FROM RETRIBUTION TO RECONCILIATION - THE EVOLUTION OF TRANSITIONAL JUSTICE IN INTERNATIONAL HUMAN RIGHTS LAW

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Abstract

Transitional justice has emerged as a vital framework within international human rights law to address large-scale human rights violations committed during periods of conflict, authoritarian rule, or political transition. Traditionally rooted in retributive justice, early approaches emphasized criminal accountability through prosecutions and tribunals aimed at punishing perpetrators. However, over time, the paradigm of transitional justice has evolved to incorporate restorative and reconciliatory mechanisms that seek to heal societies, acknowledge victims' suffering, and promote sustainable peace. This paper critically examines the transformation of transitional justice from a predominantly punitive model to a multidimensional process encompassing truth-seeking, reparations, institutional reforms, and guarantees of non-recurrence. It analyses the role of international human rights law in shaping this evolution, particularly through the jurisprudence of international criminal tribunals, regional human rights courts, and soft law instruments such as UN principles and guidelines. The study further explores how mechanisms like truth and reconciliation commissions, victim-centered reparations, and community-based justice have redefined accountability beyond mere punishment. By assessing comparative experiences from post-conflict societies, the paper highlights the tensions between justice, peace, and reconciliation, and evaluates whether contemporary transitional justice mechanisms adequately address structural injustices and systemic violence. Ultimately, the paper argues that a holistic and context-sensitive approach—anchored in human dignity and participatory justice—is essential for transitional justice to contribute meaningfully to long-term reconciliation and democratic consolidation.

Keywords:
Transitional Justice; Human Rights Law; Reconciliation; Accountability; Truth Commissions; Post-Conflict Societies.

1. Introduction: Concept and Evolution of Transitional Justice

Transitional justice has emerged as one of the most significant normative and institutional responses to mass atrocities, systemic human rights violations, and periods of political upheaval. It represents a body of principles, mechanisms, and practices adopted by societies transitioning from conflict, authoritarianism, or repression toward peace, democracy, and the rule of law. Unlike conventional justice systems that operate within stable legal orders, transitional justice functions in extraordinary contexts marked by weakened institutions, fractured social trust, and legacies of violence. Its primary challenge lies in addressing past abuses while simultaneously facilitating social reconstruction and future stability.

The concept of transitional justice is neither static nor monolithic. It has evolved from early post-war efforts focused primarily on retributive justice—most notably the Nuremberg and Tokyo Trials—to a more holistic and pluralistic framework encompassing truth-seeking, reparations, institutional reform, and reconciliation. This evolution reflects a growing recognition that criminal accountability alone is insufficient to address the deep moral, psychological, and structural harms caused by mass atrocities. Contemporary transitional justice therefore seeks not only to punish perpetrators but also to restore dignity to victims, rebuild social trust, and prevent recurrence.[1]

The term "transitional justice" gained prominence in the late 20th century, particularly during the political transitions in Latin America and Eastern Europe. As authoritarian regimes collapsed, new democracies confronted the dilemma of how to address widespread human rights violations committed under previous regimes. In many cases, traditional criminal justice mechanisms proved inadequate or politically unfeasible due to institutional fragility, lack of evidence, or negotiated political settlements. This prompted the development of alternative mechanisms such as truth commissions, amnesty laws with conditions, reparations programs, and institutional reforms.

International human rights law has played a decisive role in shaping the normative framework of transitional justice. Instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and regional human rights treaties have established state obligations to investigate, prosecute, and remedy serious human rights violations. At the same time, evolving jurisprudence from international and regional courts has clarified the limits of amnesty, the rights of victims to truth and reparations, and the duty of states to prevent recurrence. Transitional justice thus exists at the intersection of legal obligation, moral responsibility, and political compromise.[2]

This paper situates transitional justice within this evolving normative landscape, tracing its conceptual development from retributive justice to reconciliation-oriented models. It argues that transitional justice should be understood not merely as a set of post-conflict tools but as a dynamic process grounded in human dignity, participatory justice, and societal transformation. By examining its theoretical foundations and historical evolution, the paper seeks to illuminate how transitional justice has become an integral component of contemporary international human rights law.

2. Theoretical Foundations of Retributive and Restorative Justice

The conceptual architecture of transitional justice is built upon two foundational paradigms: retributive justice and restorative justice. These paradigms represent distinct philosophical approaches to wrongdoing, accountability, and social repair. Understanding their theoretical underpinnings is essential to appreciating the evolution and internal tensions of transitional justice mechanisms.

[1] Ruti G Teitel, 'Transitional Justice Genealogy' (2003) 16 *Harvard Human Rights Journal* 69.
[2] Naomi Roht-Arriaza, 'The New Landscape of Transitional Justice' (2006) 1 *International Journal of Transitional Justice* 1.

