

Relationship between transitional justice and political transition



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With reference to at least one case study (which must be a case not covered in the six case study weeks of the module), is transitional justice best understood as a catalyst or a product of political transition?

Post any violent conflict, the scourge of bloodshed and terror is bound to leave deep scars amongst the parties to the conflict. While coming to terms with the past is often a major challenge, stepping forward to a life post-conflict is harder still. With brutal military kleptocracies in retreat in Latin America, and military fascism and single-party states put on their back foot by pro-democracy activists and human rights advocates in Africa (Mutua, 2015), transitional justice made its inception into the modern world in the late 1980s and early 1990s. Its primary aim lay in facilitating a smooth process of transition from violence or mass violation of human rights to a more peaceful and democratic state. During the course of the 1990s, the discourse has come to be widely accepted as a distinct field of its own and subsequently grown and entered a phase of disquiet. The establishment of the ad hoc International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994 respectively led transitional justice to be viewed as a mechanism to end the culture of impunity within these countries. In 1998, the adoption of the Rome Statute gave birth to the largest international organization with the power to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes to be known as the International Criminal Court (ICC). Its efforts aimed to catalyze the longer-term processes of social and political change that challenge impunity (Ladisch, 2018) address the legacies of past abuses, and advance acknowledgment, dignity, and respect for

rights. Today, transitional justice scholarship is a multi-disciplinary set of inquiries that takes its inspiration from a gamut of fields including anthropology, cultural studies, development studies, economics, psychology, sociology etc.

To answer the question asked of us, we must first understand what purpose transitional justice serves. Transitional justice in a post-conflict society encompasses not only legal but also non-legal elements. It embodies four main elements; namely, criminal prosecutions, institutional reforms, truth commissions, and reparations/memorialization (Adityavarman, 2018). While criminal prosecutions and institutional reform perform the duties of holding perpetrators accountable and ensuring intolerance towards the culture of impunity, truth commissions and reparations/memorialization promote virtues of healing, reconciliation, remembrance, and a way for society to collectively air grievances, tell stories, and begin to forgive and move forward (IPI, 2013).

This paper will reference the case study of Sierra Leone to better understand the effects and impact of the transitional justice system in a country. It will follow the trajectory of a brief backdrop of the civil war followed by the mechanisms of transitional justice employed in the country and the criticism faced by it. The concluding segment of the paper serves the purpose of answering the question as to whether transitional justice was seen to fulfil the role of a catalyst or a product concerning the political transition in Sierra Leone.

Sierra Leone's civil war broke out in 1991 when Foday Sankoh's Revolutionary United Front (RUF) began a campaign against President Joseph Momoh, capturing towns on the border with Liberia (Crawford, 2015). With multiple coups following in the subsequent years, the power changed hands from President Momoh to Captain Valentine Strasser to Brigadier Julius Maada Bio. The war, fuelled by the country's rich diamond resources, also saw ex Liberian President Charles Taylor play an important role in it. In February the same year, in an attempt to usher peace, elected president Ahmed Tejan Kabbah signed the Abidjan Peace Accord with the rebels. But the peace deal unraveled the following year and Kabbah was ousted by a military junta (AFRC) led by Major Johnny Paul Koroma. Following this, the RUF later joined hands with the AFRC to assert control on its capital Freetown. However, a Nigerian-led West African intervention force (Ecomog) saw Kabbah's triumphant return after driving out the military junta.

Leaving tens of thousands dead and many more maimed and displaced, the war lasted almost eleven years. "As the conflict exploded into appalling brutality against civilians, the world recoiled in horror at the tactics used by the RUF, its allies and opponents," says the report of the country's Truth and Reconciliation Commission (SLTRC reports, Executive summary). "Reports emerged of indiscriminate amputations, abductions of women and children, recruitment of children as combatants, rape, sexual slavery, cannibalism, gratuitous killings and wanton destruction of villages and towns" (SLTRC reports, Executive summary).

The Lomé Peace Accord was signed in 1999 between the RUF and Kabbah's
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government, under the conditions that members of the RUF would not be prosecuted for crimes past committed. While both sides agreed to the deal, things took a turn for the worse when the RUF later held two companies of UN peacekeepers hostage in their compound for 75 days. With a strong-armed international intervention by the élite British troops, President Kabbah finally declared the Sierra Leone civil war over on January 18, 2002.

