Building states, building justice? Transitional justice in the context of civilian crisis management

Vera Nieminen & Nanna Hallikainen

CMC Finland Working Papers analyse civilian contributions to peace operations and include recommendations for developing practical capabilities.

Author

Vera Nieminen
Intern
CMC Finland

Author

Nanna Hallikainen
Research and Development Coordinator
CMC Finland

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1 Introduction

Over the past two decades, transitional justice (TJ) has become an integral part of post-conflict peacebuilding and international peace operations (Teitel 2003; Andrieu 2010, 538). Both scholars and practitioners in the peacebuilding field have repeatedly underlined a mutually reinforcing relationship between peace, justice and peacebuilding. Despite the widely recognised importance of TJ in the unification of societies and the building of sustainable peace after large-scale violence, critical discussion about its application in the context of international peace operations has remained in a rather marginal position compared to many other aspects of peacebuilding (Sriram 2007, 597).

In this working paper we discuss the complex relationship between civilian crisis management and promoting TJ in fragile contexts and post-conflict environments. Throughout the paper, we particularly focus on examining two conflicting dynamics that have long characterised TJ in the context of international peace operations. The first is the inherently political nature of TJ, which conflicts with the simultaneous tendency of civilian crisis management to de-politicise areas like institution building and security sector reform (SSR). The second dynamic is the difficulty in balancing between the predominant top-down and externally imported models for TJ implementation and, on the other side, responding to the demands, needs and priorities for justice and security which arise from the local level.

We begin by providing an overview of the significance of TJ as part of broader global peacebuilding framework, as well as problematising the prevailing implementation practices of TJ in the context of international peace operations. After that, we move to illustrate these practices in peace operations by using two different case examples: Kosovo and the Central African Republic. Finally, we discuss what role the international community should play in supporting TJ in conflict-affected states and, from the TJ perspective, which aspects it would be important to consider when planning operational activities of international assistance to TJ and civilian crisis management operations.

2 Mapping the relationship between transitional justice and peacebuilding

Generally, the term "transitional justice" (TJ) can be summarised as a set of different approaches and tools that aim to capture a political and moral dilemma of how to address large-scale human rights violations and war crimes that have occurred in the recent past. It usually takes place in contexts where society is

undergoing significant political transition and in post-conflict settings where state representatives and/or non-state armed groups have committed large-scale human rights violations. These violations can vary from extrajudicial executions, enforced disappearances, war crimes, crimes against humanity, forced labour and enslavement to genocide. (Teitel 2003, 69; McAuliffe 2010, 136.) TJ can be described as "a social and associative process that rebuilds fractured relationships between people" (Mani 2002, 15). This implies that in addition to judicial and institutional dimensions, referring to strengthening state institutions, enhancing the principle of the rule of law (RoL) and ensuring criminal accountability for past abuses, TJ is also a necessary measure for overcoming psychological and social consequences of violent conflict or authoritarian regime.

TJ is said to have both backward and forward-looking aspects (Andrieu 2010, 538): while dealing with the past is essential in terms of social reconciliation, preventing recurrence of similar crimes in the future by, for instance, implementing institutional reforms and building a culture of human rights and good governance, is equally essential. Figure 1 below illustrates the key objectives and core components of TJ in this regard. Here, TJ is seen as a social process where the focus is on transforming the identities of victims and former perpetrators into citizens who hold equal rights in a society. This is supported by utilising various, mutually reinforcing mechanisms which, when applied together, will eventually lead to conflict transformation.

The ultimate goal of TJ is therefore no less than a comprehensive transformation of society. To reach its goal, TJ utilises a range of judicial and nonjudicial mechanisms and instruments related to handling gross human rights violations, the most common being criminal trials (domestic, international or hybrid), truth commissions, institutional reforms, compensation and reconciliation processes and various combinations of the above. Together, and ideally implemented simultaneously, these mechanisms aim at meeting the following objectives: holding those responsible for the crimes to account in order to put an end to a culture of impunity, providing redress to victims, achieving reconciliation and reforming public judicial and security institutions to increase public trust as well as to ensure their accountability under civilian oversight. (UN 2004, 3; see also UN 2010, 2–3.)

Figure 1. Conceptual framework for dealing with the past.
Source: adapted from swisspeace / FDFA (2016).

2.1 Different forms of justice

The development of the field of TJ has long been characterised by a debate about the balancing of retributive and restorative forms of justice. In brief, restorative justice aims at rebuilding and restoring trust and social relations between communities, usually by promoting reconciliation and truth-seeking by adopting local and informal customary mechanisms. Retributive justice instead is strongly connected to a Western tradition of formal legal justice. It emphasises accountability for crimes which, in the context of TJ in post-conflict peacebuilding interventions, has been reflected in the international community having pursued prosecutions

through formal domestic and international justice mechanisms, such as ad hoc tribunals, domestic or international courts and the International Criminal Court (ICC). Restorative and retributive forms of justice were long seen as mutually exclusive, although in current approaches to TJ this sharp distinction between the two has increasingly melted. Therefore, adopting hybrid approaches where both measures are seen as complementary and may be utilised in a certain relation to each other is seen as more ideal today. (Lambourne 2013, 20–21.)

What is worth noting, but is reflected too little in connection with TJ initiatives, is that TJ is ultimately a matter of politically motivated and normatively charged societal processes – therefore, it is also tied in with certain assumptions regarding the means of how to best put "justice" into practice (Nagy 2008). We may ask, for instance, *whose* understanding of justice do the criminal trials serve, who are the victims, what is "violence", what it is not, and how different forms of violence should be addressed on a societal level. Since justice as a human experience draws a great deal from moral concepts and values, interpretations of justice are inevitably subjective as a result. This premise itself makes TJ highly vulnerable to politicisation during peacebuilding operations, meaning various struggles over meanings, hierarchies and resources that could be revealed by identifying competing visions of justice within societies and communities affected by violence during conflicts. In fact, the type and conception of justice implemented in phases of political transition are tied to prevailing societal power dynamics as well as the formation of TJ discourses and practices at a global level (see Nagy 2008). With this understood, external support for such processes cannot be considered as purely technical or apolitical, as decisions regarding, for instance, who to set under prosecution and who to consider as "victims" are inherently political and intertwined in existing power relations and political interests (Haider 2017, 13).

