



Essential

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A Transformative
Approach to
Dealing with
the Past

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A Transformative Approach to Dealing with the Past

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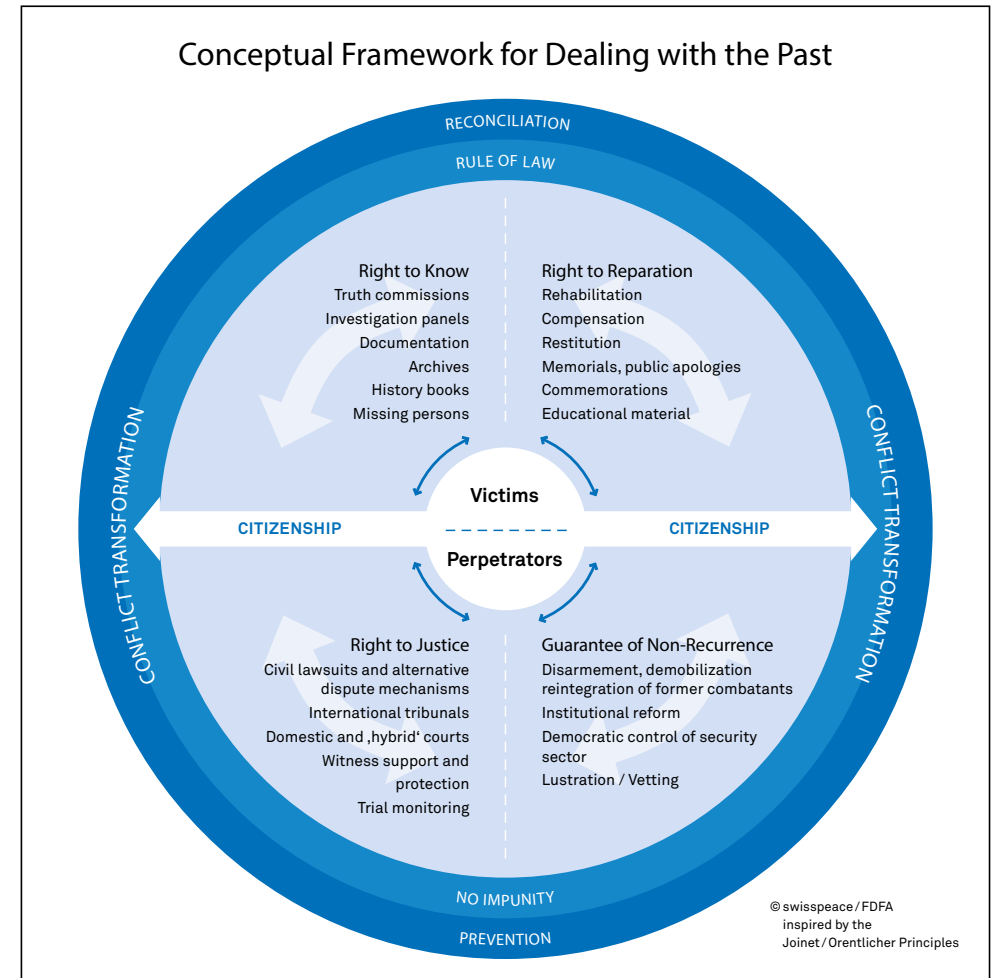
1 Introduction

- 1 For a detailed discussion of this framework please see *A Conceptual Framework for Dealing with the Past: Holism in Principle and Practice*. swisspeace Essential 03/2013 and Sisson, Jonathan (2010): *A Conceptual Framework for Dealing with the Past* in Politorbis No. 50 Dealing with the Past. ed. FDFA.
- 2 UN Document E/CN.4/2005/102/Add.1, Report of Diane Orentlicher, independent expert to update the Set of principles to combat impunity - Updated Set of principles for the protection and promotion of human rights through action to combat impunity.
- 3 Available at http://www.icty.org/x/file/Legal_Library/Statute/statute_827_1993_en.pdf.

