

Chapter 4

International Experience: Tensions Inherent in National Reconciliation and Transitional Justice Initiatives

1. Introduction

Reconciliation initiatives after violent political struggles in other countries have been undertaken to address different types of conflict situations and have taken on a variety of forms. The purpose of this chapter is to examine the nature of national reconciliation and, more specifically, transitional justice initiatives: what is the context within which they are born, what are the agendas that shape their form, what conceptualizations of reconciliation do they embody, and what levels of intervention (national, community, interpersonal) are pursued. The tension between top-down and bottom-up approaches is constantly raised in relation to the various issues explored in this chapter.

This overview covers the wide range of cases where national political conflicts were followed by some form of national reconciliation process. It thus covers those countries which engaged in a truth commission-type process, those which opted for prosecutions, those which took on reparations for victims, and those which did nothing about past injustices. Rather than attempting to provide a historical survey of the trends

regarding national reconciliation, this chapter examines the literature with a view towards developing an understanding of how reconciliation and justice have been conceptualized in the contexts of reconciliation after a national political conflict. Information from those countries where enough contextual information is available is used to illustrate the tensions and problems characterizing the issue of transitional justice.

Such an understanding of the international experience is important both in terms of providing some clues regarding the social and political contexts which shape national reconciliation initiatives, and to trace the international intellectual debates which shaped the conceptual framework of South Africa's policy makers (which will be examined in more detail in the next chapter).

Following from the focus on justice in the previous chapter, this chapter continues that line of enquiry. The question of how these policies deal with the question of justice has also been central to the international debate around transition and reconciliation. The issue of justice has perhaps also proved to be the most contentious political issue inside the countries subjected to reconciliation processes. This discussion serves to illuminate the multiple meanings given to the concept of justice in a society undergoing transition, and clarifies the competing agendas that the pursuit of justice entails.

Reconciliation is often stated as an overall goal, but is seldom defined or specifically mentioned when setting out the specific tasks to be performed by post-transition governments. The question of whether these policies did in fact contribute to reconciliation is also seldom examined in any empirical manner. The evidence regarding

assessments of degree of success of certain policies presented in this chapter is thus rather tentative, particularly when it comes to community reconciliation.

2. Context for Formulating National Reconciliation Policies

a) Government Priorities in the Post-Transition Period

A reconciliation program is usually implemented at a turning point in the conflict. The most dramatic turning points are usually a change in government. A new balance of power or a new order that requires a different inter-communal bond is thus usually the incentive for the state and other social actors to take on reconciliation work. Reconciliation is thus often associated with political transition, and according to the preceding theoretical framework (Chapter 2) it needs to be accompanied by conflict resolution and development processes. It is however an ongoing endeavor by various actors, which usually only gets official or national recognition and support during times of crisis and transition.

Reconciliation processes can thus be identified within different sectors and at various stages of a conflict's history, but national reconciliation initiatives are more isolated events. These national processes that engage a range of sectors and regions of a country, or the whole country, as a target of intervention are usually reserved for pivotal moments of the conflict's transformation.

Government involvement in reconciliation processes is found in situations where rapid political transitions have created a crisis of legitimacy for the national government or an opportunity to solidify social solidarity at the national level. The driving motivation for

national intervention is to preserve or reinforce the newly established social order. In the international literature on national reconciliation the term is closely linked with transitions to democracy, the focus being on how to build a democratic culture to bolster the newly created democratic political institutions. The international literature focuses largely on the role of elites in promoting or undermining stability, and on the need to build unity at this top level:

Stable democratic regimes depend heavily on the ‘consensual unity’ of national elites. So long as elites remain disunified, political regimes are unstable, a condition which makes democratic transitions and democratic breakdowns merely temporary oscillations in the forms unstable regimes take. (Higley and Burton 1989, p. 17)

A central political goal of the new government in this post-transition period is one of averting political instability by building a unified national identity and solidarity among groups who were previously divided, and by gaining acceptance of a new political culture. This political culture must delegitimize both violence as a political strategy in the pursuit of change and human rights abuses by present state officials (particularly in relation to state employees inherited from the previous system).

A key dilemma, particularly for a new government that has been established as a result of a negotiated transition, is the fact that members of the previous regime are retained in the new establishment. This presents serious problems in introducing a new

political culture, particularly regarding the behavior of the security forces. Redefining the role of the military and the police in a post-transition society is often a major challenge. The culture of impunity and the politicized nature of these structures presents major obstacles to the sustainability of the transition. The military may also pose a continued threat to the new government if they feel their role is undermined or marginalized, or their members threatened by prosecution, retrenchment or demotion.

While these powerful remnants of the old regime offer a serious threat, particularly aggrieved sectors of society may also pose a potential threat to political stability. This may be seen more as a challenge to the legitimacy of the government rather than as a coercive threat. This is especially the case where the new government was born out of compromise, and this compromise was to the detriment of particular sectors of society that had expected the new government to address their specific needs. Notable sectors of society whose reactions may undermine this legitimacy include: the victims of previous human rights abuses (or their surviving relatives), the combatants who sacrificed a lot in the battle to overthrow the previous regime, and sectors of society that were particularly exploited by the policies of that regime.