2.2 The institutionalisation of transitional justice in the global peacebuilding framework

From being a human rights instrument of democratisation,[1] the field of TJ has over the past two decades become institutionalised, regularised and mainstreamed within the predominant liberal peace- and statebuilding architecture

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[1] During the time of the so-called "third wave" of democratisation in Latin America and Eastern Europe that took place in the 1980s and 1990s, the field of TJ was focused on addressing dictatorial or authoritarian regimes and the transition of societies into democracies when new governments sought ways of responding to abuses under the former regimes (Mihr 2016, 7–8; Arthur 2009). This was also the first time that TJ began to be conceptualised as a separate field of research and practice.

and discourse (see e.g., Teitel 2003; Sharp 2013, 174–178; Andrieu 2010, 538–539; Nagy 2008). At the beginning of the implementation of TJ in the peacebuilding field, the interface of peace and justice was strongly characterised by the so-called "peace versus justice" debate,[2] which refers to the question of whether investigating war crimes, prosecuting and punishing war criminals bring a risk of undermining fragile peacemaking efforts. While those prioritising justice point to the importance of ending impunity by criminal accountability as a presupposition for durable peace, the advocates of peace have stressed the risk of criminal prosecutions and other initiatives to ensure accountability undermining already fragile peace settlements, diverting resources away from securing peace and provoking negative responses from perpetrators. (Baker & Obradovic-Wochnik 2016, 283–284; Schuett 1997; Ellis 2006, 113.)

The relationship between peace and justice described above has then shifted from the *either/or* dichotomy to a wider adoption of a *both/and* approach. The aim here has been to synthesise the two sides of the debate by acknowledging the multidimensional nature of justice and shifting the focus towards how peace and justice could be pursued together in terms of challenges related to the "context, time frame and developing international standards" (Parlevliet 2011, 381).[3] This shift in the narrative paved the way for wider integration of TJ in peacebuilding policy and practice. Today, the importance of TJ in peacebuilding architecture is indeed based on a widely shared view that peace and justice are seen as mutually reinforcing, even inseparable from each other, and justice is considered an important factor which differentiates negative peace from positive peace.[4] As it is widely recognised that legacies of large-scale violence and gross human rights violations have a potential to fuel future conflicts if left unaddressed, the relevant question is no longer whether justice should be delivered after mass atrocities and gross human rights violations, but rather *how* and *by which means* it should be implemented (Nagy 2008, 276).

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[2] This debate dates back to 1994–95 when "the UN began setting up the ad hoc International Criminal Tribunal for the Former Yugoslavia while the conflict in Bosnia in Herzegovina (BiH) was still ongoing" (Baker & Obradovic-Wochnik 2016, 283; see also Mihr 2016, 7–8).

[3] The UN Secretary General's report on transitional justice had an important influence in the shift to this discourse, by reframing justice, peace, and democracy, "not [as] mutually exclusive objectives, but rather mutually reinforcing imperatives" (UN 2004, 1).

[4] On the differences between negative and positive peace, see Johan Galtung (1969).

Transitional justice in the UN peacebuilding policy framework

The UN has a holistic approach to TJ and considers it as an important strategic human rights-based policy tool to enhance the situation in post-conflict societies (UN 2023, 2). The key features of the UN's approach to TJ (UN 2023, 5-11) are:

1. **Normative:**
   basing assistance on and promoting compliance with international norms and standards

2. **Strategic:**
   encouraging innovative solutions tailored to the context, fit for purpose, with a holistic and long-term perspective, and coordinated with other reform process

3. **Inclusive:**
   empowering victims, involving the marginalised, adopting a transgenerational and child-sensitive lens, and fostering community ownership

4. **Gender-responsive:**
   adopting and consistently advocating for a gender-responsive approach, including by promoting women's leadership and addressing the gendered dimension of root causes of violations

5. **Transformative:**
   supporting a transformative project that seeks to address structural causes and contributors to conflict and violations and make a tangible difference in people's lives.

Mainly, the aim of the UN is to rebuild the justice system and end impunity with TJ efforts, meaning, among other things, that amnesties should not be granted in cases of violations of international law and human rights (Gilder 2021). According to a 2022 report from the Office of the High Commissioner for Human Rights (OHCHR), transitional justice should be "context-specific, comprehensive, victim-centred, gender-sensitive, participatory and nationally owned" (UN 2022, 15). Even though member states are not utilising TJ enough, the UN can promote TJ as a tool and support national stakeholders in utilising it. The UN has also proposed how its TJ work can become more consistently strategic, integrated, innovative and people-centred. (UN 2023.)

3 Transitional justice in international peace operations

TJ has over the past two decades become an integral part of the international peace interventions of the UN, the mechanisms of TJ being included in various peacekeeping activities (Teitel 2003; Hayner 2022). Similarly, some of the EU's civilian Common Security and Defence Policy (CSDP) missions have also been engaged in TJ activities. TJ initiatives connect directly with peacebuilding interventions and TJ "spills over" into many activities within peace- and statebuilding, ranging from security sector reform (SSR), strengthening the rule of law (RoL) to implementing demobilisation, disarmament, and reintegration (DDR) programmes (Sriram 2007, 585). Although the activities listed above may not be directly related to the promotion of justice, implementation of TJ can have direct or indirect effects upon them, which in turn can lead to unintended consequences[5] in peacebuilding. In the following section, we give a brief overview of how liberal peacebuilding has influenced the formulation of TJ in international peace interventions. After that we critically look at two mechanisms used in peace operations that are closely linked with TJ: RoL and SSR.

3.1 The nexus between transitional justice and liberal peacebuilding

Despite the clear interlinkages of TJ and peacebuilding practices and their usually simultaneous application in post-conflict settings, the nexus between TJ and peacebuilding has remained relatively underexamined (Sharp 2013, 167; Baker & Obradovic-Wochnik 2016). However, liberal peacebuilding has influenced the formulation of TJ in international peace interventions and they both commonly share three similarities: a rootedness in liberal peace assumptions; marginalisation of socioeconomic issues; and the externally imported, top-down nature of TJ and peacebuilding activities.

