconciliation Commission, with less research looking at new institutions such as, for example, the South African Human Rights Commission, the criminal justice system, police reforms, etc. and their contributions and relations to the transitional justice process. In Mozambique the work with child soldiers is foregrounded and little attention is paid to the evolution of the political compromise between Renamo and Frelimo[34]. In the case of Germany, the Nuremberg trials and the Stasi Archives are often cited as the central and innovative contributions to transitional justice without looking at the cycles of engaging with the past that characterised both East and West German societies in very different ways over the past 60 years.

Rarely do we find in TJ research the attempt at looking at one transformation process or case study from a range of different angles and disciplines, in a way that would be able to answer the following questions:

- Which other – for instance economic - interventions and processes emerged parallel to the TJ efforts? How did they complement or contradict or influence one another?
- How are TJ interventions - once over - narrated and re-narrated and also evaluated and re-evaluated in light of changing social contexts and political events over time - by the population, by practitioners, by researchers, by internal and external actors?

Transitional Justice and Civilian Conflict Transformation Research in Germany

The comprehensive interventions and processes in Ger-

33 See for example www.polisci.wisc.edu/tjdb/bib.htm.

34 At the moment, in fact, this particular power sharing arrangement seems to be under duress from a transitional justice perspective. Igreja (2007) calls for a Mozambiquan truth commission.

many post-'45 and post-'89 have only found a partial reception in international TJ debates[35]. Yet the German-speaking literature offers a very rich and nuanced account and analysis of diverse local and national TJ processes over the years, from Nuremberg to the Auschwitz trials and the claims by survivors of forced labour in the late 1990s, from vetting and reparation policies to different politics and practices of remembrance in East and West Germany. It would be enriching for international TJ discourses if the insights from this long-term research into transitional justice and dealing with the past were to be more widely absorbed in the discourses of the dominant English-speaking TJ arena.

We may ask why, at this point in time, transitional justice is gaining political currency in Germany? The work on peace and civilian conflict transformation has emerged as a strong discourse and political concept in Germany since the late 1990s. Carried by actors of the peace movement, mainly from civil society organisations and churches and not least themselves influenced by the German processes of dealing with the past, the debates about civil conflict engagement placed emphasis on the non-violent, non-military and non-state nature of interventions into conflict (Weller 2007; Kirschner 2007). One may question if the concept of 'civilian conflict transformation' (*Zivile Konfliktbearbeitung* - which in turn can be seen as the German version of the broader international conflict transformation debates) has somewhat lost the explicit security dimension with its role of state actors that has dominated international politics since the New York events of 9/11. Transitional justice is different to 'civilian conflict transformation' in that, traditionally, it has a stronger focus also on state actors and sustainable institutional reform, particularly in the security sector. The following questions may be asked:

- Is TJ receiving political attention at this stage because it offers more connecting points to questions about the durability of non-violent conflict transformation approaches and the preventative effects in terms of future escalation?
- Does TJ possibly also link better with the new concepts of a 'whole of government approach' that combines questions of security and the responsibilities of states?

Reflections on Impact in TJ

TJ has not yet developed a broad debate and range of measuring tools for impact, as has been the case for conflict transformation and development work[36]. What is visible though is that different actors approach TJ questions with fundamentally different views and theoretical groundings. Körppen (2007: 31) says in the context of peace and conflict research that there is little debate about the theoretical bases backing the assumptions made about a conflict, its resolution and prevention. Evaluation "methods differ in their central assumptions about the root causes and dynamics of conflict and the necessary strategies for peace' (Körppen 2007: 31). The same applies to TJ and is visible not only in the tensions in interdisciplinary debates, but also leads to embattled practices, in particular when TJ options are discussed while a country is still experiencing violent conflict (such as Nepal, Uganda). The motives for dealing with the past in TJ also vary. Most often foreground is the focus on change in the present, on the sustainability of such change and on finding a vision of the future that carries hope, energy and the promise of belonging. TJ therefore has to have a long-range perspective. Such a vision may be where conflict transformation

35 An example for this phenomenon might be the proceedings at the large TJ conference in Nuremberg in June 2007: the conference was opened in the chambers of the Nuremberg trials, after which Germany ^featured neither in the programme nor in the ensuing debates.