With the interest of justice at heart, President Kabbah later wrote to the UNSC requesting a special court to prosecute those individuals responsible for crimes against humanity and war crimes that occurred during the civil war from 1991-2002 (Adityavarman, 2018). The Special Court for Sierra Leone (SCSL) was established under a 2002 agreement following Resolution 1315 to establish a hybrid tribunal in the country to address serious crimes against civilians and UN peacekeepers committed during the country's civil war (Crawford, 2015). Its mandate was to try those " bearing the greatest responsibility" for crimes committed in Sierra Leone after November 30, 1996, the date of the failed Abidjan Peace Accord (Fombad, 2012). It had also been given the powers to prosecute perpetrators for certain crimes under Sierra Leonean laws relating to the abuse of young girls, the conscription of children into the army and the wanton destruction of property. Further, it also hoped that the establishment of " a strong and credible court" would assist in the " strengthening of the Sierra Leone judicial system" (Open Society Foundation, 2018).

THE SPECIAL COURT FOR SIERRA LEONE

While the international community had its heart set in the right place, the various measures undertaken by it can only infer that they weren't willing to pay the price for it. With the ICTY and ICTR eating up over 10% of the regular UN budget, the Council denied establishing the SCSL as a new UN subsidiary body, which automatically required assessed funding. As a result, it relied solely on a voluntary funding mechanism, with its finances overseen by a Management Committee comprising representatives of the major donors. The then Secretary General, Kofi Annan warned that a court based on voluntary funding would be neither viable nor sustainable (Report of the Secretary-General, 2000). The establishment of the SCSL was lauded for its attempt at hybridity as it hoped to have a better impact than the strictly international courts. Easier accessibility to witnesses thanks to the in-situ placement of the court, interaction with local populations, (re)construction of local judicial capacities, and promotion of a rights-oriented local culture of accountability were some of the milestones it hoped to achieve (Young, 2013). However, the hybridity of Sierra Leone's transitional justice system was questionable. The funding issues resulted in spillover impacts on other facets of the discussion such as the reach of the court's jurisdiction and period of its operation (Dougherty, 2004). The Security Council's insistence on the narrow formulation of indicting only those with the 'greatest responsibility' was a marked departure from its previous roles of prosecuting 'persons most responsible' in the ICTY and the ICTR and led to significant limitations on issued indictments (Jalloh, 2011). Dougherty questions the basis on which persons who were charged as well as those who were left out such as junior commanders or those who directly committed atrocities, corporate profiteers who benefited from the trade of goods that sustained

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the conflict, and members of intervening actors such as Executive Outcomes (a private military company) (Dougherty, 2004). Its decision to only prosecute crimes committed after Abidjan Peace Accord was also criticized as conceptually vague, arbitrary, politically influenced, or dictated by budget restraints (Young, 2013). With the added public realization that none of the defendants had been charged under the Sierra Leonean legal system, the SCSL raised questions whether “ hybridity” was used merely as a front for gaining local legitimacy for enforcing international norms.

Tim Kelsall argues that the SCSL missed its mark on gaining local legitimacy because of its legalistic framework alienated from local ontologies, epistemologies, and notions of agency, responsibility, evidence, truth, or magic (Kelsall, 2009). Countering such claims, many have argued that engaging with local traditions would only reinforce oppressive social practices and recreate the conditions of conflict. In 2013, the Special Court for Sierra Leone became the first court of its kind to complete its mandate. During its 11 years course, the Court successfully prosecuted 9 individuals accused of the gravest crimes. Although the SCSL was seen largely as a success in regards with its attempt on gaining some local favour and successful prosecution, its budget deficit, blanket amnesties and failure to include more Sierra Leonean personnel have often been heavily criticized against.

TRUTH AND RECONCILIATION COMMISSION

Around the same time the SCSL was created, Sierra Leone also established a Truth and Reconciliation Commission (TRC) in accordance with its Lome

Peace Accord. Its mandate was to “ create an impartial historical record of violations of human rights and international humanitarian law related to the armed conflict in Sierra Leone from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity; to respond to the needs of victims; to promote healing and reconciliation; and to prevent a repetition of the violations and abuses suffered”(TRC Act, 2000). The TRC was initially granted one year, with potential for a 6-month extension to complete its mandate (TRC Act, 2002). It was hoped that the location of the TRC, along with the use of local commissioners and statement takers, would create a sense of ownership amongst local populations. (MacKenzie & Sesay, 2012). The open and public nature of the district hearings was meant to overcome the susceptibility and fear of possible covert activity in the upper echelons of Sierra Leonean society (Millar, 2010). The TRC, to a greater extent than the Special Court, made the effort to reach people in their own areas, attempting to increase ownership by making both statement and testimony giving physically accessible (Franssen, 2015). The commission operated from 2002-2004 and culminated in a 5, 000-page report detailing victims’ testimonies, a history of the conflict, human rights violations with apportioning of blame and the identification of individuals responsible, and recommendations on moving forward (Fombad, 2012). However, astute observation by scholars indicate this wasn’t without a number of functional and operational constraints. Having secured less than half of its allocated \$10 million budget - receiving only \$4 million - the mandate of the TRC was cut back significantly (Young, 2013). With a dismal budget, the regional offices were predominantly left to run on nothing or very little, making the TRC neither particularly effective nor particularly well

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set up. (Kelsall, 2009). The addition of cases being simultaneously heard at the SCSL also instilled fears of prosecution by the Special Court and made most people avoid the TRC. A nuanced variant of this argument also raises claims that justice needs to be more culturally appropriate and that Western models of retributive justice clashes with other values and traditional justice mechanisms, hindering processes of reconciliation (Grono, 2009).

