Identities in Transition:
Developing Better Transitional Justice
Initiatives in Divided Societies

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Identities in Transition Project

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 the International Center for Transitional Justice (ICTJ).

Acknowledgements

About the Author

Paige Arthur is Deputy Director for Institutional Development at ICTJ. For more than five years, she was an editor of the journal *Ethics & International Affairs*, published by the Carnegie Council for Ethics in International Affairs. She was also the Senior Program Officer for the Ethics in a Violent World initiative at the Carnegie Council. Her most recent work includes a history of the field of transitional justice, published in *Human Rights Quarterly* (May 2009). She has also published articles on political violence, decolonization, and identity politics in *Theory & Society*, *Ethics & International Affairs*, and the book *Race After Sartre* (Jonathan Judaken, ed., 2008). She holds a PhD in European history, focusing on European decolonization, from the University of California, Berkeley, and a BA in international relations from the Johns Hopkins University. Her book, *Unfinished Projects: Decolonization and the Philosophy of Jean-Paul Sartre*, is forthcoming from Verso in 2010.

About ICTJ

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. To learn more, visit www.ictj.org.

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What Difference Does Identity Make?

> Divided communities carry different experiences and understandings of the past in their minds and indeed it is this that divides them. Their accounts of the past differ deeply. They are used as a marker to determine and make positive, but more frequently negative, moral judgments on each other and so continuing the legacy of suspicion, mistrust, and hatred.
>
> —Report of the Consultative Group on the Past (Northern Ireland)[1]

Transitional justice practitioners working in contexts where ethnic, religious, or other communal identities are highly politicized are likely to face a unique set of obstacles.

Identity: A Definition

Identity refers to peoples' membership in social groups. Such groups or social categories are probably infinite and include ethnic, religious, class and gender groups, but also subgroups within those groups: women, disabled women, minority women, minority disabled women, and so on. Identities are important because they are basic elements of our social life and its reproduction. Identity groups rely on rules of membership that decide who is included, as well as characteristics, including beliefs, desires, moral commitments, and physical attributes. It is important to remember identities are socially constructed over time, and they are constantly changing.

This report focuses mainly on ethnoreligious identities. These are distinctive because they tend to be defined by passage from generation to generation and raise issues of cultural or biological reproduction—which is something that groups often try hard to protect. Thus, control over education of the young, a piece of territory linked to the group, and cultural practices and patrimony may acquire deeper importance where these identities are at stake.

The Role of Identity in Conflict

Violent conflict often has as one consequence a shift in identities and relations among groups. In the former Yugoslavia, for example, it has often been noted that conflict dramatically transformed peoples' identities; many people identified more strongly with a particular group as a result of the conflict, and had changed (negative) perceptions of other groups as well. Contexts in which there has been a strong identity dimension to the conflict tend to be characterized by a range of factors:

A pervasive sense of threat or fear of attack

Fear and uncertainty about the future strongly shape a group's expectations and behavior. Fear can stem from concern for physical security or concern over assimilation or domination. Indeed, attempts at ethnic domination, and real or perceived discrimination against religious, linguistic, and other cultural practices, may be a source for grievance and even violence. Often, efforts to dominate other groups have a strong gender dimension, as women are targeted for rape in an attempt to humiliate the group and prevent it from reproducing itself, and non-combatant men and boys are targeted in order to destroy "future" enemies. One result of these fears is that people

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[1] Consultative Group on the Past, *Report* (Belfast, 2009); available at www.cgpni.org.

align themselves with members of their own group in order to make their own provisions for security. This is especially true in the wake of violent conflict, when the state is fragile or has collapsed, and people can thus no longer expect the basic protections typically afforded by a state.

A widespread belief in identity myths

Myths that dehumanize other groups and that nationalist leaders can mobilize for political ends, for example—historical Serbian victimhood, the divine nature of the caste system, or inherent superiority of a "white race"—provide important frameworks for interpreting contemporary politics. They may lead to distorted interpretations of other groups' past actions and current behavior. Because myths are often closely linked to—and are even the source of—a group's identity, they may be particularly resistant to change. Their power is such that, as research has shown, bringing to light new, contradictory facts may do little to debunk them.

Mistrust and miscommunication

When groups do not trust one another—whether ordinary citizens or the political elite—the potential for messages to be misinterpreted or lost is exacerbated. As a result, the chances may be low for successful negotiation and recognition of the needs of other groups. When identity is a factor in the conflict, the stakes are quite high. Mistrust festers when discrimination continues to be officially sanctioned, and groups do not believe the guarantees offered by the other side to be credible.

Elite-led mobilization of groups

Researchers have argued that divisions within ethnic groups may be more important to the role of elites in ethnic conflict than divisions between groups. The explanation is that elites are often divided between ethnic extremists and moderates. Extremists try to gain power through strengthening boundaries between groups and insisting that moderates may be "traitors" to their own people. The manipulative work of ethnic elites were especially widespread in the wake of the break-up of Yugoslavia, as many politicians in the region strategically cleaved to newly refurbished ethnoreligious identities, which they then used to gain political support.

Conflict over access to resources

Interest-based competition over material goods is widely acknowledged as a source of conflict. There are many ways in which economic competition may intersect with identities: "Property rights, jobs, scholarships, educational admissions, language rights, government contracts, and development allocations all confer benefits on individuals and groups. Whether finite in supply or not, all such resources are scarce."[2] The combination of scarce resources and a fight over the state, which regulates access to those resources, may produce harmful competition among identity groups.

Universal need for identity and dignity

The drive for recognition and a feeling of self-worth is understood as universal among an important group of researchers. Some have framed this idea in terms of "basic human needs"—which include identity, recognition, and dignity as required, non-negotiable elements for human development. Since an individual's personal sense of worth is tied to the collective identifications he or she has, denial of the value of those identifications through discrimination, repression, and worse should be seen as a root cause of conflict.