   TJ and (liberal) peacebuilding share similar fundamental presuppositions about preferable institutional arrangements, and a belief that core values of liberalism including democracy, free markets, strong institutions and "justice" constitute prerequisites for durable peace (Sriram 2007, 579). Moreover, international legal,

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[5]   For example, in post-civil war Sierra Leone, TJ initiatives caused friction to the implementation of demobilisation program: Liberian fighters were afraid to demobilise because of a widespread belief that their ID cards issued to entitle them to DDR benefits would also be used to identify them for indictment for the Special Court for Sierra Leone (Sriram 2007, 585; 2005, 110).

as well as political, underpinnings of an idea of "just peace" are firmly grounded in the dominant Western ideal of liberal peace (Lambourne 2016, 252 & 254–255). The significant influence of the liberal global community in the formulation of a TJ architecture within post-conflict peace operations has therefore generally led to an emphasis on retributive approaches and individual accountability over more restorative and community-based approaches (Peou 2016, 336–338). Likewise, TJ, being heavily influenced by the "international legalist paradigm", which stresses "persuading elites and masses to comply with international humanitarian norms" (Vinjamuri & Snyder 2004, 347), has consequently promoted specific conceptions of justice and violence over others. In practice, this has led to focusing quite narrowly on addressing civil and political rights violations.

By prioritising external normative frameworks and standards at the expense of ignoring locally dominant norms, understandings of justice and local knowledge, dominant practices in TJ tend to overlook the collective and structural dimensions of violence and inequality. This, in turn, renders them mostly distant, ineffective and even harmful in post-conflict and fragile settings – and ultimately inadequate for addressing the concrete demands for justice of local people. Applying the liberal peace critique to TJ, the predominant focus on civil and political issues in the practice of TJ reflects a liberal focus on individual rights and liberty while often leaving socioeconomic consequences of violent conflict, such as poverty, destruction of environment and livelihoods, widespread public health issues such as HIV/AIDS and intergenerational trauma outside concern (Sriram 2007, 579). Consequently, predominant instruments of TJ such as criminal tribunals and truth commissions, have a tendency to ignore structural forms of violence as well as continuities of different forms of social exclusion (Nagy 2008, 279–280) which are recognised as both common root causes and potential consequences of violent conflicts.

A deep embeddedness of a state-centric approach to international peace operations (see Paris & Sisk 2009, 1; Richmond 2010, 21–24) has in turn resulted in emphasis on (re)building, reforming and strengthening formal governmental institutions in conflict-affected states. Likewise, the strong influence of legalism on TJ and its subsequent, technocratic focus on international humanitarian law and criminal tribunals has been said to distance it from the communities most concretely affected by a violent conflict (Andrieu 2010, 541). These trends have significantly formulated the implementation of TJ in international peace operations at a macro level, as "the practice of TJ has long privileged the state and the individual rather than the community and the group; the legal and technocratic rather than the political and contextual; and international rules and standards rather than cultural norms and local practices" (Sharp 2013, 157).

As in the framework of liberal peacebuilding (see MacGinty & Richmond 2013), critical discussion regarding the importance of local ownership and local

legitimacy in relation to state-centric approaches has been raised in the context of TJ as well. The examples of peace operations in Kosovo and the Central African Republic in the next chapter highlight that importance. In addition to an occasional lack of local legitimacy and inclusive participation of local communities, state-centric mechanisms deployed in TJ processes may be overall inappropriate for the political, legal and cultural context (Sriram 2007, 589). The mechanisms can also turn out to have ineffective outcomes, as the formal justice sector of a certain country may not necessarily be perceived as central nor relevant to a society's legal tradition. In contexts where formal judicial institutions enjoy low or non-existent public trust and are inaccessible to citizens, other forms of dealing with violence and delivering justice are usually preferred (Peou 2016, 338; see also Day 2022, 113). These issues together underline the importance of careful conflict analysis and context-sensitivity in the strategic planning and implementation of TJ.

3.2 Transitional justice as institutional reform: Applying perspectives from civilian crisis management framework

Alongside criminal prosecutions, the development and reforming of the state's formal institutions, namely the security and judicial sectors, to resemble Western standards has long been perceived as a key element in implementing a "transition" and as a primary pathway to building a "just and peaceful" society. As mentioned previously, these underlying assumptions have also been strongly reflected in the dominant TJ practices promoted by external actors. This approach, however, poses an inherent dilemma in fragile contexts. This is because in these societies, a state-centric and linearly progressing top-down implementation model of TJ is considered ineffective where the legitimacy and relevance of state institutions as primary providers of justice and security are being fundamentally questioned and contested.

   As civilian crisis management aims to create functioning social structures in a society recovering from violent conflict, it can be considered to play a pivotal role in this process and therefore deserves to be critically evaluated in regard to promoting TJ efforts in post-conflict environments. Promoting RoL and SSR are both central exercises in many peace operations and civilian CSDP missions. As they have the most obvious linkage to TJ in terms of institutional reforms, we aim to unpack the complex relationship between TJ and these two activities. Next, we move on to demonstrating the interfaces between TJ, RoL and SSR by pointing out potential risks and opportunities in implementing TJ alongside institutional reforms.

3.2.1 Political dynamics in transforming institutions through RoL and SSR

TJ, RoL and SSR are generally used for implementing broader institutional reforms. As TJ mechanisms and processes usually fall under the justice sector, TJ is also broadly about an institutional reform of the justice sector, even though it has many other functions, as we have pointed out earlier. Successful TJ efforts in a post-conflict society can also benefit the RoL of a state in the long term. They are often developed together in conflict-affected societies and "implementing transitional justice alongside rule of law is essential but not simple," because both concepts are easily mixed with each other in theory and practice (Mihr & Sriram 2018, 123). For instance, resources have sometimes been diverted only to TJ processes, and hence RoL has gained less promotion.

In terms of TJ, SSR also plays a crucial role as it encompasses a transformation of security sector institutions towards accountability, transparency, democratic governance and civilian oversight. The guarantee of non-recurrence obliges the state to undertake the necessary reforms in its security sector to ensure it can protect citizens from similar crimes in the future and to commit to full respect for human rights itself. To be successful in terms of TJ objectives, SSR must be justice-sensitive[6] – without addressing the culture of impunity, accountability and civilian oversight, SSR will at best remain superficial, and at worst enhance the security and judicial institutions' operational capacities for the good of an authoritarian rule. In this sense, RoL plays a crucial role in SSR, because without genuine compliance with RoL, security providers run the risk of being unaccountable, illegitimate and unresponsive to democratic oversight, as well as being unresponsive to the security needs of the people who they are supposed to serve. The relationship between SSR and RoL promotion is therefore interdependent and mutually reinforcing in the long term – one cannot be strengthened without simultaneously enhancing another.

