Working Paper

Schweizerische Friedensstiftung
Fondation suisse pour la paix
Fondazione svizzera per la pace
Swiss Peace Foundation

swisspeace

4 | 2012

Transitional Justice: Justice by Bureaucratic Means?

Sandra Rubli

swisspeace

swisspeace is an action-oriented peace research institute with headquarters in Bern, Switzerland. It aims to prevent the outbreak of violent conflicts and to enable sustainable conflict transformation.

swisspeace sees itself as a center of excellence and an information platform in the areas of conflict analysis and peacebuilding. We conduct research on the causes of war and violent conflict, develop tools for early recognition of tensions, and formulate conflict mitigation and peacebuilding strategies. swisspeace contributes to information exchange and networking on current issues of peace and security policy through its analyses and reports as well as meetings and conferences.

swisspeace was founded in 1988 as the "Swiss Peace Foundation" with the goal of promoting independent peace research in Switzerland. Today swisspeace engages about 40 staff members. Its most important clients include the Swiss Federal Department of Foreign Affairs (FDFA) and the Swiss National Science Foundation. Its activities are further assisted by contributions from its Support Association. The supreme swisspeace body is the Foundation Council, which is comprised of representatives from politics, science, and the government.

Working Papers

In its working paper series, swisspeace publishes reports by staff members and international experts, covering recent issues of peace research and peacebuilding. Please note our publication list at the end of this paper or on www.swisspeace.org.

Supported by the Swiss Academy
of Humanities and Social Sciences
www.sagw.ch

Publisher: swisspeace
Design: Leib&Gut, Visuelle Gestaltung, Bern
Ordering information: swisspeace, Sonnenbergstrasse 17
PO Box, 3000 Bern 7, Switzerland
www.swisspeace.org
info@swisspeace.ch

ISBN 978-3-908230-85-4

Working Paper 4 | 2012

Transitional Justice: Justice by Bureaucratic Means?

Sandra Rubli

October 2012

About the Author

Sandra Rubli holds a MA in Political Science from the University of Berne, Switzerland (2007). She joined swisspeace in August 2006 and worked as research assistant for FAST International. From September 2007 to April 2008 she was a research analyst for FAST International, responsible for Burundi, DRC, Ethiopia and Somalia. Since November 2008, she has been working as researcher for KOFF, the Dealing with the Past Program and has been writing her PhD thesis. Her research analyzes the links between transitional justice, dealing with the past and the post-conflict state-formation process in Burundi. She conducted extensive fieldwork in Burundi.

Table of Contents

Abstract/Zusammenfassung/Résumé

This working paper draws attention to some problematic issues of transitional justice policies as promoted by international organizations, bilateral donors and NGOs. It argues that through the crystallization of a transitional justice norm on the international level, its institutionalization in temporary legal bodies and specialized organizations, and the professionalization of the field, transitional justice has become bureaucratized. Drawing on existing critical theoretical and empirical literature and on the author's own extensive field research this working paper deconstructs the underlying assumptions and conceptualizations that guide most international transitional justice interventions. It identifies some of the conceptual and moral dilemmas that emerge from such depoliticized, prescriptive, technocratic and teleological approaches toward post-conflict justice.

Dieses Working Paper lenkt die Aufmerksamkeit auf einige problematische Aspekte von Strategien der Übergangsjustiz, wie sie von internationalen Organisationen, bilateralen Geldgebern und NGOs gefördert werden. Es argumentiert, dass die Herausbildung einer Norm betreffend Übergangsjustiz (*Transitional Justice*) auf internationaler Ebene, ihre Institutionalisierung innerhalb temporärer gerichtlicher Instanzen und spezialisierter Organisationen sowie die Professionalisierung dieses Gebietes dazu geführt haben, dass sich *Transitional Justice* verbürokratisiert hat. Basierend auf bestehender kritischer theoretischer und empirischer Literatur und auf den umfangreichen Feldforschungen der Autorin dekonstruiert dieses Working Paper die Annahmen und Konzeptionalisierungen, die den meisten Interventionen im Bereich *Transitional Justice* zugrunde liegen. Es hebt einige konzeptuelle und moralische Dilemmata solcher entpolitisierten, präskriptiven, technokratischen und teleologischen Perspektiven zur Aufarbeitung der Vergangenheit im Nachgang an Konflikte hervor.

Ce *working paper* attire l'attention sur quelques aspects problématiques des stratégies de la justice transitionnelle telle que promue par les organisations internationales, les bailleurs bilatéraux ainsi que les ONG. Il soutient que la cristallisation d'une norme de justice transitionnelle à l'échelle internationale, son institutionnalisation à travers des instances juridiques temporaires et d'organisations spécialisées ainsi que la professionnalisation du domaine ont contribué à la bureaucratisation de la justice transitionnelle. En puisant dans la littérature théorique et empirique existante et dans les recherches sur le terrain de l'auteure, ce *working paper* déconstruit les hypothèses et conceptualisations sous-jacentes à la plupart des interventions de justice transitionnelle internationale. Il met en avant quelques uns des dilemmes conceptuels et moraux inhérents à de telles approches dépolitisées, prescriptives, technocratiques et téléologiques envers la justice d'après-guerre.

Introduction

Very few other terms have acquired as much attention in so little time as 'transitional justice'. As an apparent 'field' of practice and research it was only consolidated in the late 1990s and early 2000s (Bell 2009b), with blurred boundaries separating academics and practitioners. Although the concept first emerged amongst human rights advocates, it has been quickly adopted by the peace-building community and constitutes today an integral part of the liberal peace-building model (Sriram 2007). The liberal peace-building model propagates the promotion of democracy, market-based economic reforms and a range of other institutions associated with 'modern' states as a driving force for building sustainable peace (Newman et al. 2009a). Transitional justice has become an "almost automatic response to conflict and human rights violations" (Hazan 2007: 10) and the concept has crystallized into an international norm[1] (Subotić 2009, Bell 2009a). Bilateral donors, multilateral institutions and NGOs mainstreamed it into their activities and specialized desks for transitional justice have been created. Transitional justice projects are designed, implemented, monitored and evaluated. At least in the last decade transitional justice has been professionalized through the recruitment of specialized experts and elaboration of best practice manuals. In parallel, transitional justice has become institutionalized and finds its expression in permanent and temporary institutions such as the International Criminal Court (ICC) or the International Criminal Tribunal for Rwanda (ICTR). All of these developments constitute key elements of a trend which I term the 'bureaucratization' of transitional justice. Although I do not deny the many positive aspects of these developments, I argue that the current dominant discourse and practice of transitional justice exhibit some conceptual pitfalls and problematic outcomes which have only recently started to gain attention from critical researchers.

While becoming institutionalized, professionalized and codified as a norm, transitional justice remains largely an under-theorized field (de Greiff 2010). In particular, research has only recently started to analyze the long-term changes which advocates of transitional justice claim. Consequently, many transitional justice initiatives are based rather on 'received wisdom' and causal beliefs than on empirically tested hypotheses and correlations (Thoms et al. 2008). Criticisms of transitional justice thus include assertions that it relies too heavily on a logic of project management which is detached from local political, social, cultural and historical contexts. In addition, critics suggest that 'the local' is often framed as backwards and traditional, with local actors subject to instrumental notions of change which reveal a teleological approach.

This essay directly engages with such criticisms of transitional justice. Firstly, it will explore how transitional justice as currently propagated by multilateral institutions, bilateral donors and specialized NGOs has become bureaucratized. Secondly, it will deconstruct the underlying assumptions which guide present transitional justice policies and identify some of the conceptual and ethical problems inherit in transitional justice interventions. Finally, it will argue that such criticisms of the way in which transitional justice is often conceptualized and practiced point to a need for greater theorization. The argumentation of this essay is based on an extensive review of the increasing critical literature on transitional justice and on my own extensive qualitative field research in Burundi conducted between 2009 and 2011. Following a constructivist epistemological approach I conducted in-depth interviews and had more informal exchanges with high-ranking politicians, civil society representatives, domestic and international experts and ordinary Burundians – the 'beneficiaries'. Additionally this essay is inspired by critical work on peace-building (Goetschel and Hagmann 2009) as well as on the current debate on 'fragile states' (Hagmann and Péclard 2010) at swisspeace.

[1] Throughout this working paper I use the term 'norm' not in a legal sense, but rather as it is used in social science. In this sense, a norm can be defined as a "standard of appropriate behavior for actors with a given identity" (Finnemore and Sikkink 1998: 891).