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[2]David A. Lake and Donald Rothchild, "Spreading Fear: The Genesis of Transnational Ethnic Conflict," in David A. Lake and Donald Rothchild, eds., *The International Spread of Ethnic Conflict: Fear, Diffusion, and Escalation* (Princeton: Princeton University Press, 1998), 9.

What Can TJ Do?

> During the armed confrontation the cultural rights of the Mayan people were also violated. The Army destroyed ceremonial centres, sacred places and cultural symbols. Language and dress, as well as other elements of cultural identification, were targets of repression. Through the militarization of communities…the legitimate authority structure of the communities was broken; the use of their own norms and procedures to regulate social life and resolve conflicts was prevented.
> —Report of the Commission for Historical Clarification (Guatemala)[3]

Transitional justice should not be expected to "solve" conflicts with an identity dimension—nor should any one set of policy or social interventions. They are too complex. Yet TJ has many tools that might help to improve them. A helpful way forward is to explore how TJ can be understood to address the conflict factors identified above. It should be noted that the factor of economic competition is left off of this list of what TJ can do, as TJ has little direct effect on it.

Promoting Trust, Reducing Fear

Many interventions in peacebuilding contexts revolve around trust-building activities between groups. The overarching goal of such activities is that people discover how to reframe problems of mutual concern through communication and cooperation.

TJ potentially can contribute toward these ends. Trust of marginalized groups in the state may be enhanced, in general, through the efficient and culturally sensitive administration of a variety of justice initiatives. This possibility is relevant to all TJ measures, but a clear example relates to reparations programs. In both Guatemala and Peru, indigenous groups' trust in and interaction with state institutions has historically been low. The state's bureaucracy operates in a different language (Spanish) and is largely populated by non-indigenous staff. Delivery of benefits may be less welcomed by indigenous groups if these benefits are designed and delivered without taking their needs and desires into consideration. Therefore, delivery of benefits that incorporate a cultural element, as well as symbolic measures, may go far in convincing mistrustful groups not only that they are adequately recognized by the state, but that they are being served in a meaningful way. Attention to existing gender relations and gender-specific harms will be important in the delivery of benefits as well.

TJ can also contribute to building trust across groups. Indeed, apologies, acknowledgment, and truth-telling are already recognized among peacebuilders as important intercultural trust-building activities—irrespective of whether or not these are explicitly linked to TJ. Apologies can be particularly important instruments, as they often are understood as taking place across groups, that is, "given" from one group to another. Apologies signal both an acknowledgment of wrongdoing and the fact that the group that was object of the wrongdoing is worthy of such acknowledgment.

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[3] Commission for Historical Clarification, *Guatemala Memory of Silence: Conclusions and Recommendations* (English translation from the American Association for the Advancement of Science, 1999), 35; available at shr.aaas.org/guatemala/ceh/report/english/toc.html.

One challenge to note is that, in intractable conflicts, efforts to build bridges between communities are often met with hostility. Spoilers may try to undermine bridging projects through threats and violence, and those who participate may be ostracized within their communities or branded as "traitors."

Bridging the Gap

"Bridging the Gap" is a unique series of conferences designed by the ICTY Outreach Program to explain the Tribunal's work to local populations in many of the places where the most infamous crimes took place—and where communities had images of the past that diverged strongly from the tribunal's findings. During 2004 and 2005, five conferences took place in cities around Bosnia-Herzegovina. The conferences brought senior ICTY officials together with members of local victims' associations, municipal authorities, judicial/law enforcement institutions, and politicians and civil society representatives. ICTY staff used evidence presented in the cases to explain the investigation process and the requirements for proving guilt beyond a reasonable doubt. For example, at the conference in Foča, a city notorious for rape camps run by Serb paramilitaries during the war, officials focused on the Kunarac *et al.* case, which proved that rape was used as a weapon of terror and which resulted in the imprisonment of all three of the accused. In addition to explanation of the work of the ICTY, the conferences also functioned as a forum to promote accountability initiatives at the national level and provide information for further distribution. Each participant was given a CD-ROM with overviews of the cases at the ICTY, photographs presented as evidence during the trials, and a selection of witness testimony.

Source:
ICTY Press Release: "Foča Conference "Bridging the Gap Between the ICTY and Communities in Bosnia and Herzegovina" (October 13, 2004)
http://www.icty.org/sid/8353

Reshaping Narratives, Debunking Myths

It is an unfortunate fact that mass publics are not particularly critical in their views about identity and its supporting narratives and myths. They often take identity—sometimes conceived of in racial terms, in which case the role of women as "reproducers" of the nation may be important—as intrinsic and thus relatively unchanging. This is in strong contrast with most social scientific literature about the "constructed" nature of identity. Indeed, identities can be so important and emotionally charged that even suggesting that a person's identity is a construction may be perceived either as offensive or as simply untrue.

Even if TJ initiatives were unlikely to change the deeply-rooted opinions of mass publics, they can do something about the most extreme forms of this phenomenon, which block any reflection on one's own complicity in crimes done in the name of one's group. For example, it is widely acknowledged that one of the functions of truth commissions is, in Michael Ignatieff's phrase, "to reduce the range of permissible lies." TJ initiatives, such as prosecutions and truth-telling, challenge distortions of the truth that allow groups only to see their own members as "victims." They can also challenge claims of historical "victimhood" of entire groups and help to demonstrate beyond a shadow of a doubt the fact that members of other groups have been abused. Intergroup apologies, for their part, may help to defuse long-standing competitions over victimhood, thereby challenging stories and symbols in which a group's historical victimhood plays a central role.