The starting point for institutional reforms in conflict-affected and fragile states is rarely encouraging. In these contexts, security and judicial institutions are usually ineffective and corrupt and may have limited capacity, incentives or authority to respond to citizens' security concerns. Paradoxically, institutions or actors in the internal security sector may have been considered as an undirect or direct security threat for citizens. Furthermore, actors in the security sector may have had a role in enabling or actively taking part in large-scale human rights abuses. Although we can legitimately argue that these facts only

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[6] For more about justice-sensitive approaches, see Caparini (2013).

underline the importance of rebuilding and reforming the security and judicial institutions, they simultaneously bring along wicked problems for the implementation of SSR in practice.

The politically sensitive nature of TJ itself brings along several potential risks that go hand in hand with putting TJ initiatives into practice. These risks include amplifying existing tensions between different population groups and creating new spaces of contestation over external resources – the latter applies especially in contexts where public resources might be already limited and unequally distributed (Haider 2017, 334). In fragile and conflict-affected states in particular, implementing TJ, RoL promotion and SSR simultaneously tends to create tensions and face resistance among actors within domestic security and judicial institutions who hold vested interests in the existing status quo or have other reasons to object to processes that aim at strengthening accountability, transparency and oversight within the public sector.[7] This is because SSR usually restricts the autonomy and more broadly challenges the existing power structures in security forces that may have been previously maintained through informal relationships and mechanisms such as corruption and implicit threat of using force.

As processes intervening in the heart of existing power relations and aiming to strengthen (or re-establish) a state's core functions, namely provisions of security and justice, both SSR and RoL are inherently political. Hence, when talking about macro-level political transitions on a state level, a successful transformation from cyclical, large-scale violence will ultimately require inclusive political coalitions where the state elite and key stakeholders are genuinely committed to political transformation and institutional change (see Porter et al. 2013, 313). Moreover, in order to mitigate the overall fragmentation of the TJ process, a (coherent enough) consensus regarding the ultimate endpoint and measures utilised to implement TJ is required. Like any large-scale institutional transformations even implemented in stable democracies (let alone in fragile and conflict-affected states), SSR and RoL should be understood as long-term, complex and often groping processes, which means that to succeed, they need to be driven nationally and require long-term political commitment by all relevant stakeholders. This highlights the need for policymakers to plan reform processes thoroughly and "recognize the interconnectedness of domestic institutions" (Mihr & Sriram 2018, 128). Moreover, in conflict-affected societies,

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[7] For instance, implementing justice-sensitive SSR alongside broader transitional justice efforts can in certain contexts require, for example, the exclusion of former members of conflict parties from security institutions as well as the vetting of members of security forces and investigations and arrests of former perpetrators who might be working within security sector institutions.

public confidence in judicial and security institutions is often weak, particularly among vulnerable and marginalised populations, which means that guarantees of security are also essential for people to remain committed to the political process (ibid., 126).
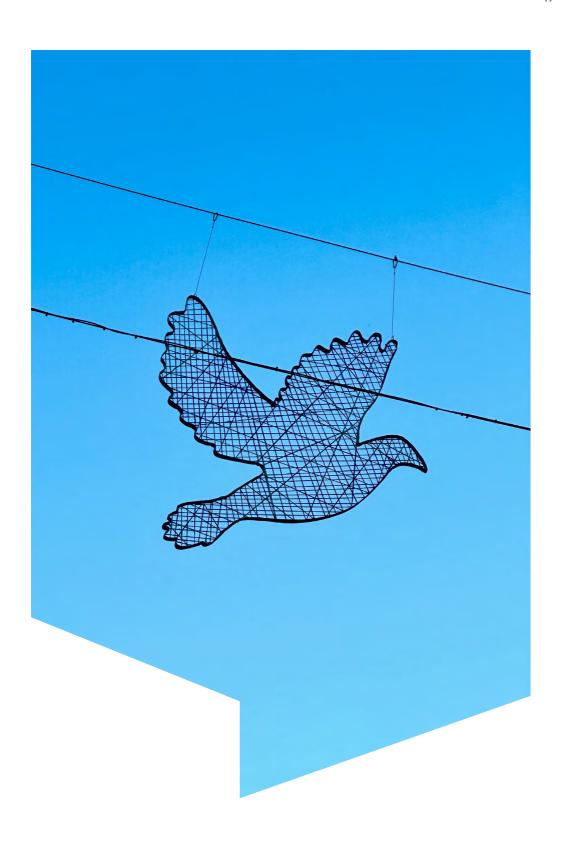
3.2.2 The role of external support: Enabling political transformation or cementing an authoritarian regime?

As frequently highlighted in the critical peacebuilding literature, external interventions into conflict-affected societies often produce hybridity, as international norms and values are projected onto local contexts and are there adopted (usually quite selectively), contested, modified or rejected (see e.g. Mac Ginty 2011, 75; Zahar 2012). This also applies to externally supported TJ mechanisms, as the instrumentalisation and exploitation of TJ mechanisms such as truth commissions and criminal tribunals by state elites to serve their own political purposes or personal benefits is not uncommon (Subotic 2009 & 2015). Therefore, during phases of political transition, external resourcing can at worst strengthen the dominant distribution of power in a target country, but it can also have a positive role in supporting power transitions and institutional change. For example, in the context of transitional societies, externally assisted or implemented but locally integrated criminal trials can function as important examples of how justice is ensured for victims and how perpetrators are made accountable for their crimes. However, enabling genuine transformation in security and judicial institutions first requires a critical turn in the country's political situation. This can be a significant political turning point or a post-conflict transition that significantly alters the internal power dynamics and creates an incentive for institutional change among the military and civilian elite. A second prerequisite for institutional transformation is the alignment of international support and the objectives of international actors with these political windows of opportunity that can help in balancing domestic political resistance to these reforms. (Berg 2022, 162–163.) Bringing along capacities, resources and expertise, the role of international actors can in these kinds of contexts be vital in building a balance of power and ensuring inclusivity between local (bottom-up) and national (top-down) initiatives in terms of TJ and peacebuilding efforts more broadly.