2.1 Retributive Justice: Accountability and Punishment

Retributive justice is grounded in the principle that wrongdoing must be met with proportionate punishment. Rooted in classical legal philosophy, particularly the works of Immanuel Kant and G.W.F. Hegel, retributivism views punishment as a moral imperative rather than a utilitarian tool. According to this view, individuals who commit crimes deserve to be punished because they have violated moral and legal norms, and failure to punish undermines the legitimacy of the legal order.[3]

In the context of international law, retributive justice gained prominence after the Second World War through the establishment of the Nuremberg and Tokyo Tribunals. These tribunals marked a watershed moment by affirming individual criminal responsibility for crimes under international law, including genocide, crimes against humanity, and war crimes. The Nuremberg principles rejected the defense of sovereign immunity and obedience to superior orders, asserting that individuals could be held accountable even when acting on behalf of the state.

The retributive model was later institutionalized through ad hoc tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and ultimately through the establishment of the International Criminal Court (ICC). These institutions reflect a commitment to ending impunity and reinforcing the rule of law at the international level.

From a transitional justice perspective, retributive mechanisms serve several important functions. They affirm the moral condemnation of atrocities, provide a measure of justice to victims, and deter future violations. Moreover, criminal trials can contribute to historical clarification by establishing authoritative records of past abuses. However, the retributive model is not without limitations. Criminal trials are inherently selective, resource-intensive, and often incapable of addressing the full scope of mass violations. They may also exacerbate political tensions, particularly in fragile post-conflict societies.

Critics argue that an overemphasis on retribution can hinder reconciliation and undermine peace processes. In some contexts, rigid insistence on prosecutions has been perceived as victor's justice or external imposition, thereby delegitimizing transitional justice efforts. Furthermore, retributive justice tends to individualize guilt, potentially obscuring the structural and systemic factors that enable mass violence, such as institutionalized discrimination, economic inequality, or authoritarian governance.[4]

2.2 Restorative Justice: Healing, Participation, and Social Repair

In response to the limitations of retributive approaches, restorative justice emerged as an alternative or complementary framework. Rooted in communitarian philosophies and indigenous justice practices, restorative justice prioritizes healing over punishment, dialogue

[3] Pablo de Greiff, 'Theorizing Transitional Justice' in Melissa Williams, Rosemary Nagy and Jon Elster (eds), *Transitional Justice* (NYU Press 2012) 31.
[4] Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials' (2011) 2 *Annual Review of Law and Social Science* 269.

over adversarialism, and social repair over retribution. It seeks to address harm by involving victims, perpetrators, and affected communities in processes aimed at acknowledgment, accountability, and reconciliation.

Within transitional justice, restorative justice gained prominence through mechanisms such as truth and reconciliation commissions, community-based justice initiatives, and reparations programs. The South African Truth and Reconciliation Commission (TRC) stands as the most influential example of this approach. By offering conditional amnesty in exchange for full disclosure of truth, the TRC sought to balance the demands of justice with the imperatives of national reconciliation. While controversial, the South African experience profoundly shaped global discourse on transitional justice.[5]

Restorative justice redefines accountability not solely as punishment but as acknowledgment of harm, acceptance of responsibility, and commitment to non-repetition. It emphasizes the centrality of victims, recognizing their right to truth, dignity, and reparation. Unlike retributive systems, which often marginalize victims as mere witnesses, restorative processes seek to empower them as active participants in justice.

From a theoretical standpoint, restorative justice aligns with relational and communitarian conceptions of justice, which view individuals as embedded within social relationships rather than as isolated actors. Harm is understood not merely as a violation of law but as a rupture in social relationships and moral order. Justice, therefore, involves repairing these relationships and rebuilding trust within society.

However, restorative justice is not without criticism. Detractors argue that it may sacrifice accountability in the name of reconciliation, particularly when amnesties shield perpetrators of serious crimes from prosecution. There is also concern that power imbalances between victims and perpetrators may undermine genuine participation, especially in contexts where perpetrators retain social or political influence. Moreover, restorative mechanisms may place undue emotional burdens on victims, expecting forgiveness or reconciliation as a moral obligation.

