

Transitional justice

CIFEDHOP 2014 session

José Parra
Consultant in human rights and development

1. Transitional justice

- Social and institutional practice to deal with the legacies of gross human rights violations in a context of transition to democracy and/or peace
- Legal norms establishing the States obligations to prosecute, truth-telling, reparations and institutional reform/non-recurrence

2. International serious crimes

- Genocide
- War Crimes
- Crimes against humanity
 - ... committed as part of a widespread or/and systematic attack directed against any civilian population (art. 7 (1) Rome Statute of the ICC)*

3. Transitional Justice: the four pillars

- Justice
- Truth
- Reparations
- Non-recurrence/institutional reform

Justice

- **Rationale:** no serious crime should remain unpunished. A condition to build peaceful societies (deterrence, prevention)
- **Dilemmas:** fairness v efficiency, selectivity, temporal limitations, impunity gap, number of cases and link high positions to specific acts
- **Mechanisms:** ICC, international tribunals, mixed tribunals, national tribunals, universal jurisdictions

Kenya case

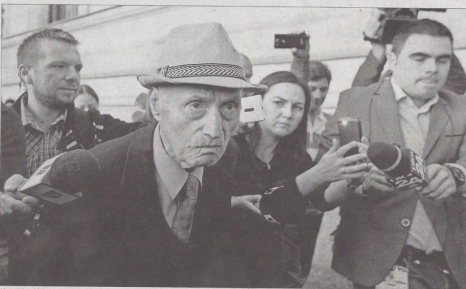


Truth

- **Rationale:** reconciliation, denial of human rights violations, prevent repetitions, an emerging right to know, honoring the victims and a narrative of what happened, preserving the memory, basis for prosecution (unique opportunity to investigate, gather and organize information and evidence)
- **Dilemma:** forget or remember (confront past crime), amnesty
- **Mechanisms:** commission of inquiry, civil society initiatives, historical truth commissions, truth commissions, memorialization (archives)

Rumania

6 INTERNACIONAL EL PAÍS, sábado 11 de octubre de 2014



Alexandru Vintreanu sale de los juzgados de Bucarest el 14 de septiembre. (SCOPUS PHOTO, GETTY)

Rumania enjuicia su pasado

El director de una cárcel comunista donde se torturó a presos políticos hace 50 años se sienta en el banquillo acusado de crímenes contra la humanidad

cer a una asociación estudiantilidad de anticomunistas. "Soy ve allí un año y un mes", precisa sentada en un ruidoso sofá de la sede de la Asociación de Antiguos Detenidos Políticos, en Bucarest. Hoy tiene 63 años y, tras las gafas de memoria reciente, una vena roja morada azul. A pesar de que los reclusos no se cruzaban apenas con los altos muros de la cárcel, Dimitrescu vio a Vintreanu un par de veces. Los dos terminaron en uno de los agujeros de aislamiento. "Se reple", por respuesta. "En la cárcel nos trataban como animales, vivíamos hacinados y los golpes y las torturas, sobre todo psicológicas, eran terribles. Trabajaban de limpiarlos de toda nuestra dignidad", apunta. En la primera sala de familia, Sierat. Pero "como un caballo adiestrado", recuerda su esposa, Nicolae. "Era alto, guapo, fuerte... me lo desbarraron en un estado lamentable".

"Yo no he hecho nada. Esto me está destruyendo", dice en su casa el acusado

"Aunque tarde, es clave para poder afrontar la historia", dice una exreclusa

Reparations

- **Rationale:** states' obligation to provide adequate, effective and prompt reparation for harm suffered. Right to effective remedy
- **Dilemma:** comprehensiveness, completeness, compensation, complexity
- **Mechanisms:** from adjudication to administrative program; restitution; compensation; rehabilitation; satisfaction

Tunisia



Institutional reform

- **Rationale:** ensure non-recurrence and support transition to sustainable peace and democracy
- **Dilemma:** ensuring due process
- **Mechanisms:** Lustration/vetting, security sector reform and DDR

Ukraine



4. Peace vs Justice

- True or false dilemma
(impunity vs peace)
- Timing and sequencing

Colombia



5. Preventing international serious crimes

- Early warning: special procedures and representatives
- Raising awareness and conflict prevention/
culture of peace

6. Transitional justice and UPR process

- Human rights reality check
(past and current serious crimes
and prevention)
- Culture of human rights
(raising awareness, human rights
education and training)

Concluding remarks

UPR: a complementary role for transitional justice

- an opportunity to raise-awareness about what are international serious crimes and existing mechanisms to address them
- an opportunity to periodically assess the efforts of a State to prevent or redress international serious crimes and inform the international community
- an opportunity to forge alliances (recommending States, national and international (specialized) NGOs, and others)