In dealing with narratives and myths, a danger exists in focusing only on brutality and cruelty. Ordinary people—the bystanders—are unlikely to identify with perpetrators of sadistic acts, and they can easily dismiss them as "bad apples." A focus on only the worst acts may have the effect of distancing audiences, which does not facilitate reflection on their own complicity in crimes against another group. More consideration should be given to positive stories of "righteous dissenters"—those who may have gone against their group by aiding someone from the other "side."

Encouraging Political Learning/Cooperation

Transitional periods are a time of enormous political learning, when new or reformed institutions must learn how to govern in a political landscape in which the social groups and power structures involved may be very different than they were before. Groups who have never worked together—possibly because one of them was formally excluded from power on the basis of identity—must now cooperate.

TJ initiatives work within these dynamics. If they are designed in a thoughtful way, they might help groups learn how to work together—from the grass roots to the elite level. Where the identity dimension to a conflict has been particularly strong, such as in Northern Ireland or Cyprus, getting civil society groups from both sides to work together may be an important symbolic victory in itself. Much groundwork likely has to be done in preparation for this kind of encounter.

On the level of government, TJ may be one of the early cooperative initiatives for any new regime. In cases where new constitutional arrangements enshrine minority rights or federalist principles, TJ may be an institutional site where those new rights and principles are tested and acted out. In Cyprus, for example, the only existing intergovernmental body between the Republic of Cyprus and the Turkish-controlled north is the Committee on Missing Persons, which provides information to families of the disappeared on both sides. In Iraq, there has been significant political discussion between the Kurdish Regional Government and the central government concerning reparations for the victims of Saddam Hussein's Anfal campaign. Instances such as these are proof that TJ may involve a process of delicate negotiation in which parties may (or may not) learn how to work together.

Neutralizing the Power of Harmful Elites or "Ethnic Entrepreneurs"

A main strategy for neutralizing harmful elites is to promote moderate politics in highly divided societies. TJ is often controversial, so it cannot be taken as a given that it will promote tolerance and moderation. Trials, in particular, may be flashpoints for the emergence of identity-based solidarity with a person on trial for serious human rights violations—for example, Slobodan Milosevic among nationalist Serbs, or Egon Krenz among East Germans feeling disenfranchised by reunification.

Yet there are reasons to believe that TJ can have moderating effects. Even if the initial reaction to a trial is hostile, over the long term, ideologically based movements can be delegitimated through trials of their leaders. Truth-telling and prosecutions can bring to light the cynical motives of manipulative elites. They can explore and publicize the diversity within ethnic groups, rather than treating them as singular blocs in which people are all the same—which may in turn allow for an understanding of potentially crosscutting identifications.

Healing Through Remembering: Day of Private Reflection, Northern Ireland

"Day of Private Reflection" is an initiative born out of a public consultation process and 2002 report of Healing Through Remembering, a non-sectarian, cross-community project composed of a broad base of individuals working to address the legacy of the conflict in Northern Ireland. First occurring in 2007, the Day of Reflection is designed as a voluntary opportunity for people in Northern Ireland, the Republic of Ireland and Great Britain to reflect on the conflict. Taking place on June 21, the longest day the year and a point of transition in seasons, the day is intended to be an inclusive and positive event that focuses on commitment to future peace. Participants are encouraged to acknowledge the loss and pain cause by the conflict, remember the victims, reflect on personal attitudes that may have negative consequences, and think about actions that can work towards a peaceful future. Careful work was done around using language that would not inflame sectarian passions, in an effort to make the day truly inclusive. Intended as a personal and private experience, the day of reflection does not include public events, but does encourages groups to support venues and processes for individuals to take part in. Suggestions for reflection include a moment of silence, sharing of stories, prayer, and meditation. The recent report of the official Consultative Group on the Past in Northern Ireland affirmed the value of the day and called on government, church, and civil society actors to support it.

Source:
http://www.healingthroughremembering.info

Vetting and other reforms of abusive institutions are also crucial in helping to neutralize harmful elites. Here, focus not only on national leaders but also on community-level elites may be important. In cases of ethnic cleansing, members of a minority group will not feel safe to return to communities where those who evicted families, raped women and girls, and committed other serious abuses still retain power. Attention to elites at the local level is of key importance in such instances.

Recognizing Victims in the Way that Resonates with Their Belief Systems

Recognizing victims, including their humanity and their status as citizens with rights, is one of the main motivations for undertaking TJ. In the wake of identity-based abuses, recognizing the identities of the victims may be an important part of helping them regain their dignity. TJ can achieve this through attending to and incorporating relevant religious and cultural traditions.

There are two different approaches that might be taken. First, TJ measures might "mainstream" an intercultural approach throughout. In Peru, the reparations program takes this approach, although it is still unclear how it will play out in practice. In theory, it means that the design of reparations should be sensitive to different worldviews and—according to the recommendations of the Peruvian Truth and Reconciliation Commission—it should enable the creation of a space for different people to exercise citizenship in their own terms and according to their own value system.

Second, TJ measures might think in terms of a few culturally specific actions and benefits, in consultation with victims. This approach would secure, in concrete terms, specific goods and rights to participation for particular groups—ones that would only theoretically be guaranteed through a mainstreaming approach. As a piecemeal approach, however, it might not result in as thorough an engagement with the worldviews of victimized groups as a mainstreaming approach would.

Encouraging Less Divisive Forms of Identification

It should be recognized that TJ measures themselves may become the object of identity politics no less than any other social intervention. Ultimately, TJ measures have an important element as a public "performance"—that is, they are watched by audiences, who may identify with some of the actors over others. Serbian nationalists' hostile reaction to the work of the ICTY is a good example TJ-related identity politics. Also, in Guatemala, there have been many struggles between indigenous groups and other groups over the wish for reparations specifically for acts of genocide.