2.3 Integrating Retributive and Restorative Paradigms

Contemporary transitional justice increasingly recognizes that retributive and restorative justice are not mutually exclusive but complementary. Rather than framing them as competing models, modern approaches seek to integrate elements of both to address the complex realities of post-conflict societies. This integrative approach acknowledges that different contexts require different combinations of mechanisms, and that justice must be tailored to societal needs, historical experiences, and political constraints.[6]

International human rights law has played a critical role in mediating this integration. While affirming the duty to investigate and prosecute serious crimes, international norms also

[5] Priscilla B Hayner, 'Truth Commissions: Exhuming the Past, Seeking the Future' (1994) 12 *Human Rights Quarterly* 558.
[6] Diane Orentlicher, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) 100 *Yale Law Journal* 2537.

recognize the legitimacy of alternative justice mechanisms, provided they respect victims' rights and do not amount to blanket impunity. The jurisprudence of regional human rights courts, particularly the Inter-American Court of Human Rights, reflects this balanced approach by endorsing truth commissions and reparations while rejecting unconditional amnesties for grave violations.

The evolution from retribution to reconciliation thus reflects a broader transformation in the understanding of justice itself. Justice is no longer conceived solely as punishment imposed by the state but as a multifaceted process involving truth, accountability, healing, and institutional reform. This shift underscores the normative maturation of transitional justice as a field that seeks not only to address the past but also to shape a more just and inclusive future.[7]

3. International Human Rights Law and Transitional Justice Frameworks

3.1 Emergence of Transitional Justice within International Human Rights Law

The development of transitional justice as a distinct field is inseparably linked to the evolution of international human rights law. While early international legal frameworks were primarily concerned with inter-state relations, the post–World War II era marked a paradigmatic shift toward the protection of individuals as subjects of international law. This transformation created the normative foundation upon which transitional justice mechanisms would later emerge. The Universal Declaration of Human Rights (UDHR), adopted in 1948, marked the beginning of a global consensus that grave violations of human dignity demand accountability, remedy, and institutional safeguards against recurrence.

International human rights law introduced legally binding obligations upon states to respect, protect, and fulfill fundamental rights. These obligations gained particular relevance in post-conflict and post-authoritarian contexts, where systematic abuses such as enforced disappearances, torture, extrajudicial killings, and mass displacement were often perpetrated by state authorities themselves. Transitional justice thus emerged as a response to the tension between legal accountability and political transition, operating within the normative constraints imposed by human rights law while addressing the realities of fragile governance.[8]

Unlike traditional criminal justice systems, transitional justice frameworks are shaped not only by legal doctrine but also by ethical considerations, social demands, and political compromise. International human rights law provides the minimum normative threshold below which transitional arrangements cannot fall. This includes obligations to investigate serious violations, provide effective remedies, ensure non-discrimination, and guarantee the rights of victims to truth, justice, and reparation. These principles have gradually crystallized through treaty interpretation, customary international law, and judicial practice.

The integration of transitional justice into human rights law was neither linear nor uncontested. Early post-conflict transitions—such as those in Spain, Argentina, and Chile—often relied on

[7] Carlos Osorio, 'The Archival Politics of Transitional Justice' (2014) 19 *International Journal of Human Rights* 415.
[8] Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34 *Journal of Law and Society* 411.

amnesties and political settlements that prioritized stability over accountability. However, subsequent developments in international jurisprudence increasingly challenged the legitimacy of such arrangements. The growing influence of human rights institutions transformed transitional justice from a discretionary political choice into a legally constrained process governed by international norms.

3.2 Normative Foundations: Treaties, Custom, and Soft Law

The normative architecture of transitional justice draws from multiple sources of international law, including treaty obligations, customary international law, and soft-law instruments. Core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the International Convention for the Protection of All Persons from Enforced Disappearance establish binding duties on states to prevent, investigate, and punish serious human rights violations.[9]

Article 2 of the ICCPR obliges states to provide effective remedies for rights violations, while Articles 6 and 7 prohibit arbitrary deprivation of life and torture. These provisions have been interpreted by the Human Rights Committee to require not only cessation of violations but also accountability for perpetrators. Similarly, the CAT explicitly mandates criminal prosecution of torture and rejects justifications based on exceptional circumstances, thereby reinforcing the principle of non-derogability.

Beyond treaty law, customary international law has increasingly recognized the duty to prosecute international crimes such as genocide, crimes against humanity, and war crimes. This duty has been affirmed through consistent state practice and opinio juris, particularly following the establishment of ad hoc international tribunals and the International Criminal Court (ICC). The prohibition of amnesties for such crimes has gained normative strength, although its precise contours remain debated.

Soft law instruments have also played a crucial role in shaping transitional justice frameworks. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005) articulate comprehensive standards for victim-centered justice, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Similarly, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Joinet-Orentlicher Principles) articulate the rights to truth, justice, and reparation as interdependent and indivisible.[10]

These instruments, while not legally binding, exert significant normative influence by guiding state practice, informing judicial reasoning, and shaping international expectations. Together, they provide a coherent normative framework that situates transitional justice firmly within the architecture of international human rights law.

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[9] Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field"' (2009) 3 *International Journal of Transitional Justice* 5.