Another motivation for a national government in pursuing a reconciliation process is to promote a new political consensus that undermines public support for the opposition parties. A re-writing of the official history of the country is a powerful political weapon to undermine the credibility of certain political actors. A policy of exposing past abuses would be very attractive to a newly dominant political party if they expect such exposure to reflect more negatively on the image of their opponents than on themselves. Such a

motivation would require that the exposure focus on political responsibility for abuses (rather than those carrying out the orders) in order to have the desired affect on the voting public.

Addressing the needs of victims is a loudly acclaimed component of many national reconciliation initiatives. Justice is often defined in terms of restoring victims' dignity or providing them with information or some form of reparations. The extent of delivery on these promises has, however, regularly been questioned. This lack of satisfaction by relatives of victims can, in part, be put down to the impossibility of compensating people for the loss of life of a family member. It is not a situation that can be fully restored. The question, however, also arises as to whether addressing the needs of victims is a serious priority in the government's reconciliation program unless these victims are sufficiently organized to pose a serious threat to social stability or political legitimacy.

There is also no obvious reason for governments to address reconciliation at the community level unless local political instability threatens to escalate out of control. If the local intra- and inter-communal hostilities and the suspicions and mistrust between community members and local state officials are contained, the healing of the community can be left to its "natural progression" rather than necessitate state intervention. Especially if the new local political hegemony favors the dominant political party, intervention could be seen as a threat to this status quo.

b) Institutions or Communities as the Focus of Reconciliation

National conflicts addressed by reconciliation schemes can be analytically divided into two broad types: inter-communal and state versus society. While there is much overlap, these two types present certain fundamental differences in the problems that they attempt to address.

On the one hand are societies where the state has been responsible for extreme human rights abuses in the name of a political ideology. Their enemy is defined as people with a particular belief system, often epitomized by guerrilla forces, but usually found throughout civil society. The victim-victimizer relationship is thus played out as state versus civil society, state institutions versus political parties, and security forces versus civilians and rebels. Reconciliation is essentially needed between civil society and the state. Countries experiencing the fall of dictatorial systems in Latin America and Eastern Europe have defined their reconciliation attempts in these terms.

The second category - inter-communal conflict - is defined by the division of the whole society into separate ethnic groups. While containing elements of the first category, the essential division which reconciliation programs are designed to address are the divisions among different sectors of the population. In some countries control of the state is so completely dominated by one group that it becomes the main instrument of communal oppression. Overcoming the division between civil society and the state is then, however, only part of the process of social reconciliation. Broader national reconciliation is a process that also has to address divisions within civil society.

Rather than simply reflecting the nature of the society or the way in which social divisions are understood, these categories reflect the focus given to reconciliation endeavors.

Either type of reconciliation program (inter-communal or state versus society) can be viewed from a top-down or bottom-up perspective. The state versus society tension is found at national and community level (between local police and local government institutions and community residents). Inter-communal tensions characterize national social relations (among leaders and in public forums), but are also present at community level where different ethnic groups may live as neighbors or as segregated groups composing a local economy. The choice of focus on either type is thus not a deciding factor in determining whether the approach is top-down or bottom-up.

It is, however, unlikely for either type of conflict to characterize communities without some level of the other being present, or for the conflict to take a uniform nature throughout the society. So if a reconciliation program is conceived too rigidly in terms of the one or other type, certain local conflict dynamics may fall outside the ambit of the reconciliation program. A bottom-up perspective would thus be one that remains open to considerations of both types of social divisions.

The way the national reconciliation program defines the conflict of the past can thus be crucial in defining what forms of intervention are considered at the local level. If, for example, the conflict is considered purely in terms of certain ethnic divisions, the internal divisions within these ethnic groups that so often occur during conflict, are likely to be marginalized as being irrelevant to the national reconciliation process. Similarly, a

process which prioritizes state versus civil society tensions may fail to sufficiently engage with issues of ethnocentrism, racism or intercultural communication.

Part of the national reconciliation process is the development of a macro narrative of the conflict - an attempt to tell the story of the conflict in terms of broad social dynamics and patterns of conflict behavior. These narratives present a danger of oversimplification of the conflict, and the relegation of certain divisions (that may be a paramount concern to certain communities and individuals) to the margins of the process.

3. Justice

As evidenced in the extensive emerging literature on transitional justice, the issue of justice is a crucial component of the transition and reconciliation process. As detailed in the previous chapter, justice is a multifaceted concept that can be approached from a variety of perspectives. In a society undergoing a major political transition after a long period of conflict, serious disputes often emerge around the issue of prosecution of human rights abusers. The debate around justice is thus generally one that views it in terms of retribution. The extent and form of such prosecutions is generally viewed as being determined by the local (national) political context at the time of transition (as well as the dynamics of the conflict). On the other hand, there is a body of theory and practice regarding international human rights law, as well as various arguments around the symbolic and inhibitive purposes of punishment that are seen to influence (or justify) policy.

