

Research Brief

“Fear of the Future, Lived through the Past”: Transitional Justice in the Wake of Ethnic Conflict

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Paige Arthur

Surprisingly little attention has been paid to understanding the ways ethnic identities might matter for transitional justice—even when the justice in question is a response to clear-cut cases of identity-based violations, as in Rwanda and the former Yugoslavia.

The social dynamics of ethnic identities is a huge subject. This article narrows the issue by looking specifically at ethnic conflict. It surveys for a transitional justice audience the key factors driving ethnic conflict, and describes some of the more well-known methods of addressing those factors. The goal is to adapt, for the purposes of transitional justice, what has been learned from the extensive body of existing research on ethnic conflict.

The Salience of Ethnic Identities for Transitional Justice

Considering the salience of ethnic identities helps us to think about risk factors during transitions that have, as yet, been underplayed by transitional justice practitioners. Political openings are often moments—as in Rwanda and South Africa—in which identities are particularly susceptible to reshaping. This may partly be because the state itself is changing, and may deliberately try to reshape identity categories and engineer new relations among communities. But it may also be because such openings offer opportunities for new kinds of identifications from the ground up—especially political ones, as new actors have a chance to emerge. To the degree that new political identities may map onto exclusivist ones, often organized around ethnicity or religion, there may be a recipe for identity-based extremism, as was the case in the former Yugoslavia.

Transitional justice measures may not be able to do much to ameliorate that process, if it happens, but they should at least do their best not to contribute to it.

Factors in Ethnic Conflict

A first step in thinking through the relationship between ethnic conflict and transitional justice is to identify key factors in ethnic conflict. Researchers have concluded

Research Project

Identities in Transition

In post conflict societies, histories of exclusion, racism and nationalist violence often create divisions so deep that finding a way to agree on the atrocities of the past seems near-impossible. This project seeks, first, to ensure that transitional justice measures are sensitive to the ways in which targeting people on the basis of their ethnic or religious identity may cause distinctive harms and, second, to clarify the difficult political challenges that arise in societies where communities are not ready to cooperate, or even agree on a definition of who the victims are. If transitional justice can find ways to act as a means of political learning across communities, foster trust and recognition, and if it can serve to breakdown harmful myths and stereotypes, then this will be at least a small step toward meeting the challenges for transitional justice in divided societies. The project is managed by Paige Arthur, Deputy Director for Institutional Development at ICTJ.

that countries in which identity is a key dimension of conflict are characterized by the following factors, to varying degrees:

- *A pervasive sense of threat or fear of attack:* Uncertainty and fear for the future may strongly shape a person’s expectations and behavior. Fears may concern the physical security of a group, as well as assimilation or domination by another group.
- *A widespread belief in myths that dehumanize other groups:* Myths are often closely linked to or even the source of a group’s identity. They may lead to distorted interpretations of other groups’ past actions and current behavior, and can be particularly resistant to change.
- *Mistrust and miscommunication among ordinary citizens and political elites:* When groups do not trust one another, the potential for messages to be misinterpreted or lost is exacerbated. As a result, the chances for successful negotiation and recognition of the needs of other groups may be low.
- *Elite-led mobilization of groups:* Politicians may cleave to newly refurbished ethnoreligious identities to gain political support against external “threats.” Extremists, in particular, try to accrue power through strengthening boundaries between groups and insisting that moderates may be “traitors” to the other side.
- *Conflict over groups’ access to resources:* The combination of scarce resources and a fight over the state, which regulates access to those resources, may produce harmful competition among groups.
- *Lack of recognition of basic human needs such as identity and dignity:* Since an individual’s personal sense of worth is tied to his/her collective identifications, denial of the value of those identifications through discrimination, repression and worse should be seen as a root cause of conflict.

Competition and polarization among ethnic identities may affect the design, implementation and potential outcomes of transitional justice measures.

Responses to Ethnic Conflict

Generally, there is agreement that recalibrating fundamental institutional arrangements, especially constitutions and electoral systems, is an indispensable method of channeling competition of all kinds, including among ethnic groups, into political institutions, thereby averting a relapse into violence. The most well-known constitutional options are consociationalism, where groups share power and may have vetoes over issues of concern, and federalism, where territorially concentrated groups have power in their own political subunit.