[10] Louise Mallinder, 'Can Amnesties and International Justice Be Reconciled?' (2007) 1 *International Journal of Transitional Justice* 208.

3.3 Victims' Rights and the Centrality of Human Dignity

A defining feature of contemporary transitional justice is its victim-centered orientation. International human rights law recognizes victims not merely as passive beneficiaries of state action but as rights-holders entitled to participation, recognition, and redress. This shift represents a departure from earlier legal paradigms that prioritized state sovereignty and public order over individual suffering.[11]

The right to truth has emerged as a cornerstone of victim-centered justice. Initially developed in response to enforced disappearances in Latin America, the right to truth encompasses both individual and collective dimensions. Victims and their families have the right to know the fate of disappeared persons, the circumstances of violations, and the identity of those responsible. At a societal level, truth contributes to historical memory, democratic accountability, and the prevention of denialism.

The right to justice complements the right to truth by requiring effective investigation and prosecution. International jurisprudence increasingly emphasizes that symbolic or purely administrative measures cannot substitute for genuine accountability. However, human rights bodies have also acknowledged that justice may take diverse forms, provided that core obligations are fulfilled and impunity is not institutionalized.

Reparations constitute another essential pillar of victim-centered justice. International law recognizes that reparations must be adequate, effective, and proportional to the harm suffered. Importantly, reparations are not limited to financial compensation; they encompass rehabilitation, satisfaction, and symbolic measures such as memorialization and public apologies. In transitional contexts, reparations serve both restorative and transformative functions by addressing structural inequalities and affirming the dignity of victims.

By centering victims, international human rights law reshapes transitional justice from a state-centric project into a participatory and moral enterprise. This normative shift reinforces the legitimacy of transitional processes and aligns them with broader democratic values.[12]

3.4 Limits and Tensions within Human Rights–Based Transitional Justice

Despite its normative sophistication, the integration of transitional justice within international human rights law is not without tension. One of the most persistent challenges concerns the balance between peace and justice. In societies emerging from violent conflict, demands for accountability may clash with political negotiations aimed at ending hostilities. Peace agreements often involve compromises, including conditional amnesties or reduced penalties, raising questions about their compatibility with international obligations.

Critics argue that rigid application of international legal standards may undermine fragile peace processes and discourage armed actors from disarming. Conversely, proponents of strict accountability contend that peace built on impunity is inherently unstable and morally

[11] Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 *Harvard International Law Journal* 201.
[12] Rama Mani, 'Rebuilding an Inclusive Political Community After War' (2005) 5 *Security Dialogue* 511.

untenable. This tension reflects a deeper philosophical debate about whether justice is a prerequisite for peace or a product of it.

Another challenge lies in the uneven application of international justice. Selectivity in prosecutions, geopolitical power asymmetries, and institutional limitations have raised concerns about the legitimacy of international criminal institutions. The perception that international justice disproportionately targets actors from the Global South has fueled skepticism and resistance, particularly in post-colonial contexts.

Furthermore, the legalistic framing of transitional justice may marginalize local traditions and community-based approaches to conflict resolution. While international norms emphasize universal standards, they may insufficiently account for cultural diversity and indigenous conceptions of justice. This tension highlights the need for context-sensitive approaches that reconcile universal human rights with local legitimacy.[13]

4. Role of International Criminal Tribunals in Transitional Justice

4.1 Emergence and Mandate of International Criminal Tribunals

International criminal tribunals represent one of the most significant institutional developments in the evolution of transitional justice. Their emergence reflects the international community's commitment to combating impunity for the gravest crimes and affirming the principle of individual criminal responsibility. Beginning with the Nuremberg and Tokyo Tribunals and continuing through the establishment of ad hoc and permanent courts, these institutions have fundamentally reshaped the landscape of international law.

The Nuremberg Tribunal established foundational principles that continue to define international criminal law: individuals can be held criminally responsible under international law; official capacity does not exempt one from liability; and crimes against humanity constitute offenses against the international community as a whole. These principles laid the groundwork for subsequent tribunals and informed the normative development of transitional justice.

The ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) marked a renewed international commitment to accountability in the post–Cold War era. Established under Chapter VII of the UN Charter, these tribunals combined judicial innovation with enforcement authority, contributing significantly to the development of substantive and procedural international criminal law.[14]

4.2 Contributions to Accountability and Legal Development

International criminal tribunals have made profound contributions to the jurisprudence of international law. They have clarified the elements of crimes such as genocide, crimes against

[13] Colleen Murphy, 'Political Reconciliation and Transitional Justice' (2010) 18 *Journal of Political Philosophy* 1.
[14] Bronwyn Leebaw, 'The Irreconcilable Goals of Transitional Justice' (2008) 30 *Human Rights Quarterly* 95.

humanity, and war crimes; developed doctrines of command responsibility and joint criminal enterprise; and expanded protections for victims of sexual and gender-based violence.