Sierra Leone's government tasked the National Commission for Social Action (NaCSA) with the implementation of the recommendations made by the truth commission on institutional reforms and reparations for victims (Adityavarman, 2018). The inclusion of institutional reforms and the establishment of reparations were meant to demonstrate how the different elements of transitional justice were mutually reinforcing and highlighted how peace and justice approaches work together during post-conflict reconstruction (Adityavarman, 2018). After much delay on the government's behalf, individual victims of the conflict, including amputees and survivors of sexual violence, received reparations in the amount of 100 USD each. Whilst interviewees did seem to appreciate TRC's efforts to peacebuilding, they were more concerned with the immediate needs of socioeconomic and political justice than with promoting peacebuilding in the country. This only reinforces the argument that although legal accountability and truth, or acknowledgment, are crucial in post-conflict countries, they are however not the only ingredients necessary for transformative justice.

A CATALYST OR A PRODUCT?

For several states in the depths of despair, transitional justice has become an article of faith as a catalyst for reclaiming societies in political and social imbalance (Mutua, 2015). Senior statesmen and leading academics have often endorsed the critical place of transitional justice in returning societies to civilization. To answer the question of whether transitional justice plays the role of either a catalyst or a product, my answer would be twofold. While transitional justice does act as a catalyst in terms of bringing a sense of acknowledgment and accountability of past crimes, it also acts as a product of political transition entrusted with the task of maintaining the transition and preventing the relapse of the country into a conflictual state. The fault lies where in the two terms are treated as mutually exclusive. One will not and cannot last without the other which is why it is essential that they serve the purpose of mutually reinforcing each other. In the case of Sierra Leone, while the mechanisms in place achieved the 'justice' aspect of it, it lagged considerably with the 'peace' element. While the transitional justice mechanisms were largely a success in terms of ending the culture of impunity and ushering holding leaders accountable (however limited) in Sierra Leone, it lagged severely in its peace-building aspects for the sustenance of the political transition. Most post-conflict nations tend to lapse back into a conflictual state because due consideration isn't given to achieving sustainable ways of maintaining the transitioned state. The adoption of a 'One Size Fits All' approach is seen not only as incomplete but also unsatisfactory. In some cases, it may even prove to be detrimental to the process of peace and reconciliation. Arnould and Parmentier express how goals may differ from country-to-country and due consideration should be given to possible complementarities and conflicts between different goals

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whilst employing conflict sensitivity tools to ensure that societal, historical or ethnic divisions aren't deepened (Arnould and Parmentier, 2017). With the main objective of achieving a stable post-conflict nation, transitional justice mechanisms must give more weight to the inclusion of the local communities. Peacebuilding strategies need ' to be domestically rooted and " owned" by the local population, and not imported or imposed (Park, 2008). While the role of peacekeepers or international organizations cannot be overlooked in areas of security or funding, it is vital that transitional justice initiatives are as locally driven as possible in order to create lasting peace. With a major concern for many authors having been the simultaneous existence of the SCSL and the TRC, one must take into account an economy's limitations to achieving success in multiple fields. While advocates would label it as a holistic approach, the costs of implementation of the same cannot be overlooked. A country just coming out of conflict is unlikely to have the necessary resources to implement all of these measures at once (Adityavarman, 2018).

However, while these concerns are all valid, the purpose of transitional justice is for it to be transformational. Transitional justice cannot transform society if the approach taken by it is piecemeal. We must rethink our idea of ' transition' as an interim process that links the past and the future, and instead think in terms of ' transformation,' which implies long-term, sustainable processes embedded in society and adoption of psychosocial, political and economic, as well as legal, perspectives on justice (Mallinder, 2011). Thus, while post-conflict societies are likely to be scarce on funding and resources, it is vital that international donors increase their funding for

transitional justice so that post-conflict countries can take a holistic approach to reconstruction (Adityavarman, 2018). Only in this way can transitional justice truly serve the purpose of not only catalyzing the process of political transition but also leading to a more sustainable, healthy product of it.

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