1 Bureaucratization of Transitional Justice

A great deal of literature on transitional justice addresses issues concerning the design of transitional justice mechanisms, questions of timing and sequencing and how best to apply transitional justice. Thereby scholars often take a normative stance which has heavily influenced the development of the literature in this field (Duggan 2010) and the current dominant discourse and practice. By focusing for a long time on (mainly) legal mechanisms to deal with a violent past, transitional justice was dominated by legal scholars examining "doctrinal issues with reference to international criminal law, human rights law, humanitarian law and domestic challenges to amnesty" (Bell 2009b: 10). However, a growing body of critical research has recently emerged (cf. Palmer et al. 2012, Sriram 2007, Baines 2010, Subotić 2009, Shaw et al. 2010, Vinjamuri and Snyder 2004). This literature attempts to empirically test the claims of advocates and practitioners (Duggan 2010) and to question underlying assumptions of the concept of transitional justice. It is to this critical literature which this paper speaks, and to which it will contribute.

Transitional justice can be defined as the "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes"[2] (Teitel 2003: 69). However, a consensus about what transitional justice is and what the concept entails is absent from both the policy and academic arenas. While some authors argue for a more narrowly defined concept (e.g. Bell 2009b) focusing on legal aspects, others argue for a thicker understanding of transitional justice (e.g.McEvoy 2007). In the practical field a comprehensive and commonly agreed upon definition is still lacking to designate the active domain of policy and interventions in (post-) conflict societies in order to deal with the legacy of a violent past. Throughout the 1990s, international organizations, donor countries, think tanks and specialized NGOs developed a plethora of transitional justice definitions in their policies. Some authors and policy-makers even use the term 'dealing with the past'. They argue that 'transitional justice' is too closely associated with juridical mechanisms and, in contrast, 'dealing with the past' would include a wide range of activities not limited to a transitional period (cf. Sisson 2010). However, throughout this essay I use the term 'transitional justice' as it is more widely used by policy makers and academics. Moreover, through the broadening of its scope the concept of transitional justice includes today many of the same elements as 'dealing with the past', such as truth, justice, reconciliation, reparations and institutional reforms. Although the definitions of transitional justice thus vary in their wording, I argue that importantly the concepts which are promoted by international organizations, bilateral donors and specialized NGOs are based on the same assumptions and same normative underpinnings, and thus share some key features and disseminate a very similar meaning of transitional justice. In the sections which follow I will elaborate on this and demonstrate how transitional justice has developed to become 'justice by bureaucratic means', something which can be applied in any situation or society.

1.1 Crystallization as an International Norm

Over the last two decades transitional justice has crystallized as a norm on the international level and in international relations. The first initiatives of transitional justice with the involvement of the international level were the Nuremberg and Tokyo trials held by the Allied Powers in order to deal with the crimes of the German Nazi and Japanese regimes, respectively. As a first phase of transitional justice they reflect the "triumph of transitional justice within the scheme of international law" (Teitel 2003: 70). The legacy of this interstate cooperation and the criminalization of state wrongdoing based on universal rights formed the basis of modern human rights law (Teitel 2003) and one legal foundation of the current transitional justice norm. However, those efforts after the Second World War remained the only judicial approaches at the international level until the end of

[2] The author notes that transitions from authoritarian regimes towards democracy might be very different from transitions from war to peace and would require separate treatment and analysis. However, mainstream transitional justice claims to be valid and applicable for both types of transitions.

the Cold War. In the meantime, transitions from authoritarian regimes to democracy in Latin America have contributed to the development of the transitional justice field from another angle. Since legal accountability under these repressive regimes was not possible, international and national human rights movements focused on shaming campaigns against human rights violations (Arthur 2009). From the 1980s onwards, the focus of the discourse was on human rights issues related to political transitions (Arthur 2009: 336). These debates distinguished themselves from the previous human rights discourse by adding the normative aim of facilitating a transition to democracy (Arthur 2009, Bell 2009b). Truth commissions with the mandate to examine gross human rights violations committed by a repressive state emerged as the main instrument of this period. The dominant normative lens (to facilitate transitions to democracy) determined which kind of justice measures were considered as appropriate and why certain measures were recognized as the legitimate justice initiatives during a time of political change (Arthur 2009).

In parallel, efforts on the international level were undertaken to further develop norms and standards to address human rights violations and codify transitional justice in the form of United Nations (UN) statements and resolutions as well as various soft law standards (Bell 2009a). These efforts also led to the establishment of the Office of the High Commissioner of Human Rights (OHCHR) in 1993. The extensive involvement of the High Commissioner in technical assistance projects reflects a shift in UN human rights practice from monitoring violations to the building of institutions and capacities to facilitate compliance. Against this background Louis Joinet (1997), with his principles against impunity, provided a normative framework based on which transitional justice has been conceptualized. After the end of the Cold War and with the UN *Agenda for Peace* (1992), transitional justice has broadened its scope. It does not now only cover transitions from authoritarian regimes to democracies, but also includes transitions from war to peace. Humanitarian law's requirements concerning post-conflict legal accountability began to be explored and developed. For example, in 1995, the International Committee of the Red Cross stated that amnesty should be limited to detainees who have not violated international humanitarian law, thus interpreting the broadly worded amnesty provision (Article 6(5) of Protocol II to the 1949 Geneva Conventions (Bell 2009b). The jurisprudence of the international humanitarian law, in particular by the International Criminal Tribunal for the former Yugoslavia (ICTY), has started to expand its applications to situations of internal armed conflict. Transitional justice includes intrastate incidents that occur even in peacetime, thus, which are beyond international conflict, focusing on extreme offenses such as crimes against humanity (Teitel 2005). In 2000, the UN formalized this normative commitment to transitional justice with a set of internal guidelines to its mediators and one year earlier through its dissent to the amnesty provision of the Lomé Peace Accord for Sierra Leone (Bell 2009b). In 2004 this was further reinforced by the UN report on "The rule of law and Transitional Justice in Conflict and Post-Conflict Societies" (S/2004/616) and in the UN Guidance Note specifying the UN 'approach towards transitional justice' (UN Secretary General 2010).

These developments contributed significantly to the emergence of the transitional justice norm based on the normative premise that international humanitarian law, international criminal law and human rights law require accountability in post-conflict contexts. Transitional justice has moved "from being aspirational to embodying binding legal obligations" (Van Zyl 2005: 209) and has evolved from its historically exceptionalist origins to become "something which is normal, institutionalized and mainstreamed" (McEvoy 2007: 412). Bell (2009b: 16) states that the concept of a coherent field of transitional justice, thus transitional justice as a norm, emerged because "international legal norms were argued to be relevant to peacemaking bargains." International law now sets out clear standards regarding state obligations in dealing with past human rights abuses and corresponding prohibitions, for example for blanket amnesties for grave crimes. The legally characterized codification of standards and principles, various soft law standards, UN resolutions and statements all reflect a certain legalism of transitional justice (McEvoy 2007). Based on that, I argue that the dominant focus of this crystallized transitional justice norm lies on judicial account-

ability. Most observers and scholars have viewed internationalized criminal courts as the "gold standard" (Ramji-Nogales 2010: 3) for dealing with the past, resulting in the belief that the same accountability mechanisms can and should be applied across varied cultures and contexts.

This, however, has not always gone uncontested and the crystallization has not been as linear and uncomplicated as it is often depicted. The peace versus justice debate is probably the best known example. Proponents of peace argue that justice would only be possible if there is peace, and, yet, justice itself can hinder the achievement of peace (Anonymous 1996, Bell et al. 2004, Sriram and Pillay 2009). However, often evoking the obligations of international law and presenting the dilemma as a question of timing and sequencing, the debate seems to have reconciled normative legal standards with the pragmatics of making peace. Transitional justice has become an "almost automatic response to conflict and human rights violations" (Hazan 2007: 10). Among international organizations, donors and transitional justice advocates, a consensus seems to have emerged, namely that states emerging from conflict have the choice of "how much accountability when" rather than between some accountability and none (Bell 2009a: 120). Thus, today it is no longer an option whether to deal with the past or not, but rather how, when and which mechanisms to deploy. With the crystallization of transitional justice as a norm on the international level, states and political leaders responsible for past grave human rights violations can no longer easily avoid their responsibility without being at least internationally blamed and depicted as pariahs.

1.2 Institutionalization of Transitional Justice

The establishment of transitional justice as an international norm has been accompanied by an institutionalization of transitional justice. Firstly, the transitional justice norm and its legal basis, including international criminal law, international humanitarian law and human rights law, have been further developed, legalized and codified (Subotić 2009) by special bodies. In 1993 and 1994 respectively, the ICTY and the ICTR were established. With the adoption of the Rome Statute in 1998 the basis for the creation of the permanent International Criminal Court (ICC) was laid. As an example for the further development of international law, the ICTY has contributed significantly to the codification of sexual violence. In a landmark case against Anto Furundžija, the ICTY's judges stated that rape may also be prosecuted as a grave breach of the Geneva Conventions as well as a war crime and might be used as a tool of genocide. In 1998, this last aspect was confirmed when the ICTR rendered a judgment in the Akayesu case in which it was concluded that rape constitutes genocide (website ICTY undated).