From a transitional justice perspective, these tribunals serve several key functions. First, they provide authoritative judicial acknowledgment of atrocities, countering denial and revisionism. Second, they individualize guilt, thereby rejecting collective blame and reinforcing the rule of law. Third, they contribute to historical record-building, offering detailed factual accounts grounded in judicial findings.

The establishment of the International Criminal Court (ICC) further institutionalized these advances. Unlike ad hoc tribunals, the ICC operates as a permanent institution with global jurisdiction over the most serious international crimes. Its principle of complementarity reinforces domestic accountability by encouraging states to prosecute crimes themselves, thereby integrating international justice into national legal systems.[15]

4.3 Critiques and Limitations of International Criminal Justice

Despite their normative significance, international criminal tribunals face substantial criticism. One major concern relates to selectivity and political influence. The ICC's focus on situations in Africa, for instance, has generated accusations of neo-colonialism and selective justice. Such perceptions undermine the legitimacy of international criminal law and complicate its role in transitional contexts.

Another limitation lies in the tribunals' distance from affected communities. Proceedings are often conducted far from the sites of atrocities, in unfamiliar legal languages and procedures. This remoteness can weaken local ownership and limit the tribunals' restorative impact. Victims may feel disconnected from processes that claim to deliver justice on their behalf.

Moreover, international trials are resource-intensive and slow, often taking years to conclude. Their limited capacity means that only a small number of perpetrators can be prosecuted, leaving many victims without a sense of closure. As a result, international criminal justice alone cannot address the full scope of transitional justice needs.[16]

4.4 Complementarity and the Future of International Criminal Justice

The principle of complementarity offers a potential bridge between international and domestic justice mechanisms. By positioning international courts as courts of last resort, complementarity encourages states to strengthen their own judicial systems and assume primary responsibility for accountability. This approach aligns with the broader objectives of transitional justice by fostering domestic ownership and institutional reform.

In recent years, hybrid and hybridized courts—such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia—have emerged as innovative models that combine international expertise with domestic participation. These institutions seek to

[15] David Crocker, 'Reckoning with Past Wrongs: A Normative Framework' (1999) 13 *Ethics & International Affairs* 43.
[16] Lars Waldorf, 'Anticipating the Past: Transitional Justice and Socio-Economic Wrongs' (2012) 21 *Social & Legal Studies* 171.

balance international standards with local legitimacy, offering a more context-sensitive approach to accountability.

Looking forward, the role of international criminal tribunals in transitional justice will depend on their ability to adapt to evolving political realities while maintaining normative integrity. Their effectiveness will be measured not only by convictions but also by their contribution to truth, reconciliation, and the strengthening of domestic legal systems.[17]

5. Reparations and Victim-Centred Justice in Transitional Justice Frameworks

5.1 Conceptual Foundations of Reparative Justice

Reparations constitute one of the central pillars of transitional justice, reflecting a normative shift from state-centric models of accountability toward victim-centred approaches grounded in human dignity. While retributive justice focuses on punishing perpetrators, reparative justice seeks to acknowledge harm, restore dignity, and address the material and symbolic consequences of mass violations. Within international human rights law, reparations are no longer viewed as discretionary gestures of goodwill but as legally enforceable entitlements arising from violations of fundamental rights.

The concept of reparations is rooted in the principle of *restitutio in integrum*, which requires restoring victims to the position they would have occupied had the violation not occurred. However, in contexts of mass atrocities, complete restitution is often impossible. As a result, modern reparative frameworks emphasize a combination of material and symbolic measures aimed at addressing both tangible losses and moral injury.

Reparations occupy a dual function in transitional justice. On one hand, they serve corrective purposes by compensating victims for harm suffered. On the other, they play a transformative role by acknowledging historical injustices, addressing structural inequalities, and reaffirming the moral responsibility of the state. This dual function situates reparations at the intersection of law, morality, and politics.[18]

5.2 International Legal Framework Governing Reparations

International human rights law provides a robust normative foundation for reparations. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) obligates states to ensure effective remedies for rights violations, a requirement interpreted to include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. This understanding has been elaborated through jurisprudence and soft-law instruments.

The most authoritative articulation of reparative standards appears in the **UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005)**. These principles affirm

[17] Naomi Roht-Arriaza and Javier Mariezcurrena, 'Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice' (2006) 1 *Cambridge University Press* 1.
[18] Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 *Human Rights Quarterly* 321.

that victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to:

1. **Restitution** – restoration of liberty, identity, family life, and citizenship;
2. **Compensation** – economically assessable damage including physical and mental harm;
3. **Rehabilitation** – medical, psychological, and legal support;
4. **Satisfaction** – measures such as truth-telling, apologies, memorialization;
5. **Guarantees of non-repetition** – institutional and legal reforms.