One strategy to overcoming divisive forms of identification is to stage "outreach" to all communities. The South African TRC provided a "visual" outreach to all groups by ensuring that all were present at the public hearings. Their performances may have enabled new, positive identity positions: "black" citizens; "vulnerable" men; "heroic" women. This may be an appropriate strategy in cases where groups have long been denied the rights of citizenship. It can be a way of promoting a multicultural citizenship that positively affirms identities.

Another strategy is to use the "neutral" language of "victims" and "perpetrators," rather than identity categories, in TJ efforts. While this language flattens the social complexity of human rights abuse, it may allow for the emergence of identifications that cut across groups. This may be a particularly useful strategy in deeply divided societies.

A final strategy is to highlight "crosscutting" identities. In some cases, focusing reforms and TJ initiatives around gender—rather than divisive ethnoreligious identities—may be a way to generate cooperation and to move forward. In others, it may be useful to draw attention to those who have crossed group boundaries—often at great risk to themselves. This is a means of blurring boundaries that may have been hardened by years of conflict. Such a strategy would seem useful in all contexts, except perhaps in contexts in which there might be a threat of retaliation for instances of what is perceived as "collaboration" with another group.

In all of this, it is important not to lose sight of individuals. Especially when people have been denied citizenship rights and have suffered abuse based on their identity, it is crucial that TJ enable their full entitlement to basic individual human rights. These are basic guarantees and protections that, it should be acknowledged, apply to everyone irrespective of their identities.

How Can TJ Do It?

> If the rights of all ethnic and tribal groups, in all facets of social, economic and political life are considered equally and proportionate to their populations, national unity will be guaranteed.
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> (Man from Bamiyan)
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> —A Call for Justice, Report of the Afghan Independent Human Rights Commission[4]

Dealing with identity requires sensitivity to a distinctive set of issues. The following offers general guidance on giving adequate attention to the negative and positive roles identities play.

Informed Analysis

In order for TJ to deal adequately with the factors at work in conflicts with an identity dimension, it must first acknowledge and assess the relative weight of those factors in any particular context. Concretely, this means taking stock of the role that fear of domination, a pervasive sense of threat, ethnic entrepreneurs, dehumanizing myths and narratives, etc., played in the past and continue to play in the present.

TJ practitioners can begin to pay attention to these factors through a general conflict analysis. Questions that analysis should answer—without being exhaustive—might be grasped through the following categories:

The Nature of Human Rights Violations

General	Identity-Related
What serious human rights (HR) violations have there been?	Do these HR violations fit within a broader range of harms related to ethnicity, religion, language, expression, etc., which may not be captured through a standard HR framework?
What is the time frame of the violations?	Do the harms span generations? Has there been a history of cultural, religious, linguistic, or other forms of domination? Is there a legacy transmitted from parent to child?
Is there potential for further violations?	Is there a pervasive sense of physical threat, including existential threat to the group (fear of ethnic cleansing, control of women's reproduction, forced displacement, large-scale massacre, etc.)?

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[4] Afghan Independent Human Rights Commission, A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan (2005), 397, 339; available at www.aihrc.org.af/Rep_29_Eng/rep29_1_05call4justice.pdf.

Past Political and Conflict Dynamics

General	Identity-Related
What is the history of the conflict?	Has there been a history of domination? Is it supported by myths and narratives of group superiority/inferiority? What are the key points on which interpretations of the conflict do not agree (often events to which each group gives very different symbolic meaning)?
What were the sources of tension and conflict?	Was there unequal access to the state among groups, whether formally or informally? Was there unequal access to economic power and markets based on group belonging? Were groups located in separate territories, or were they generally mixed across the country?
Which actors were instrumental in the conflict?	Were political or cultural elites using appeals to identity-based solidarity in order to gain power? Was an unfair set of state institutions or economic arrangements contributing to conflict? Was the media a source of misinformation and hate speech?

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Current Political and Conflict Dynamics

General	Identity-Related
What are the long-term trends: are tensions increasing or decreasing?	Have groups' relationships to the state changed? Have groups' access to resources changed? Has misinformation and hate speech in the media decreased? Are there protections for minority groups, and are they credible and enforced?
What are the short-term trends: are there triggers that may escalate tension or cause violence?	Are there divisive festivals, parades, commemorations, or other events with symbolic meaning on the horizon? Are elections coming up?
Are there institutions in place to manage tensions?	Have political arrangements been reformed in a way that does not disadvantage any group? Is there oversight of divisive events (e.g., are there laws or an independent oversight body for them)? Have claims for sovereignty or autonomy been met?
What are the different actors' perspectives on how to deal with human rights violations?	Do minority/indigenous groups see TJ as an opportunity to expand claims for justice beyond individual HR violations, whereas the state sees it as an opportunity to limit them? Do minority/indigenous groups see TJ as a chance to link past HR violations to present injustice, whereas the state sees TJ as a chance to draw a line under the past?

Obviously, there is much more that should be thought through in analysis. The framework above is intended only to suggest some directions for thinking.

A Diverse Set of Stakeholders

Dealing with identity will likely entail bringing together a diverse set of actors. In many countries, "human rights" groups do not always neatly overlap with organizations representing marginalized identity groups, such as minorities, religious communities, or indigenous peoples. Many groups don't necessarily see themselves as human rights actors, and don't use the language of human rights. They may be more interested in economic development, the protection of traditions and ways of life, or the recovery of land, to take a few examples. These groups will have to work together, even though they often have different interests and objectives.

Working together on transitional justice may be both challenging and rewarding. Challenges may arise because some groups may see their critical interests in ways that intersect only indirectly with redress for past human rights violations. That is, whereas human rights groups may focus on individual human rights violations, groups representing indigenous peoples may focus on collective rights in addition to individual human rights, and they may advance a more far-reaching social or development agenda than a traditional human rights organization would.