Transitional justice aims not only to contribute to a mere absence of violence and a potentially tense coexistence, but also to foster trust and to help transform resentment and the thirst for vengeance. It makes sense, then, to include proposed remedies for ethnic conflict that move beyond the sphere of institutional arrangements. Such social and cultural interventions include changing symbols and ideologies and restructuring social relationships through affirmative action programs. Less state-focused interventions

include trust-building activities across groups, using techniques pioneered in the conflict resolution and peacebuilding community.

What Role for Transitional Justice in the Wake of Ethnic Conflict?

The goal of transitional justice is not to prevent ethnic conflict—something it could not do on its own—but rather to make a modest contribution to the amelioration of the factors judged to cause it.

Two issues thus arise. The first concerns how the conflict factors identified in the research literature affect transitional justice. Competition and polarization among ethnic identities may affect the design, implementation and potential outcomes of transitional justice measures. Third-parties may need to be brought in to ensure fairness. Preferential policies may have to be enacted in staffing schemes. And outreach policies may have to deal with publics that are highly resistant to changing myths they hold about the past.

The second concerns how transitional justice measures themselves may have effects on this competition and polarization. For example, they may ameliorate conditions by isolating extremists, challenging the public’s views of ethnic categories and contesting an implicit ranking or hierarchy among groups. However, transitional justice may also unintentionally contribute to “freezing” identity categories, reinforcing distinctions—and hierarchies—among them.

Below are some of the ways transitional justice might be made more sensitive to these issues, with a specific focus on the conflict factors identified above.

Truth-telling initiatives may have effects in reducing intergroup fear, in debunking myths, in reducing the attractiveness of elite agendas and in recognizing the identity and dignity of all groups within a society. For example, a truth commission can bring to light the motives of elites, as well as the relationship between nationalist elites and undemocratic practices. It can explore and publicize divisions within ethnic groups, rather than treating these as monolithic blocs—which may in turn allow for an understanding of potentially crosscutting cleavages.

Memorialization efforts are likely to be a key site of contention for communities emerging from ethnic conflict, precisely because they are symbolic measures. Memorialization might thus be thought to be most relevant in offering recognition to groups and, perhaps, debunking myths. To be effective, however, memorialization efforts’ contributions should be undertaken in a way that will not demean the dignity of other groups, nor foment a tit-for-tat escalation of competing group symbols in the public sphere—which may reinforce a sense of group threat.

Reparations provide recognition directly to victims, through a combination of material benefits and symbolic gestures of acknowledgment and regret. Intergroup apologies

About the Author

Paige Arthur is Deputy Director for Institutional Development at ICTJ and manager of the Identities in Transition project. She holds a PhD in history from the University of California, Berkeley.

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are acknowledged as an important method of offering recognition, reducing the fear of domination and promoting communication and trust. Apologies may offer a signal that a state—or another group—takes seriously the wrongs of the past, especially when they are coupled with other measures, such as material reparation and reform of discriminatory institutions.

Vetting might be thought to have positive effects in ameliorating elite-led mobilization, promoting intergroup trust and diminishing a competition for resources. If done well and with sufficient political buy in, vetting might remove or sanction divisive leaders; promote greater trust between marginalized communities and security forces; and both open new career paths for marginalized groups and confirm a sense of ownership of the state. Vetting is especially important in societies where ethnic domination has been maintained—or was perceived to be maintained—through the military or the police.

Criminal accountability is one of the most well-known transitional justice responses. The truth-telling function of prosecutions may help combat myths about the past; reveal motives of elites who are cynical operators; and highlight the role of mass publics as their supporters. Prosecutions may also reduce fear and anxiety by incapacitating direct perpetrators and masterminds of criminal policies, usually by putting them in jail. On the flip side, extremist elites may invoke criminal trials as evidence of a group’s further “victimization,” thus reinforcing hostile myths.

Conclusion

In considering the relationship between transitional justice and ethnic conflict, a more fundamental question arises concerning the scope of justice (and injustice) that transitional justice efforts should attempt to address. Should transitional justice try to provide redress for identity-based discrimination itself, such as the apartheid system? Or should it simply be sensitive to the continuing effects of such a system as it tries to grapple with a narrower band of individual human rights violations?

While this paper does not resolve this ongoing debate, it notes that, at a minimum, transitional justice could do much more to enhance its sensitivity to factors in ethnic conflict. It could also strive to work more coherently with those interventions, such as constitutional reforms and affirmative action policies, that are expressly designed to provide redress for discrimination and to manage ethnic conflict.

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