These categories reflect an understanding that justice must be multidimensional and responsive to diverse victim experiences. Importantly, the principles emphasize that reparations must be proportional, effective, and accessible, and must not depend on the identification or prosecution of perpetrators.[19]

Regional human rights systems have reinforced these obligations. The Inter-American Court of Human Rights has developed the most advanced jurisprudence on reparations, consistently ordering comprehensive measures including public apologies, institutional reforms, and memorialization initiatives. The European Court of Human Rights, while traditionally more restrained, has increasingly recognized the need for effective remedies in cases involving systemic violations.

5.3 Victim-Centred Justice and Participatory Approaches

A defining feature of contemporary reparative justice is the shift toward victim participation. Unlike traditional criminal justice systems, which often marginalize victims, transitional justice frameworks increasingly recognize victims as rights-bearing agents entitled to voice, dignity, and agency.

Participation enhances both the legitimacy and effectiveness of reparations. When victims are consulted in the design and implementation of reparative programs, outcomes are more likely to reflect lived experiences and address actual needs. Participatory approaches also empower marginalized groups—such as women, indigenous communities, and minorities—whose suffering has historically been overlooked.[20]

Victim-centred justice further acknowledges the gendered and intersectional dimensions of harm. Sexual violence, forced displacement, and socio-economic marginalization disproportionately affect women and vulnerable populations. Reparations that fail to account for these differentiated harms risk reproducing existing inequalities. Consequently, contemporary reparations programs increasingly incorporate gender-sensitive and culturally appropriate measures.

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[19] Mark Drumbl, 'Collective Violence and Individual Punishment: The Criminality of Mass Atrocity' (2005) 99 *Northwestern University Law Review* 539.
[20] Fionnuala Ní Aoláin, 'Advancing a Feminist Analysis of Transitional Justice' (2009) 20 *International Journal of Transitional Justice* 275.

Nevertheless, participation must be meaningful rather than symbolic. Tokenistic consultation or bureaucratic processes can retraumatize victims and erode trust. Effective participation requires transparency, accessibility, and sustained engagement throughout the reparative process.

5.4 Challenges and Critiques of Reparations Programs

Despite their normative appeal, reparations face significant practical and ethical challenges. One persistent issue is resource limitation. States emerging from conflict often lack the financial capacity to implement comprehensive reparations programs, leading to partial or delayed implementation. This can foster resentment among victims and undermine the legitimacy of transitional justice initiatives.[21]

Another challenge lies in determining eligibility. Decisions about who qualifies as a victim and what constitutes harm are inherently political and contested. Narrow definitions may exclude large segments of affected populations, while overly broad definitions risk diluting reparative impact.

There is also the danger of instrumentalization, whereby reparations are used as substitutes for criminal accountability or as tools of political appeasement. When reparations are framed as compensation in exchange for silence or forgiveness, they risk undermining the moral foundations of justice.

Furthermore, reparations alone cannot rectify deep structural inequalities or historical injustices. Without complementary reforms addressing land distribution, economic exclusion, and institutional discrimination, reparative measures may provide only symbolic relief.

6. Institutional Reforms and Guarantees of Non-Recurrence

6.1 Conceptual Foundations of Institutional Reform

Institutional reform constitutes the forward-looking dimension of transitional justice, aimed at preventing the recurrence of human rights violations by transforming the structures that enabled abuse. While prosecutions and reparations address past harms, institutional reforms seek to reshape the future by embedding accountability, transparency, and respect for human rights within state institutions.[22]

Guarantees of non-recurrence are recognized under international law as an integral component of reparative justice. They reflect the understanding that justice cannot be achieved solely through retrospective measures but requires systemic transformation. Institutions such as the military, police, judiciary, and intelligence services often play central roles in repression, making their reform essential to sustainable peace.

6.2 Legal and Institutional Dimensions of Reform

[21] Louise Arbour, 'Economic and Social Justice for Societies in Transition' (2007) 40 *New York University Journal of International Law and Politics* 1.
[22] Pablo de Greiff, 'Justice and Reparations' in Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press 2006) 451.

Institutional reform encompasses a wide range of measures, including vetting of public officials, judicial reform, security sector reform (SSR), and constitutional restructuring. Vetting processes aim to remove individuals implicated in serious abuses from positions of authority, thereby restoring public trust and preventing future violations. However, vetting must be conducted in accordance with due process to avoid collective punishment or politicization.