Secondly, specialized (international) NGOs have emerged, such as the Center for Transitional Justice (ICTJ) founded in 200. Moreover, international organizations and bilateral donors have created new administrative branches or included transitional justice prominently in existing units. For example, in 2003, the Swiss Federal Department of Foreign Affairs created within the Human Security Division (HSD) the Task Force Dealing with the Past. By developing a conceptual framework, it mainstreams dealing with the past activities in its human security, peace promotion, human rights and humanitarian policies. Such new specialized actors and administrative units have increasingly invested financially, politically and symbolically in transitional justice (cf. Hazan 2006) by carrying out comparative research or training, or supporting politically or symbolically transitional justice processes. In particular, international actors have started, since the new millennium, to play a greater role in framing approaches to transitional justice (Leebaw 2008). By developing principles of 'best practice' of transitional justice they have actively shaped and contributed to the establishment of the transitional justice norm. The institutionalization of transitional justice has also led to the opening of new funding schemes. In order to receive funds, humanitarian and peace-building organizations have started to place and frame their projects under the heading of transitional justice and/or transitional justice has been mainstreamed into existing humanitarian and peace-building programs. For local NGOs and associations this implies that they need to adapt their language and

label their reconciliation, dialogue or reintegration projects as transitional justice. However, there might be a risk that 'beneficiaries' and local NGOs only instrumentally and superficially adopt the goals of transitional justice policies because they are more interested in the projects' material resources than in their actual aims (Goetschel and Hagmann 2009).

While this institutionalization of transitional justice in legal edifices, NGOs and administrative bodies strengthens accountability for past crimes and the fight against impunity in post-conflict societies, I claim that the institutionalization on various levels is a strengthening of a certain transitional justice discourse defined by international NGOs, organizations and donor countries. As a consequence some concepts and terms, such as reconciliation or justice, have lost some of their flexibility of interpretation. For example, in Brčko District in Bosnia and Herzegovina a narrow official interpretation of reconciliation as the increased interaction between ethno-national groups does not necessarily reflect or incorporate the variety of understandings of reconciliation amongst the population (Jones 2012). Below I further discuss the implications of a dominant conceptualization by international NGOs, organizations and donor countries.

1.3 Professionalization of the Field

Transitional justice has become professionalized with experts, think tanks and researchers engaged to consult, design, implement and evaluate transitional justice projects. Wilson (2003: 383) observes that a "global reconciliation industry" has sprung up to formulate and implement policies. Thereby certain experts define which measures and mechanisms are considered to be appropriate and legitimate for a certain context. On the one hand such professionalization ensures that lessons are learnt from other contexts, that failures and pitfalls of earlier interventions can be avoided and that existing international norms, standards and principles are respected. Consequently, international organizations, bilateral donors and specialized NGOs have developed their own transitional justice manuals and practical tools based on best practice and lessons learnt in other contexts. Remarkably, in collaboration with ICTJ, OHCHR developed a series of rule-of-law tools for post-conflict states on the establishment and functioning of truth commissions, reparations, vetting programs and prosecution initiatives based on best practices. On the other hand, such professionalization implies that a handful of (mainly international) experts decide upon a local transitional justice process and the normative conceptualization of justice, reconciliation and peace. As those experts and specialized bodies lie mainly in the West and most experts and professionals are Western, the transitional justice norm is strongly influenced and dominated by Western values. Also international criminal tribunals, through which transitional justice has partly become institutionalized, follow a legal tradition of trials and punishment of individual crimes (Tiemessen 2011). Thus, based on a liberal tradition of accountability, transitional justice initiatives promote a rather adversarial, retributive model of formal legal justice (Lambourne 2009). I will return to this below, when I discuss in more detail the moral dilemma which emerges from seeing transitional justice as a political process through which parts of the social world are molded.

A good example of the involvement of experts and their role in a transitional justice process is provided by the case of Burundi. The national consultation process on the implementation of transitional justice measures in Burundi is strongly influenced by the ICTJ. In 2006 a local NGO asked the ICTJ for expert advice on a project to prepare victims for the truth seeking process (correspondence on file with author). As a consequence of this query, ICTJ prepared a document lobbying the international community and bilateral donors to conduct national consultations (ICTJ 2008a). When these national consultations finally took place, on behalf of the UN representing the international community, a former collaborator of the ICTJ was part of the steering committee. The six members of the committee elaborated the questionnaire, conducted the consultation sessions and wrote the final report including the recommendations. The presentation of what transitional justice is at the beginning of each consultation session was mainly based on the conception of the ICTJ. Moreover, the two representatives of the UN on this committee added a disclaimer to the question of amnesties: amnesties cannot be granted for genocide, war crimes and crimes against

humanity (Comité de Pilotage Tripartite 2010, personal communication with a field assistant 2010). This disclaimer officially limited the legitimate measures to deal with those crimes and excluded them from amnesty. This issue is still in fact pending in the negotiations on transitional justice between the UN and the Burundian government.

Through the professionalization and the institutionalization of transitional justice in specialized NGOs and governmental bodies, transitional justice has become subject to project management logic. For example, in the context of Northern Ireland, Bell and others (2004: 7) argue that reforms can only be possible when they are "couched in managerialist language, with an emphasis on 'professionalism', 'efficiency' and modernisation". When the state is perceived to have 'done a good job in difficult circumstances', demands for institutional reform would be seen as a political assault on the integrity and neutrality of the legal structure (Bell et al. 2004). By planning, implementing, monitoring and evaluating (Goetschel and Hagmann 2009) transitional justice has also become rationalized. Transitional justice processes are articulated in log-frames with activities and outputs which are supposed to lead to assumed outcomes and impacts which can be evaluated. Comparing development and transitional justice, Colvin (2008: 413) argues that both are underlined by the logic that with careful planning and proper technique, their goals can be accomplished effectively and efficiently. Based on manuals of best practices that are developed by experts, transitional justice is elaborated and deployed in projects. However, these manuals depict a rather technocratic, toolbox and recipe-like approach to transitional justice characterized by a strong focus on legalism. The focus on legal norms further leads to professional demands for lawyers and legal analysis that serve to perpetuate the institutional dominance of law and legal approaches to transitional justice (Bell 2009b).

2 Deconstructing Underlying Assumptions Guiding Transitional Justice Interventions

As I have argued thus far, based on the emerging transitional justice norm and best practice manuals and toolboxes, the great variety of transitional justice initiatives tend to be designed and planned by experts and professionals and deployed in projects which can be implemented, monitored and evaluated. It is this crystallization of a transitional justice norm and the institutionalization and professionalization of the transitional justice field that constitute key elements characterizing what I identify as the bureaucratization of transitional justice. Thus accountability or justice for past human rights abuses is deployed through bureaucratic means.

However, these bureaucratic approaches are built on a largely under-theorized (de Greiff 2010) understanding of transitional justice or on selective and insufficiently empirically tested assumptions. Through the institutionalization of transitional justice 'vague statements' and 'received wisdom' (Goetschel and Hagmann 2009) are produced about what transitional justice is and how the aims of it can be achieved. For example, the often stated beneficial nexus between truth-telling and reconciliation remains on a conceptual level rather than being based on an empirically established correlation. The beneficial effects of truth telling might only be based on a moral conviction (Brahm 2007) or arise from often repeated aspirational statements (Borer 2006). Borer (ibid: 30) writes that the "particular linking of two concepts – truth and reconciliation – has been reiterated so often that it has achieved the status of a truism." Especially regarding the effects and impacts of transitional justice, research has only recently started to analyze long term changes (Thoms et al. 2008). Consequently, many transitional justice initiatives are based rather on 'received wisdom' and causal beliefs than on empirically tested hypotheses and correlations (ibid.).

If we again take the example of Burundi we can see how perceptions of which transitional justice mechanisms are needed can be complicated. When Burundians were asked in national consultations on transitional justice 'what is needed for reconciliation?' 83 percent mentioned justice. However, 'truth' (91%) and also 'forgiveness' (87%), which is often associated with amnesties and framed as the opposite of justice (cf. Hamber 2007), are perceived to be even more needed for reconciliation (Comité de Pilotage Tripartite 2010). In the open question category, people then mentioned prerequisites for reconciliation and the non-recurrence of violence such as dialogue, civil and patriotic education and equal and sustainable economic development. Such aspects are usually not explicitly part of transitional justice policies, or at least not in the case of Burundi where it consists of a Truth and Reconciliation Commission and a special criminal tribunal. Thus, Burundians consider other aspects than justice conductive to reconciliation, and consequently seem to implicitly challenge the transitional justice assumption that justice is needed for reconciliation.