An emerging concern for addressing the victims' needs in these circumstances is, however, also notable. This perspective criticizes the limited vision of the retributive paradigm and examines the need for restitution and more restorative forms of justice with regards to human rights abuses, while not rejecting punishment as an element of the process.

As in criminal justice, the need to address the perspective of victims is often not considered in the transitional justice equation. Existing judicial mechanisms relying mainly on prosecution of offenders do not necessarily address any of the needs of the victims. Van Boven, et al (1992, p. 500), for example, note that in:

... international relations, including in the UN system, the perspective of the victim of gross human rights violations is often overlooked. Apparently the victim's perspective is considered a complication, an embarrassment, a political inconvenience and a marginal phenomenon.

The following discussion reviews the literature dealing with transitional justice in the light of the tensions between national political objectives versus community and individual (victim) perspectives.

a) The Decision to Prosecute

The way in which justice is addressed varies widely. Of some significance in looking at these differences are the reasons why different approaches have been followed. The most common consideration in addressing this question is whether the old regime was able to secure an amnesty for its members and whether the prosecution of human rights abusers would pose a threat to the stability of the new government (Zalaquett, 1988). While human rights advocates decry this tendency of providing amnesties (either before or after transition), political rationality tends to favor stability over human rights prosecutions (such as illustrated by the policy reversals in Argentina discussed by Garro (1993)).¹

Samuel Huntington (1991) concluded from a study of democratization in 35 nations that the type of democratization process determines whether the new government decides to prosecute and punish or forgive and forget the torturers of the previous regime². He claims that

¹ The initial decision to prosecute offenders in Argentina was, for example, reversed when the military objected to these prosecutions and started flexing its muscle. Prosecutions, particularly against junior officers, were halted by the legislation during Alfonsín's presidency, and those who had been jailed were ultimately released after a general pardon by President Menem in 1989.

Views on this amnesty are divided:

Some observers believe that the new democratic government should have been more resolute and swift in trying the military and security personnel involved in gross abuses. As time passed the officers closed ranks and the new democratic government had to attend more to economic and administrative issues. (Liebenberg 1996, p. 19)

On the other hand it is argued:

In the eyes of some observers, the Argentine attempt to achieve justice for past abuses had overreached itself, endangering the democratic transition and eventually forcing the civilian government to legitimate the self-amnesty of the previous military rulers (du Toit 1994, p. 65).

² Zalaquett (quoted in Fraser and Weissbrodt. 1992, pp. 612-615) provides a similar causal framework consisting of a typology of situations in which repressive governments are replaced by democratic governments, each linked to a particular form of transitional justice and truth process. His categories are:

- (1) Clear victory over oppressors with few political constraints
- (2) The defeated force lose legitimacy but retain control of armed forces
- (3) Military rulers allow civilian government to come to power following negotiations on their own terms. Former rulers are thus still influential and cohesive.
- (4) Gradual transition from dictatorship to democracy with the possibility of popular forgiveness in a society where human rights abuses have ceased.

Justice was a function of political power. Officials of strong authoritarian regimes that voluntarily ended themselves were not prosecuted; officials of weak authoritarian regimes that collapsed were punished, if they were promptly prosecuted by the new democratic government. (p. 228).

The policy decision was

... little affected by moral and legal considerations. It was shaped almost exclusively by politics, by the nature of the democratization process, and by the distribution of political power during and after the transition. (p. 215)

Moran (1994), however, challenges this view with a more updated examination of three Eastern European countries (East Germany, Czechoslovakia and Bulgaria). He claims that “the psychological variables of ‘exit’ and ‘voice’ are much more pertinent to the eventual resolution of the ‘torturer problem’ than is Huntington’s structural paradigm” (p. 97). Voice is defined as “verbally attempting to reverse a decline in a system or nation,” and exit refers to the ability of those opposing the system to leave the country. He argues that:

... in the newly democratized countries of Eastern Europe the tendency to forgive and forget can be found in those countries where either exit

and/or voice were allowed under the old regime.(T)he outcome of the ‘torturer problem’ can be looked upon as a pressure cooker, where exit and voice provide for a pressure release. Where the release is not allowed, the former torturers face explosive situations in the post-transition period.

(p. 101)

Moran explains this relationship in terms of the emotional nature of the policy issue: “forgiveness and vengefulness are emotions located in the human psyche that are often relieved through cathartic behavior,” rather than the constraints of a political and legal order (p. 108).