In contrast, without genuine opportunities for political transformation and institutional change, and in societies where there is no clear (or coherent enough) social consensus about the endpoint of "transition", allocating international support for SSR programmes, combined with a lack of proper accountability

mechanisms, tends to reinforce dominant non-democratic forms of civil-military relations. This increases the risks of, for example, abuses committed by security forces and lack of legitimacy, as well as mistrust among security sector and judicial institutions. (Berg 2022, 162–163; Mobekk 2010, 284.) At worst, the technical support offered by peace operations to the state's security sector can in fact contribute to cementing the power of an authoritarian regime. Signs of such developments can be seen in the context of Palestinian territories (on EUPOL COPPS, see Bouris & İşleyen 2020; Tartir 2015; 2018) and in DRC (see Arnould 2016). The realisation of the above-mentioned negative development has high potential in particular in cases where external support for SSR is not conditional on, for instance, ensuring accountability and compliance with human rights.

When reflecting on the above-mentioned notions on what most SSR missions implemented in fragile states have in practice looked like, it is contradictory that most international SSR programmes have prioritised short-term, operational goals such as counter-terrorism and counterinsurgency in countries affected by protracted civil wars where possibilities for genuine institutional transitions have long been very limited. (Berg 2022 162–163). In fact, the approach to SSR has in most cases remained technical, as the focus in past operations has largely been on building and strengthening the operational capacity of the respective country's internal security institutions. Instead, coordinated and comprehensive measures to develop transparent relations and public trust among the local population have remained scarce – let alone talking of local legitimacy and local ownership at an operational level (see e.g. Mobekk 2010; Sedra 2018; Jackson 2018.)

Missions relying on the above-described "train and equip" strategy, as usually being simpler to quantify and implement in a certain context when being less politically sensitive, tend to be more attractive for donors, which may explain why this approach has become more dominant in the field. On the other side of the coin, missions leaning on the "train and equip" strategy more probably lack accountability and oversight measures as well as the ability to respond to citizens' real security needs. What illustrates this trajectory well is how the question of people's de facto *access to justice* has been frequently marginalised in SSR efforts (see e.g. Mobekk 2010, 288). This approach can backfire in the future with the wider emergence of non-state security providers and increasing instabilities resulting from contestations over political authority. Giving an example from the Sahel region, jihadist groups have been able to fill the vacuum of protection, security, justice and basic welfare that national and local authorities have repeatedly failed to provide (Rupesinghe & Bøås 2019).

4 Transitional justice in Kosovo and the Central African Republic

International peace operations with explicit mandates of TJ have been rare in the past 25 years. To give practical examples of TJ in peace operations and the challenges in terms of local ownership, we examine how TJ has appeared in international peace operations in Kosovo and the Central African Republic.[8] Following the case examples, we demonstrate how TJ has evolved in peace operations during the past 20 years.

4.1 UNMIK and EULEX Kosovo

International TJ interventions and investments in the Western Balkans have been extensive, perhaps the most notable being the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY). In Kosovo alone, two peace operations have worked with TJ: the United Nations Mission in Kosovo (UNMIK) and the EU civilian CSDP mission, EULEX Kosovo. The need for international peace operations in Kosovo arose after the armed conflict between Albanian insurgents and the forces of the Federal Republic of Yugoslavia in 1998–1999. The conflict ended when NATO forces and the Government of the Federal Republic of Yugoslavia signed an agreement in 1999 to disarm the Kosovo Liberation Army and to withdraw the military forces of the Federal Republic of Yugoslavia. Despite the long-term international presence, democracy development and large-scale investments in transitional justice mechanisms in the country, Kosovo society is still suffering from unresolved tensions between the Albanian and Serb populations.

UNMIK was established in 1999 by the UN Security Council (UNSC) to have an international civilian presence in Kosovo alongside the NATO-led international peacekeeping force in Kosovo (KFOR). For around ten years, it had a mandate to administer all the governance of Kosovo, meaning that UNMIK was exercising state powers. Therefore, it was a multidimensional mission which oversaw the establishment and recovery of institutions in Kosovo, including the judiciary. Concerning TJ, UNMIK handled cases involving war crimes against civilians. (Alija 2021.) EULEX Kosovo in turn supports the rule of law institutions in Kosovo. When the mission was launched in 2008, support for war crime investigations was included in its mandate (The Council of the EU 2008). The

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[8] Please note that we examine here the work of these peace operations only from the point of view of transitional justice, not of their overall success.

mandate for such executive power lasted until 2018 (ibid., 67) and since then, the investigation and prosecution of war crimes have been carried out by Kosovo's local courts and national prosecutors and the Kosovo Specialist Chambers & Specialist Prosecutor's Office.

For the international community, perhaps too many expectations were poured over the influence and possibilities of ICTY to contribute in an all-encompassing way to the post-conflict societal recovery. There was also too much trust in its possibilities to fulfil other objectives of transitional justice, such as achieving reconciliation. This might partially explain why international pressures for restorative dimensions of transitional justice, such as truth-seeking, education reforms, memorialisation projects and supporting reconciliation between population groups, have remained negligible. Furthermore, the impact of these kinds of externally supported initiatives have remained limited. (Subotic 2015, 366.) When looking at Kosovo, the ethnicisation of "truth" is still strongly present in formal history education, manifesting as, for example, hate speech, ethnic stereotyping and massive falsification and distortion of data and misrepresentation of events in both Albanian and Serb textbooks. Overall, the violence of the recent past is interpreted very narrowly, focusing one-sidedly on supporting "the victimization of one's own ethnic group while completely ignoring the suffering of the other side". (Subotic 2015, 373; see also Youth Initiative for Human Rights, Kosovo 2017.)