The discourse promoted by transitional justice advocates suggests various such interpretations about reality and causal mechanisms, which are then presented as factual evidence. Rather than hypotheses derived from narrowly defined scientific theories, they are, however, vaguely stated assumptions. The following part deconstructs some of these underlying assumptions that guide present transitional justice policies and identifies some of the conceptual and ethical problems inherit in transitional justice interventions.

2.1 Depoliticization

A widespread assumption is that transitional justice will be accepted as a legitimate and (value-) neutral tool, since it is guided by and based on international norms and standards. Underlying this assumption is the belief in the universality of those norms and standards, such as human rights. Due to their externality, they are perceived to be immune to local power struggles and political instrumentalization (Leebaw 2008). Such a 'neutral' and technocratic approach might be appealing in a highly politically polarized and stalled context. However, the vague definitions of transitional justice and undefined substance of its goals of truth, justice and reconciliation make the policies and concepts susceptible to misuse and manipulation by powerful local or international actors. In these

cases, transitional justice advocates speak of politicized (transitional) justice; justice is used for political aims. The ICTJ states that "without any truth-telling or reparation efforts […] punishing a small number of perpetrators can be viewed as a form of political revenge. Truth-telling, in isolation from efforts to punish abusers and to make institutional reforms, can be viewed as nothing more than words. Reparations that are not linked to prosecutions or truth-telling may be perceived as "blood money" - an attempt to buy the silence or acquiescence of victims" (ICTJ 2009).

However, I challenge the perceptions of 'politicized' justice that transitional justice advocates put forward when transitional justice becomes subject of local political struggles. In contrast, I argue that in doing so transitional justice advocates deny the inherent political nature of the process. Hence, it seems that transitional justice has become depoliticized. This depoliticization of international interventions is in line with the increasing judicialization of conflicts and legal approaches toward conflict resolution. Law, especially international law, is perceived as a "safe, neutral, universal way to engage with other countries" (Oomen 2005: 893). The legalist lens that transitional justice takes limits the focus to specific sets of actors for specific sets of crimes committed within a rather artificial period of time, and thus determines the categories of when, to whom and for what transitional justice applies (Nagy 2008). Consequently the transitional justice norm frames the particular kind of solutions and the particular kind of problems it aims to address (ibid.). Thereby this framing occurs in an apolitical way and judicial means are considered to be the appropriate and legitimate way to resolve the problems framed in a legalist way. Wide ranging political questions are translated into more narrowly framed legal questions (Robins 2012). As some (Nagy 2008, McEvoy 2007) highlight, the problem is not with law or human rights per se, but rather with their over emphasis in the approach of the transitional justice norm and the depoliticized way in which 'justice' is supposed to operate.

Due to claims of the universality of human rights and the neutrality of law, normative narratives of transitional justice regard transitions as inherently positive and as requiring no further elucidation (Dube 2011). Within the norm of transitional justice, transitions are equalized with positive outcomes (ibid) without really asking what the content is of 'doing good'. Avoiding the thorny normative question of whether a transitional justice intervention and the goals promoted are 'good' or 'bad', transitional justice initiatives promote a rather technical and depoliticized approach. Although transitional justice advocates claim to promote, at least not explicitly, less political goals, transitional justice mechanisms judge political violence and therefore are implicated in political judgments (Leebaw 2008). For example, the goal of reconciliation was reformulated in apolitical terms. While reconciliation used to refer to political compromises and bargains to stabilize the new regime, today it pertains rather to consensus (ibid). Thus, transitional justice is not a value-neutral tool, but instead an inherently political process. The normative and political concepts underlying transitional justice initiatives are related to popular identity, local and global power relations and contested conceptions of justice and the organization of the social world (Goetschel and Hagmann 2009). Teitel (2002: 385) even argues that "law itself can define what constitutes peace and stability internationally, and further that it could somehow displace politics to resolve international conflicts." But the normative goals of transitional justice including the conceptualization and understanding of justice, reconciliation and peace, are only rarely deliberated and discussed with those at whom the intervention is target. Instead the concepts of liberal peace-building and democratic peace theory are rather uncritically endorsed, despite the growing body of critical literature on liberal peace-building and the promotion of democracy (cf. Newman et al. 2009b, Sriram 2007).

2.2 External Engineering of Reconciliation, Democracy and Peace

Reliant on technocratic and project logic approaches, it is presumed that the aims of transitional justice, such as reconciliation, rule of law, democracy and peace, can be externally engineered. It is also assumed that the 'right' set of institutions and the 'appropriate' mix of processes, with a few changes, can be applied to any and all situations and countries (Thoms et al. 2008). They will be

successful as long as one possesses adequate knowledge to determine which intervention to deploy (cf. Fletcher et al. 2009), has local partners and financial means. This assumption often translates into a 'toolbox' approach from which the appropriate combination for the intervention has to be chosen. "A distinguishable transitional justice template has emerged involving possible prosecutorial styles of justice […], local mechanisms for truth recovery, and a programme for criminal justice reform in previously conflicted societies." (McEvoy 2007: 412). Underlying this assumption is a certain perception of what a transition is. Drawing largely on an article by Arthur (2009), I claim that this perception has led to the definition of the 'legitimate' mechanisms resulting in a 'toolbox' approach. Arthur (ibid) claims that the conceptual content of transitional justice has directly been shaped by a set of interactions among human rights activists, lawyers and legal scholars, policymakers, donors and comparative politics experts. They largely understood transitions to democracy in the 1970s and 1980s in terms of political reform, rather than social transformation, thus, they were construed as taking place primarily at the legal-institutional level of politics (ibid.). Judicial accountability measures, truth commissions, restitution or reparation, and reform of state institutions – have become recognized as the legitimate set of measures. Underlying the development of a 'toolbox' is a particular understanding of transitions toward democracy as a "shortened 'sequence' of elite bargaining and legal-institutional reforms rather than through long-term socioeconomic stages" (ibid: 338). Social change is considered to be an outcome of legal-institutional reforms and hence, transitional justice is often externally imposed in a paternalistic and top-down way (Goetschel and Hagmann 2009).

Due to the focus on legal-institutional reforms, the 'toolbox' approach towards transitional justice is a typically state-centered and state-driven process. It organizes itself conceptually and politically along the lines of the nation-state (Colvin 2008). Critics have suggested that this approach often ignores or neglects local realities, historical developments and social, economic and political conditions. Roht-Arriaza (2006: 2) states that "a narrow view [of transitional justice] can be criticized for ignoring root causes and privileging civil and political rights over economic, social and cultural rights". Justice is not a thing in and of itself, simply delivered and engineered by specific transitional justice mechanisms and institutions, but rather justice is a social project (Baines 2010). In the rush to advance transitional justice initiatives, donors, NGOs and international organizations may overlook the context (and its limitations) in which their interventions will unfold (Fletcher et al. 2009). As transitional justice aims at transforming the social and political circumstances which led to gross human rights violations, it requires in-depth contextual knowledge. Perceptions about what should be transformed must be shared with local stakeholders and approaches must be adapted to specific contexts in order to enjoy the necessary legitimacy at the local level. But partly due to time constraints and managerial rationality of transitional justice policies only few efforts are made to conceptualize local understandings of justice and reconciliation. Little is invested in exploring existing informal conflict resolution mechanisms, customary law, religious and kinship institutions. The lack of context knowledge is mostly substituted with expert knowledge (Goetschel and Hagmann 2009). It is often based on 'received wisdom' and assumed causal beliefs about transitional justice or 'experts' simply evoke international norms and standards without linking them to the context. Thereby external 'expert' knowledge is considered to be superior and trumps popular and indigenous conceptions about how to deal with the past.