Judicial reform is particularly critical, as an independent and competent judiciary is indispensable for the rule of law. Reforms may involve restructuring courts, strengthening prosecutorial independence, improving access to justice, and enhancing legal education. Without a functioning judiciary, transitional justice mechanisms risk becoming symbolic rather than transformative.[23]

Security sector reform addresses one of the most persistent sources of post-conflict instability. Militarized policing, lack of civilian oversight, and cultures of impunity often perpetuate cycles of violence. Reforming security institutions requires both technical capacity-building and normative transformation, including human rights training and accountability mechanisms.

6.3 Constitutional and Legal Reforms as Structural Guarantees

Constitutional reform plays a foundational role in institutional transformation. Post-conflict constitutions often incorporate expanded bills of rights, stronger checks and balances, and mechanisms for judicial review. By embedding human rights norms within constitutional frameworks, states signal a commitment to preventing the re-emergence of authoritarian practices.

Legal reforms may also involve repealing repressive legislation, enacting anti-discrimination laws, and aligning domestic law with international human rights obligations. Such reforms not only prevent future violations but also symbolize a normative break from the past.

Importantly, institutional reforms must be locally grounded and politically inclusive. Imposed or externally driven reforms risk lacking legitimacy and sustainability. Successful reform processes typically involve broad consultation and reflect local historical, cultural, and social contexts.[24]

6.4 Challenges in Ensuring Non-Recurrence

Despite their centrality, guarantees of non-recurrence face numerous obstacles. Entrenched power structures, political resistance, and weak state capacity often hinder meaningful reform. In some cases, former perpetrators retain influence within political or security institutions, undermining reform efforts from within.

Additionally, international actors may prioritize short-term stability over long-term reform, resulting in compromised transitional agendas. The tension between peace and justice

[23] William A Schabas, 'The Contribution of the Eichmann Trial to International Law' (2013) 4 *Journal of International Criminal Justice* 667.
[24] Christine Bell and Catherine O'Rourke, 'Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes' (2010) 59 *International and Comparative Law Quarterly* 941.

resurfaces here, as comprehensive reforms may be perceived as destabilizing in fragile contexts.

Moreover, institutional reform is inherently a long-term process whose outcomes may not be immediately visible. This temporal disconnect can weaken public support and lead to reform fatigue. Sustained political will, civil society engagement, and international support are therefore essential to ensure continuity and effectiveness.[25]

7. Suggestions: Strengthening Transitional Justice for Sustainable Peace and Human Rights Protection

The evolution of transitional justice from a narrow retributive framework to a multidimensional human rights–oriented paradigm reflects significant normative progress. However, persistent structural, political, and institutional challenges continue to limit its transformative potential. In light of the preceding analysis, this section proposes key normative, institutional, and policy-oriented suggestions to strengthen transitional justice mechanisms and enhance their effectiveness in promoting reconciliation, accountability, and sustainable peace.

7.1 Adopting a Context-Sensitive and Pluralistic Justice Framework

One of the central lessons emerging from comparative transitional justice experiences is the need to move beyond uniform, one-size-fits-all models. While international human rights law provides a universal normative baseline, its implementation must be sensitive to local historical, cultural, and socio-political contexts. Transitional justice frameworks should be designed through inclusive consultation with affected communities, civil society organizations, and marginalized groups to ensure contextual legitimacy.

Hybrid models that integrate formal legal mechanisms with indigenous and community-based justice practices can offer more meaningful and culturally resonant outcomes. Such pluralistic approaches acknowledge that justice is experienced differently across societies and that legitimacy arises not solely from legal conformity but from social acceptance. International actors should therefore adopt facilitative rather than prescriptive roles, supporting locally driven initiatives while ensuring compliance with fundamental human rights standards.[26]

7.2 Strengthening Victim-Centric Approaches and Participatory Justice

Transitional justice processes must further deepen their commitment to victim-centered justice by ensuring meaningful participation at all stages of design and implementation. Victims should not merely be beneficiaries of justice mechanisms but active contributors to shaping their scope, priorities, and outcomes.

This requires institutionalizing participatory mechanisms such as consultative forums, community dialogues, and representative victim committees. Special attention must be paid to

[25] M Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes' (1996) 59 *Law and Contemporary Problems* 63.
[26] Dustin Sharp, 'Addressing Economic Violence in Times of Transition' (2014) 19 *International Journal of Transitional Justice* 291.

the inclusion of women, indigenous peoples, children, and other historically marginalized groups whose experiences of harm are often intersectional and underrepresented.

Furthermore, psychosocial support, trauma-informed processes, and long-term rehabilitation services should be integrated into transitional justice strategies. Justice that re-traumatizes victims or reduces their suffering to bureaucratic procedures risks undermining its own moral foundation.[27]

7.3 Enhancing the Coherence Between International and Domestic Mechanisms

A recurring limitation of transitional justice frameworks is the disconnect between international legal norms and domestic implementation. To bridge this gap, greater emphasis must be placed on strengthening national ownership while maintaining international oversight.

