

## Transitional justice and reconciliation from the international peace-building perspective

### Abstract

In the last decades, international actors have played an influential and catalytic role in facilitating justice and reconciling divided societies through post-conflict peacebuilding missions. Peacebuilding missions not only provide an intermediary role between former enemies but have become an effective participant in activities that form part of the mechanisms of transitional justice. In doing so, these actors take on the role of a 'moral agent' which very often lacks political trust and trust responsiveness. The objective of this article is to review theoretical critiques on the practice of peacebuilding missions in transitional justice processes and to evaluate their contribution to shaping the concept of reconciliation. It will analyse the effect of such critiques and discuss whether the existing theoretical criticism fundamentally changes the dominant concepts of transitional justice or if there is a potential requirement for the absorption of this criticism into the existing corpus of knowledge in the field as a way of advancing the development of international peacebuilding activities.

**Keywords:** transitional justice, reconciliation, international community, peace-building, human rights

### Introduction

Transitional justice is generally conceptualised as an area that explores attempts to secure peace and justice.<sup>1</sup> It is a new field of study but is in a process of transition and is continuously exposed to criticism.<sup>2</sup> A number of controversial issues have been raised about the ideology of the concept, the functioning and legitimacy of its legal mechanisms, the general capacity of its designers to carry out their tasks, etc. Reconciliation as the final goal of transitional justice has also become a contested

- 1 The term 'transitional justice' was used in 1995 by Neil Kritz, who published a seminal three-volume study entitled *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. This work mapped out a coherent area of study for the mechanisms of transitional justice, such as commissions of inquiry, trials, vetting and restitution or reparation. Kritz, N (2005) *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* United States Institute of Peace Press: Washington, DC.
- 2 On the contemporary nature of the 'field' of transitional justice see generally: Ch. Bell (2009) 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"' *The International Journal of Transitional Justice* 3: 5-27. On transitional justice as a field in transition, see: Ch. Bell, C. Campbell and F. Ni Aoláin (2004) 'Justice Discourses in Transition' *Social and Legal Studies*: 305-328.

concept, with a wide array of confusing and competing approaches and a value which has been discussed in various political, ethical and legal contexts.<sup>3</sup> Additionally, the scope and structure of transitional justice has changed significantly in its purpose and it has become more professionalised and specialised.<sup>4</sup> Despite the theoretically immensely rich repository in transitional justice research,<sup>5</sup> and the practical guidance and tools which are in place, the challenge remains for each post-conflict situation of how best to come to terms with the past and improve relations between parties formerly at odds with one another.<sup>6</sup>

Usually, post-conflict societies emerging from violent conflicts are also marked with legacies of gross human rights violations, human loss and economic destruction. They often lack the material and technical resources to set up healing projects and reparation programmes, and there is frequently a lack of political will to initiate and implement transitional justice processes. Therefore, a need for the international community to support the initiation – in some cases, leading off – the transition process has become a necessary peacebuilding ingredient.<sup>7</sup>

The international community has supported regions and countries not only to keep but also to build peace in the post-conflict phase.<sup>8</sup> These interventions have been combined with ‘peacekeeping’ operations seeking to end the violent conflicts

- 3 *Stanford Encyclopedia of Philosophy (2015) Reconciliation* available at: <http://plato.stanford.edu/entries/reconciliation/>.
- 4 Subotic, J (2012) ‘The Transformation of International Transitional Justice Advocacy’ *The International Journal of Transitional Justice* 6: 106-125, available at: [http://www.academia.edu/2578504/The\\_Transformation\\_of\\_International\\_Transitional\\_Justice\\_Advocacy](http://www.academia.edu/2578504/The_Transformation_of_International_Transitional_Justice_Advocacy).
- 5 See, for instance, R. Teitel (2003) ‘Transitional Justice Genealogy’ *Harvard Human Rights J* 16: 69-94; J. Elster (2004) *Closing the Books: Transitional Justice in Historical Perspective* New York: Cambridge University Press; A. De Brito, C. González Enríquez and P. Aquilar (Eds.) (2001) *The Politics of Memory: Transitional Justice in Democratizing Societies* New York: Oxford University Press.
- 6 The expansion of transitional justice scholarship involves dedicated journal and research centres; academic programmes; and national, regional and international research centres. See, for instance, the International Center for Transitional Justice <https://www.ictj.org/>.
- 7 The international community provides fragile governments with important financial, institutional and normative support for reckoning with the past, attending to the needs of victims and helping to set up democratic governance, respect for human rights and the rule of law. On the role of international initiatives to support reconciliation, see generally the intervention by Goran Fejic *International initiatives to support reconciliation* presented at the Regional Seminar on the Role of Parliamentarians in the National Reconciliation process in Africa, Session IX: available at: <http://www.idea.int/conflict/upload/GF-INTERVENTION-BUJUMBURA-RECONCILIATION-THE-ROLE-OF-THE-INTERNATIONAL-COMMUNITY.pdf>.
- 8 With the end of the Cold War, the world experienced a rapid expansion in international peacekeeping and peacebuilding. See, generally: S. Chesterman (2004) *You, The People: The United Nations, Transitional Administration and State Building* 238, Oxford: Oxford University Press. On the different generations of peacekeeping missions, see generally R. Paris (2003) ‘Peacekeeping and the Constraints of Global Culture’ *Eur J Ind Rel* 9: 441, 448-50.

associated with one form or another of unrepresentative and/or repressive government and to assist war-torn societies to undergo transition.<sup>9</sup>

In the last decades, international peacebuilding has evolved into complex multi-dimensional operations which are called upon to facilitate a political process through the promotion of national dialogue and reconciliation; the protection of civilians; assistance in the disarmament, demobilisation and reintegration of combatants; support for the organisation of elections, and the protection and promotion of human rights; and assistance in restoring the rule of law.<sup>10</sup> The international peacebuilding missions discussed here are those central to the United Nations (UN) system and, in a few cases, the European Union (EU), as opposed to the various types of peacebuilding activities carried out by individuals, religious groups and non-governmental organisations (NGOs). The UN and EU (in some cases) peacebuilding missions have not only played an intermediary role between former enemies: they have been involved on an ongoing and daily basis in the process of establishing democratic governance in territories recovering from conflict; in some cases, they have facilitated state-building through the promotion of democratic governance; and they have also become an effective participant in the design of mechanisms that form part of the transitional justice process often aiming at the reconciliation of former enemies. In doing so, international peacebuilding missions take on the role of ‘moral agent’. However, they often lack political trust and trust responsiveness.