“Justice, reconciliation and peace are seen as inextricably intertwined. And yet, relatively few transitional justice scholars consider the goals of peace and reconciliation, instead continuing to focus primarily on the promotion of human rights, democracy and the rule of law”... “In addition to accountability or legal justice, attention needs to be paid to the psychosocial processes, socioeconomic conditions and political context in order for transitional justice to support peacebuilding” (Lambourne 2014: 19 and 34).

Dealing with a past of gross human rights violations is a challenge for societies undergoing political and social transitions. It is a long-term process, which generally includes a number of different actors and mechanisms with not only diverse perceptions of the past but also various visions for the future. Both scholars and practitioners have grappled with the ways in which dealing with the past can be understood and the essential elements of an effective and legitimate process. This includes swisspeace who, together with the Federal Department of Foreign Affairs of Switzerland (FDFA), developed a *Conceptual Framework for Dealing with the Past*¹ based on the work of United Nations (UN) Special Rapporteur Louis Joinet and later recommendations.²

The four rights at the centre of this conceptual framework are connected and are thought to be able to contribute to conflict transformation as a broader goal of peacebuilding. Examples of this rationale can be seen in founding documents of dealing with the past mechanisms, such as the UN Security Council Resolution 827 which established the International Criminal Tribunal for the Former Yugoslavia (ICTY) which states that the tribunal “would contribute to the restoration and maintenance of peace” (1993: 1),³ and national laws establishing domestic mechanisms, such as the Promotion of National Unity and Reconciliation Act No. 34 which formed the basis of the Truth and Reconciliation Commission (TRC) of South Africa, which assumes that



the TRC would “promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past” (1995).⁴

However, there is limited theoretical or practical work which asks how dealing with the past is and can be connected to conflict transformation. This means that

⁴ <http://www.justice.gov.za/legislation/acts/1995-034.pdf>. Last accessed 7th May 2015.

5 Although a much debated concept we use reconciliation here to describe a process or a number of processes that aim at transforming relationships in societies affected by armed conflict, authoritarian regimes, and gross human rights violations, allowing for the acceptance of different views of the past and helping a society to resolve conflicts in a non-violent and constructive way.

there is a gap in terms of conceptualising the link and in terms of its evidentiary foundation. The current literature on dealing with the past and its tools (like truth commissions, tribunals, reparations or institutional reforms) cannot sufficiently explain the relationship between specific mechanisms and processes and the broader, longer-term social and political change which is necessary for a peaceful future. The concept of conflict transformation provides the missing link in this regard: it focuses on ongoing processes, taking into account the transformation of relationships, behaviours, attitudes, institutions and structures that perpetuate violence. Hence, a conversation between dealing with the past and conflict transformation promises to further explain the link between transitional justice instruments and their contribution to peace and reconciliation (Kayser-Whande and Schell-Faucon 2010). Both dealing with the past and conflict transformation share a common commitment to societal transformation and increased justice through peaceful and lawful means. Reconciliation⁵ and the restoring of relationships must emerge from a dealing with a past process.

Paul Gready and Simon Robins have written that “Transformative justice entails a shift in focus from the legal to the social and political, and from the state and institutions to communities and everyday concerns. Transformative justice is not the result of a top-down imposition of external legal frameworks or institutional templates, but of a more bottom-up understanding and analysis of the lives and needs of populations. Similarly, the tools of transformation will not be restricted to the courts and truth commissions of transitional justice, but will comprise a range of policies and approaches that can impact on the social, political and economic status of a large range of stakeholders” (2014: 340).

The [Special Court for Sierra Leone \(SCSL\)](#) was largely detached not only from the [Truth and Reconciliation Commission](#) but also from national judicial, investigative and prosecutorial structures, meaning that the potential impact in terms of changing the latter was very limited. On the contrary, in the case of Bosnia and Herzegovina, international crimes that were not prosecuted by the ICTY are adjudicated by the [Section for War Crimes within the State Court and the State Prosecutor’s Office of Bosnia and Herzegovina](#). The integration of trials regarding international crimes in domestic judicial systems, whenever politically possible, enhances the institutional structures and rule of law in the respective country in a more sustainable manner than international structures which are short-term and not integrated with the domestic system.