This pressure cooker/catharsis model has also been used to explain the differences among people’s views on revenge within a society. Laber (1992, p. 7) points out:

Those most actively seeking vengeance are not ... the former dissidents who suffered more than others did at the hands of the communists. Having spoken out all along, the dissidents appear to have less need for catharsis now; nor do they feel they have to prove themselves. The people seeking vengeance, on the whole, come from the ‘gray zone’, neither communists nor dissidents, they sat back, did nothing to incur disapproval and were not persecuted. They suffer now, some say, from a guilty conscience and are taking revenge for their own humiliation. By insisting on ‘purification,’ they want to show that they are pure.

De Waal (1990) also comments on a similar disparity between ex-combatants and intellectuals and bureaucrats in Zimbabwe. Despite their extreme suffering, many ex-combatants, he notes, are more willing to forgive and reconcile with their erstwhile enemies than those who did not participate directly in the conflict.

The structuralist (balance of power) approach to the question of prosecution assumes that vengeance and retribution would be the automatic (and acceptable) response, and that only legal and political constraints would cause a government to hold back its pursuit of punishment. Victor's justice, they argue, is thus by definition retributive, and is only constrained by the extent or nature of defeat of the outgoing regime.

Within this model of explanation there would thus be little scope for concerns about community reconciliation or victims' particular needs. The motivation arises from the national political milieu where the victor automatically pursues retribution to the extent possible. The connection between the policy and the goal of promoting human rights and promoting reconciliation would appear to be only tangential. The policy is driven by past experience and present restraints rather than as a pro-active intervention pursuing the future needs of the society.

A similar argument regarding the lack of a victim focus or future orientation can be made for the explanatory model presented by Moran. His explanatory variable, catharsis, does, however, provide some space for consideration of reconciliation needs in the society. His pressure cooker model, however, reduces the intervention strategy to a reaction to past events rather than a goal-oriented intervention. Community and individual needs may count as factors that are tangentially linked to catharsis, but are not direct considerations within the equation.

Either model still treats the decision to prosecute as a factor influenced by national circumstances rather than driven by loftier ideals. While the future-oriented goals (reconciliation and promoting human rights) may be held out as justifications for such

policies, they appear to be formulated as post-hoc justifications rather than clearly strategized policies. While the prosecution of human rights offenses is still accepted as an obligation under international law (Nino, 1991), the local circumstances and anticipated repercussions have generally been found to be more influential variables.

Another element that could also be factored into the equation is the political ideology of the victor group. The political ideology inspiring the struggle for political change is sometimes associated with a vision of a reconciled society. There is also often a tension between very militant vengeful rhetoric and the language of forgiveness in the discourse of a liberation movement. The dynamics of conflict often produce a discourse that leaves little space for reconciliation. Visionary leaders during conflict are, however, also likely to engage with the vision of a reconciled post-conflict society (as discussed in Chapter 2).

The point of transition, however, presents those in leadership positions with the opportunity to accentuate the one or the other path. In Zimbabwe there was, for example, extreme anxiety among whites when Mugabe won the election, as he was perceived to be radical and vengeful. He, however, adopted a policy of national reconciliation built on a vision of non-racialism and political and economic compromise (De Waal, 1990). This reconciliation was presented as a gift from the victims based on personal moral convictions. While it may have succeeded in ensuring a peaceful post-transition normalization of social relations, it ultimately appears to have failed as a political program. The underlying assumptions of (or hope for) a commitment to a redistribution of resources and the establishment of a unified African identity was not acceptable to whites. They did

not perceive the existence of a covenant in which the “gift” of non-retribution was exchanged for social justice and incorporation into an African identity.

Confusing the vision of reconciliation with a practical program and processes involved in reconciliation is clearly a danger during the period of deep euphoria that may characterize transitions. Montville (1993, p. 120) also describes an incident in Nicaragua where an emotionally driven act of forgiveness by a torture victim-turned-victor was not ultimately reciprocated. Reconciliation that is initiated and implemented by one side in anticipation of a reciprocal engagement in a new moral order is, it appears, unfeasible in the context of transitional societies.

The perspectives of victims or the concerns about rebuilding communities are, it appears, completely absent in most of these discussions regarding prosecution versus forgiveness. The political leadership takes on the role of representing the victims in their act of moral outrage (prosecution) or in their act of mercy (lack of prosecution). The victims’ willingness to go along with their leaders’ decision is taken for granted. The few times that victims’ voices as a group are heard, are when they condemn amnesties and demand prosecutions (e.g., Chile, Argentina and Brazil). Their voices are heard in protest against government policies rather than during the process of developing policies.