ICTY's significant role in TJ in the Western Balkan region and the overall dominant legalistic approach to TJ both explain why the international operations' focus was so narrowly on supporting the operational functioning of formal judicial systems on both the national and international level. UNMIK established so-called hybrid courts in Kosovo, meaning that national and international counterparts exercised domestic and international law separately or together to prosecute war crimes as a wider approach to peacebuilding (Istrefi 2016, 4). However, if examined through purely quantitative measures, UNMIK's work in terms of handling cases during its eight-year mandate was not very effective, as at the end of it, the number of handled cases was low (see Alija 2021, 65). In 2008, EULEX Kosovo continued the work of UNMIK in terms of RoL by receiving files from UNMIK. The mission investigated and prosecuted international crimes with a focus on war crimes. During its mandate regarding war crime investigations, EULEX Kosovo filed 22 indictments and found 38 defendants guilty of war crimes (ibid., 68).

TJ efforts in Kosovo started during the time when the international community was enthusiastic in implementing international interventions, statebuilding and TJ in the aftermaths of conflicts. However, the influence of the liberal peacebuilding paradigm often meant that local ownership was not part of the TJ activities, and EULEX Kosovo was also designed with an externally imported,

top-down nature where the local population did not have agency in the implementation. (Hehir 2021, 9.) The TJ efforts of the international organisations, including UNMIK and EULEX, were "more interested in maintaining stability than documenting the truth about the past and bringing justice to the victims" (Visoka 2016, 18).

Locally integrated criminal trials can function as important examples of how justice is ensured for victims and how perpetrators are made accountable for their crimes. However, in post-war Kosovo, the outcome was quite the opposite, as the wartime leaders of organised crime eventually became political leaders in the post-conflict setting (Kersten 2022, 711). This created a fundamental problem for TJ, as those who have perpetrated war crimes obviously do not want their actions to be investigated. Such a situation also poses a threat to the authority and legitimacy of public institutions in a post-conflict society pursuing democracy (Mihr & Sriram, 2018, 124). The main task of UNMIK was to stabilise Kosovo and therefore the prosecution of war crimes had a minor role in its actions (Alija 2021, 69). Both missions have worked within the framework of UNSC Resolution 1244, which refers to an international security presence as a solution and to the need for ending violence and repression in Kosovo. Security presence and stabilisation alone do not bring justice, and therefore UNSC Resolution 1244 itself is not the most suitable for TJ and the effective prosecution of war crimes.

Overall, the implementation of TJ in Kosovo has leaned more on a retributive approach, and the focus has been not on supporting victims but on prosecuting perpetrators (Visoka 2016, 5). Even though many institutions and organisations have worked with TJ in Kosovo, clear change has not been achieved. Impunity for war crimes, missing persons, displacements, human rights violations and ethnic divisions have persisted for around 25 years. At the beginning of 2024, the Kosovo Government adopted its first TJ strategy to improve the situation. (Haxhiaj 2024.) This could be an outcome of the poorly implemented TJ efforts by UNMIK and EULEX that did not have local ownership integrated as a norm in the missions' operational context. Of course, UNMIK and EULEX were not the only entities, as the ICTY also implemented a top-down approach to TJ.

4.2 MINUSCA

A slightly newer case of TJ justice implementation in a peace operation comes from the Central African Republic (CAR). After decades of instability in the CAR, in 2012 a rebel coalition called Séléka launched a series of attacks. Even though a peace agreement was reached, the rebels seized Bangui and overthrew the

president in 2013. Séléka launched a transition phase but fighting among the forces of the coalition and locally formed self-defence militias continued. (UN 2024; Picco 2023.)

The United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) was established by the UNSC in 2014, and RoL has been an important part of the mandate since the establishment. The first mandate of MINUSCA stated the need for the ICC in cooperation with transitional authorities to examine alleged violations of international humanitarian law and human rights in the CAR (UNSC 2014). After that, TJ became one of MINUSCA's priority tasks in 2015. In the renewed mandate, MINUSCA's task was to assist the authorities and facilitate other bilateral and multilateral support to the authorities in the establishment of the national Special Criminal Court (SCC), and to provide technical assistance and capacity-building for CAR authorities to facilitate the functioning of the SCC. (UNSC 2015.) In its latest mandate, MINUSCA still continues to have similar tasks in relation to TJ (UNSC 2024a).

The SCC is also hybrid in nature, as it was established based on the national judicial system but applied international norms and procedures when there were no national means. Furthermore, the SCC has a structure where both national and international judicial personnel work in the court. Most of the staff are Central African, but the international staff can overrule their decisions. MINUSCA has been providing assistance to the key judicial personnel and recruited international personnel to the SCC. MINUSCA has also been assisting the SCC in investigations and protecting the rights of the accused. (Gilder 2021.)

After a great deal of preparatory work to secure SCC's credibility, independence and impartiality, the court finally became operational in 2018 (Human Rights Watch 2022). The SCC together with partners established a new law on legal aid, including services for victims and protection for witnesses, and started investigating cases in 2019 (Morjé Howard et al. 2020). By February 2024, the court had launched a trial of its second case concerning individuals accused of war crimes and crimes against humanity (UNSC 2024b). The first verdict was delivered in October 2022, and as the court has received many indictments as well, in 2023 the president of the CAR promulgated the law renewing the mandate of the SCC until October 2028. MINUSCA assisted in drafting the law and strongly advocated its adoption. The mission has also been publishing regular reports on human rights violations in the CAR and sharing information with the SCC (UNSC 2022).

As the type and conception of justice implemented in phases of political transition are tied to prevailing societal power dynamics, the SCC has lacked legitimacy at the local level. Despite MINUSCA establishing the hybrid court

together with the national authorities, assisting transitional authorities in capacity-building and working with victims, the SCC and especially MINUSCA have not completely enhanced local ownership of justice. Even though the UN recognises the importance of local ownership, MINUSCA did not involve local people in the establishment of the court, which constrains its legitimacy amongst locals (Gilder 2021; Sprik 2019). The Central Africans included in the process were members of the national elite, which means some local people can feel alienated from the work of the SCC. Furthermore, the state authority in the CAR did not have the legitimacy of the population even before the deployment of MINUSCA (Zimmerman 2020, 8). In December 2020, when asked about different justice systems, 45% of the CAR population had confidence in the SCC, where 70% had confidence in alternative justice, 59% in traditional justice and 47% in ordinary justice (Vinck et al. 2021). This suggests that MINUSCA's work supporting the SCC has been important, but the SCC has not been bringing local justice for the Central Africans.