International peacebuilding assistance, while highly appreciated, has not been spared from criticism. In this article, I aim to review some of the scholarly critiques on the practice of international peacebuilding missions while facilitating justice in a post-conflict society, as well as to evaluate their contribution to shaping the concept of reconciliation. I will analyse the effect of such critiques and discuss whether the existing scholarly criticisms fundamentally change the dominant concepts of transitional justice with a particular focus on reconciliation, or potentially require the absorption of the existing corpus of knowledge and the corresponding conceptual framework.

This article commences with an overview of the definition, scope and implementation modalities of transitional justice, reconciliation and peacebuilding, highlight-

- 9 Examples of more complex, multi-dimensional peace operations include Cambodia, Angola, Burundi, Central African Republic, Liberia, Mozambique, Rwanda, Sierra Leone, Chad, Sudan, Côte d’Ivoire, Democratic Republic of the Congo, Somalia, Kosovo, El Salvador, Guatemala, Haiti, Timor-Leste, Bosnia and Herzegovina, Eastern Slavonia and Croatia (Eastern Slavonia is a part of Croatia). On UN peace operations generally, see the official webpage of the UN Peacebuilding Commission: <http://www.un.org/en/peacebuilding/>.
- 10 For instance, the mandate of the United Nations Mission in Kosovo (UNMIK) included establishing an interim civilian administration including police; promoting the establishment of substantial autonomy and self-government in Kosovo; creating a democratic political atmosphere respectful of human rights; repatriating over one million refugees; supporting the reconstruction of infrastructure and the economic system; maintaining civil law and order; promoting human rights; and ensuring the safe return of refugees and displaced persons to their homes. On the mandate of UNMIK, see: UNSC Resolution 1244, S/RES/1244, 10 June 1999.

ing common factors with regard to the use and clarification of different legalistic concepts. Specific attention will be given to views on transitional justice as a ‘global project’, as well as to views that criticise the designers of international transitional justice processes as those who seek to produce standardised models (one-size-fits-all) without taking into consideration the local context.

### Concept and scope of transitional justice

Transitional justice is a field of activity that focuses on:

How societies address legacies of past human rights abuses, mass atrocity, and other forms of severe social trauma, including genocide.<sup>11</sup>

The approaches involve a ‘set of inter-related principles and processes’ centred on the imagined rule of law and law-making ‘in constituting transition’ towards a range of goals and ends.<sup>12</sup> The international approach to transitional justice was framed through the proliferation of key international treaties<sup>13</sup> and through international engagement in the ‘post-conflict agenda’ via the UN and, lately, by regional organisations as well.<sup>14</sup> Increasingly, international efforts have focused on establishing international and hybrid courts, writing laws, punishing perpetrators of human rights abuses, supporting human rights NGOs and generally promoting the rule of law abroad. Former Secretary General of the UN, Kofi Annan, in his report to the Security Council in August 2004, acknowledged that there had been an increased focus by the UN on questions of justice, transitional justice and the rule of law in conflict and post-conflict societies.<sup>15</sup> He noted that direct UN involvement in post-conflict societies had been characterised by the importation of transitional justice appa-

- 11 Bickford, L (2004) ‘Transitional Justice’ in Dinah L. Shelton (Ed.): *The Encyclopedia of Genocide and Crimes against Humanity* Farmington Hills: Macmillan Reference.
- 12 Teitel, R (2003) *op. cit.* at p. 12 (fn 5).
- 13 Genocide Convention (1948), the Universal Declaration of Human Rights (1948), the Geneva Convention on the Laws of War (1949) and the early attempts to instigate a regime of international criminal accountability in the war trials held in Nuremburg and Tokyo. Human rights treaties, such as the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights do not expressly incorporate such an obligation; however, all of them do expressly include the right to a remedy which has been understood by their respective monitoring bodies to raise an obligation in relation to human rights violations such as disappearances, torture and arbitrary killings. On the obligations of international human rights treaties to deal with the past, see: D. Orentlicher (1991) ‘Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime’ *Yale Law Journal*: 2537-2615.
- 14 *An Agenda for Peace: Prevention Diplomacy, Peacemaking and Peacekeeping* (1992) 17 UN Doc. A/47/277-S/24111.
- 15 UN Secretary-General (2004) *The rule of law and transitional justice in conflict and post conflict societies* UN Doc. S/2004/616, at p. 4.

ratus, for example in Kosovo and Timor-Leste, where the UN had been directly involved in the administration of justice, police and prison services.<sup>16</sup>

Definitions of transitional justice vary and have evolved over time.<sup>17</sup> For the UN, transitional justice comprises:

The full range of processes and mechanisms associated with a society's attempts to come to terms with the legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.<sup>18</sup>

The purpose of transitional justice processes is to promote justice and to provide a means of reparation in the wake of horrifying violence.<sup>19</sup>

The International Center for Transitional Justice (ICTJ) defines transitional justice as:

A response to systematic or widespread violations of human rights [which] seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy.<sup>20</sup>

Meanwhile, Tietel defines transitional justice as a:

Concept of justice intervening in a period of political change, characterized by a juridical answer to the wrongs of the past regime.<sup>21</sup>

As such, transitional justice encompasses both backward- and forward-looking aspects.<sup>22</sup> According to Roht-Arriaza and Mariezcurrena, transitional justice comprises the:

Set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.<sup>23</sup>

16 *ibid.* at p. 5 (para. 11).

17 For a critical review of the definitions of transitional justice, see generally: R. Nagy (2008) 'Transitional Justice as a Global Project: Critical Reflections' *Third World Q* 29(2): 275-289.

18 UN Secretary-General (2004) *op. cit.* at p. 4 (para. 8).

19 Walker, M (2006) *Moral Repair: Reconstructing Relations after Wrongdoing* Cambridge: Cambridge University Press.

20 ICTJ Website, available at: <http://www.ictj.org/en/tj/>. See also UN Secretary General (2004) *op. cit.*

21 Teitel, R (2003) *op. cit.*

22 *ibid.*

23 Roht-Arriaza, N and J. Mariezcurrena (2006) *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* Cambridge: Cambridge University Press, at p. 2.