While the international literature pays extensive attention to the question of vengeance/prosecution versus forgiveness by the new government, very little is known about the perspectives of individual victims regarding these policy choices.

b) The Meaning of Prosecution and Punishment

Central in many analyses of the role of prosecution and punishment are their contribution to deterrence on the one hand and their contribution to conveying a message of moral condemnation of human rights abuses on the other. These are both strong arguments regarding the social function of justice (as discussed in the previous chapter) and are generally presented in relation to national social needs. They also, however, require consideration in terms of their functionality for community and individual needs.

i) Prosecution and Deterrence

The argument for the deterrent value of prosecutions has been relatively weak. It is argued that, unless perpetrators of human rights abuses are prosecuted by the new governments, there is no disincentive for authoritarian regimes in other countries to perpetrate similar abuses. It could, however, also be argued that, if victimizers expect to be prosecuted, they are unlikely to hand over power until they are completely defeated. Moreover, the deterrent role of punishment is highly questionable (especially when punishment in one country is argued to serve in deterring abuses in another country). People who see themselves as combatants in a war situation are also unlikely to view prosecution for their deeds as a major consideration if they perceive a more immediate threat being presented by the existing conflict. The possible threat presented by the termination of the existing conflict (specifically through their defeat) is unlikely to feature highly in their deliberations, except when defeat becomes unavoidable.

An increased role for the international community in this regard is, however, being explored. The imminent establishment of a permanent International Criminal Court as being discussed by the UN General Assembly could serve as a more credible disincentive

than present International Criminal Tribunals that are irregular occurrences. The loopholes and legal and practical difficulties of pursuing large-scale prosecutions may, however, severely limit the reach of such an institution, and thus limit its deterrent capacity.

While the need for deterrence is also of relevance to local communities and to victims who feel vulnerable to future abuses (from the same perpetrators or different ones), the international debate around deterrence focuses almost exclusively on the national figures who orchestrate systematic policies of abuse, and look at deterrence mainly in relation to other countries in the international communities (rather than the country where the abuse has already occurred). The latter deterrent motive does not hold value to the local community, and the prior only to a limited extent. While local communities are obviously affected by the national systematic policies of abuse, human rights abuses at the community level may continue or reappear without them necessarily being sanctioned nationally.

In the international human rights literature, deterrence is mainly viewed with regard to the national picture. The prosecution of senior leadership is likely to have the greatest national impact. At the local level, it may, however, be more important to rout out the perpetrators who still have local power. The impunity of local perpetrators may thus continue while national perpetrators are prosecuted. The fact that human rights abuses often continue, but are targeted at criminal rather than political enemies of the state (as has been widely observed in Latin America and South Africa), is also an indication of impunity within the lower ranks of the state structures, despite changes happening at the senior levels.

Because of the cost implications, prosecutorial policies generally focus on the most prominent perpetrators. Where prosecutions are pursued more broadly they are generally unable to secure high rates of conviction (e.g., the small percentage of successful prosecutions in post-Nazi Germany). In a situation of large-scale patterns of human rights abuses among the police and the military, prosecutions of individuals are thus difficult to execute, and the consequent impact on deterrence quite limited.

ii) Prosecution and Moral Condemnation

Perhaps because of the limitations listed above, analysts have focused more on the symbolism of prosecutions. The impact of the message of moral condemnation conveyed by prosecution and punishment is, however, even more difficult to evaluate. It is thus perhaps more generally accepted as an important contribution in the development of a global acceptance of human rights norms, rather than a direct contributor to a local human rights culture. While many post-transition trials are largely seen as victor's justice (e.g., the selective prosecutions at Nuremberg), there is growing international support for trials directed at prosecuting human rights abuses on both sides of a conflict (e.g., the War Crimes Tribunal for Yugoslavia).³ This moral condemnation, it is hoped, not only sends a message to the international community, but also acts as a local human rights education tool. It at least provides official affirmation or acknowledgment of a new human rights commitment.

³ Klarin (1996), however, notes the Serb reaction to the International Criminal Tribunal hearing cases of genocide and crimes against humanity in the Former Yugoslavia:

They perceive the tribunal as an instrument for an international ruling class - 'a new world order' - whose aim is not to deliver some imaginary international justice, but to execute pressure on them and extort political and other concessions. (p. 21).

Shriver (1995) reflects on the positive lessons in addressing and labeling evil that came out of the Nuremberg Trials. He notes:

... that one of the gifts of post-war Germany to the world may be its example of wrestling with the necessity and the enduring problems of breaking with an evil political past not only in broad, symbolic ways but in terms of concrete assignments of guilt and punishment to some of the perpetrators of the evil. , however, ambiguous and selective, such measures are therapeutic additions to law, political precedent, and citizen education.
(p. 84)

Observers are also quite positive in evaluating the experience of Chile in this regard. Aguero (1993), Americas Watch (1991), Ensalaco (1994a) and Benomar (1993) all see the role of the Rettig Report (which documented human rights violations) in laying the foundation of a human rights culture and saw its recommendations regarding human rights education at schools and judicial reform as particularly significant in contributing to institutional reform.

Correa (1992, p. 487) also concludes that:

... the most important justification for punishing human rights violators during a transition to a democracy is that the criminal sanction best expresses society's moral repudiation of the human rights violations.

Punishment appears then as a means and not as an end in itself.....the criminal sanction is the best means, the best way to express and reinforce social repudiation.