But there are potential rewards to collaboration. The potential for TJ to have a wider impact is strengthened when a broader range of stakeholders (and their interests) are taken into account. Part of what TJ aims to do is to empower victims—to restore their agency as citizens. To the degree that marginalized groups organize themselves and participate in a TJ process, they may make progress toward becoming more powerful political actors.

Finally, it is important to be aware of the possibility for identity politics to be at work among civil society actors themselves. Where resources are scarce, and access to the state is limited, these groups may come into conflict, and "identity" may be the language in which these conflicts are expressed. In Guatemala, for example, there are deep conflicts between some human rights and indigenous actors—a factor that has affected the course of TJ, and in particular the development of a reparations program there.

An Expanded Set of Tools

Advances in international law with respect to minority and indigenous peoples' rights may be useful to TJ actors. Minority Rights Group has synthesized existing international law and developed the following set of pillars:

Historical Enquires Team, Northern Ireland

The Historical Enquires Team (HET) is a special investigation unit established within the police service of Northern Ireland. Initiated in 2005, the unit is tasked with re-examining all 3,268 deaths attributable to the conflict in Northern Ireland between 1968 and 1998. Through this process the HET seeks to provide families with a sense of closure. In some instances, re-examination may lead to prosecutions, but in others further development is not possible. In these situations HET staff meets with the family to explain the investigation, share as much information as possible, and answer questions. Although focused on families, the HET also aims to develop a sense of public confidence that all cases from the conflict have been examined fully and without bias. The team is composed of police officers and civilian staff that have been recruited from Northern Ireland and externally. A recent study notes that the HET has played a positive role in providing a symbolic "official stamp" validating, for example, the accuracy of information gathered by NGOs that had been previously denied by government. However, there is mistrust from the Catholic/Nationalist community, as the HET is mainly composed of ex-police from either Britain or from the Protestant community; indeed, it is not reflective of the communities it serves. Nonetheless, in some cases local NGOs are acting as intermediaries between the HET and mistrustful families, especially from the Catholic/Nationalist side of the conflict.

Source: http://www.psni.police.uk/historical-enquiries-team/historical-enquiries-team

> *The right to exist:* obliging states to protect the existence of minority communities as a whole, which means the prohibition of genocide and assimilation—which would lead to the disappearance of a minority as a community with its own identity—and population displacement resulting in the expulsion of communities from the country.

> *The right to non-discrimination:* protecting minorities from direct or indirect discrimination on the basis of ethnic, religious, linguistic or cultural identity.

The right to protection of identity: preserving the freedom of minorities to practice their culture, religion and language in the public and private spheres, and taking measures to enable minorities to develop these aspects of their identity.

The right to participation in public affairs: ensuring that minorities can participate in decision-making processes that affect them at the local and national level, particularly as regards how their communities are governed.

These pillars are useful because they help set out a basic set of rights to which people can make claim in TJ—including a set of violations that should be taken into consideration. Moreover, they offer guidance on TJ process, participation, and design. For example, in the case of an official truth commission, a minority rights approach would suggest outreach specifically to minority groups, allowing them to feed into the commission's mandate.

Designing TJ Interventions

Rather than offering a blueprint for TJ initiatives to follow, the approach here is to set forth some guiding questions. Proposals for TJ should be tested against these questions to determine whether or not they will be sensitive to the particular challenges that identities may pose for TJ. This involves using judgment—but judgment based on informed analysis and an awareness of the actors and tools that are relevant in these kinds of contexts.

Will the initiative provide for accountability, both to the law and to all the communities it aims to represent?

Will the initiative be perceived as legitimate by all affected groups?

Will the initiative promote social learning between communities?

Will the initiative promote trust between groups?

Will the initiative make state and/or social institutions more representative of the society they serve?

Will the initiative promote and protect the dignity of all?

These are broad questions, intended to provoke reflection and then action. In effect, through grappling with them, practitioners and policymakers should attempt to model the values they would like to see in politics and society. They should also identify and try to influence the levers of power that would help create political and social change.

We can explore some examples for designing TJ initiatives by examining each question in turn:

1. Will the initiative provide for accountability, both to the law and to the communities it aims to represent? It may do so by:

- Ensuring that oversight for the initiative is plural or neutral. It could be plural through power sharing of some form, perhaps modeled on new constitutional arrangements. It could be neutral through bringing in a third party, such as the UN or a trusted power.
- Providing for outreach to and feedback mechanisms for all affected communities; these mechanisms should be designed to get beyond the view of elites alone (including communal elites).

2. Will the initiative be perceived as legitimate by all affected groups? It may do so by:

- Employing fair, non-discriminatory procedures; special attention should be paid to official languages and to ceremonial ritual.
- Providing for meaningful, decision-making-level participation by members of all groups.

- Careful outreach, including a variety of targeted messages, to all groups (including the "dominant" group—perhaps especially so).
- Where sovereignty is contested, incorporating a pluralist approach to law and sovereign authority in its operations, while still maintaining a strong commitment to individual rights and the right to "opt out" of culturally specific arrangements if desired.

3. Will the initiative promote social learning across communities? It may do so by:

- Modeling successful cooperation among groups.
- Highlighting examples of behavior that all groups can identify with, such as people who crossed identity "boundaries" to help others in need.

4. Will the initiative promote trust across groups? It may do so by:

- Modeling competence of marginalized groups (especially where there are prejudices around groups' intellectual or professional capacities).
- Demonstrating cooperation among elites.
- Debunking myths and divisive narratives.

5. Will the initiative make state and/or social institutions more representative of the society they serve? It may do so by:

- Facilitating the participation of marginalized groups in decision-making forums.
- Building the organizational capacity of marginalized groups so as better to participate.
- Enacting preferential policies, especially if these are in use in other state institutions as a means of reversing discrimination. Careful messaging around the logic of preferences will be necessary in order to help prevent negative reactions from a dominant group.