More recently, the UN has moved towards recognising that, to deal properly with the root causes of conflict, it is also necessary to address violations of economic, social and cultural rights.<sup>24</sup>

Four processes are believed to constitute the core of transitional justice; usually, a transition encompasses:

- a justice process, to bring perpetrators of mass atrocities to justice and to punish them for the crimes committed
- a reparation process, aiming to provide redress to victims for the harm suffered
- a truth-finding process, to investigate atrocities in full so that society discovers what happened during the repression/conflict, who committed the atrocities and where the remains of the victims lie
- and an institutional reform process, to ensure that such atrocities do not happen again.<sup>25</sup>

To assist in this endeavour, guidelines and rule-of-law policy tools have been devised. The Office of the UN High Commissioner for Human Rights (OHCHR) released *Rule-of-Law Tools for Post-Conflict States* in 2006,<sup>26</sup> while the UN Secretary-General, in his Guidance Note of 2011, provides guiding principles and a framework for the approach adopted by the United Nations to transitional justice processes and mechanisms.<sup>27</sup> In order to be implemented successfully, every process of transitional justice should be designed and implemented with particular attention to the rights of victims and their families,<sup>28</sup> as well as with particular care for the needs and perspectives of women and children.<sup>29</sup> There is general agreement that transitional justice processes are of integral concern to a local population and that local actors should have a say in formulating the outcomes of the process.<sup>30</sup> For transitional justice processes to be legitimate and sustainable, they should, wherever possible, build on existing judicial systems and legal traditions and reflect the culture and values of the country in question.<sup>31</sup> However, very often transitional justice processes are initi-

24 Office of the High Commissioner of Human Rights (2009) *Analytical Study on Human Rights and Transitional Justice A/HRC/12/18*, Geneva: United Nations.

25 *ibid.*

26 Office of the United Nations High Commissioner for Human Rights (2006) *Rule-of-Law Tools for Post-Conflict States – Vetting: An operational framework* New York and Geneva, available at: <http://www.ohchr.org/Documents/Publications/RuleoflawVettingen.pdf>.

27 United Nations (2010) *Guidance Note of the Secretary-General – United Nations Approach to Transitional Justice* available at: [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf).

28 *The EU's Policy Framework on support to transitional justice* available at: [http://eeas.europa.eu/top\\_stories/pdf/the\\_eus\\_policy\\_framework\\_on\\_support\\_to\\_transitional\\_justice.pdf](http://eeas.europa.eu/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf).

29 Heyzer, N (2004) *Women, War and Peace: Mobilizing for Security and Justice in the 21<sup>st</sup> Century* UNIFEM, the Dag Hammarskjöld Lecture, 22 September, pp. 1-4, at p. 4.

30 United Nations (2010) *op. cit.* at p. 3 (fn. 27). See also the EU's *Policy Framework* on support for transitional justice *op. cit.* (see above, footnote 28).

31 Hansen, A, Sh. Wiharta, B. Claussen and S. Kjeksrud (2007) *The Transition to a Just Order – Establishing Local Ownership after Conflict – A Practitioners' Guide* Folke Bernadotte Academy, at p. 4, available at: <https://www.sipri.org/sites/default/files/files/insight/SIPRIInsight1102.pdf>.

ated by the international community either due to the conflict being ended with international assistance or through a peace agreement,<sup>32</sup> or because the new government lacks the resources or political will to do so,<sup>33</sup> or as a result of integrative and state-building processes.<sup>34</sup>

Here, Nagy rightly questions the categories of when, for whom, and for what, transitional justice applies.<sup>35</sup> When transitional justice processes are initiated by peacebuilding missions under these sorts of circumstances, transitional justice processes will lead to particular kinds of solutions and the addressing of particular problems which will not necessarily result in the outcomes that the society undergoing the transition expects from transitional justice processes.

### The notion of reconciliation

In the past decade, ‘reconciliation’ has become one of the four main categories of transitional justice initiatives that receive donors’ support, along with political development, socio-economic assistance and security.<sup>36</sup> Researchers and practitioners see

- 32 Such is the case of Bosnia and Herzegovina through the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement (Dayton Accords), which is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, in November 1995 and formally signed in Paris on 14 December 1995. The United Nations Integrated Mission in East Timor (UNMIT) was established on 25 August 2006 by UN Security Council Resolution 1704 ([http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1704\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1704(2006))). The Kosovo war ended with the signing of the Military Technical Agreement between the International Security Force (‘KFOR’) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (commonly known as the Military Technical Agreement, or Kumanovo Agreement) which was concluded on 9 June 1999 in Kumanovo, Macedonia.
- 33 Muvingi, I (2016) ‘Donor-Driven Transitional Justice and Peacebuilding’ *Journal of Peacebuilding & Development* pp. 10-25, available at: <http://dx.doi.org/10.1080/15423166.2016.1146566>.
- 34 For instance, Article 2.5 of the Comprehensive Proposal for the Kosovo Status Settlement (the Ahtisaari Plan), which provided for internationally-supervised independence for Kosovo under the auspices of the International Civilian Office (ICO) and a European Rule of Law Mission (EULEX), responsible for administering and enhancing the rule of law in the country. Under the Ahtisaari Plan, transitional justice is deemed a constitutional obligation. Article 2.5 states that the Kosovo Government shall fully promote reconciliation among communities and shall establish a comprehensive and gender-sensitive approach to dealing with its past. *Comprehensive Proposal for the Kosovo Status Settlement* available at: [http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf).
- 35 Nagy, R (2008) *op. cit.* at p. 284.
- 36 Smith, D (2004) *Towards a Strategic Framework for Peacebuilding: Getting Their Act Together, Overview Report of the Joint Ustein Study of Peacebuilding* Oslo: Ministry of Foreign Affairs.

reconciliation as a necessary requirement for lasting peace.<sup>37</sup> Reconciliation has been defined as a process:

Through which a society moves from a divided past to a shared future,

while looking at the past in a way that allows people to see it in terms of ‘shared suffering and collective responsibility’ as a means of helping to restore confidence.<sup>38</sup> Reconciliation has been understood as nothing more than ‘simple coexistence’, in the sense that former enemies comply with the rule of law instead of killing each other.<sup>39</sup> Karen Bronéus defines reconciliation broadly as:

Finding a way to balance issues such as truth and justice so that the slow changing of behavior, attitudes and emotions between former enemies can take place.<sup>40</sup>

Reconciliation has also been termed as a consequence of successful conflict resolution which is to be achieved through an interactive problem-solving framework as an integral part of peacebuilding processes.<sup>41</sup> Through a successful conflict resolution process, new relationships are promoted resulting in stable peace, mutually enhancing co-operation and ultimate reconciliation.<sup>42</sup> Reconciliation has also been used in the context of acknowledgement, contrition, mercy and forgiveness.<sup>43</sup> Some scholars have argued that reconciliation processes will not necessarily lead to forgiveness, as this is considered to be a power held only by those who have been victimised and which cannot be claimed by others.<sup>44</sup>

