Restorative Justice & Transitional Justice

Breaking from a violent & abusive past

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From Principles to Practice: Implementing Restorative Justice Programmes

- Restorative Justice & Transitional Justice

- What is Transitional Justice?
  - Ways that countries emerging from periods of conflict & repression address large-scale / systematic human rights violations so numerous & so serious that normal justice system can’t provide an adequate response
  - Rooted in accountability & redress for victims. Recognizes their dignity as citizens & as human beings
  - Usually includes: truth seeking, reparations, justice, measures for non-recurrence, reconciliation & healing.

- [https://www.ictj.org/about/transitional-justice](https://www.ictj.org/about/transitional-justice) (ICTJ)
Restorative Justice informs Transitional Justice

- TJ often seen as alternative to traditional criminal justice system / retributive justice
- Achieve accountability & redress outside of criminal justice system (except for most serious international crimes generally reserved for specialist tribunals).
- Sierra Leone – to persuade fighting factions to stop the carnage & commit to peace: general amnesty - truth & reconciliation commission tasked with addressing accountability.  
  http://www.sierraleonetrc.org/
Key steps

- Product of national consensus / dialogue
  - [https://www.youtube.com/watch?v=VVH380BuMU](https://www.youtube.com/watch?v=VVH380BuMU) (TUNISIA)

- Opportunity for victims / communities to be acknowledged & heard
  - Hearings / statements / interviews / other
Restorative Justice & Accountability

- Thorough examination of past period of conflict / abuse
  - Impartial historic account
  - Identifying those who masterminded violence / repression
  - Identifying underlying causes & fault lines
  - Serious pursuit of guarantees of non-recurrence / recommendations – never again

- Holding of perpetrators to account through rigorous inquiry and robust public findings
  - Encourage / compel truth telling
Sierra Leone Guarantees of non-recurrence

- Recommendations implemented:
  - Gender laws / Child Rights Act
  - Creation of national Human Rights Commission
  - Disclosure of assets by senior public officials
  - Independent prosecution authority provided to Anti Corruption Commission
  - Official apology to women by President

- See Recommendations Matrix:
Restorative Justice & Accountability

- Methods of accountability
  - Public acceptance of responsibility
    - Truth for Amnesty (South Africa)
  - Sincere offer of apology
  - Immunity or lenient sentencing for full disclosure, reparation, commitment to peace
  - Mediation / arbitration
  - Symbolic / material reparation
  - Community service / reconstruction
Restorative Justice between individuals

- **South Africa**: s 11, TRC Act: informal mechanisms for resolution of disputes, incl. mediation, arbitration & any procedure provided for by customary law & practice shall be applied, where appropriate, to facilitate reconciliation & redress for victims.

- **Tunisia**: art 48, Transitional Justice Organic Law, 2013: Committee for Arbitration & Reconciliation to resolve disputes between victims & perpetrators.

- **Nepal**: art 22, Commission on Investigation into Disappeared Persons, Truth & Reconciliation Act (2014) - reconciliation can be made on application of perpetrator or victim.
Colombia Peace Jurisdiction

- **Truth, Coexistence & Non-Repetition Commission**
  - Contribute toward historical clarification
  - Recognition of victims
  - Responsibility for the armed conflict
  - Promote coexistence across the country

- **Special Jurisdiction for Peace: - Peace Tribunal, Judicial Panels**
  - Political crimes but not grave human rights violations = amnesty
  - Grave violations but disclose truth & contribute to reparations & guarantees of non-recurrence –
    - no prison but punishment that has “restorative & reparative function”
    - Restriction of liberty: 5 to 8 years / community service
  - Decline to disclose truth – full force of law & prison
East Timor: Community Reconciliation Process

- Village-based participatory process: community hearings:
  - Perpetrator admit violation: agreement brokered: community service, apology, symbolic fine, reparations:
    - repair of public buildings, tree planting, erection of village flagpole; cleaning of public places.
    - reimburse victim for goods stolen or destroyed, e.g. livestock
    - donate a cow - slaughtered & eaten at communal meal
  - Perpetrator then accepted back into community.
  - Role of office of the General Prosecutor and approval of court
Different mechanisms
- Truth & Reconciliation Commission
- National Reconciliation Commission
- National Cohésion and Intégration Commission

Voluntary rapprochement
- Individual / community / national reconciliation
- Mediation / arbitration

Outlet for all role-players
- Submissions
- Art, theatre, poetry, music, free expression
- Celebrate acts of humanity on all sides

Reconciliation activities
10 Key Principles & Values of Peace

1. Choose Zimbabwe as your #BuildingBlocks4Peace
2. Respect the Constitution & play by the Rule of Law
3. Enjoy rights and priviledges & perform roles & mandates in accordance with the Constitution
4. Embrace conflict prevention efforts & stand firm against violence
5. Embrace diversity & celebrate our differences
6. Protect women, girls, persons living with disabilities, youth and all generations
7. Communicate in a manner the unifies, edifies & promotes cohesion
8. Be driven by the values of ubuntu
9. Choose dialogue as the preferred medium of communication, engagement, and decision making
10. Give mediation, conciliation and other alternative approaches for resolving disputes a chance
Sierra Leone
- Community truth-telling bonfire
- Cleansing ceremony
- Person to person peace

Kenya
- "Promote appreciation of Ethnic Diversity", through community elders.
- Creation of a County Elders Forum
- Community Peace and Cohesion Committee.
- Programs to combat hate speech

Rwanda
- Education for peace
- National summits
- Training of grassroots leaders

Liberia
- Regional Consultations to National Reconciliation Conferences
- Palava Hut - community healing
- Sharing of Kula nut: dispute resolution, based on forgiveness.
Take the outcomes seriously

- Respect rights of victims & take necessary steps
- Act against perpetrators who spurned /abused RJ process
- Seriously reform abusive institutions
- Enshrine & protect rights in constitutions
- Preserve memory and make records accessible
Values needed

- Commitment to building a new & better future for all
- Vision
- Integrity & honesty
- Courage
- Resilience & persistence
- Respect & tolerance of human rights of all
- Energy / Readiness for hard work
- Sacrifice / selflessness