Despite claims and assertions for context-specific approaches rather than one-size-fits-all formulas, and for regarding transitional justice as a political question rather than a set of merely technical decisions (cf. UN Secretary General 2004), transitional justice mechanisms have all too often been introduced without regard for the internal dynamics of the society for which they were intended (Hazan 2006), and thus are "abstract from lived realities" (Nagy 2008: 279) in a way which "may be alien and distant to those who actually have to live together after atrocity" (ibid: 275). For example, criminal courts rely on a concept of individualized guilt, which is an integral element of justice, and a clear separation between victims and perpetrators (Buckley-Zistel 2009). However, this may not resonate with local contexts and conceptions of guilt because guilt is not only individual but instead embedded in a collective social and political context (ibid). Where there were exceptions and efforts

to include local realities and consider local perceptions and participation, such good intentions often fall prey to managerial efficiency and rationality criteria when it comes to implementation. The normative content and the desirability of the aims of transitional justice are seldom subject to discussion with local actors. When people, 'beneficiaries' and target groups are consulted, this is done only with regards to project implementation. For example, in Burundi the population was able to express its opinion in national consultations mainly on the implementation modalities and the technical aspects of the truth and reconciliation commission and the special tribunal (cf. Comité de Pilotage Tripartite 2010). While the consultations provide a semblance of participation, political questions were not addressed and the population could not participate in the designing and planning of the transitional justice project in Burundi. Hence, the majority of the population has been excluded from defining what justice, reconciliation and peace mean in the Burundian context.

The paternalistic imposition of transitional justice models that are detached from the local political, historical, social or cultural context may result in contestation and rejection of, as well as resistance to, transitional justice. However, transitional justice is rarely a democratic process. Often provisions of transitional justice are set in peace negotiations between armed groups, political parties, governments and international actors. Victims are among the primary beneficiaries (Sisson 2010), but they are mostly excluded from the planning and designing of transitional justice processes and almost never represented in peace negotiations. This leads us to ask in what ways 'the local' is imagined and targeted as part of transitional justice.

2.3 Conceptualization of 'The Local'

The UN (UN Secretary General 2004: 12) recognizes that "due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition". Initially, traditional mechanisms and customary law were viewed as complements to non-prosecutorial transitional justice mechanisms, able to afford them increased legitimacy (Shaw et al. 2010). Earlier transitional justice efforts were conceptualized by the relegation of restorative justice to the periphery of local communities and by the international community's mainstay of retributive justice (Tiemessen 2011). Thus, local and domestic mechanisms were associated with a more restorative approach to justice, while international mechanisms or domestic mechanisms fully corresponding to the transitional justice norm follow a rather retributive approach. However, the conceptualization of local justice as being exclusively restorative has been criticized by several authors as there is no straightforward correlation between retributive justice as international and cosmopolitan and restorative justice as domestic and communitarian (ibid). The distinction between retributive justice as in western formal legal systems and restorative justice as in indigenous, informal justice mechanisms is oversimplified and serves to mask multiple, complex human needs, expectations and experiences related to dealing with the past and reconciliation (Lambourne 2009). While today this false distinction between the local as restorative and the international as retributive has increasingly been acknowledged (cf. ibid), transitional justice initiatives that take into account local mechanisms for administering justice and settling disputes frequently follow a level-based approach. However, such level-based approaches are conceptualized in a dichotomous manner in which the 'local' is constructed as a category that is separated from the 'international' or 'global' and in which each realm is somehow distinct and discrete from each other (Baines 2010).

There exists a plethora of studies on local, traditional or customary mechanisms (e.g.Huyse and Salter 2008), but many of these studies focus on and provide insights into principles of customary practices with a concern for how they (can) contribute to national-level transitional justice mechanisms or reconciliation processes (Baines 2010). Following on from the UN's postulate that local mechanisms should be taken into account in conformity with international standards it means that local mechanisms and perceptions are only considered as long as they resonate with international norms and standards. If local mechanisms resemble Western courts and customary laws or can be adapted to meet 'universal' standards (Baines 2010), they are perceived to be appro-

priate and worthy of funding from donors. This implies that global efforts and initiatives precede local particularities (Finnström 2010) and suggests a certain superiority of international approaches. In contrast, if local actors and local mechanisms do not share the donors' geopolitical worldviews (Goetschel and Hagmann 2009), they are deliberately excluded on the grounds of moral backwardness or a lack of modernity. For example, after a controversy regarding the execution of 22 convicted 'génocidaires' in 1998, Rwanda imposed a de facto moratorium on carrying out death sentences and eventually abolished the death penalty in 2007 in order to persuade foreign states and in particular the ICTR to extradite suspects to trials in Rwanda (cf. Waldorf 2009). Without the moratorium and the abolition, the Gacaca system which was established in 2002 would most likely not have been supported by international organizations and bilateral donors, not at least because it might violate standards of due process (Tiemessen 2004).

Debates about localizing transitional justice are often framed in reference to the virtues of 'modernity' which are supposedly represented by international or formal justice versus those of 'tradition' supposedly represented by local justice (Shaw et al. 2010), resulting in the conceptualization of 'the local' as pre-modern and remote. As traditional approaches are often analyzed against the backdrop of international norms they may be considered to be informal and illegitimate in opposition to formal, legitimate and 'modern' mechanisms promoted by the transitional justice norm (Baines 2010). This 'mismatch' between a traditional or customary based approach and international norms and standards may lead to the discrediting of local practices of redress altogether, to the delegitimization of some transitional justice strategies in favor of others (Tiemessen 2011) or to the marginalization of the experiences, understanding and priorities of people living in a certain 'local' space (Shaw 2008 cited in Baines 2010). For example, the proposed formalization of Acholi reconciliation rituals into Ugandan law is somehow based on a perception that the North is less 'developed' and people have "their primitive justice measures, whereas those in the South have modern ones". This "socially infantilizes the North" (Allen 2007: 160).

Transitional justice initiatives that take into account traditional approaches, I argue, reveal a certain depiction of 'the local'. 'The local' is often equated or even conflated with 'traditional' and 'customary', in return 'the customary' or 'traditional' is frequently perceived to be a self-evident property of 'the local'. (Shaw and Waldorf 2010). Based on this conflation and equalization, claims of more legitimacy and acceptance of traditional mechanisms are made on the grounds of 'authenticity', 'tradition' and 'communitarianism' (Betts 2005). However, 'the local' is not defined by traditional mechanisms and customary law alone, rather justice is a social project among many others (Baines 2010). The overwhelming emphasis on customary law may deflect attention away from other locally based practices of redress and conflict resolution (Shaw and Waldorf 2010). Local contexts and actors are not static, fixed or homogenous; instead they are heterogeneous, dynamic and changing. What the local context is and how it relates to transitional justice cannot be simply answered beforehand by an ethnographic study, but the relevant local context for transitional justice interventions is emergent out of the engagement between external and internal actors (Colvin 2008). The 'local' and the 'national' are defined by disputes over values, practices, memories and efforts to remake the social world (Leebaw 2008, Colvin 2008) and may even be an 'invention of tradition' by local elites (Allen 2007). Hence, purely 'nationally owned' processes may not be per se more sensitive to the 'local' than processes that involve the international level. Moreover, inherent in transitional justice initiatives is also a certain depiction of the 'local' past. Following a thread of 'purity' (Colvin 2008), transitional justice efforts sometimes display the desire to recover lost worlds, essences or to build new ones that meet some of an ideal which surfaces in the language of 'reconstruction', 'healing' and 'restoring' (ibid.). Such vocabulary implies a return to a harmonious *status quo ante* (Betts 2005) and depicts a rather idealized peaceful past society which might not recently, or indeed ever, have existed in this idealized form.

I argue therefore that 'the local' and 'traditional or customary mechanisms' are always constructed as a function of goals and perceptions of involved actors. For example, the current Gacaca courts are not the original – 'traditional' – Gacaca which did not use trials (Betts 2005). While in the more tra-

ditional version Gacacas were voluntary, inter-familial and sanctions were enforced by social pressure and directed exclusively towards the restoration of social harmony, the modern version is backed by the state and can involve a prison sentence for the guilty person (Betts 2005). Hence, local practices are adapted to varying degrees concerning their meaning and level of formality. Customary law and local norms are not "a stable body of fixed rules, but rather a set of changing practices" (Shaw and Waldorf 2010: 15). Moreover, local contexts, justice systems and norms have been and are shaped by colonial remodeling, imported influences, international expectations, modernization, social control, or elite manipulation (ibid., Lambourne 2009). Notwithstanding the remoteness of some places from metropolitan centers, it would be hard to find a place now that is not pervaded by circulations of ideas and images from international human rights NGOs, externally funded religious institutions, vehicles of international interventions, national political campaigns or networks of migrants and diaspora groups (Shaw and Waldorf 2010). Thus, no location in the world exists in complete detachment from national and global processes. Therefore, a broader range of ideas, practices and processes need to be explored, including those borrowed and reconfigured from elsewhere, those developed through exchange with actors beyond the immediate locale and those that emerged from performances of everyday life to (re-)make relationships (ibid). Hence, in transitional justice, one should be aware of the fact that an idealized peaceful 'traditional' past might never have existed and that traditions may "no longer exist or have been used, misused and transformed by entrepreneurs of violence" (Pouligny 2005: 20).