In this Essential, we aim to build on the work which has been done connecting dealing with the past and conflict transformation, and our own practical experiences, in order to identify synergies and the potential way forward for those who wish to ensure that dealing with the past interventions contribute to a transition towards long-term peace and reconciliation. In particular, we focus on the ways in which a conflict transformation lens, approach and methodologies can enhance dealing with the past processes. The Essential is structured in the following way: Chapter 2 addresses definitions of the terms ‘dealing with the past’ and ‘conflict transformation’ and how we understand and use them; Chapter 3 looks at synergies in theory and practice between conflict transformation and dealing with the past; and Chapter 4 outlines ways forward asking what a dealing with the past process would look like and incorporate if learning from conflict transformation is taken seriously.

2.1 Dealing with the Past

In this Essential we refer to ‘dealing with the past’ rather than transitional justice in order to emphasise the long-term nature of the process, the judicial and non-judicial elements of a reckoning with past violence, and to allow for the possibility that such a process will not be a linear transition from ‘A’ to ‘B’ but rather an ongoing and complicated set of negotiations and dialogues between many different actors. However, the terminology of ‘transitional justice’ is prolific in the literature and practice of this field and thus many of the sources we cite here will also use this vocabulary.

Dealing with a past of gross violations of human rights and international humanitarian law can be approached in different ways. Following the Nuremberg and Tokyo trials after World War II, a body of international humanitarian, human rights, and international criminal law has been developed and applied as forms of [retributive justice](#) from the 1990s onwards in mechanisms of international criminal law such as the *ad hoc* ICTY and the International Criminal Tribunal for Rwanda (ICTR), hybrid courts such as the Special Court for Sierra Leone (SCSL) or the Extraordinary Chambers in the Courts of Cambodia (ECCC), and ultimately in the permanent International Criminal Court (ICC). Concurrently it has also been recognised that [restorative justice](#) is important and that other elements of dealing with the past such as truth-seeking, reparations, memorialisation and institutional reform are essential for societies in transition. In an overview of the development of the field, Teitel has identified three phases of transitional justice since the Nuremberg Trials to the current day which illustrates “a broader intellectual trend toward an increased pragmatism and politicization of the law” (2003: 70). In addition, there has been increasing interest in holistic approaches to dealing with the past and debates over the most effective

combination of interventions (see for example Olsen, Payne and Reiter 2010).

Different typologies and frameworks for dealing with the past have been developed both by the UN and by scholars and practitioners. The following table selects a few illustrative approaches: the Joinet-Orentlicher Principles Against Impunity; the UN Five Pillars which extend the Principles Against Impunity; and those of Stephan Partmentier who is a Professor of Criminology at KU Leuven; Alex Boraine who is a former Commissioner for the South African Truth and Reconciliation Commission; and Wendy Lambourne who is a peace studies scholar at the University of Sydney.

Importantly each of the different approaches to dealing with the past, despite emphasizing varied mechanisms, share commonalities which have been observed by Undine Kayser-Wande and Stephanie Schell-Faucon (2010: 98-99):

- > A belief that it is central to address past human rights violations to achieve a just and peaceful society.
- > An assumption that a wider-ranging (often political) change and transformation process is taking place and that dealing with the past is part of it.
- > A hypothesis that dealing with a violent past helps to reconcile a divided society.
- > The inclusion of often vaguely defined visions of a democratic, just and peaceful future.

