

Dealing with a violent past The impact of transitional justice



This brief assesses the impact of transitional justice mechanisms on peace and democracy. Based on four case studies from Africa and Latin America, it argues that the expected positive effects of transitional justice may be too high. Transitional justice processes are complex and dynamic and may change substantially over time. The distinction between short term and long term impact is essential.

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When societies go from military dictatorship to democracy or from internal war to peace, one of the toughest choices facing the government in the new order is how to deal with past violence. Formal transitional justice mechanisms (TJMs) such as criminal prosecutions, truth commissions, economic and symbolic reparations, and amnesties, are believed to (re)establish the rule of law; to enhance the respect for human rights; to deter further violence; and to promote reconciliation. Currently there is growing criticism of the “real impact” of transitional justice in terms of bringing meaningful justice to the victims and persecuted or disadvantaged groups. Scholars also disagree widely on how and in which ways these mechanisms may contribute to the larger goals of (re)constructing democracy or building peace after the end of violent conflict. Evidence to support the many conflicting claims remains highly contested. Are the intended positive effects of transitional justice on peace and

democracy realised on the ground? What are the obstacles and limitations?

This brief presents an empirical analysis of the conditions under which transitional justice processes aid or harm the development of peace and democracy in the context of four different countries: Uruguay, Peru, Rwanda, and Angola.

DIFFERENT SOLUTIONS TO PAST VIOLENCE

The four countries differ widely in terms of the type of conflict, the type and number of transitional mechanisms that each country has implemented, and in terms of the degree of peace and democracy observable today.

One was a military dictatorship (Uruguay), another a case of executive fiat combined with violent armed conflict (Peru) and two were cases of internal war (the civil war and genocide in Rwanda and the long-lasting civil war in Angola).

These four countries further represent two different types of transitions; post-authoritarian Uruguay and Peru and post-conflict Rwanda and Angola. We call these, type 1 and type 2 transitions, respectively. The most important goal of the new order of post-authoritarian transitions (type 1) is usually to attain democratic stability. A second, more long-term goal will be to work towards democratic consolidation, which may or may not include addressing abuses of the past. This is what we see for both Uruguay and Peru. They have prioritised democratic elections and democratic stability first, and - many years after the transition - addressed violations of the past through trials.

For post-conflict transitions (type 2), establishing peace is priority number one of the successor government. Holding elections and building democracy will most likely gain secondary importance. In the cases studied here - Angola and Rwanda - the conflict ended with a one party clear winner, and consolidating peace was their primary objective. The sitting Angolan government has been reluctant to hold elections. The same applies to Rwanda.

Of these four, Uruguay has instituted the longest and most protracted transitional justice proceedings to address its violent past: A partial amnesty law that was effective for over 25 years, four or five attempts at truth finding, wide-reaching reparations programmes and a number of trials of alleged human rights perpetrators in national courts. Peru too has had a truth commission, reparations programmes, two partial amnesty laws and various human rights trials in national courts. In Rwanda, the most extensive and comprehensive efforts to prosecute alleged human rights violators have been instituted, using three sets of courts:

local gacaca courts, national courts, and the International Criminal Tribunal for Rwanda (ICTR). Rwanda has followed up with a number of reparation programmes. On the far other end of the transitional justice spectrum, we find Angola. This country granted full impunity for past human rights violations through an amnesty issued in connection with the peace agreement in 2002. There has been hardly any accountability for past human rights violations, and no attempt at truth finding or reparations to victims. There has been some economic compensation to ex-combatants.

HOW TO ASSESS IMPACT

To empirically examine the frequently contradicting claims regarding the anticipated impact of transitional justice processes on peace and democracy, we used a four-step approach, combining quantitative measures and qualitative analysis: 1) Examination of *the context surrounding the transition* from a period of violence to peace/democracy, focusing on factors such as the historical background of the conflict, the type and length of conflict, the type and extensiveness of human rights violations, the way the conflict ended, the change in regime and the resulting balance of power. 2) Examination of *the establishment of transitional justice mechanisms*, focusing on their purpose and mandate (to the extent that this had been made explicit), and paying special attention to the timing and sequencing of different TJMs. In the post-conflict cases we also examined whether the transitional justice measures form part of a broader peacebuilding process and which actors (national or international) have been pushing the agenda of transitional justice. 3) Examination of *to what extent/degree TJMs had been implemented*. I.e. for a truth commission to be fully effective, it must have carried out its