However, there is also another TJ mechanism in the CAR, the Truth, Justice, Reparation and Reconciliation Commission (TJRRC), which was created in 2020. After violence and several massacres in 2017 and 2018, a peace agreement was signed between the government and armed groups. The commission was thus set up after national public consultation (ICTJ 2024a). MINUSCA has also been supporting its operationalisation with partners such as UN Women and the International Center for Transitional Justice (ICTJ). The operations and progress of the TJRRC have begun slowly and the commission has been struggling with shortages of finance and staff (Benga 2023). The commission's activity report presented at the end of 2022 listed only a few activities, such as two outreach activities and travel by the commissioners. The commission had not taken any cases by the time of the report. In early 2024, the TJRCC was finally getting ready to start registering and hearing testimonies of victims (ICTJ 2024b), but in May 2024 the mission of the commissioners was ended because of dysfunctionalities in the commission. Since then, the CAR authorities have been in the process of selecting a new commission (OHCHR 2024). The TJRCC used to have good support amongst the Central Africans. Furthermore, when asked about the concept of "truth" in 2020, 70% of Central Africans said that it contributes to peace, 61% said it contributes to justice and 56% said it contributes to reconciliation (Vinck et al. 2021, 19). Truth commissions are primarily retributive, so the TJRCC should also respond to the needs of citizens and begin work with reparation and reconciliation. If the new commission manages to start its work and conduct it appropriately, the TJRRC has the potential to gain legitimacy amongst local people and ultimately to make a positive contribution to broader peacebuilding efforts in the country.

Hybrid TJ can appear in applying different forms of justice and/or in applying different systems of justice. In the case of SCC, hybridity of SCC is rather constructed by the national and international judicial systems, like the court UNMIK established in Kosovo as well. In contrast, hybridity has not been apparent in combining both restorative and retributive approaches. However, it is important that MINUSCA started supporting the TJRRC, which should apply some restorative justice for people in the CAR. By combining these two activities, one could argue that MINUSCA applies hybridity of retributive and restorative justice in the CAR.

4.3 From Kosovo to CAR: Small steps for the better but the same fundamental problems?

Although the societal contexts are quite different in Kosovo and the CAR, comparing the TJ efforts within peace operations' frameworks in these two countries shows that positive development has taken place with regard to the realisation of local legitimacy and ownership and the more inclusive participation of local stakeholders. Whereas in Kosovo, UNMIK did not initially involve the local people in the process, in the CAR, MINUSCA worked with national professionals in the process of establishing the SCC, continues to support it and supports the TJRRC which was set up after a national public consultation. However, even in MINUSCA, the work has still not reached the UN's level of ambition.

Just like in Kosovo, in the CAR context, the overall implementation of TJ has also been very top-down in manner and has mostly focused on state-centric and primarily retributive mechanisms. As one of the TJ goals of the UN is ending impunity, it highlights the nature of retributive justice, which has rootedness in liberal peace assumptions and focuses on addressing civil and political rights violations. This can also be seen in the cases of Kosovo and the CAR where the liberal global community has had a great deal of influence in terms of the strategic planning of the peace operations in question. Not much has changed between the Kosovo and CAR operations regarding this, as the problems of state-centredness and focusing too narrowly on retributive mechanisms, that were already characteristic of the TJ efforts in Kosovo, have also plagued the TJ process in the CAR. The courts established in both countries by the UN peace operations are based on retributive justice and, in a certain way, they also give a face to TJ to the public in these countries. Questions arise, however, as to whether and to what extent these courts resonate with local people's sense of justice, whether they are seen operating in a just, objective and effective manner and whether these courts are even seen as relevant channels in delivering "justice" in a broader picture. Although national legislation has been mixed with

international law, even the national legislation is based on the idea of strong judicial institutions and legalism. Local people might instead find that restorative justice would rather bring durable peace to society, especially between people. At least there is a hope that MINUSCA's support for the TJRRC is an improvement compared to UNMIK and EULEX Kosovo, and that the new commission will use culturally, politically and legally appropriate means of restorative justice.

5 Discussion

In this working paper we have mapped linkages between civilian crisis management and the promotion of transitional justice in fragile contexts. We can conclude that from the perspective of the widely recognised objectives of TJ listed in this paper earlier, the close interplay and mutual implementation of the development of the rule of law, justice reform and SSR are crucial, although frequently poorly considered in the field. Probably because of political sensitivities and the need to be committed to support for the long term, necessary reforms in justice system and RoL development have often been marginalised in previous SSR efforts.

Based on earlier insights, we discuss here what role the international community should play in supporting TJ in conflict-affected states. From the TJ perspective, we look at which aspects it would be important to consider when planning the operational activities of international assistance to TJ more broadly and in civilian crisis management operations in regard with TJ.

5.1 Understanding the political nature of transitional justice and recognising the risks of hybrid outcomes

Transitional justice processes are inherently political, and they often involve decisions and actions that are strongly influenced by existing power relations and vested interests. It follows that **in externally supported TJ initiatives – as well as in activities that are connected to TJ in a more indirect way, such as in SSR and RoL missions – there must be a solid understanding of domestic political conditions. That, in turn, will enable the assessment of how external policy interventions such as SSR assistance will affect internal political power dynamics – and vice versa.**

As in other areas of peacebuilding, the spreading of TJ norms and practices from the international to the domestic level does not occur without contradictions, as they collide with different national and local conceptions of justice,

norms, values, practices and political interests. **Therefore, externally supported TJ initiatives should also be acknowledged as having the potential to produce unintended consequences and hybrid outcomes**. We argue, however, that this should not be interpreted as a death blow to all externally supported TJ initiatives, but rather it should encourage us to reconsider the intensity of international presence as well as the role of international actors in peacebuilding efforts more broadly.

5.2 Adapting means to local and contextual realities with solid conflict analysis

To be successful, externally supported TJ-related activities, such as justice-sensitive SSR and RoL promotion, need to be rooted in an understanding of local realities, needs, conflict dynamics and existing power balances. In other words, these initiatives should be informed by solid conflict analysis. Applying conflict sensitivity enables us to assess whether implementing certain TJ mechanisms might in fact deepen gaps of trust between different population groups and, more broadly, helps in mitigating negative spillover effects concerning certain TJ mechanisms (Haider 2017, 352).