Hayner (1994), while not holding out strong hopes for direct deterrence, argues that the strongest deterrent potential of a truth commission is through the publication of records, which could possibly lead to a more knowledgeable citizenry which would recognize and resist any sign of return to repressive rule.⁴

Garro (1993, p. 4) spells out a similar perspective in relation to the transition in Argentina:

The most troubling issues posed by the transition or consolidation of democracy in Latin America are ... centred not so much on the creation of new legal institutions, but rather on the need to develop the necessary degree of consensus in support of these institutions.

Where prosecutions were absent or convicted perpetrators released, the new culture that the government seeks to build is undermined. Alfonsín and Menem's interference with the prosecutions of perpetrators in Argentina, for example, clearly undermined the nascent authority of the judiciary. "Burying the past human rights abuses under the rug of

⁴ This hope is also expressed in the final report of the Rettig Commission:
To fulfill a preventive function, truth must be impartial, complete and objective, in such a way as to create a conviction in the national conscience of how the events took place and

‘national reconciliation’ has not helped the process of instilling democratic values to the Argentine people” (ibid., p. 99). Furthermore, Garro notes, that the escalation of police brutality and the relative success of the electoral campaigns of military officers who sympathized with the military dictatorship, demonstrate the low level of commitment to democratic values.

Reflecting on the experience of Zimbabwe, Carver (1989) also regards that the lack of prosecution of human rights abusers within the Smith regime after the political transition as being partially responsible for the subsequent abuses committed by the new government during the Matabeleland crisis:

... the (ZANU) government seems proud of the fact that it bears no grudge against torturers. It is not surprising, then, that the culture of torture has survived into the post-independence era. (p.13)

The lack of prosecution of human rights abusers in Chile is also identified as a factor responsible for the failure of the government in preventing subsequent abuses (particularly the use of torture by the armed forces) under the democratic government (Benomar, 1993).

Moral condemnation through prosecutions is a process carried out by national government. It is an expression of national values by national leaders, communicated via mass media. Communities and victims are consumers of this message rather than

how they unduly affected the honor and dignity of the victims. (Volume 1, Part 1V,

participants in its formulation and transmission. The moral condemnation by official state structures is an important message that victims do need to hear after experiencing victimization, often at the hands of these very structures. It is thus a formal acknowledgment by the structure that is formally charged with protecting citizens against abuses. This can provide victims with a strong indication of the shift in government's values and its changed relationship with them as citizens.

As noted in the discussion on healing in Chapter 2, this acknowledgment by the government of the immorality of the abuses, and its commitment to non-repetition are important elements in the healing process for many victims.

This national political message may, however, be only part of the picture. Moral condemnation may be more broadly needed. A new political culture requires a change in values at all social level. It may be initiated or pushed by the national level, but must ultimately also filter down to the local level. It has to be adopted by local state officials, local police and local community leaders for it to have any enduring significance. The international literature again focuses almost exclusively on the significance of national moral condemnation through prosecutions without evaluating whether this new moral commitment is shared by or filtered down to the local level. Especially where the state lacks broad political support, where it is seen as remote from local concerns or where local leaders have strong influences, the national political message may lack impact at the local level.

iii) Breadth of Prosecution: Individual versus Collective Guilt

The question that also arises in relation to prosecutions is that of who should be punished - just those who gave the orders, those who carried them out, or the whole section of society which supported the oppressive regime. The Rwanda Tribunal has, for example, defined four levels of guilt: level 1 - ordering and planning and being very active in the genocide, levels 2 and 3 - direct participation in the genocide and level 4 - stealing or damaging property during the genocide. In part this is purely a response to the scale of the problem: tens of thousands are being held for trial (UN Human Rights Field Operation in Rwanda, 1996). The consequences of large-scale executions for future reconciliation is very worrying, especially when legal representation of accused is lacking, legal procedures are compromised due to the heavy caseload, and when these executions are carried out in public as was done with some of those convicted.

Generally, local communities are more likely to be directly impacted by “lower levels of guilt.” Where individuals from different sides of the conflict have to live together as neighbours after the conflict, the sense of impunity with regards to local perpetrators could have serious consequences. The deprioritization of these offenses (either in terms of resources invested in securing prosecutions and in terms of sentencing) for the sake of expeditious processing, could undermine the sense of justice with regards to local perpetrators.

A related question is that of collective versus individual guilt. The implications for the type of reconciliation arising from each approach is debatable. Focusing on the guilt and punishment of individual offenders at Nuremberg is held out by some as the reason

for the “success” of post-Nazi reconciliation. Richard Goldstone (Yugoslavia War Crimes Prosecutor) argues that:

.... the Nuremberg trials had also been important in helping the German people come to grips with the Holocaust as they individualized the guilt of Nazi leaders who were identified as a group of criminals rather than as representatives of the whole German nation. (Business Day, 7 February 1997).

The counter-argument claims that reconciliation has not happened in Germany, that Germans have generally simply denied their past, and have not reflected on the role played by the population through its support for and acquiescence to the Nazi government. Individualized prosecution has thus allowed individual citizens to avoid personal responsibility and has buried rather than dealt with the past (Reuter, 1990).