Table 1: Facts about the four country cases

COUNTRY	DATE OF FORMAL TRANSITION	CONFLICT OR REGIME TYPE	MAIN TYPE OF VIOLATIONS	TYPE AND SEQUENCING OF OFFICIAL DEPLOYMENT OF TJ MECHANISM		PRIMARY DRIVER OF INITIAL TJ SETTLEMENT
				INITIAL	LATER	
Uruguay	1984	Military dictatorship	Ca. 200 dead and detained-disappeared Ca. 20,000-200,000 tortured (figures highly contested)	TC, amnesty	TC, trials, reparations	Nationally driven
Peru	2000	Internal armed conflict / Authoritarian regime	69,000 dead and detained-disappeared 600,000 internally displaced persons (IDPs)	TC, trials recommended, reparations	Fujimori conviction 2009, other on-going high level trials National record of victims, reparations plan, exhumations	Nationally driven
Rwanda	October 2003	Genocide	10,000 (civil war) 800,000 (genocide) 200,000 (crimes against humanity)	Peace agreement, ICTR, national courts	Gacaca	Internationally and nationally driven
Angola	Luena Memorandum of Understanding 2002	Civil war	Ca.0,5- 4 million dead and detained-disappeared Ca. 4 million IDPs (figures highly contested)	Peace agreement, amnesty	None	Nationally (warring parties) driven with international observation.

investigations in a timely manner and launched an official report summarising its findings. Furthermore, the recommendations made by the truth commission must have been followed up by the government or other agents for the commission's work to be expected to have substantive impact on peace and democracy.

4) Examination of *empirical evidence showing improvement in peace and democracy.*

DOES TRANSITIONAL JUSTICE PROMOTE PEACE AND DEMOCRACY?

We assessed the degree of peace and democracy for each country as of the end of 2011. Peace and democracy are concept that we understand as a continuum: Democracy evolves from low to medium to high. Peace evolves from negative to liberal to positive.

The analysis shows that only Uruguay has reached a stage of positive peace and a high degree of democracy. Peru has achieved a moderate degree of peace and a medium level of democratic consolidation. Rwanda in turn has achieved what may best be described as a liberal peace, but where steps have been made towards a positive peace. Angola has the poorest track record of our four cases. Political violence has ceased (except for separatist-related conflict in Cabinda in the north) but there is hardly any national reconciliation, making it a case of negative peace. For all practical purposes, Angola, like Rwanda, is today an autocratic one-party state. But unlike Rwanda, there is little obedience to the law and human rights are widely disrespected. Angola consequently has the lowest score on democracy.

A crude interpretation of Figure 1 would be that the country that has done the most in terms of transitional justice (Uruguay) is also

the country that has reached the highest level of peace and the highest level of democracy. Similarly, the country that has done the least in the TJ field (Angola) is the country that has the lowest recording for peace and the lowest level of democracy.

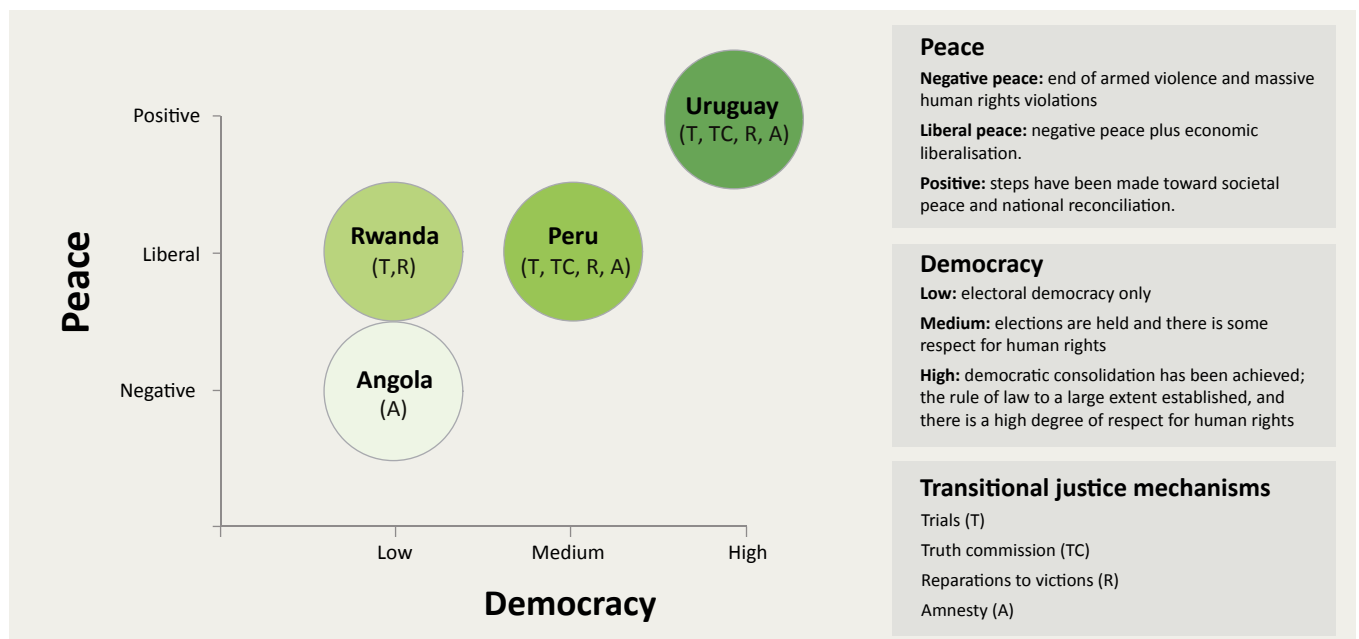
Assessments of the outcome of transitional justice mechanisms depend on context and time. One must distinguish between short-term and long-term impact of transitional justice. What may be good for democracy or peace in the short term may be detrimental to democracy in the long run. There are potential positive and negative impacts on democracy/peace for all of the four transitional justice mechanisms that we have examined. The only exception is trials.