2.4 Instrumentalist Understanding of Actors

Underlying the bureaucratized approaches towards transitional justice that are deployed in a project management and technocratic logic is a rather instrumentalist understanding of local actors, social relations and target groups. Underlying the depoliticized transitional justice model lies the premise that "societies can be understood and manipulated, and people will behave rationally or at least predictably" (Colvin 2008: 423). Derived from a legalistic definition as "the ethical attitude that holds that moral conduct is to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules" (Shklar 1964: 1 cited in Vinjamuri and Snyder 2004), it is assumed that the behavior of actors is guided by norms. Transitional justice mechanisms would function according to their prescription and would not be manipulated, adapted or filtered by local actors. However, local actors, including civil society organizations, victims, perpetrators, bystanders, local elites and political parties, are not passive and recipient subjects, but rather actively adapt, use, manipulate, and shape transitional justice interventions and policies. Moreover, people do not always act rationally and behaviours are difficult to predict in advance. While law on the one hand has the capacity to regulate violent behavior and expose arbitrary state powers, on the other hand it represents also a way of conceptualizing and articulating how we would like the social world to be (McEvoy 2007). In this sense, transitional justice has the capacity to arbitrate about the past in relation to individual guilt and institutional responsibility. It can deny and reject or affirm and support certain past political practices and versions of the past (Bell 2009b). It is mainly in the field of politics in which we decide about the organization of a society and how and which norms and perceptions will become legally binding institutions or regimes. Hence, transitional justice is an inherently contested political process.

In spite of the declarations and efforts of participatory approaches to "respect and support local ownership, local leadership and local constituency for reform" (UN Secretary General 2004: 7), transitional justice promoted by international organizations, bilateral donors and specialized NGOs is highly prescriptive. Due to time constraints and managerial rationality of transitional justice policies few efforts are made to conceptualize local understandings of justice and reconciliation. Baines (2010) observes that the field of study and practice only rarely starts with local knowledge. Based on international norms and standards, transitional justice policies reproduce a problematic 'division of labour' (Goetschel and Hagmann 2009). The global North, represented by international organizations, donor states and specialized NGOs, defines and finances transitional justice projects, while the global South is supposed to absorb and implement them.

To enhance local participation and local ownership of transitional justice strategies, the international community perceives that this can be best handled by civil society organizations, and they are assumed to be the ideal vehicles for delivering reconciliation (Pankhurst 1999). Pankhurst (ibid: 246) claims that new organizations are established with the aim of mediating tensions within communities or old organizations are sometimes revived and given new meaning. Transitional justice advocates believe in the need to strengthen and involve civil society for a better acceptance and legitimacy of transitional justice interventions. Underlying this belief is the assumption that civil society naturally represents the population's needs and concerns. Supposedly representing the needs and concerns of victims, victim associations enjoy a special status due to the premise of victim-centered transitional justice mechanisms (Sisson 2010). However, the concept of civil society is much disputed. In contrast to widely held beliefs, civil society organizations are "often urban based, operate in a top-down manner and are not necessarily democratically organised, nor do they always maintain cross-ethnic relations" (Goetschel and Hagmann 2009: 63). An example from Burundi illustrates this point. With the first multi-party elections in 1993 and the victory of a Hutu party, the members of the former Tutsi-dominated single party needed to find space other than the political institutions through which they could make their claims heard. Many former Tutsi politicians founded their own civil society organizations such as AC Genocide which mobilize an ethnicized discourse.[3] Pankhurst (1999: 247) specifies that simply because civil society organizations "exist outside the control of the state does not guarantee that they embody any qualities of morality or concern for the greater good, an erroneous assumption which is often made by outsiders who work with a simplistic notion of civil society as merely the sum of associational life." Partly based on this conceptualization of a 'good' civil society is the assumption that there would be a demand from 'below', from the population and from local civil society organizations for accountability in post-conflict contexts. However, Subotić (2009: 7) rightly challenges this assumption that states will adopt international justice models just because their domestic constituencies will demand it.

2.5 Teleological Approach Towards Transitional Justice

A fundamental belief which underlies most policies is that transitional justice is a necessary and purposeful development on the way to the construction of a liberal society and the establishment of the rule of law and a democratic state. This teleological approach of transitional justice assumes that all countries will, or should, converge in the long run towards a liberal democratic state. Expressed in this idea is a linear continuum from a weak conflict state to a strong peaceful state. Thus, all post-conflict states would, with the right and appropriate means including transitional justice, converge towards a liberal democracy according to the Western model. In contrast, violence is associated with moral backwardness and a lack of modernity (Goetschel and Hagmann 2009). Based on the focus on international law, transitional justice underlies the "paradigm of transition from a less liberal (more violent) context, to a more liberal (less violent) one. The projected end-goal is thus some form of liberal-democratic state" (Bell et al. 2004: 3). In line with the increasing judicialization of post-conflict situations, the current international enthusiasm might be understood as part of a broader attempt to create a new world order of liberal democracies in which politics is forever deferred and history comes to an end (Orford 2006). Thereby states are being produced as reliable subjects of the capitalist democratic order (ibid). Most transitional justice initiatives privilege a liberal paradigm of civil and political rights through an emphasis on procedural democracy, constitutionalism and the rule of law (Gready 2005). For example, by neglecting the systematic economic abuses and the legacies of inequality and poverty, the South African Truth and Reconciliation Commission contributed to providing an enabling context for free markets (ibid).

[3] AC Genocide was established following the massacres of Tutsis in 1993 and thus can be considered as a victim group. In an ethnicized discourse, it advocates for a strong 'punitive justice' (personal communication , October 2010) for the Tutsi victims by framing the massacres as a genocide against the Tutsi committed by Hutu, irrespective of the fact that the civil war also cost many lives of Hutu.

Such teleological approaches to transitional justice and peace-building reveal a paradox that countries emerging from violent conflicts are not only dangerous in their 'non-modernity' but are also 'blank slates'. This implies that post-conflict societies represent a social and political vacuum from which it is relatively easy to engineer the goals of transitional justice, including reconciliation, democracy and peace (Cramer 2007). However, "there is no tabula rasa society" (Fletcher et al. 2009: 209) in which transitional justice can simply be implemented and thus lead to the emergence of a liberal democratic state. Instead, "context matters and it matters considerably" (ibid: 209). According to Shaw and Waldorf (2010: 11) the teleological assumptions of transitional justice are based on dominant ideas about "the proper work of speech and memory, models of personhood, and understandings of damage, social repair, and redress". However, such dominant concepts are mainly inspired by Western conceptualizations and scholars. For example, the empowering, redemptive and apotropaic powers of speaking and remembering – one of the major premises of truth commissions – were forged by Western religious and psychological thought (Shaw 2007). These teleological approaches of transitional justice propagate a Western inspired model of justice (Lambourne 2009). The aims and substance of transitional justice are uncontested and essentially given, and transitional justice initiatives rather uncritically endorse the concept of liberal peace-building and democratic peace theory according to which post-conflict states will emerge as liberal democratic states with the help of transitional justice interventions. An empirical finding, although based on an inverted logic, is provided by Fletcher and others (2009). They find that in states "where there is strong rule of law, democracy, and a negotiated political settlement, the global community will respect the decisions of these governments to choose the substance, timing, and sequencing of transitional justice interventions" (ibid: 217). Consequently, if states are closer on the continuum to liberal democracies, the necessity for an intervention seems to be less immediate.

Conclusion

This critical essay has explored the transitional justice policies of multilateral organizations, bilateral donors and specialized NGOs. I have argued that generally, they propagate a conception of transitional justice according to which its goals including justice for past human rights abuses can be achieved by bureaucratic means. Thus reconciliation, rule of law, democracy and peace can be externally engineered. As a policy, transitional justice follows a managerial logic where projects need to be planned, implemented, monitored and evaluated. Although promoters of transitional justice are increasingly talking in terms of adapting policies to the local context, the normative content of their transitional justice policies are rarely actually discussed with local actors. By avoiding the difficult discussion about what justice and reconciliation mean in certain contexts, transitional justice is thus depoliticized and appears as an uncontested idea. Following a teleological logic, this transitional justice conception promotes a Western inspired model of justice. If local mechanisms do not resonate with a liberal tradition of accountability, they are considered to be second-best, illegitimate or backward. Transitional justice policies are devoted to establishing a liberal democratic state according to examples from the global North.