   Moreover, giving support to informal justice mechanisms helps to fill the gap in achieving justice among individuals and local communities in contexts where public judicial institutions are not able to operate at their full capacity. Furthermore, those seeking justice must also be able to rely on customary and informal justice mechanisms which must be available and publicly recognised, as long as they operate in line with international human rights standards. Not only is this a necessary insight from the point of view of local legitimacy and ownership, but it also reflects the reality in many fragile states and the importance of informal justice systems for local communities, especially in areas which are less controlled by the state authorities.

5.3 Enhancing more locally resonant approaches to justice in peace operations

Prevailing models of implementing TJ in peace operations are not compatible enough with local needs and understandings of justice, and may even conflict with them. Therefore, we should turn our attention to examining how people affected by conflict perceive and experience injustice and insecurity in their everyday lives, and how we can respond to their grievances and demands for

justice and security. **Within the current peace operations and civilian crisis management instruments it would be beneficial to consider how to better respond to the needs of local people, for example in terms of access to justice.** When talking about supporting public security institutions via SSR and RoL promotion, we should not only focus more on responding people's urgent demands in terms of security and justice, but we should also ask *whether people are actually able to seek justice via public institutions*. For instance, we should examine more carefully what kind of structural and cultural factors might be blocking some people's access to justice and whether certain types of crimes, such as sexual and gender-based violence, are effectively dealt with and investigated by the police and judicial sector.

In the long run, it is impossible to bring about durable change only by influencing actors on a state level. The support of international actors should, thus, also help to rebuild social cohesion and mutual trust among population groups. **Peace operations should therefore start investing in and diverting resources to restorative justice mechanisms in a more balanced way than earlier, in order to respond more holistically to the grievances and demands of people affected by violations and conflict.** Although criminal trials are evidently necessary in countering impunity and ensuring accountability for past violations, they are insufficient in restoring social relations, often remain distant from most local people, and are at best ineffective if focusing only on a handful of high-ranking perpetrators. In this regard, context-aware (both culturally and religiously sensitive) bottom-up restorative justice initiatives have a potential to help in rebuilding inclusive social communities. Moreover, they can overall respond better to the needs of local communities, therefore filling the void that top-down trials inevitably leave.

At the grassroots level, applying resilience thinking to TJ could be beneficial in finding and strengthening strategies to cope with various forms of violence and enhance the capacity to adapt to new social and political reality in post-conflict situations. Often being more inclusive, the resilience approach also has the potential to overall resonate better with needs at the local and community level, as it focuses on facilitating rather than delivering (externally defined) understandings of justice (Kastner 2020, 373). On the other hand, we should avoid appointing *resilience* as a leading principle for societal reconstruction and promotion of justice, because as such, it is insufficient to address the actual root causes and main drivers of violence like political and economic structures, intersectional vulnerabilities and social injustices – all of which are already recognised as huge empty slots in the field of TJ.

5.4 Including the expertise of civil society to its full potential

Focusing more on the work done by civil society actors would open alternative pathways to address grievances over justice and security that would resonate better at the level of local communities and better suit contextual realities. Supporting the work of civil society actors in promoting TJ more robustly is also sensible from an economic point of view: At best, it can yield significant impact with relatively small resources compared to, for instance, massive top-down judicial processes or national truth-seeking initiatives. However, it is crucial to critically assess the role of international actors as supporters of local and regional organisations – whether the goals, objectives and perceptions of just outcomes are imposed from outside, or whether local actors are given the space to determine these objectives themselves. In this regard, we underline the potential of the adaptive peacebuilding approach in implementing TJ. This means a shift in the objective of external actors from defining an end-goal of the process externally to focusing more on supporting and facilitating locally and nationally led processes (de Coning 2021, 269–270). A way to bring a bottom-up approach to TJ is to include civil society composed of commonly excluded groups such as young people.

6 Conclusion

Various cases from the field illustrate that international and domestic interactions and frictions tend to create complex dynamics of contestation around transitional justice. Especially in fragile contexts, TJ initiatives have a high potential to interact with other dimensions of peacebuilding, such as institutional reforms, in unpredictable ways. Alongside many potential positive contributions to peacebuilding, TJ endeavours simultaneously entail many risks, ranging from being misused and instrumentalised by domestic elites to exacerbating existing tensions between ethnic groups and the insufficiency of certain mechanisms for domestic contexts or local normative frameworks. These difficulties in promoting TJ externally point at broader issues regarding international peace interventions and especially projecting external normative frameworks within peace- and statebuilding in a top-down and state-centric manner.

What seems clear is that legalistic and retributive processes alone will not be sufficient to make a peaceful transition in conflict-affected societies. Processes focusing more on restorative mechanisms and especially on those that stress the importance of victims' needs are also needed. As long as this cannot be implemented at national level, the international community should focus on

finding alternative ways of how, for example, victims' rights and needs could be addressed in fragile contexts. In this regard, and relying on academic literature, we agree with the argument raised earlier in the academic literature that the adaptive peacebuilding approach and resilience thinking can offer fruitful pathways to address questions of TJ in today's fragile and conflict-affected contexts. This statement, however, calls for tempering significantly the expectations about "quick fixes" and possibilities for deep and rapid institutional, political and normative transformations soon after violent conflict. At the same time, it would require international actors to stop and ask several questions: first, who has the right and legitimacy to define what is the ultimate goal for TJ; second, who has the expertise and legitimacy to choose mechanisms relevant to TJ; and finally, following from the two previous questions, what this means in terms of how the *effectiveness* of TJ processes is defined and evaluated.

Although institutional reform is today a key dimension of TJ, it has still remained a rather under-researched topic in contemporary TJ literature. While TJ has been explicitly included in the structures of the UN framework, in the framework of the EU's civilian CSDP missions, the interlinkages between TJ and crisis management operations have not yet been adequately identified and studied. This is unfortunate, because this would improve the possibilities of critically evaluating whether missions' operational activities possibly support, conflict or even undermine the implementation of various TJ mechanisms and objectives in a wider societal context. This would also consider how missions could better contribute to certain TJ objectives, such as responding to victims' needs, improving people's access to justice and building public trust. More research, and above all, more thorough and inclusive implementation, is needed so that sustainable peace can be supported by means of TJ.

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