Reconciliation may happen at individual, community and state level. Reconciliation at community and state levels does not necessarily bring reconciliation at individual level; here, reconciliation must take place between victim and offender/perpe-

- 37 Ficher, M (2011) *Transitional Justice and Reconciliation: Theory and Practice* Berlin: Berghof Research Centre for Constructive Conflict Management, at p. 406.
- 38 Bloomfield, D, T. Barnes and L. Huyse (2003) *Reconciliation after Violent Conflict. A Handbook* Stockholm: International IDEA, pp. 12-21. The handbook is available at: <http://www.un.org/en/peacebuilding/pbso/pdf/Reconciliation-After-Violent-Conflict-A-Handbook-k-Full-English-PDF.pdf>.
- 39 Crocker, D (2003) ‘Reckoning with Past Wrongs: A Normative Framework’ in Carol Prager and Govier Waterloo (Eds.) *Dilemmas of Reconciliation: Cases and Concepts* Ontario: Wilfrid Laurier University Press, at p. 54.
- 40 Brounéus, K (2007) *Reconciliation and Development* paper read at ‘Building a Future on Peace and Justice’, Nuremburg, 25-27 June, at p. 3.
- 41 Kelman, Herbert C. (2010) ‘Conflict Resolution and Reconciliation: A Social-Psychological Perspective on Ending Violent Conflict Between Identity Groups’ *Landscapes of Violence* 1(1), Article 5, available at: <http://scholarworks.umass.edu/lov/vol1/iss1/5>.
- 42 *ibid.*
- 43 Ficher, M (2011) *op. cit.* at p. 415 (fn 37).
- 44 Martha, M (2002) *Breaking the Cycles of Hatred. Memory, Law and Repair* Princeton: Princeton University Press.

trator.<sup>45</sup> Unlike apologies or expressions of forgiveness, which can be one-sided processes at community and state level, individual reconciliation requires the involvement of both parties. There must be a process of direct interaction between the victim and the perpetrator. The perpetrator asks for forgiveness; the victim grants forgiveness. At societal or national level, reconciliation may be understood as:

A societal process that involves mutual acknowledgement of past suffering and the changing of destructive attitudes and behavior into constructive relationships towards sustainable peace.<sup>46</sup>

It thus requires a measure of confidence-building, which should result in a reservoir of trust.<sup>47</sup>

### Defining international peacebuilding

When defining the concept of peacebuilding, most scholars refer to the report of former UN Secretary-General Boutros Boutros-Ghali, *An Agenda for Peace*, from 1992, in which he introduced the concept of peacebuilding as an:

Action to identify and support structures, which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.<sup>48</sup>

Over the years, various efforts have been made to elaborate on this definition. According to former UN Secretary-General Kofi Annan, the term ‘peacebuilding’ refers to:

Actions undertaken at the end of a conflict to consolidate peace and prevent a recurrence of armed confrontation.<sup>49</sup>

45 Forget, M (2003) ‘Crime as Interpersonal Conflict: Reconciliation Between Victim and Offender’ in Carol Prager and Govier Waterloo (Eds.) *Dilemmas of Reconciliation: Cases and Concepts* Ontario: Wilfrid Laurier University Press, at pp. 111-35.

46 Brounéus, K (2007) *op. cit.* at p. 5 (fn 40).

47 See Q. Qerimi (2003) ‘South-east Europe’s EU integration: Dreams and realities’ *South-East Europe Review* 5(4): 43-56; B. S. Sergi and Q. Qerimi (2007) ‘The process of EU enlargement towards south-eastern Europe: current challenges and perspectives’ *South-East Europe Review* 10(2): 57-65; Q. Qerimi and B. S. Sergi (2008) ‘A regional-based approach towards economic development in the Western Balkans’ 4(2/3) *World Review of Entrepreneurship, Management and Sustainable Development* 4(2/3): 182-202.

48 *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping* is a report written by UN Secretary-General Boutros-Ghali. The report can be accessed at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/47/277](http://www.un.org/ga/search/view_doc.asp?symbol=A/47/277).

49 Annan, K (1998) *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa* Report of the Secretary-General to the Security Council, S/1998/318, para. 63.

The Brahimi Report from 2000 defined peacebuilding as:

Activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.<sup>50</sup>

The concept of international peace building has been institutionalised across a number of organisations outside the UN system.<sup>51</sup> The assistance of the UN, of regional organisations and also of individual member states in post-conflict peacebuilding projects has taken many forms. The African Union (AU) is engaged in supporting several peace processes in Africa;<sup>52</sup> the European Union (EU) is active in supporting the peace process on the territories of the former Yugoslavia;<sup>53</sup> and the Organisation of American States (OAS) is supporting peace processes in the western hemisphere.<sup>54</sup> Peacebuilding missions have been involved in the justice sector and, with it, have contributed to transitional justice processes. The UN itself has set up

- 50 Report of the Panel on United Nations Peace Operations (2000), commonly known as the Brahimi Report after its chair, Lakhdar Brahimi. A/55/305–S/2000/809, para. 13.
- 51 The modalities of missions include: peace building, peace implementation, state building, nation building, stabilisation and reconstruction missions and peace operations. See Ch. Call and E. Cousins (2008) 'Ending Wars and Building Peace: International Responses to War-Torn Societies' *International Studies Perspectives* 9: 1-21 at p. 4.
- 52 As of May 2015, there were nine UN peacekeeping missions in Africa supported by more than eighty thousand troops (80 per cent of all UN peacekeepers are deployed in Africa) and fifteen thousand civilians. The largest missions are in the Democratic Republic of Congo (DRC), Darfur (jointly administered with the AU), South Sudan and Mali. Meanwhile, the AU leads a peacekeeping mission of more than twenty-two thousand troops and police in Somalia, known as AMISOM. The Economic Community of West African States (ECOWAS), a bloc of fifteen countries, has a small UN-recognised mission in Guinea Bissau. On AU peace operations, see: P. Williams and A. Boutellis (2014) *Partnership peacekeeping: Challenges and opportunities in the United Nations–African Union Relationship* Oxford: Oxford University Press.
- 53 Under the Common Security and Defence Policy (CSDP), the EU retains a key supporting role in stabilising Bosnia and Herzegovina, through a military-led mission (EUFOR/Althea). Between 2003 and 2012, the EU also deployed a police mission (EUPM) in Bosnia and Herzegovina. In Kosovo, the EU has deployed a mission to support the Kosovo authorities in upholding the rule of law (EULEX). CSDP missions have also been deployed in the former Yugoslav Republic of Macedonia. On EU support for peace building in the western Balkans see, generally, the European Commission External Action document: EU relations with the Western Balkans, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/29660/factsheet-eu-engagement-western-balkans\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/29660/factsheet-eu-engagement-western-balkans_en). For the European Union Rule of Law Mission (EULEX) mandate and activities in Kosovo, see the mission's official webpage available at: <http://www.eulex-kosovo.eu/>. On the European Union delegation and its activities in Timor Leste, see the EU delegation official website, available at: [https://eeas.europa.eu/delegations/timor-leste\\_en](https://eeas.europa.eu/delegations/timor-leste_en).
- 54 2010-2015 US Assistance to Haiti, Overview 2015, available at: <https://www.usaid.gov/news-information/fact-sheets/us-assistance-haiti-overview-2010-2015-december-2014>.