These critical reflections are not intended to suggest that transitional justice is not desirable, nor that is has no good effects or outcomes. Nor is the universality of global norms questioned; human rights are applicable in any part of the world. However, the uncomfortable feeling of some actors in the global South towards 'global' norms and standards may stem, among other reasons, from the fact that not everybody is contributing equally to their development and codification. Moreover, resistance grows out of the double standard in applying them. Therefore, claims to consider local contexts, perceptions and participation should be taken seriously. 'Beneficiaries', focal groups and local actors should be involved as an equal party in the planning and designing of transitional justice and not only in the implementation phase of policies.

Finally, these critical reflections should encourage academics to address the fact of under-theorization and to conduct research challenging the normative and underlying assumptions of transitional justice. More knowledge about effects and impacts is needed, but also on the causal beliefs and assumptions underlying transitional justice. Researchers can also provide more insights into the perceptions, understandings and conceptualizations of transitional justice at the local level. Such studies could inform policies by multilateral organizations and governmental donors.

List of Abbreviations

HSD	Human Security Desk
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner of Human Rights
UN	United Nations

References

Allen, Tim (2007), The International Criminal Court and the Invention of Traditional Justice in Northern Uganda, in: Politique Africaine, 107, pp. 147-166.

Anonymous (1996), Human Rights in Peace Negotiations, in: Human Rights Quarterly, 18, pp. 249-258.

Arthur, Paige (2009), How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice, in: Human Rights Quarterly, 31, pp. 321-367.

Baines, Erin (2010), Spirits and social reconstruction after mass violence: Rethinking transitional justice, in: African Affairs, 109, 436, pp. 409-430.

Bell, Christine (2009a), The "New Law" of Transitional Justice, in: Ambos, Kai, Judith Large and Marieke Wierda (eds.), Building a Future on Peace and Justice: Studies on Transitional Justice, Conflict Resolution and Development: the Nuremberg Declaration on Peace and Justice, Berlin Heidelberg: Springer Verlag.

Bell, Christine (2009b), Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field', in: International Journal of Transitional Justice, 3, 1, pp. 5-27.

Bell, Christine, Colm Campbell and Fionnuala Ni Aolain (2004), Justice Discourses in Transition, in: Social and Legal Studies, 13, 3, pp. 305-328.

Betts, Alexander (2005), Should Approaches To Post-Conflict Justice and Reconciliation Be Determined Globally, Nationally or Locally?, in: European Journal of Development Research, 7, pp. 735-752.

Borer, Tristan Anne (2006), Truth Telling as a Peace-Building Activity: A Theoretical Overview, in: Borer, Tristan Anne (ed.) Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies, Notre Dame, Indiana: University of Notre Dame Press.

Brahm, Eric (2007), Uncovering the Truth: Examining Truth Commission Success and Impact, in: International Studies Perspectives, 8, pp. 16–35.

Buckley-Zistel, Susanne (2009), Transitional Justice in Divided Societies - Potentials and Limits. 5th European Consortium for Political Research General Conference. Potsdam University, Germany.

Colvin, Christopher J. (2008), Purity and Planning: Shared Logics of Transitional Justice and Development, in: International Journal of Transitional Justice, 2, pp. 412-425.

Comité de Pilotage Tripartite, (CPT) (2010), Les consultations nationales sur la mise en place des mécanismes de justice de transition au Burundi. Bujumbura.

Cramer, Christopher (2007), Civil War is not a Stupid Thing: Accounting for Violence in Developing Countries, London, Hurst.

de Greiff, Pablo (2010), A normative conception of Transitional Justice, in: Politorbis, 50, pp. 17-29.

Dube, Siphiwe Ignatius (2011), Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions, in: International Journal of Transitional Justice, 5, pp. 177-197.

Duggan, Colleen (2010), Editorial Note, in: International Journal of Transitional Justice, 4, pp. 315-328.

Finnemore, Martha and Kathryn Sikkink (1998), International Norm Dynamics and Political Change, in: International Organization, 52, 4, pp. 887-917.

Finnström, Sverker (2010), Reconciliation Grown Bitter? War, Retribution, and Ritual Action in Northern Uganda, in: Shaw, Rosalind, Lars Waldorf and Hazan Pierre (eds.), Localizing Transitional Justice: Interventions and Priorities after Mass Violence, Stanford, California: Stanford University Press.

Fletcher, Laurel E., Harvey M. Weinstein and Jamie Rowen (2009), Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective, in: Human Rights Quarterly, 31, pp. 163-220.

Goetschel, Laurent and Tobias Hagmann (2009), Civilian peacebuilding: peace by bureaucratic means?, in: Conflict, Security and Development, 9, pp. 55-73.

Gready, Paul (2005), Reconceptualising transitional justice: embedded and distanced justice, in: Conflict, Security and Development, 5, 1, pp. 3-21.

Hagmann, Tobias and Didier Péclard (2010), Negotiating Statehood: Dynamics of Power and Domination in Africa, in: Development and Change, 41, 4, pp. 539-562.

Hamber, Brandon (2007), Forgiveness and Reconciliation: Paradise Lost or Pragmatism?, in: Journal of Peace Psychology, 13, 1, pp. 115-125.

Hazan, Pierre (2006), Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice, in: International Review of the Red Cross, 88, 861.

Hazan, Pierre (2007), Das neue Mantra der Gerechtigkeit. Vom beschränkten Erfolg international verordneter Gerechtigkeit, in: Der Überblick, 1, pp. 10-22.

Huyse, Luc and Mark Salter (eds.) (2008), Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences, Stockholm: International IDEA.

ICTJ, (International Center for Transitional Justice) (2009), What is Transitional Justice?, online: http://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf (accessed: July 16, 2012).

ICTY, (International Criminal Tribunal for the former Yugoslavia) (undated), Landmark Cases, online: http://www.icty.org/sid/10314 (accessed: July 30, 2012).

Joinet, Louis (1997), Revised Final Report. Question of Impunity of Perpetrators of Human Rights Violations (Civil and Political). E/CN.4/Sub.2/1997.20. New York: United Nations.

Jones, Briony (2012), Exploring the Politics of Reconciliation through Education Reform: The Case of Brcko District, Bosnia and Herzegovina, in: International Journal of Transitional Justice, 6, pp. 126-148.

Lambourne, Wendy (2009), Transitional Justice and Peacebuilding after Mass Violence, in: International Journal of Transitional Justice, 3, 1, pp. 28-48.

Leebaw, Bronwyn Anne (2008), The Irreconcilable Goals of Transitional Justice, in: Human Rights Quarterly, 30, 1, pp. 95-118.

McEvoy, Kieran (2007), Beyond Legalism: Towards a Thicker Understanding of Transitional Justice, in: Journal of Law and Society, 34, 4, pp. 411-440.

Nagy, Rosemary (2008), Transitional Justice as Global Project: Critical Reflections, in: Third World Quarterly, 29, 2, pp. 275-289.

Newman, Edward, Roland Paris and Oliver P. Richmond (2009a), Introduction, in: Newman, Edward, Roland Paris and Oliver P. Richmond (eds.), New Perspectives on Liberal Peacebuilding, Tokyo, New York, Paris: United Nations University Press.

Newman, Edward, Roland Paris and Oliver P. Richmond (eds.) (2009b), New Perspectives on Liberal Peacebuilding, Tokyo, New York, Paris: United Nations University Press.

Oomen, Barbara (2005), Donor-Driven Justice and its Discontents: the Case of Rwanda, in: Development and Change, 36, pp. 887-910.

Orford, Anne (2006), Commissioning the truth, in: Columbia Journal of Gender and Law, 15, 3.

Palmer, Nicola, Phil Clark and Danielle Granville (eds.) (2012), Critical Perspectives in Transitional Justice, Antwerp - Oxford - Portland: Intersentia.

Pankhurst, Donna (1999), Issues of justice and reconciliation in complex political emergencies: conceptualising reconciliation, justice and peace, in: Third World Quarterly, 20, 1, pp. 239-256.

Pouligny, Béatrice (2005), The Forgotten Dimension of 'Transitional Justice' Mechanisms: Cultural Meanings and Imperatives for Survivors of Violent Conflicts. Global Justice, Local Legitimacy International Conference. University of Amsterdam.

Ramji-Nogales, Jaya (2010), Designing Bespoke Transitional Justice: A pluralist process approach, in: Michigan Journal of International Law, 32, 1.

Robins, Simon (2012), Transitional Justice as an Elite Discourse: Human Rights Practice: Where the Global Meets the Local in Post-conflict Nepal, in: Critical Asian Studies, 44, 1, pp. 3-30.

Roht-Arriaza, Naomi (2006), The New Landscape of Transitional Justice, in: Roht-Arriaza, Naomi and Javier Mariezcurrena (eds.), Transitional Justice in the Twenty-First Century: Beyond Turth versus Justice, Cambridge: Cambride University Press.