If we take the holistic framework of dealing with the past, developed by swisspeace and the Swiss Federal Department of Foreign Affairs based on the Joinet/Orentlicher Principles against impunity⁶ (see Introduction), we can see that it is explicit in its inclusion of conflict transformation as one of the overarching goals of a dealing with the past process. As explained by

⁶ UN Document E/CN.4/2005/102/Add.1, Report of Diane Orentlicher, independent expert to update the Set of principles to combat impunity - Updated Set of principles for the protection and promotion of human rights through action to combat impunity.

	United Nations Pillars	Stephan Parmentier	Alex Boraine	Wendy Lambourne
Joint-Orentlicher Principles Against Impunity				
<u>Right to Justice</u>	Prosecutions	Accountability	Accountability	Accountability
<u>Right to Know</u>	Truth-Seeking	Truth	Truth Recovery	Truth: Knowledge and Acknowledgement
<u>Right to Reparation</u>	Reparations	Reparations	Reparations	Socioeconomic Justice
<u>Reconciliation</u>		Reconciliation	Reconciliation	Relationship Transformation
<u>Guarantee of non-recurrence</u>	Institutional Reform		Institutional Reform	Structural Transformation Political Justice
	Popular Participation			Local Ownership, Capacity Building

Table 1. adapted from Lambourne 2014: 54)

Sisson “The outermost circle is defined by the parameters of reconciliation and non-repetition of the serious and systematic abuses of the past. This is again a long-term goal, for which a societal process of Dealing with the Past is a necessary pre-requisite. Impact measurement is more difficult here, but the key concept is conflict transformation” (2010: 14). The rationale is that the institutions and mechanisms supported by dealing with the past initiatives will establish democratic norms of tolerance and power-sharing and that victim and perpetrator identities will be transformed into that of being a citizen in a new social contract (Ibid).

Thus, the importance of conflict transformation for dealing with the past needs to be acknowledged more explicitly, and engaged with more directly. This is not only a conceptual question but also a very practical one. We have begun to ask questions of the impact and legacy of dealing with the past, questions which demand an understanding of how different dealing with the past processes in different contexts and at different times can contribute to conflict transformation. However, dealing with the past interventions to date have largely failed to engage with theories of change and there is no solid evidentiary foundation on which to base claims to impact. If we now turn to the work done within the conflict transformation field it is possible to identify the key ways in which conflict transformation can usefully be brought to bear on dealing with the past.

2.2 Conflict Transformation

Conflict transformation theory **understands conflicts as a part of human life that serve social progress as a catalyst for change** if handled in a constructive and non-violent way. Particularly important for the successful management of conflict is to take into consideration the grievances and needs of a multitude of actors in society. Conflict transformation seeks to establish mechanisms to transform violent conflict into non-violent forms of handling and resolving conflict. Therefore, conflict transformation addresses the individual as well as the structural level of society and encompasses all activities that intend to transform attitudes, beliefs, individual and societal values, relationships, interests, institutions and structures that perpetuate violence (Miall: 2004). Conflict transformation processes are long-term endeavours that can take very different forms depending on local culture, traditions, values, ways of understanding conflict and peace, norms, types of governance and socio-political realities. In every conflict context, multiple transformation processes are happening at the same time and at different levels, addressing different root causes of conflicts as well as with different actors.

The above mentioned holistic approach to dealing with the past has some crucial elements in common with conflict transformation, since it aims at addressing long-term changes in society in a sustainable manner and challenges root-causes of conflict. Dealing with the past is a crucial component of the over-arching conflict transformation process as past human rights violations and atrocities have impacted on individual well-being, people's relationships, institutional structures and political realities that prevent a society from reconciling and creating a joint vision of the future. Not only do both conflict transformation and dealing with the past share the same vision of just peace and societal reconciliation (Kayser-Whande and Schell Faucon 2010: 100) but they

are both highly political: in order to achieve just peace and reconciliation, power imbalances in society have to be addressed.