international tribunals such as the ICTY in The Hague<sup>55</sup> and the ICTR in Arusha.<sup>56</sup> Lately, the Special Court for Kosovo was established to address the allegations of the 2011 Council of Europe Parliamentary Assembly report, prepared by Special Rapporteur Dick Marty.<sup>57</sup> These international judicial mechanisms have investigated and prosecuted international crimes – including genocide, crimes against humanity and war crimes – which forms a fundamental component of transitional justice.<sup>58</sup> Additionally, in Cambodia, East Timor, Sierra Leone and Kosovo, the UN and the EU have been involved in efforts to create new judicial models for the prosecution of international crimes. These ‘hybrid courts’ were added to the judicial structure of a nation in which massive violations of human rights and humanitarian law had taken place.<sup>59</sup> Moreover, the international community has sponsored the setting up of truth and reconciliation commissions such as those in El Salvador, Guatemala and East Timor, among many others.<sup>60</sup>

Despite the target of peacebuilding being the reform of society as a whole, as well as of all social institutions in the broadest sense, especially in so-called weak, failing or failed states, and, with it, the making of a contribution to overall international sustainable peace,<sup>61</sup> peacebuilding practice and scholarship can point to a series of chronic weaknesses in the processes implemented to date aiming at overcoming the past and facilitating reconciliation.<sup>62</sup> These include the complexity of post-

55 Security Council Resolution 827, 25 May 1993.

56 Security Council Resolution 955, 8 November 1994.

57 Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights (2010) *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*\* Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, available at: <http://assembly.coe.int/nw/xml/News/FeaturesManager-View-EN.asp?ID=964>.

On 3 August 2015, the Kosovo Parliament passed the Law on Specialist Chambers and Specialist Prosecutor’s Office, a constitutional amendment that will establish a special war crimes court to prosecute members of the former Kosovo Liberation Army for alleged crimes committed during and after the conflict in Kosovo. See, generally Law No.05/L-053 *On Specialist Chambers and Specialist Prosecutors Office*.

58 On criticism of the emerging norm of accountability for human rights violations through international tribunals, see: K. Sikkink (2011) *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* Norton.

59 Linton, S (2001) ‘Cambodia, East Timor and Sierra Leone: Experiments In International Justice’ *Criminal Law Forum* 12. On the Kosovo hybrid courts system, see: D. Welski (2014) *Hybrid Court System in Kosovo: Has EULEX proven to be the device to strengthen the independence and effectiveness of the judiciary?* available at: <http://legalpoliticalstudies.org/wp-content/uploads/2014/11/Policy-Report-11-2014-eulex-Hybrid-Courts-ENG.pdf>.

60 For a detailed account of truth commissions, see: P. Hayner (2002) *Unspeakable Truth: Facing the Challenge of Truth Commissions* Routledge; N. Roht-Arriaza and J. Mariezcurrena (2006) *op. cit.*

61 United Nations Peacekeeping Operations *Principles and Guidelines* at pp. 22-23, available at: [https://www.un.org/en/peacekeeping/documents/capstone\\_eng.pdf](https://www.un.org/en/peacekeeping/documents/capstone_eng.pdf).

62 Durch, W and T. Berkman (2006) *Who Should Keep the Peace?* Washington, DC: Stimson Center.

conflict transitions, the mismatch between expectations of rapid recovery and processes that have historically taken considerably longer, and the crucial issue of state-society relations as well as external actors' (lack of) knowledge, tools, resources or legitimacy effectively to contribute to such a process.<sup>63</sup>

The internal operational challenges faced by peacebuilding operations are of high relevance but they are not, however, the focus of this article. What follows next is a review of the scholarly criticism of the ideological assumptions behind international peacebuilding activities and their impact on the goals of transitional justice.

### Critiques of international peacebuilding and transitional justice processes

In recent post-conflict situations, international peacebuilding operations have been given extensive mandates including transitional justice activities.<sup>64</sup> In practice, scholars and policy-makers have pointed out some of the tensions between international peacebuilding initiatives and local transitional justice processes manifest in the so-called 'peace versus justice' debate.<sup>65</sup> Proponents of peace argue that justice would only be possible if there is peace and, yet, justice itself can hinder the achievement of peace.<sup>66</sup> The so-called 'peace versus justice' debate is related to the practice and political effect of the international – but also local hybrid – tribunals on the respective transitions. A plethora of hypotheses has been proffered with regard to the effects of international tribunals. On the one hand, there are claims that international tribunals yield a net positive effect on 'peace' by marginalising perpetrators, deterring potential war criminals and inducing parties to enter peace negotiations.<sup>67</sup> On the other hand, critics insist that the interventions of international tribunals undermine peace by instigating continued violence and leaving belligerents with few options but to continue fighting 'to the bitter end'.<sup>68</sup>