6. Will the initiative promote and protect the dignity of all? It may do so by:

- Anticipating the use of hate speech and distortions of the truth; putting in place a strategy to publicly and swiftly combat them when they arise.
- Employing a culturally sensitive approach in its outreach, its daily functioning, and the delivery of services and benefits.

Key Challenges to Consider

Informed analysis will reveal many risks to TJ interventions' potential to contribute to defusing identity-based tensions. One of them has already been mentioned—the fact that identity politics may affect civil society groups themselves, especially if they are competing for resources or recognition, as has been the case in Guatemala. Here we highlight a few of the key challenges.

Threats or intimidation to bridging actors and activities

Communication and trust in contexts where hostile myths and hate speech are pervasive are likely to be challenging. As hostile myths become more widespread, moderate and "bridging" figures between communities may come under attack as "traitors" to their group—thus closing off concrete pathways for communication and mutual trust. Ways that individuals might be at risk range from physical attack to more subtle social ostracism. One clear example of this phenomenon was Hutu-led attacks on "moderate" Hutus during the Rwandan genocide—that is, those who were in favor of sharing political power with Tutsis.

Indicators of this kind of risk include wide acceptance of hate speech and dehumanizing words and myths. These things are used to "police" group boundaries and keep people in line. Thus, where they are the norm, the more

likelihood there will be for intolerance of people trying to cross group boundaries or bring groups together. Still, the existence of courageous, respected bridging figures can have high symbolic value in deeply divided societies.

The timing and format of interventions in these situations must be carefully planned. It may be unwise to move right away to intercommunal activities, or at least to do so in public. Lots of groundwork will have to be laid before groups will feel secure enough to work together—secure not just with each other, but within their own groups.

Potential for conflict escalation

There are many activities that serve as potential triggers for violence. The OECD-DAC guidelines on evaluating peacebuilding activities note in particular that elections and controversial celebrations are trigger points. Indeed, the best time to undertake transitional justice measures is probably not in the midst of a security dilemma, which may erupt around moments of contestation, such as elections or processes of integrating formerly warring armed forces.

Elections are particularly important flashpoints, as their purpose is to promote competition. The structure and sequencing of elections is of importance in ethnically divided societies. One deep worry is that the outcomes of elections may represent "worst-case" scenarios in which openly racist or xenophobic parties may win elections, as was the case among all three ethnic groups in elections in Bosnia and Herzegovina in 1996. There is also the possibility that the competitive nature of elections will exacerbate interethnic tensions through the use of mass media for propagandistic campaigning.

Celebrations and other symbolic acts are also events that can escalate rather than reduce tensions between groups. Here, specific TJ measures may contribute to the problem. One example concerns competing memorials that ex-combatant groups have erected in and around Sarajevo, in which the various groups were increasingly offended by the other groups' attempts to commemorate their dead. These memorials were often viewed as intentionally offensive.

Analysis should clarify the potential risks for conflict escalation, in order to make informed decisions about the optimal timing and sequencing of TJ efforts.

Guatemalan CEH on Genocide

The agreement that established the Guatemalan truth commission, the Commission for Historical Clarification (CEH), was among the most contested parts of the Oslo Accords. A mere two pages long, the accord that created the CEH established a wide mandate in which the commission was to address all human rights violations and acts of violence during the thirty-six years of conflict. The mandate's failure to define narrowly what forms of violence should be addressed ultimately enabled the CEH to deal directly with the ethnicized character of violence. Indigenous groups in particular lobbied the CEH, pushing its investigations in this direction. Alongside the discovery that the state was largely responsible for human rights abuse during the conflict, one of the CEH's most shocking findings was that the state had committed acts of genocide against the Mayan people. When the CEH presented its report to the government, the report was rejected, and indeed deep divisions and inequality continue to exist. Yet, coinciding with the emergence of an increasingly vocal and organized pan-Mayan movement of indigenous communities and indigenous women in Guatemala, the report and its findings placed Mayans center stage in a national context where they had been largely invisible. The report can be seen as a key official text helping to constitute and consolidate Mayan identity at both national and international levels. It has both provided recognition to indigenous peoples and also helped to enhance their political agency, largely through their organization around and participation in truth-telling processes.

Source:
"Guatemala." Genocide and Crimes Against Humanity. Ed. Dinah L. Shelton. Gale Cengage, 2005. eNotes.com. 2006. 10 Jul, 2009 http://www.enotes.com/genocide-encyclopedia/guatemala

The use of identity categories

Which identity categories—if any—to use is a difficult choice that all transitional justice efforts will have to face. Will a particular TJ initiative, for example, simply adopt the ethnic categories that were used in the conflict? In this case, it may risk "freezing" conflict identities. Or will it attempt to contest those categories, and put them into doubt? This approach risks ignoring important needs for recognition of collective suffering. Will it not refer to these categories at all, and instead use a standard human rights framework in which "victims" and "perpetrators"

are the only prominent categories, no matter what motivated the violence? This approach risks glossing over the way identity-based difference motivated abuse.

Unfortunately, there is no single model to adopt here. It may be impossible or unrealistic to avoid using ethnic or other identity labels. In some cases, their use may be empowering—especially in cases where groups have been deeply marginalized on the basis of their identity. In others, using de-ethnicized "victim" and "perpetrator" labels may open up opportunities for empathy across identity lines. In the end, the categories used by a TJ intervention are probably best developed in a way that tries to reinforce the work of other reforms, especially with respect to new constitutions and citizenship regimes. There simply cannot be hard and fast rules on this issue.