Ideally, there is a two-fold openness with regards to the outcome of conflict transformation processes. Firstly, the vision of peace in society is developed throughout the process. Contrary to a human rights based approach, conflict transformation practitioners do not assume to know the ideal condition of a society that needs to be established beyond that of it being peaceful. Secondly, as the process is owned by local societies, they create their own models which do not necessarily need to reproduce models of liberal democracies. Running throughout this openness is an emphasis on **process** and a long-term perspective on dynamic phases of social change which may include relapses into violence. There is also a **limited role for external actors**. They may support mediation and dialogue processes, help with conflict analysis, provide spaces for reflection and discussion, suggest mechanisms and structures to deal with conflicts non-violently and provide expertise and funding in the fields mentioned above. In other words, they can support infrastructures for peace⁷ mainly through accompaniment, institution and capacity building.

⁷ Infrastructures for Peace are a: "Dynamic network of interdependent structures, mechanisms, resources, values, and skills which, through dialogue and consultation, contribute to conflict prevention and peace-building in a society." (Kumar and De La Haye 2011 :14) Further readings also available at: <http://www.i4pinternational.org/infrastructures-for-peace>.

In Sri Lanka, the conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) had its roots in the exclusion of the Tamil minority from political decision making processes, discrimination and the non-recognition of the Tamil culture and language as part of a national identity. After a ceasefire agreement was signed in 2002 one of the typical conflict transformation activities was to look for power sharing mechanisms between the various minorities in Sri Lanka. To this effect, various external organisations as well as their bilateral partners supported the conflict parties, their proxies as well as civil society with expertise in different power sharing models, in bringing them together and creating a space to discuss these and to jointly work towards potential options for peace in Sri Lanka. The idea was to prepare the conflict parties and civil society to come up with their own suggestions and ideas in or around the peace negotiations that were expected to take place in the near future.⁸

⁸ For further reading on this case see: Jonathan Goodhand, Benedikt Korf, and Jonathan Spencer (2011).

3 Dealing with the Past and Conflict Transformation: Synergies in Theory and Practice

Building on the synergies highlighted in Chapter 2.2 we have already seen that dealing with the past and conflict transformation can be usefully brought together and should be done so more frequently in order to enhance the implementation and impact of dealing with the past processes on long-term peace and reconciliation. In particular we need to reflect on how we deal with the past in order to ensure that it contributes to conflict transformation and thus the prevention of potential future violent conflicts in the ways intended in the different frameworks discussed in Chapter 2.1. Previous experiences with dealing with the past interventions have frequently missed opportunities as they have most often been implemented without taking into consideration this conflict transformation potential.

Before moving onto the points of synergy we will first highlight the divergences between dealing with the past and conflict transformation and thus hint at possibilities for re-thinking dealing with the past practice.

Dealing with the past processes have been criticised for:

- > their approach to conflict which is often limited to a very legalistic approach and focused only on physical rather than structural violence;
- > the focus of their interventions on closure and accountability instead of transformation, and on results rather than process;
- > the actors with which they work, being often perpetrator focused, using victims for very specific purposes, excluding marginalized groups and focused on the centres and not the periphery;
- > the way in which change is understood to take place through a strong top down approach that often ignores bottom up processes.

Unlike conflict transformation which is concerned with conflict as part of society and human life, dealing with the past mechanisms often have a tendency to seek closure through an end to direct violence and a desire to manage and somehow neutralise conflict within societies in transition. As Meister writes “the costs of achieving a moral consensus that the past was evil is to reach a political consensus that the evil is past” (2002: 96). In addition, dealing with the past processes have generally been dominated by legal approaches and a focus on human rights with the clear end goal of societies in which there are no human rights violations. This contrasts the conflict transformation approach which has an open ended goal of transforming relations so that people can live decently together in a way which cannot be designed beforehand, but is instead process oriented.

Finally, dealing with the past debates have in recent years been concerned, among other issues, with the role which models and tool-boxes should play in the design and implementation of a dealing with the past process. Can dealing with the past be more than a selection of the mechanisms on offer such as truth commission, trials, commemorations, or reparations?