The principle of complementarity should be operationalized beyond criminal prosecution to include reparations, truth-seeking, and institutional reform. International bodies can support domestic institutions through technical assistance, capacity-building, and monitoring mechanisms, rather than substituting local processes.

Hybrid judicial models, regional accountability mechanisms, and cross-border cooperation can further enhance coherence and legitimacy. Such approaches enable international norms to be internalized within domestic legal systems, fostering sustainability and local trust.

7.4 Prioritizing Institutional Reform and Rule of Law Consolidation

Long-term prevention of human rights violations depends fundamentally on institutional transformation. Transitional justice must therefore be linked to broader governance reforms aimed at strengthening the rule of law, judicial independence, and democratic accountability.

Security sector reform should prioritize civilian oversight, professionalization, and human rights training, ensuring that coercive institutions operate within legal and ethical boundaries. Judicial reforms must address structural deficiencies such as corruption, political interference, and access to justice.

Equally important is the reform of legal education and public administration, embedding human rights principles within professional cultures. Without such systemic changes, transitional justice risks becoming a symbolic exercise rather than a catalyst for sustainable transformation.[28]

7.5 Integrating Socio-Economic Justice and Structural Transformation

Contemporary transitional justice discourse increasingly recognizes that political violence is often rooted in structural inequalities, economic exclusion, and social marginalization. Addressing these underlying conditions is essential for meaningful reconciliation.

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[27] Thomas Nagel, 'War and Massacre' (1972) 1 *Philosophy and Public Affairs* 123.
[28] Ruti G Teitel, 'Transitional Justice and Judicial Activism: A Right to Accountability?' (2010) 13 *Cornell International Law Journal* 385.

Future frameworks should integrate socio-economic rights into transitional justice agendas, linking reparations and institutional reforms with development policies, land reform, and social welfare programs. Such integration moves transitional justice beyond retrospective accountability toward transformative justice that addresses both symptoms and causes of conflict. International financial institutions, development agencies, and human rights bodies should coordinate efforts to ensure that economic reconstruction aligns with justice objectives rather than undermining them.[29]

7.6 Strengthening Normative Clarity and Political Will

Finally, the effectiveness of transitional justice depends on sustained political commitment and normative clarity at both domestic and international levels. States must reaffirm their obligations to combat impunity and protect human dignity, even when doing so entails political costs.

International institutions should address inconsistencies and perceptions of selectivity that undermine the credibility of global justice mechanisms. Greater transparency, equitable enforcement, and inclusive decision-making processes are essential to restoring trust in international accountability systems.

8. Conclusion

Transitional justice represents one of the most ambitious efforts within international law to confront mass atrocity, restore dignity to victims, and rebuild fractured societies. Its evolution from a narrow focus on retributive accountability to a comprehensive framework encompassing truth, reparations, institutional reform, and reconciliation reflects a profound shift in the understanding of justice itself.

This study has demonstrated that transitional justice is neither a singular model nor a linear process. Rather, it is a dynamic and context-dependent project shaped by historical legacies, political realities, and normative aspirations. International human rights law provides the foundational principles that guide this project, but its effectiveness ultimately depends on how these principles are interpreted, implemented, and internalized at the domestic level.

The analysis of reparations and institutional reforms underscores that justice cannot be confined to courtrooms alone. Sustainable peace requires addressing the material, psychological, and structural dimensions of harm while transforming the institutions that enabled violence. Without such comprehensive engagement, transitional justice risks becoming symbolic, selective, or superficial.[30]

At the same time, transitional justice must navigate enduring tensions—between peace and justice, universality and cultural specificity, legal accountability and political compromise.

[29] Anja Mihr, 'Transitional Justice and the Quality of Democracy' (2017) 11 *International Journal of Transitional Justice* 423.
[30] David Luban, 'A Theory of Crimes Against Humanity' (2004) 29 *Yale Journal of International Law* 85.

These tensions should not be viewed as failures but as inherent challenges that demand continuous negotiation and ethical reflection.[31]

Ultimately, transitional justice is best understood not as a finite project but as an ongoing societal commitment to dignity, accountability, and inclusion. Its success lies not merely in punishing past wrongs but in cultivating conditions under which future violations become unthinkable. By anchoring justice in human rights, participation, and institutional transformation, transitional justice holds the potential to transform societies emerging from conflict into communities grounded in trust, equality, and the rule of law.

[31] Jeremy Sarkin, 'The Necessity and Challenges of Establishing Truth Commissions' (2001) 1 *International Journal of Transitional Justice* 1.