- 63 Call, Ch. and E. Cousens (2008) 'Ending Wars and Building Peace: International Responses to War-Torn Societies' *International Studies Perspectives* 9: 1-21, available at: <http://peacealliance.org/cms/assets/uploads/2013/05/Ending-Wars-Building-Peace.pdf>.
- 64 For instance, the UN Mission in Kosovo (UNMIK) and the UN Transitional Authority in East Timor (UNTAET). For an overview of UN efforts to establish the rule of law and contribute to peacebuilding in post-conflict Kosovo and East Timor see, generally: R. Caplan (2004) 'International Intervention and its Aftermath: Kosovo and East Timor' in U. Schneckler and S. Wolff (Eds.) *Managing and Settling Ethnic Conflicts: Perspectives on Successes and Failures in Europe, Africa and Asia* London: Hurst & Company, p. 206. See also: H. Strohmeyer (2001) 'Making Multilateral Interventions Work: the United Nations and the Creation of Transitional Justice Systems in Kosovo and East Timor' *Fletcher For. World Aff.* 25(2): 107.
- 65 See generally: Ch. Lekha Sriram (2004) *Confronting Past Human Rights Violations: Justice vs Peace in Times of Transition* Frank Cass, examining in detail the tensions between peace and justice initiatives.
- 66 Lekha Sriram, Ch and S. Pillay (Eds.) (2009) *Peace versus Justice? The dilemma of transitional justice in Africa* Scottsville: University of KwaZulu Natal Press.
- 67 Keller, L (2008) 'Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms' *Conn. J. Int'l L* 23: 209-278.
- 68 On the so-called 'peace versus justice' debate and the politics of the International Criminal Court (ICC), see: M. Kersten (2014) 'Bringing Conflict into the Peace versus Justice De-

Notwithstanding this, it can be stated that the peace versus justice debate is being reconciled. This reconciliation is manifest in the pragmatics of making peace through normative legal standards mainly through the integration of human rights standards as an automatic response to human rights violations during conflicts as well as the establishment of international human rights tribunals, all of which are aimed at the achievement of mutual reinforcing goals.<sup>69</sup> The establishment and functioning of peacebuilding missions, however, have been subject to powerful, parallel critiques: missions are too often externally-driven;<sup>70</sup> planned and implemented in a top-down and state-centric manner;<sup>71</sup> embody technocratic, neutral and apolitical solutions to highly-contested or contestable political issues and choices;<sup>72</sup> and, ultimately they do not reflect local needs and realities but a dominant ‘liberal international peace-building’ paradigm.<sup>73</sup> Sriram contends that the fields of transitional justice and peacebuilding:

Share key assumptions about preferable institutional arrangements and a faith that other key goods – democracy, free markets and ‘justice’ – can essentially stand in for, and create, peace.<sup>74</sup>

This belief has roots in a neoliberal doctrine<sup>75</sup> which encourages the:

Opening up of political space, including improvements regarding contestations, participation and human rights.<sup>76</sup>

Teitel adds that:

Justice-seeking phenomena [...] is intimately tied to the fashioning of a liberal political identity.<sup>77</sup>

bate’ *Justice in Conflict* available at: <https://justiceinconflict.org/2014/12/09/bringing-conflict-into-the-peace-versus-justice-debate/>.

- 69 Vieille, S (2012) ‘Opinion Transitional Justice: A Colonizing Field?’ *Amsterdam Law Forum* available at: <http://amsterdamlawforum.org/article/download/283/461>.
- 70 Lambourne, W (2009) ‘Transitional Justice and Peacebuilding after Mass Violence’ *Oxford Journals Law & Social Sciences International Jnl. of Transitional Justice* 3(1): 28-48.
- 71 Richmond, O (2009) ‘The Romanticisation of Local Welfare, Culture and Peacebuilding’ *The International Spectator* 44(1): 161-63. See also R. MacGinty (2008) ‘Indigenous Peace-Making versus the Liberal Peace’ *Cooperation and Conflict* 43(2): 139-162.
- 72 Sharp, D (2014) ‘Addressing Dilemmas of the Global and the Local in Transitional Justice’ *Emory International Law Review*, 29: 71-117.
- 73 Newman, E, R. Paris and O. Richmond (2014) *New Perspectives on Liberal Peacebuilding* United Nations University Press.
- 74 Lekha Sriram, Ch (2009) ‘Transitional Justice and the Liberal Peace’ in: E. Newman, R. Paris and O. Richmond (Eds.) *New Perspectives on Liberal Peacebuilding* New York: UN University Press, p. 120.
- 75 Paffenholz, Th (2010) *Civil Society and Peacebuilding: A Critical Assessment* London: Lynne Rienner Publishers, p. 43.
- 76 Jarstad, A. K and T. D Sisk (2008) *From War to Democracy: The Dilemmas of Peacebuilding* Cambridge: Cambridge University Press, p. 17.
- 77 Teitel, R (2003) *op. cit.* at p. 225 (fn 5).

The liberal peacebuilding model propagates the promotion of democracy, market-based economic reforms and the introduction of a range of other institutions associated with 'modern' states as a driving force for building a sustainable peace.<sup>78</sup> The liberal peacebuilding model, as a particular vision promulgated by international peacebuilders, identifies how states should organise themselves internally, based on the principles of liberal democracy and market-oriented economics, and seeks to stabilise countries that have recently experienced civil war. In his critique, Paris argues that peacebuilding by international actors resembles an updated (and more benign) version of the mission 'civilisatrice' stemming from colonial-era beliefs.<sup>79</sup>

However, Paris (and other authors) claims that this kind of globalisation is not necessarily undesirable – indeed, peacebuilders should continue to promote the principles of liberal market democracy in war-shattered states.<sup>80</sup> However, in practice the possibility for the implementation of these principles of liberal market democracy by peacebuilding missions is questionable, especially in the initial years after conflict. In war-shattered territories, the priorities of people subsequent to a traumatic experience are concentrated on identifying human loss and missing persons, and the recovery of the economic devastation that has resulted from the conflict. All these issues lingering over post-conflict societies create tensions that may be unleashed in particular in the immediate aftermath of the conflict<sup>81</sup> and interrupt peacebuilders' efforts to implement the principles of liberal democracy.<sup>82</sup> Such transitions last longer and often result in the categories of so-called 'fragile and failed states'.<sup>83</sup> Therefore, the question remains unanswered: should peace builders first deal with the needs of the society or should they concentrate on the state-building process?

78 Newman, E, R. Paris and O. Richmond (2014) *op. cit.* (fn 72).

79 The mission of 'civilisatrice' encompassed the colonial era belief that European imperial powers had a duty to 'civilise' dependent populations and territories. See R. Paris R (2002) 'International Peacebuilding and the "Mission Civilisatrice"' *Rev Intl Studies* 28: 637.

80 Paris, R (1997) 'Peacebuilding and the Limits of Liberal Internationalism' *International Security* 22(2): 54-89.

81 Sharp, D (2014) 'Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice through the Lens of Critique' *Chicago Journal of International Law* 14(1), Article 6.