36 Hazan (2007) has developed indicators for ‚mechanisms of transitional justice', especially around tribunals and truth commissions. He also includes questions about public apologies and reparations and works along a time scale.

and TJ most strongly link - since conflict transformation is sometimes accused of focusing too strongly only up to an agreement stage (e.g. Dudouet 2006). This is also where development work links in with its measures of socio-economic empowerment and improvement. **Future TJ** research may ask:

- What ideas and theories of social change inform TJ thinking? What basic conceptions about individual and collective human change processes (identity transformation, trauma healing, etc.) inform TJ interventions?
- How do these views impact on the field of TJ in general, and on the dynamics in different countries and cases in particular?

From Linear to Systemic Thinking

Based on the observation that conflicts often develop a kind of "organic' dynamic where irregular and non-linear phases of stagnation, fluctuation and rapid change alternate (Dudouet 2006), some practitioners and scholars in peace and conflict transformation studies have been concerned with developing new theoretical bases (Lederach 2005, 2007; Wils 2006). To capture the phenomenon they draw, among other things, on systemic approaches derived from physics and cybernetics that take a more cyclic or spiral model as a starting point. Looking at "conflict systems' as moving dynamic entities with self-generating and self-regulating powers, this view assumes that conflicts are non-linear in their evolution with multiple, sudden, simultaneous and over-layered movements (Dudouet 2006, 73). This assumption has decisive implications for TJ processes that are deeply influenced by the view TJ actors have of the respective conflict dynamics and modes of evolution. As yet we find, however, a lot of linear thinking in TJ literature, especially in texts with a strong normative and legal focus.

The initial polarisation between different TJ interventions that dominated debates for some time (whether to have trials or truth commissions, etc.), is less of an issue today. Today, the discussion is rather about sequencing, and about simultaneous measures and their complementarities (Hazan 2007a; Roht-Arriaza/Mariezcurrena 2006). This approach asks: When is the time "ripe' for a broad public review of the past? What aims can be achieved/aspired to at what moment in time? What can be done if the local security situation does not allow TJ measures (yet)? Therefore, how do we sequence TJ interventions? Yet even sequencing still has a chronological, linear idea of intervention. More cyclic (or rather spiral) and endless process models are likely to soon replace the conventional linear models that seek a single "road to peace' with reconciliation and democracy as an ideal end state. Also, if half of the countries that emerge from war lapse back into violence within five years (Kofi Annan), TJ needs to give more attention to long-term peace building work (Dudouet 2006, 9, referring to Fischer 2006). What happens to TJ if a country relapses to war? What is the role of TJ in latent, "cold' conflict situations? How can TJ contribute to positive non-violent forms of "waging' conflict?

Bearing in mind Dudouet's own critique of the shortcoming of her cyclic conflict model, TJ scholarship may want to approach the following question:

- What dynamics emerge between planning, interventions and actual developments in the long-term? How can we conceive of these dynamics without falling into simple cause-consequence thinking?

Timing, time frames and pace

TJ is a field of practice that is driven by great urgency and, at times, a kind of actionism. This is not surprising maybe in light of the desire to react to the immediacy of great hu-

man suffering and to engage the human capacity to commit "inhuman' deeds with the greatest preventative powers. Hence the introduction of TJ activities after conflict has picked up pace enormously, so much so that, even in violent conflict situations, debates about future TJ activities are launched. The assumption seems to be that beginning TJ interventions sooner will yield faster and better results.[37]

Often we also find a language of restoration of some prior state - as in "re'-construction and "re'-conciliation - in contexts where there has not been such a prior state or relations that people aspire to return to. A more nuanced understanding of social repair and its relationship with time is needed (Das/Kleinman/Locke 1997, Das/Kleinman/Reynolds 2001, Ross 2003), where a nostalgia for certain aspects of the past co-exists with both aspirations and resentment, pains and hopes. In a context where the social fabric has been severely damaged (Huyse speaks of a "wounded biotope', 2008), and in which other dynamics such as global influences and economic changes impact on the relationship between the generations, it remains to be asked what is to be restored and what has, in fact, to be thought anew, invigorated by the fresh imagination of possibilities yet unthought-of. We need to beware of an unreflected "return to the past' or to "tradition'. TJ interventions are therefore (and often this remains an underexplored dimension) concerned with a process of imagining and visioning that is meant bring to life new, creative, maybe unusual ideas and impulses for the work of building a joint future. Such processes can only come out of a local impulse and are more likely to succeed if they mainly build onto local resources.