Shaw, Rosalind (2007), Memory Frichtions: Localizing Truth and Reconciliation in Sierra Leone, in: International Journal of Transitional Justice, 1, pp. 183-207.

Shaw, Rosalind and Lars Waldorf (2010), Introduction: Localizing Transitional Justice, in: Shaw, Rosalind, Lars Waldorf and Pierre Hazan (eds.), Localizing Transitional Justice: Interventions and Priorities after Mass Violence, Stanford, California: Stanford University Press.

Shaw, Rosalind, Lars Waldorf and Hazan Pierre (eds.) (2010), Localizing Transitional Justice: Interventions and Priorities after Mass Violence, Stanford, California: Stanford University Press.

Sisson, Jonathan (2010), A Conceptual Framework for Dealing with the Past, in: Politorbis, 50, pp. 11-15.

Sriram, Chandra Lekha (2007), Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice, in: Global Society, 21, 4, pp. 579-591.

Sriram, Chandra Lekha and Suren Pillay (eds.) (2009), Peace versus Justice? the dilemma of transitional justice in Africa, Scottsville, South Africa: University of KwaZulu Natal Press.

Subotić, Jelena (2009), Hijacked Justice: Dealing with the Past in the Balkans, Ithaca and London, Cornell University Press.

Teitel, Ruti (2002), Humanity's law: rule of law for the new global politics, in: Cornell International Law Journal, 35, pp. 356-387.

Teitel, Ruti (2003), Transitional Justice Genealogy, in: Harvard Human Rights Journal, 16, pp. 69-94.

Teitel, Ruti (2005), The Law and Politics of Comtemporary Transitional Justice, in: Cornell International Law Journal, Vol. 38, p. 837, 2005.

Thoms, Oskar N.T., James Ron and Roland Paris (2008), The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysts and Practitioners. Centre for International Policy Studies. University of Ottawa.

Tiemessen, Alana Erin (2004), After Arusha: Gacaca Justice in Post-Genocide Rwanda, in: African Studies Quarterly, 8, 1, pp. 57-76.

Tiemessen, Alana Erin. (2011), The International Normative Structure of Transitional Justice. Doctor of Philosophy, The University of British Columbia.

UN Secretary General (2004), The rule of law and transitional justice in conflict and post-conflict societies. S/2004/616. New York: United Nations.

UN Secretary General (2010), United Nations Approach to Transitional Justice. United Nations.

Van Zyl, Paul (2005), Promoting Transitional Justice in Post-Conflict Societies, in: Bryden, Alan and Heiner Hänggi (eds.), Security Governance in Post-Conflict Peacebuilding, Münster: LIT Verlag, pp. 209-222.

Vinjamuri, Leslie and Jack Snyder (2004), Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice, in: Annual Review of Political Science, 7, pp. 345-362.

Waldorf, Lars (2009), Transitional Justice and DDR: The Case of Rwanda. International Center for Transitional Justice.

Wilson, Richard A. (2003), Anthropological studies of national reconciliation, in: Anthropological Theory, 3, 3, pp. 367-387.

swisspeace Publications

Working Papers
(CHF 15.- plus postage & packing)

3 | 2012
Manuel Vogt
Escaping the Resource Curse: Ethnic Inclusion in Resource-Rich States in West Africa
September 2012
ISBN 978-3-908230-84-7

2 | 2012
Andrea Iff, Rina M. Alluri, Sara Hellmüller
The Positive Contributions of Businesses in Transformations from War to Peace
August 2012
ISBN 978-3-908230-83-0

1 | 2012
Philipp Lustenberger
A Time to Fight, and a Time to Talk? Negotiability of Armed Groups
June 2012
ISBN 978-3-908230-81-6

1 | 2011
Gabriela Mirescu (ed.)
Social Inclusion and Cultural Identity of Roma Communities in South-Eastern Europe
April 2011
ISBN 978-3-908230-79-3

2 | 2010
Andrea Iff, Damiano Sguaitamatti, Rina M. Alluri, Daniela Kohler
Money Makers as Peace Makers? Business Actors in Mediation Processes
November 2010
ISBN 978-3-908230-78-6

1 | 2010
Lukas Krienbuehl
Peace with Power-Sharing: under which Conditions?
June 2010
ISBN 978-3-908230-77-9

2 | 2009
Rina M. Alluri
The Role of Tourism in Post-Conflict Peacebuilding in Rwanda
December 2009
ISBN 978-3-908230-76-2

1 | 2009
Ulrike Joras
Motivating and Impeding Factors for Corporate Engagement in Peacebuilding
August 2009
ISBN 978-3-908230-75-5

3 | 2008
Ulrike Joras
"Financial Peacebuilding"- Impacts of the Nepalese conflict on the financial sector and its potential for peacebuilding
November 2008
ISBN 978-3-908230-73-1

2 | 2008
Dennis Dijkzeul
Towards a Framework for the Study of "No War, No Peace" Societies
April 2008
ISBN 978-3-908230-71-7

1 | 2008
Ulrike Joras, Adrian Schuster (eds.)
Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola
April 2008
ISBN 978-3-908230-72-4

3 | 2007
Danielle Lalive d'Epinay, Albrecht Schnabel (eds.)
Transforming War Economies
October 2007
ISBN 978-3-908230-70-0

2 | 2007
Marie-Carin von Gumppenberg
Kazakhstan - Challenges to the Booming Petro-Economy
FAST Country Risk Profile Kazakhstan
September 2007
ISBN 978-3-908230-69-4

1 | 2007
Nika Stražišar
Peacebuilding and Organized Crime. The Cases of Kosovo and Liberia
August 2007
ISBN 978-3-908230-67-0

swisspeace

3 | 2006
René Lemarchand
Burundi's Endangered Transition.
FAST Country Risk Profile Burundi
October 2006
ISBN 3-908230-65-9

2 | 2006
T.K. Vogel
Bosnia-Herzegovina: The Challenge of Legitimacy.
FAST Country Risk Profile Bosnia and Herzegovina
October 2006
ISBN 3-908230-66-7

1 | 2006
Kathrin Wyss
A Thousand Hills for 9 Million People
Land Reform in Rwanda: Restoration of Feudal Order or Genuine Transformation?
März 2006
ISBN 3-908230-63-2

Conference Papers (CHF 15.- plus postage & packing)

1 | 2011
Andrea Iff (ed.)
swisspeace Annual Conference 2010
Ballots or Bullets: Potentials and Limitations of Elections in Conflict Contexts
August 2011
ISBN 978-3-908230-81-6

Laurent Goetschel (ed.)
Conference Proceedings "The Politics of Peace: From Ideology to Pragmatism?"
Juni 2011, LIT Verlag
ISBN 978-3-643800-38-1

1 | 2009
Didier Péclard (ed.)
swisspeace Annual Conference 2007
Environmental Peacebuilding: Managing Natural Resource Conflicts in a Changing World
December 2009
ISBN 978-3-908230-74-8

1 | 2007
Jonathan Sisson (ed.)
swisspeace Annual Conference 2006
Dealing with the Past in Post-Conflict Societies: Ten Years after the Peace Accords in Guatemala and Bosnia-Herzegovina
September 2007
ISBN 978-3-908230-68-7

1 | 2006
Rita Grünenfelder and Heinz Krummenacher (eds.)
swisspeace Annual Conference 2005
Searching for Peace in Chechnya - Swiss Initiatives and Experiences
March 2006
ISBN 3-908230-64-0

1 | 2005
Laurent Goetschel und Albrecht Schnabel (Hrsg.)
swisspeace Jahreskonferenz 2004
Stärkung der Zivilgesellschaft als Mittel der Friedensförderung?
Erfahrung des Afghan Civil Society Forum (ACSF)
September 2005
ISBN 3-908230-60-8

1 | 2003
swisspeace Annual Conference 2003
Adding Fuel to the Fire - The Role of Petroleum in Violent Conflicts
April 2004
ISBN 3-908230-52-7

Information Brochures

swisspeace Brochure and Annual Report in German, French and English

swisspeace Anniversary Brochure "1988-2008"

NCCR Brochure in German, French, English and Russian

Newsletter

For a subscription to the KOFF e-mail Newsletter please access www.swisspeace.org.

Other Publications

A complete list of publications and order forms can be found at www.swisspeace.org/publications.

Schweizerische Friedensstiftung
Fondation suisse pour la paix
Fondazione svizzera per la pace
Swiss Peace Foundation

swisspeace

Sonnenbergstrasse 17
P.O. Box, CH-3000 Berne 7
Tel +41 (0)31 330 12 12
Fax +41 (0)31 330 12 13
info@swisspeace.ch
www.swisspeace.org