THE IMPORTANCE OF CONTEXT AND TIME

One of our major findings is that the four cases differ much more on the democracy dimension than on the peace dimension. There are several reasons for this. First, it has to do with the selection of cases. The two internal-war conflicts (Rwanda and Angola) ended in clear victory, rather than a compromise peace settlement where electoral democracy was a critical part of the deal. In our two post-conflict cases, oppositional parties have no fair chance to win elections and elections are frequently postponed.

Second, there is an institutional argument to be made: It is harder to build a viable democracy after massive violence when democratic institutions are not likely to have been functioning. Taking into account the pre-conflict state of institutions is crucial. The difference between establishing and re-establishing democracy is potentially huge. This point is well described when comparing Uruguay (where the dictatorship was an autocratic interlude in an otherwise democratic history) with Angola

Figure 1: Transitional justice impact on peace and democracy



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(which went straight from colonialism and war for independence into nearly three decades of civil war, and which barely had any functioning formal institutions after the Portuguese left the country). Given such different contexts, the variation in democratic outcome is not surprising.

The time factor is a central, related element. Time may work both in favour and disfavour of transitional justice. Uruguay is a good example of a country where the passage of time has allowed for an almost complete turnaround from massive state supported impunity for past human rights violations to systematic fact finding and large-scale accountability for past abuses. By contrast, in Angola, impunity for wartime crimes remains and there are no signs that this is likely to be challenged in the imminent future. One potential explanation is that impunity may have rooted itself in the political and judicial culture. An alternative explanation is that not enough time has gone by to make Angolans ready to deal with their violent past.

The length of the conflict itself is equally important. In Uruguay the dictatorship period was relatively short and people had memories of a well-functioning democracy. In Angola, by contrast, fighting, violence and abuses of all kinds have been dominant in the collective memory for generations. Not surprisingly, people simply want peace to continue when peace finally comes. The mere absence of fighting is a great improvement over war. With time and distance to the violations, with a strengthened civil society, and with the establishment of democratic institutions, demands for truth commissions or trials may arise.

This brings us to the sequencing of TJ mechanisms. As Uruguay and Peru illustrate, impunity sanctioned through amnesty laws may be replaced by truth and justice over time. Information gathered by truth commissions may later be used as evidence in trials of alleged human rights perpetrators. The timing and sequencing of transitional justice mechanisms thus matter.

CONCLUSIONS

Strengthened regional and global institutions for the protection of human rights have created a more favourable climate for pursuing justice for past wrongs. Yet, our studies show that it is the national context that determines the impact of transitional justice on peace and democracy. It is the balance of power, the nature and length of the conflict, and the strength of national institutions that shape the outcome. The regional and global human rights context influences how internal governmental human rights policies shift when international actors get involved.

MAIN FINDINGS

The principal finding is that the general scholarly claims regarding the impact of transitional justice mechanisms must be modified by context and subsidiary conditions:

- Trials may be good for democracy, if they strengthen the rule of law, and if they do not spark renewed conflict.
- Truth commissions have little impact on democracy, but they may be good for peace if implemented right and the recommendations are followed up.
- Reparations may be good for democracy if they lead to more justice for victims, and may enhance peace if they encourage ex-combatants to refrain from using violence.
- Amnesties may facilitate the transition to peace/democracy in the short run, but may be detrimental to democracy (rule of law, democratic legitimacy).
- Transitional justice processes are complex and dynamic and may change substantially over time. The distinction between short-term and long-term impact is therefore essential.