In order to research the aspect of time, it may pay to work in contexts where TJ processes have been underway for some time or where processes of dealing with the past have experienced several cycles already, such as Cambodia, Argentina, Germany, etc. These can serve as good research fields to trace long-term changes as well the shifts in the discourses "narrating' them. They also lend themselves to study social transformation processes in their complexity. If the past returns in cycles into the public sphere and debates over time, this may well put the current approach of sequencing, and especially the *pace* of it, in question and conjure a much slower, transgenerational lens and vision.[38]

Interesting could be a reflection on the time frames chosen for a TJ intervention (usually 5-10 years, at most a generation). We also need to reconsider the timing that is deemed right for beginning and ending interventions: is it really the sooner the better? And we need to review the respective pace in the implementation of TJ interventions. Questions that need to be traced in this respect are:

- What are the things that "energise' a situation in the long run? How are *processes* of remembering enabled that are healing as opposed to feeding a wounding memory that seeks to keep alive the negative energy of the violation? How are sustainable *spaces* created that do not foreclose multiple voices and contestations over the past?
- How can such processes be supported and accompanied adequately without falling prey to a kind of "imperative of forgiveness' as was said of the South African TRC?

37 In addition, there is an increasing professionalisation of TJ as a field. A critical issue is the delicate balance between bringing stimulating questions for local debates and dominating debates with preconceived values and ideas in vulnerable contexts. TJ may still face its own 'do no harm' debate in the near future.

38 Contexts that - for a range of reasons - did not immediately implement TJ measures can also be interesting in exploring alternative ways of engaging with the legacies of pain and atrocity. Mozambique, for example, is sometimes mentioned as a country that ‚did not have a TJ process'. Yet processes of engaging with the past emerged locally (Honwana 1999, Igreja 2007) and Mozambique's transition from civil war to peace is widely regarded as successful..

A need for 'sensuous scholarship'

Lederach's (1997, 29) states that 'the emotive, perceptual, social-psychological and spiritual dimensions' are 'core not peripheral concerns' when facing contemporary conflict. The same idea we find relevant for Transitional Justice. In much of current TJ literature, however, these dimensions do not feature in such a central role but remain occasional excursions into the personal and complex, maybe 'too complex' to be heeded as starting points for further exploration and action. In light of this we may want to critically self-reflect on our motivations for this particular work. Are we conscious of the extent to which we participate in a highly political process of knowledge production that feeds of the narrations of violent experiences that ''others' have had (e.g. Cuéllar 2005)? Judging from our own experiences, we would further say that it is important to be mindful of the gap that needs to be bridged between witnessing TJ processes and writing about them academically. There is not enough self-reflective writing on these experiences yet. Narratives of atrocity tend to erode language and defy reason, and the energy that emanates even from them, even when recounted much later, can wield the powers to make people physically ill, as happened for example to Desmond Tutu, researchers and translators at the South African TRC.

One of the core challenges TJ scholars face is to capture the complexities and emotionality that are characteristic for the subject matter, without conflating or getting lost in them. Paul Stoller (1997) advises on a kind of 'sensuous scholarship' that is needed, that acknowledges the involvement and, in a sense, works with the inevitable complicitness we encounter in any conflict scenario. We are faced with 'the practical difficulties of implementing a code of ethics, something that is often easier to define than to apply (Pouligny et al 2007: 19). Often we are driven to work with issues of TJ by our own personal motivations and life-stories that are intimately connected to both our personal and our countries' histories. As authors here we are no exception with our own entangled third generation post-Holocaust German experiences. Lederach (2007) reminds us that by disguising our own motivations and omitting the personal in our public narratives, we are doing a disservice to scholarship, to our field, to ourselves and to the people we claim to assist.

From Interdisciplinary to 'Trans-disciplinary' Research

The disciplines that are currently concerned with transitional justice processes are increasing, reaching from law, criminology and political science/international relations to history, religious studies/ theology and philosophy, to sociology, social anthropology, psychology and pedagogy/ education. Other influential interdisciplinary discourses that shape the research field TJ at present are, most prominently, international human rights debates, research on conflict transformation and peacebuilding, development studies und research on societies in transition.

Following Oduro (2007: 21) we can distinguish four sets of actors with defining powers in the field: *Human rights activists* and scholars who foreground legal measures, prevention through reform of abusive institutions and promote respect for the rule of law. *Peacebuilding and conflict transformation* activists and scholars who focus on building new peaceful relationships, bridging divides, establishing trust and responsibility through acknowledgement and accountability. *Religious actors***'** stake is often in truth-telling, apology, forgiveness, repentance, healing, rebirth of society, moral reflection. *Political democratic nation-building advocates* advise a focus on rebuilding societies in a spirit of democratic citizenship as connector, developing a political culture of power sharing, and nurturing the legitimacy of new political institutions.