Conclusion: High Expectations for Transformation

In the end, individual TJ measures are unlikely to lead to the kind of social transformation that is often expected in societies where one or more groups have been systematically abused on the basis of their identity. A truth commission cannot end racism; prosecutions of a handful of masterminds cannot make up for genocide; and a state-run reparations program cannot restore lost lands and centuries of lost dignity to indigenous peoples.

A holistic approach to TJ is of vital importance—not in achieving the desired transformation, which is too high a goal for TJ, but rather in empowering key actors who may make such transformation possible. A range of initiatives will be necessary, not just judicial and nonjudicial forms of accountability, but also reform of state and important social institutions, such as the media.

This is why so much stress has been laid in this report on creating interventions that promote social learning, that debunk harmful myths, and that insist on representation of all groups. It is through the good practice of TJ that new actors may be empowered and new political behaviors modeled.

Annex 1
Specific Issues for Transitional Justice: Indigenous Peoples[*]

Transitional justice is used with increasing frequency to respond to certain types of human rights violations against indigenous peoples. This is true of post-conflict contexts such as Guatemala, but also in cases where there is no regime transition, such as in Canada and Australia.

Rights Regimes for Indigenous Peoples

Indigenous standards are codified in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and Convention No. 169 of the International Labour Organization (ILO). In addition to the provisions of minority rights, indigenous rights include extensive protections of land rights, including collective title. Critically, as far as transitional justice is concerned, UNDRIP requires "just, fair and equitable compensation" for lands which have been occupied or taken from indigenous people without their consent. UNDRIP also provides for the right to self-determination, although activists interpret "self-determination" in different ways, sometimes as full sovereignty, sometimes as control over key decisions while respecting state sovereignty.

The Scope of Injustice

Where justice issues related to indigenous peoples are at stake, there may be conflict over the scope of injustice that TJ measures can address. A TJ framework addresses only a certain part of the historical injustices that have structured relations between states and indigenous peoples. In Canada, for example, recent TJ efforts deal only with aboriginal survivors of residential schools—not with the wide range of injustices that aboriginals have suffered in the colonial era. In such contexts, governments are likely to use TJ to limit the scope of state responsibility for injustice and to shut down other indigenous demands for justice. Indigenous groups, by contrast, are likely to use TJ to gain traction on other political issues, especially social justice ones.

TJ's Relationship to History

Similarly, governments may try to use TJ to draw a line through the past and legitimate present policy. TJ may be designed in part to allow the government and the dominant (settler) society to say finally to aboriginal peoples "OK, now we're even." For indigenous leaders, TJ is not a wall, but a bridge. It will likely be used to draw history into the present, and to show the connections between past policy and present injustices.

Sovereignty and Legal Pluralism

One of the historic injustices that lies at the heart of indigenous identity is loss of sovereignty. Governments may try to use transitional justice to assert their sovereign and legal authority, whereas indigenous peoples may make competing claims to sovereignty and legal authority.

Links to TJ?

One goal of TJ in such cases may be to help level the playing field for indigenous actors. At a minimum, respecting indigenous rights within the TJ process is an important symbolic gesture. It demonstrates that a clean break has been made with the past, and encourages all communities to have faith in the process. This may include respecting indigenous law and ritual as part of the TJ process. It may also include treating leaders of indigenous groups as sovereign actors; that is, working through a "nation-to-nation" framework in negotiating TJ efforts.

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[*] This section draws heavily on work by Courtney Jung and Chris Chapman for the *Identities in Transition* project.

Annex 2
Specific Issues for Transitional Justice: History Education*

The essential goal of education is to transform children into citizens who can function beyond the circle of the family in society, the workplace and the political community. Within education, history may be the discipline that is most inherently conservative, as it has traditionally been the place in which group cohesion and patriotism have been taught. Thus, changes in the ways that groups are portrayed in textbooks and classrooms, can promote truth-telling and acknowledgment, and can be a way to offer moral repair in the wake of mass atrocity. Through representation and inclusion, these changes can also contribute to the transformation of identities.

Why Teach History?

In countries where the wounds of conflict are fresh, there is a question about whether—and at what age—children should learn about the past. This debate took place in South Africa after apartheid. Initially, reformers argued that history was not useful in helping the majority of South Africa's children—deeply disadvantaged black South African children—finish their compulsory education and prepare to get jobs. Pro-history reformers won the day, however, arguing that that history education would strengthen democracy in three ways: teaching human evolution with scientific accuracy; presenting the history of all the people who happen to reside in South Africa; and transmitting an accurate history of past human rights abuses in order to prevent the misuse of history by politicians and others.

Focus on Curriculum vs. Focus on Methods of Instruction

Much attention is given to reforming curriculum, such as textbooks. In two-state cases, the search has been for a mutually intelligible "bridging discourse" that minimizes dissonance, rather than a substantially new narrative that a majority of citizens can agree on. But curriculum reform, when done in isolation, faces serious obstacles. Students and teachers may resist the new narratives, even dismissing them as "enemy" propaganda. Teachers committed to the new curriculum may have their authority challenged by students unwilling to go along with narratives that contradict what they learn at home and in their communities. Moreover, schools may still be largely segregated.

Increasingly, experts in history education reform are focusing on pedagogy reform—strategies or styles of instruction——and thus, on viewing teachers as equal in importance to, or more important than, teaching materials. One organization, Facing History and Ourselves (FHAO), has developed a teaching method that uses events in other countries as a way of thinking about one's own past. In South Africa, FHAO creates discussions around case studies from the Holocaust and U.S. race issues, since teachers and their students find safety in this distance from their own past. FHAO has also used this method in their transitional justice module.

Links to TJ?