82 The most notorious events are the ethnically-charged riots across Kosovo, while under UNMIK territorial administration, on 17-18 March 2004, where nineteen people were killed (11 Kosovo Albanians and eight Kosovo Serbs) and more than 900 injured (including 65 international police officers and 58 Kosovo Police Service officers). For a detailed account of these events see, generally: Organisation for Security and Co-operation in Europe (2004) Human rights challenges following the March riots, available at: <http://www.osce.org/kosovo/32379?download=true>.

83 The notion of a fragile state has, in particular, been valued by western government actors and policy analysts to label and rank a number of developing countries facing violence and conflict, political instability, severe poverty and other threats to security and development. On the concept and categories of states see: Nay, O (2012) 'Fragile and failed states: Critical perspectives on conceptual hybrids' *International Science Review* available at: [http://pa.perroom.ipsa.org/papers/paper\\_7560.pdf](http://pa.perroom.ipsa.org/papers/paper_7560.pdf).

Another criticism is related to the normative stance of the doctrine of transitional justice which has heavily influenced the development of the literature in this field.<sup>84</sup> By focusing for a long period on a (mainly) legal approach towards dealing with a violent past, transitional justice has been dominated by legal scholars examining:

Doctrinal issues with reference to international criminal law, human rights law, humanitarian law and domestic challenges to amnesty.<sup>85</sup>

The legacy of this interstate co-operation and the criminalisation of state wrongdoing based on universal human rights standards has formed the basis of modern human rights law and constitutes one of the legal foundations of the current transitional justice norm.<sup>86</sup> The dominant normative human rights lens (to facilitate transitions to democracy) has also determined which kind of justice measures were considered appropriate and why certain measures were recognised as legitimate justice initiatives during a time of political change.<sup>87</sup> As such, the undertakings by international actors based on a human rights approach, manifest in the form of international and hybrid tribunals, have been termed as ‘global project’ without considering that truth and justice are complementary approaches to dealing with the past.<sup>88</sup> The transitional justice literature, as defined by a western, legalistic approach to justice through the ‘global project’, affects the field’s ability to account for indigenous and customary mechanisms of justice that do not espouse this legalistic lens.<sup>89</sup> Transitional justice processes and mechanisms may, like liberal peacebuilding, destabilise post-conflict and post-atrocity countries because ‘calls for justice’ are likely to generate tensions and exacerbate conflicts that have the potential to undermine peacebuilding on the ground.<sup>90</sup> The international push to do justice, or ‘the judicialisation of international relations’,<sup>91</sup> has led the international community to respond to the call for accountability by setting up major international legal institutions – usually seated outside the territory where the conflict took place – and other, hybrid, local models. They have, how-

- 84 Colleen, D (2010) ‘Editorial Note’ *International Journal of Transitional Justice* 4: 315-328.
- 85 Bell, Ch (2009) *op. cit.* (fn 1).
- 86 Teitel, G (2003) *op. cit.* (fn. 21).
- 87 Paige, A (2009) ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’ *Human Rights Quarterly* 31: 321-367.
- 88 According to Nagy, the ‘global project’ refers to the fairly-established consensus that transitional justice has emerged as a body of customary international law and normative standards. See R. Nagy (2008) *op. cit.* (fn. 17).
- 89 Vieille, S (2012) *Transitional Justice: A Colonizing Field?* stating that transitional justice literature is defined by a western, legalistic approach to justice which affects the field’s ability to account for indigenous and customary mechanisms of justice that do not espouse such a legalistic lens. DPhil thesis submission available at: <http://amsterdamlawforum.org/article/download/283/461>.
- 90 Sriram, Ch, O. Martin-Ortega and J. Herman (2010) ‘Promoting the Rule of Law: From Liberal to Institutional Peacebuilding’ in Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman (Eds.) *Peacebuilding and the Rule of Law in Africa: Just Peace?* 1(1-2).
- 91 Nagy, R (2008) *op. cit.* (fn. 17).

ever, been criticised for not involving a range of local activities that are not directly about doing justice *per se*.<sup>92</sup>

International peacebuilding efforts and their impact on transitional justice processes have been criticised for an inappropriate balance between the ‘local’ and the ‘international’ in terms of agency, input and authority over post-conflict planning and programming.<sup>93</sup> Thomson and Nagy state that the field of transitional justice has only recently started to pay attention to:

More localized, traditional mechanisms as a corrective to the shortcomings of internationalized, ‘one-size-fits-all’ approaches.<sup>94</sup>

For a long time, peacebuilding experts have addressed transitions from conflicts in terms of legal, institutional and political reform rather than social transformation.<sup>95</sup>

The ‘one-size-fits-all’ approaches inherent in international transitional justice undertakings have been criticised for giving too little attention to local traditional practices of promoting peace, justice and reconciliation.<sup>96</sup> Internationalised ‘one-size-fits-all’ approaches might be well planned, designed and also capable of monitoring based on project management logic. In practice, however, ‘one-size-fits-all’ approaches exclude a hearing of the needs of those affected by conflict; above all, victims and their families.<sup>97</sup> As such, the exclusion of the local population from the designing and planning of transitional justice processes, and without considering the internal dynamics of the society, may result in contestation and a rejection of the mechanism by those for whom they are intended.

Often, transitional justice processes were construed as taking place through the legal-institutional level of politics and subject to project management logic. For ex-

- 92 Oomen, B (2005) ‘Donor-Driven Justice and Its Discontents: The Case of Rwanda’ *Development and Change* 5: 893.
- 93 Chesterman, S (2007) ‘Ownership in Theory and in Practice: Transfer of Authority in UN State-Building Operations’ *J of Intervention and Statebuilding* 1(1): 3-26. See also T. Donais (2009) ‘Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes’ *Peace & Change* 34(3).
- 94 Thomson, S & R. Nagy (2011) ‘Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda’s Gacaca Courts’ *International Journal of Transitional Justice* 5.
- 95 For instance, UNMIK in Kosovo established the local institutions from scratch; it established the legal framework and also facilitated the political processes related to its state-building. However, UNMIK, during its state-like mandate, did not undertake activities that will bring the parties to the conflict closer and initiate any process of reconciliation. On UNMIK activities and the lack of reconciliation activities see, generally: Burema, L (2012) ‘Reconciliation in Kosovo: A Few Steps Taken, A Long Road Ahead’ *Journal on Ethnopolitics and Minority Issues in Europe* 11(4): 7-27.
- 96 Rubli, S (2012) *Transitional Justice: Justice by Bureaucratic Means?* Swisspeace Working Paper, available at: [http://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/WP4\\_2012.pdf](http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/WP4_2012.pdf).
- 97 *ibid.* at p. 12.