Almost all of these different actors and disciplines, however, still conduct their practical and theoretical discourse about TJ more or less next to each other, rather than in a deeper conversation with each other. One listens to one another's presentations at the many conferences and workshops but there are few research projects that systematically work on the *same* specific research questions *across* disciplines that undergo the painstaking process of seeking to formulate joint insights and record and publish observations together. The kind of deeper fruition that does not yet seem to be taking place on a large scale is about the internalisation and application of insights from each others' disciplines and the exploration of their meaning in practice. At the same time, there is a realisation in intra-disciplinary debates that there is a need for far-reaching work between the disciplines in order to develop further the insights won about TJ processes and assist in making them relevant to practice[39]. An important new effort in this respect is the founding of the International Journal of Transitional Justice (IJTJ) in 2007 that seeks to provide a conscious interdisciplinary platform that crosses global-local and North-South divides and that brings together insights from practice and scholarship on an issue-based approach (IJTJ 2007: Vol.1.1, 2). A notable advance beyond the tendency of TJ scholarship to fragment, disconnect and objectify experiences of suffering and violence is Pouligny et al.'s (2007, XV) attempt at a 'trans-disciplinary' conversation. They 'bring together disciplines that address mass crime' by offering 'a combination of case studies and transversal reflections based on different field experiences.'

To us it seems that especially disciplines more concerned with the micro-level - those looking at the realm of the individual and the interpersonal and working with a kind of ethnographic eye such as critical trauma psychology, social anthropology, educational and religious science/ theology - can enable insights that are very relevant to larger collective political and social change processes. Yet they seem to remain of limited impact in the dominant TJ debates so far.[40] An example might be the important but little-mentioned relevance of mourning processes for the transformation of identities as well as for careful forms of encounter and dialogue across the divisions of the past. Volkan cautions us to 'have a look at the complicated psychology that exists between large groups' [and] [...] not to make the concepts of 'apology' or 'forgiveness' magical tools in international relationships without first considering the slow and complicated mourning processes associated with them' (2006: 130).

Also, in the beginning stages of being more widely internalised in TJ debates are insights from local long-term and micro-studies coming from social anthropology (e.g. Theidon 2007; Das/Kleinman/Lock 1997; Huyse 2008), that sensitise for the nuances of social process and its development over time and that also have an eye for the fundamental relevance of other world views and cosmologies as TJ processes unfold. While we have developed some socio-economic consciousness in recent years of the need to look at *structura*l violence, there is still little understanding of the realm of *cultural* violence (Galtung 1996) and its workings and little knowledge as to how it may be undone.

Overall, TJ as a research field appears yet fragmented. The beginning efforts at building and deepening 'trans-disciplinary' cooperation form an important step in developing the field and its relevance. Generally, there is need for

39 Bell, Campbell, Ni Aloin (2004) for instance, speaking from a legal perspective, demand an approach that takes into account the insights from the social sciences and Stachowske (2007) calls for therapeutic memory work to position itself more consciously in a broader political, cultural and historical framework.

40 See for instance Gobodo-Madikizela 2003 on South Africa; on the Balkans and beyond Vamik Volkan (1993, 1996, 1997, 1998, 1999, 2000, 2002; 2004, 2006a, 2006b); for Germany and Israel/Palestine Dan Bar-On (1989, 1995, 1999, 2000, 2001, 2002, 2004); Albeck/Adwan/Bar-On (2002); on Uganda Lindorfer (2008).

more integration of approaches that foreground aspects of institutionalisation at societal level (which TJ tends to foreground) and (inter)personal transformation and internalisation of non-violent, constructive forms of dealing with conflict (that conflict transformation tends to foreground). Both fields can benefit from a sustained and deepened conversation between peace and conflict (transformation) studies and transitional justice scholarship with the aim of exploring the overlapping questions and complementarities, but also engaging contradictions and differences in practice. A look at the societal dimensions mentioned earlier (legal-judicial, political, economic, socio-cultural, religio-spiritual, psychological, etc.) might feed into further theory-building and enable more new 'trans-disciplinary' conversations that engage with longer-term social development and transformation processes in a self-reflective and introspective way.

Some of the most critical questions to trace for future TJ scholarship seem to us:

- How do we find a way of engaging the pragmatics of transitional decision-making with the nuances and complexities of the same processes, looking at them as memory processes and processes of social change, informed by a constant narrative reconstruction of events?
- How do we as "intermediaries' assist in facilitating information flows between people working at the grassroots where individuality and innovation count and people working at policy-making level where quantity, impact and symbolic effect count?
- When, in light of the current context, there is no chance of their fruition in the present, how do we "sow the seeds' for future possibilities that may unfold much later?

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