History education reform is a huge challenge for TJ and often faces obstacles from all sides. Although a number of truth commissions have made recommendations for educational reform, and Sierra Leone's and Peru's have even produced materials for classroom use, these efforts have not been taken up in the school systems. On the other hand, South Africa now requires all final year high school students—nearly 200,000 students per year—to write their standardized test essays about the TRC. Clearly, truth commissions as well as historical commissions and courts could have educators who work as liaisons to the educational community, providing outreach and workshops for teachers and creating didactic materials for teachers to use. But without broader educational reform efforts, in which justice, equity, and respect are modeled in the school system itself, these efforts may be wasted.

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* This section draws heavily on work by Elizabeth A. Cole and Karen Murphy for the *Identities in Transition* project.

Annex 3
Specific Issues for Transitional Justice: Media*

Representations of identity, of history, of the justification of transitional measures—indeed the stories about the society itself—become critical in shaping the extent to which stability, harmony, new nation-building and community can be sustained. In divided societies, media practices may perversely exploit TJ measures to deepen ethnic divides. They also may, conversely, support and advance TJ measures to help knit a society together.

An Analytical Approach to How Information Flows

It would be useful for those working on TJ to develop a "diagnostic" of information flows within a society—a framework for analysis that helps to map an understanding of existing communication networks, their impact and influence as well as the potential effectiveness and strategy for information interventions.

In each state there is a "market for loyalties" in which large-scale competitors use communications to organize a cartel of imagery and identity. As Monroe Price puts it, there are sellers and buyers in the market. "Sellers" are "those for whom myths and dreams and history can somehow be converted into power and wealth—classically states, governments, interest groups, businesses, and others. The 'buyers' are the citizens, subjects, nationals, consumers—recipients of the packages of information, propaganda, advertisements, drama, and news."

In using the diagnostic approach, one might begin by seeking to understand who, in a particular market, the "sellers" are and what mechanisms exist for diffusion of their messages, as well as who the "buyers" are and how they interact with those competing for their allegiances.

Approaches to Media Interventions

There are three ways in which external actors can influence this market for loyalties. In the first, actors with the power to do so may use force to shut down media outlets spewing hate speech or outright lies. The UN Stabilization Force in Bosnia-Herzegovina used force to neutralize Serb radio and TV stations in the 1990s; one precipitating event was disinformation about a press conference given by ICTY chief prosecutor Louise Arbour.

The second method of influence is through legal regimes prohibiting hate speech and reporting that might incite violence. Legal regimes may be monitored by independent media commissions. This approach was used in Kosovo.

A third approach, called "subsidy," is a more nuanced and complex form of intervention. It occurs when particular actors—for example, NGOs, international governmental officials, or national governments—attempt to shape information by supporting particular voices and media outlets or by inserting their own messages directly into the information system. Outreach programs developed by TJ initiatives are examples of subsidy.

Links to TJ?

Too little attention and resources have been given to outreach efforts for TJ. Media are a theater in which TJ justice efforts themselves address identity factors in the broader political, cultural and social dynamics at play in a society. TJ actors—especially outreach programs—will likely rely heavily on subsidy strategies in which distinct messages are crafted for different kinds of "buyers" in the market. In some cases, a more heavy-handed approach may be needed, where powerful international actors are enlisted to use force and law to prevent the proliferation of hostile myths and hate speech in the information space.

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* This section draws heavily on work by Monroe Price and Nicole Stremlau for the *Identities in Transition* project.

Annex 4
Specific Issues for Transitional Justice: Constitutional Orders*

In the wake of identity-based conflict, TJ actors are likely to be working in contexts where the political order is under negotiation, where a new political order is struggling to gain its footing, or where no constitution exists.

Constitutional Arrangements

There are two major constitutional options: power sharing or federalism. Arend Lijphart has recently argued that there is now considerable consensus among scholars that some form of power sharing arrangement will always be the best choice for divided societies. These arrangements require two key elements: power sharing, meaning the participation of all groups in political decision making; and group autonomy, where groups run their own affairs, with special authority over education and culture. Other potential requirements are guarantees of proportional representation and the provision for a minority veto on key issues.

In federalism or "cantonization" power is devolved to a lower level of a political hierarchy, creating a "mini-sovereign" political unit. Typically, each political unit is a territory where a particular ethnic community is concentrated. This method has been used in Belgium, Canada, Switzerland, Nigeria, India, and Bosnia and Herzegovina and is currently the model in Iraq. Its rationale is based on two ideas: first, that ethnic conflict and competition can best be managed on smaller scale; and, second, that by giving different ethnic groups a measure of sovereignty over their own affairs, ethnic conflict can be averted and a state can be held together. One thing to note here is that sometimes federal arrangements are combined with power sharing ones; they are not mutually exclusive.

Links to TJ?

Federalist arrangements are likely to be more conducive to TJ than power sharing ones—initially, at least. The reason being that power sharing often results from a stalemate in the conflict, meaning that neither side has the strength to insist on justice initiatives. Essentially, both parties may have a veto over TJ, unless international actors get involved. In federal systems, TJ can be pursued at different levels of government and within different political units.

Further, in these circumstances, TJ may play two contrary roles. First, TJ has the capacity to act as a wedge—a way to divide communities further. It may be used by communities to make claims against one another, potentially as a method of legitimizing autonomy or even independence. The Kurds in Iraq are an example of this approach.

Alternatively, TJ might become a model for political learning. It may be a first instance of cooperation in the new political order that fosters new practices and respect. The Committee on Missing Persons in Cyprus is a unique experiment in political cooperation—the only of its kind between the Greek Cypriot and Turkish Cypriot communities there.

Whether TJ is pursued in either instance may largely depend on the interests of those leading their communities. Ethnic entrepreneurs are likely to pursue the first strategy, while those preferring accommodation between groups will pursue the latter.

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* This section draws heavily on work by Will Kymlicka for the *Identities in Transition* project.