ample, in the context of Northern Ireland, Bell and others argue that reforms can only be possible when they are:

Couched in managerialist language, with an emphasis on ‘professionalism’, ‘efficiency’ and modernisation.<sup>98</sup>

By such planning, implementing, monitoring and evaluating, transitional justice has also become rationalised.<sup>99</sup> As such, transitional justice processes are articulated in log-frames with activities and outputs which are supposed to lead to assumed outcomes and impacts which can be evaluated. Comparing development and transitional justice, Colvin argues that both are underlined by the logic that, with careful planning and proper technique, their goals can be accomplished effectively and efficiently.<sup>100</sup> Based on manuals of best practice that are developed by experts, transitional justice has been elaborated and deployed in projects.

From the perspective of mission implementation, this form of the management of peacebuilding missions is needed, but a project-based and recipe-like approach to transitional justice through ‘toolboxes’, with little or no attention to societal needs and local context, does not contribute to the initiation of the major pillars of transitional justice processes, namely that of reconciliation and the guarantee of non-recurrence.<sup>101</sup> Most authors agree that reconciliation describes a process rather than an end state or outcome, aiming at the building of relationships between individuals, groups and societies.<sup>102</sup> There is a widespread assumption that transitional justice projects by international actors will be accepted as legitimate and (value-)neutral tools, since they are guided by, and based on, universally-recognised international norms and standards.<sup>103</sup> When it comes to reconciliation, however, this assumption is questionable. While under a universally-recognised human rights framework, there is an understanding that a similar ‘right set and appropriate institutional structure’ can, with few changes, be instituted in all transitional situations. Judicial accountability measures, truth commissions, restitution or reparation and the reform of state institutions – all these have become recognised as a legitimate set of measures and are being implemented with international support in post-conflict situations. Implementations of this mechanism are affected by power struggles and the daily politics of the specific contexts.

Additionally, in reconciliation processes much of the human emotions are involved due to the very sensitive and personal experiences of those affected by conflict. As such, a reconciliation process has to be individualised and its success ques-

98 Bell, Ch, C. Campbell and F. Ní Aoláin (2004) *op. cit.* (fn. 65).

99 Goetsche L. 1 and T. Hagmann (2009) ‘Civilian peacebuilding: peace by bureaucratic means?’ *Conflict, Security and Development* 9: 55-73.

100 Colvin, Ch (2008) ‘Purity and Planning: Shared Logics of Transitional Justice and Development’ *International Journal of Transitional Justice* 2: 412-425.

101 Burema, L (2012) *op. cit.* (fn. 94).

102 Skaar, E (2013) ‘Reconciliation in a Transitional Justice Perspective’ *Transitional Justice Review* 1(1), Article 10, available at: <http://ir.lib.uwo.ca/tjreview/vol1/iss1/10>.

103 Rubli S (2012) *op. cit.* (fn. 95).

tioned when initiated and implemented in a project-based management manner. Reconciliation frequently involves political compromises and bargains in order to stabilise new regimes. It is not, however, a value-neutral tool, but rather a political process involving individuals and society as a whole.<sup>104</sup>

Implementation of the ‘one-size-fits-all’ approach lacks the social, historical and cultural connection to the people who are primarily affected by the transition. The assumption that what has worked in a few developed and industrialised countries will work elsewhere is highly questionable when considering reconciliation. Local actors and communities must be involved in the design and implementation of transitional efforts, in particular reconciliation programmes.<sup>105</sup> It is well-known that ignoring local needs and failing to engage local actors is likely to undermine the anchoring of lasting peace.<sup>106</sup> Re-establishing dialogue between parties, via locally-led and -owned programmes, is often the best way to bridge differences and restore trust between former enemies.

## Conclusion

Peacebuilding through international missions and transitional justice processes often takes place simultaneously in a post-conflict situation. Practice has shown that the implementation of both activities at the same time successfully poses an immense challenge for the mission as well as for the society undergoing the transition. As such, the international approach based on ‘one-size-fits-all’, ‘toolbox approaches’, and the imposition of a western liberal approach through project management logic in the practice of peacebuilding in the process of overcoming transitions and achieving justice for past violations, is capable of being criticised. It must be acknowledged that each transitional society is unique. Therefore the modality for peacebuilding through international missions and transitional justice processes must be specifically designed for each new situation. Scholarly criticism of cultural imperialism and the enforcement of western values in peacebuilding missions have been rife for years and, in several instances, these criticisms are valid, especially in the processes of reconciliation.

Therefore, scholarly criticism needs to be absorbed within overall peacebuilding knowledge and practice in order for a peacebuilding mission to be successful. Particular care must be taken so that, during a peace operation, in the pursuit of supporting and protecting peace, a country’s cultural norms and values are not sidelined or altogether obliterated. There should not be a ‘one-size-fits-all’ approach to transitional justice. International peacebuilding missions, while providing new governments with important financial, institutional and normative support for transitional justice processes, need to pay much greater attention to the needs of victims and their families while setting the foundations for democracy, human rights and the rule of law. Particularly, reconciliation takes more time and effort than the establishment of any

104 Bloomfield, D, T. Barnes and L. Huyse (2003) *op. cit.*

105 United Nations (2010) *Guidance Note of the Secretary-General – United Nations Approach to Transitional Justice op. cit.* (fn. 25).

106 Vieille, S (2012) *op. cit.* (fn. 68).

project-based and time-restricted criminal trial, truth commission or any other mechanism.

Transitional justice mechanisms are the steps to be taken by individuals, community and governments towards reconciliation. Nevertheless, there are certain initiatives that could be undertaken by peacebuilders which contribute to transitional justice processes and increase the chances of stability, security and sustainable peace. Examples include the overall and comprehensive documentation of the past through documenting the casualties of the conflict; the initiation and maintenance of dialogue between the parties to the conflict; assisting economic activities that will foster the enjoyment of economic and social rights; and other activities as needed by the respective society. Despite all the criticism, it has to be noted ultimately that the activities of peacebuilding missions to date have shown that these missions can be a catalyst for the initiation of activities which, later, have assisted war-torn societies to undertake an all-inclusive and comprehensive transitional justice process that has laid the ground for reconciliation.