Burgess (1992) also points to individualized guilt assigned to political leaders in the former East Germany as a scapegoating process whereby the population avoids dealing with their own complicity in abuses - a process which prevents a deeper reconciliation, especially the construction of new political values.

The implications of a sense of collective guilt by a group (or absence thereof) for community reconciliation or victims’ sense of justice is difficult to ascertain from the international literature. Whether the process of building interpersonal and broader community bonds across historical divides is facilitated or impeded by this belief in

collective guilt (by either the victims and those collectively responsible, or both) is not addressed in the literature. It, however, appears very likely that reconciliation would be difficult between victims who hold a whole group responsible and individuals within that group who do not accept some level of collective responsibility.

c) Reparations for Victims

While the victims have specific interests in the question of prosecution and amnesty, a clearer role for their participation in reconciliation processes has been defined in relation to restitution. Van Boven, et al (1992) identify a number of considerations in this regard:

A whole series of non-monetary means of reparations may be made to victims of gross violations of human rights, depending on the situations, the nature of the violations and the position and needs of the victims, [These include] reinstallation in a function, provision of new employment, pension rights, medical and educational services, social security, housing, restoration of reputation, acknowledgement of wrong done and, last but not least, revelation of the truth.... (p. 500)

[In] dealing with the issue of reparation, the perspective of the victims should be the point of departure. Their needs and wishes deserve paramount attention. (p. 502)

Through increased lobbying and sensitivity to such needs, reparations for victims has become a central element of many countries' attempts to deal with the past and bring about reconciliation.

The Rettig Commission in Chile embodied this approach probably more than any other. Its focus was to uncover the truth about individual victims' circumstances, acknowledge their role and the injustice done, resolve the legal position (i.e., declare the disappeared to be dead), and provide social services (pensions, health, etc.) to the

surviving relatives (Ensalaco, 1994a). Whether this is sufficient (in the light of the lack of prosecutions) for the surviving relatives is, however, questioned (see e.g., Garreton, 1996 and Americas Watch, 1991).

The restitution approach also contains many other pitfalls. Who would qualify for restitution - the victims themselves (who survived torture, banishment, etc.) or their dependents as well? In Chile, only the relatives of the disappeared qualified, while in Argentina those who were exiled and lost their jobs also received compensation. Unless well conceived, these differentiations could lead to divisions among the victimized population.

Hughes (1993) finds similar problems encountered in post-WWII Germany 's restitution policies:

... persecution alone was insufficient grounds for restitution. Only those who organised effectively and met Allied and German normative expectations (that is, those persecuted for racial, religious, or political grounds) received recompense. Gypsies, homosexuals, forcibly sterilized individuals, and "asocials" received nothing in the 1940s and 1950s because Allied and German opinion considered them morally undeserving. (p. 898-899)

Reparations policies elevate certain victims to a higher status than others. In a community that is characterized by many different forms and severity of suffering, this differentiation could thus easily undermine victim unity or broader community relationships.

Another form of reparations – remembrance -- has been particularly fraught with such problems. In Zimbabwe the issue of remembrance of those who died in the liberation war has become divisive. Separate lists of ZIPRA and ZANLA (the two liberation movements) soldiers were drawn up, and disagreements arose over who should receive recognition. The exclusion of civilians who also died either as innocent bystanders or in resisting the Rhodesian Army became another point of discord:

Above all, there are people whose sons and daughters gave their lives for the liberation of Zimbabwe, but who today face many problems and who have not received any information or gratitude from the nation for their sacrifices. (Richard Dube in reference to ZIPRA war dead in a report to the Mafela Trust, May 1990 quoted in Brickhill, 1995, p. 170).

Kruger (1995) also argues that the Mugabe government's attempt to erect memorials to war heroes gave rise to conflicts because of disagreements around the questions of who would be considered war heroes. While on the one hand there was conflict around the equal recognition of ZANLA and ZIPRA guerrillas, white (ex)Rhodesians found that they were not free to erect memorials to those who died in the war.

As with prosecutions, reparations also raises the issue of collective guilt or collective responsibility. When restitution is given to victims, this may also create

resentment by a population which has not accepted overall responsibility for the suffering of a particular group. Hughes (1993) found Germany to be such a case:

Both privileges and restitution created resentment especially where Germans had to surrender confiscated property acquired, purportedly, “in good faith.” ... [O]nly concern for Germany’s international position convinced Konrad Adenauer to negotiate, and parliament to approve, substantial individual compensation to individuals persecuted, usually living in Germany, and collective compensation (to those victims who had emigrated).The question thus remains “Did Wiedergutmachung strengthen West German democracy or, as many contemporaries argue, simply exacerbate surviving anti-Semitic and antidemocratic attitudes? (p. 899)

In addition to the concerns regarding who gets reparations and how much, there has also been controversy over a government’s policy to pursue reparations as a substitute for prosecutions. Indications are that victims may resist this “second best” alternative. Reparations by themselves are clearly not enough. Edelstein (1994, p. 2) notes in the case of Argentina, for example, that:

... many victims and relatives have been unwilling to accept compensation from the government because, in their view, filing for financial compensation is a buy-off that cannot make up for what was lost. Public discontent over the Argentine amnesty provisions may have been balanced

out by providing redress to victims, but was not viewed as a substitution for prosecution or as mitigating the state's obligation to identify and punish human rights offenders.

d) Justice and/or Truth

Some have argued that truth could serve as a substitute for traditional prosecutions. Ensalaco (1994a), for example, notes that punishment does not occur simply through incarceration. In Chile and El Salvador, the reports published by the Commissions, in effect, punished certain individual leaders and institutions through undermining their personal reputation or institutional prestige. A process of public shaming subverted the status of these structures in society. The extent and universality of this shaming process is, however, questionable, especially within the security structures.

An alternative argument for substituting truth for justice, is to see truth as a form of restorative justice. Garreton (1996), however, found that, in Chile, there was an unresolvable tension between the goals of justice and reconciliation, and that the government attempted to superimpose the concept of reconciliation on the concept of justice, sometimes replacing it altogether.⁵ This, he claims, was not accepted by the public. He refers to a 1992 poll which found that, while 60.1% of the population saw the Rettig Report as a step towards reconciliation, 53.3% viewed the government as delivering truth but not justice. Most people still saw punishment of offenders as a necessary step of the reconciliation process. Delivering enough truth to satisfy most people thus was not found to remove their demand

⁵ The presidential decrees which established the Rettig Commission (Decree No. 355), for example, states: "only on the basis of the truth will it be possible to satisfy the demands of justice and create indispensable conditions for achieving true national reconciliation." (April 25, 1990 Dairo Official - Art.)

for punishment. Presenting it as an “either or” choice is perceived to be a false dichotomy by the public who have to judge the success of the policy.

4. Conclusion

Most reconciliation initiatives that are recorded in the literature reflect an understanding of reconciliation as being a national process - the creation of a new national identity, the creation of new relationships among political elites, and re-building trust within (and of) the national political community. Where the individual is involved it is often as a contributor towards this national process, either by providing information that is useful in charting abuses by state institutions, or by symbolizing the role of national political groups on either side of the conflict. Few processes see the individual as targets/consumers (as opposed to pawns) of reconciliation processes.

Truth Commissions which hear evidence from individuals have, moreover, usually operated behind closed doors and only engaged the public through their final reports (e.g., Chile, Argentina, and El Salvador). They thus engage with each victim individually, rather than requesting input from communities or organizations. They also only feed back information to the nation as a whole - there is no communication channel directly with communities, and the information that is published is filtered by the commission and is thus determined by their goals.

The only processes which appear to deal with victims on their own terms or which have a more community-centered approach are non-state initiatives. Michaelson (1993)

describes an initiative by the Life and Peace Institute in Uppsala Sweden to address reconciliation in the Somali conflict. These bottom-up, participatory, people-centered processes, he argues, lend legitimacy to larger segments of civil society. This gives reconciliation processes more momentum and enhances the likelihood that solutions will be durable. He concludes that, if it is only the perpetrators of violence that are legitimated and empowered by negotiations, the peace will be a shallow one.

The War-Torn Societies Project (of the UN Research Institute for Social Development) also notes that

Post-war rebuilding inevitably involves actors at international, national and local levels. However, the contribution made by local actors to restore and improve social, economic and political living conditions are often ignored or undervalued. Likewise, their representation in the bodies that identify priorities and programmes for post-war rehabilitation is often limited.

(War-Torn Societies Project Research Update, 1996, p. 1)

National reconciliation policies/processes are caught up in competing demands and a myriad of needs. These are pressed upon them by political parties, victims, and international actors. The demands of a new democracy and/or a conflict-ravaged country also present problems of political stability and economic development that leave limited resources and great potential for future conflict.

The strategic choices regarding how to address the demands for justice, truth, and reparations in a way that respects and heals the past while also building a new society with the capacity to address newly emerging conflicts are overwhelming. The choices made are, however, also very indicative of the type of society that is envisioned, the basic values pursued and the new moral order anticipated by policy makers. They provide insights into the nascent political culture, particularly its conceptualization of the relationship between the state and citizen (especially those most marginalized by human rights abuses), and the primacy of the central state as the locus of stability and order versus the significance of addressing victim needs and community building in ensuring peaceful co-existence.

This chapter has indicated the various ways in which the tension between national and local/victim priorities have manifested themselves in the context of post-war reconciliation initiatives when they engage with questions of justice. As will be demonstrated in the next chapter, these tensions became very evident in the lead up to, and the actual operation of, the TRC. The drafters of the TRC legislation and the TRC's own attempts to be sensitive to local community and victims' concerns were constantly in tension with its broader political mandate to promote national reconciliation. It thus reflected many of the tensions that characterized the other countries reviewed in this chapter.