In this chapter we respond to these differences by looking at possible synergies, learning from conflict transformation to improve dealing with the past practice and understanding that it is part of a political transition that needs to be negotiated. We focus on the areas we believe to offer the most potential: conflict analysis; process; impact.⁹

⁹ We would like to emphasise that conflict sensitivity is another very important approach that could establish a stronger transformative lens to dealing with the past processes. This concept is mentioned in the section on conflict analysis but is not elaborated in detail in this document. For further reading see Annex 1.

3.1 Conflict Analysis

A formal, official dealing with the past mechanism (for example a truth commission, tribunal, reparation program, Demobilisation Disarmament and Reintegration - DDR program, judicial reform etc.) focuses on specific instruments and their implementation and sequencing. There are two concerns: first the dealing with the past process has to be **conflict sensitive** and second, it has to be **oriented towards a transformation** from violence to peace. Therefore the first step is a conflict analysis, which includes context, root-causes, the nature of the post conflict phase, conflict dynamics and its historical dimension, giving an in-depth insight into where a specific society stands at a given moment in time. Conflict analysis is one of the main tools of the conflict transformation approach and should be revisited throughout a process for continued reflection and analysis. The realities of the time and funding constraints of dealing with the past processes, for example the setting up of a truth commission or a tribunal, lead to such analysis often being done rather quickly or not at all in the first post-conflict phase. In addition, conflict analysis which may be part of the work of such a mechanism, for example a judgement in a trial or the report of a truth commission, is only part of the internal workings and logic of the mechanism itself and not of a broader analysis. The benefits of undertaking a conflict analysis even before deciding what mechanism/s is/are chosen and in which sequence (for example first a truth commission, then a tribunal and reparation program) are that:

- > It can identify an entry-point which will then shape and define the intervention, rather than selecting from a pre-determined list of ‘options’ from the ‘tool-box’. It can contribute through an in-depth analysis of not only where the society stands today

- but also what the root causes of the violence and past human rights violations are. This helps to define intervention strategies beyond the dealing with the past tool box linking different sectors of intervention such as dealing with the past, peace building, governance, education, media and others.
- > Such an approach allows for much more diversity and a move away from the kind of standardised tool-box practice which has been the subject of criticism of dealing with the past interventions.
 - > It also allows actors to work at different levels of analysis by including the intervention itself in the analysis and understanding the impacts of dealing with the past activities and see their activists and advocates as political actors who will have an effect on the transformation itself. This increases the potential that the dealing with the past process becomes more conflict sensitive.
 - > Based on the conflict analysis a theory of change can be designed that will become part of the implementation process.
 - > The conflict analysis supports the identification of the root causes of conflict and is also an excellent tool to bring individuals with different identities and experiences together to discuss and negotiate their perspectives on root causes. This by itself constitutes an intervention and can lay the ground for long-term reconciliation.
 - > Specific questions from conflict analysis that are relevant for dealing with the past processes are:
 - Who are the **actors** that must be involved in a dealing with the past activity? Who has interest in dealing with the past activities and who does not?
 - What are their **relations**?
 - At what **moment in time** in this conflict context should a dealing with the past activity be set up? When is the “right” moment?

- What are the **root causes** of conflict or the root causes of the past human rights violations and atrocities? Is the selected dealing with the past activity addressing these and making a change? What is needed to enhance chances and opportunities for change?
- What are the **connecting elements** in society (i.e. joint music culture, same religion, common memories etc.) and how could they be valorised through a dealing with the past activity?
- What are the **dividing elements** in society (i.e. violent and dividing history, legacy of conflict) and what is likely to enhance them? How are dealing with the past activities dealing with dividers?

10 See [Framework Agreement on the Bangsamoro \(FAB\) and its Annex on Normalization by Office of the Presidential Adviser on the Peace Process](#).

11 See [Terms of Reference for the Transitional Justice and Reconciliation Commission by Office of the Presidential Adviser on the Peace Process, Chapter V, Section 1, Terms of Reference for the Transitional Justice and Reconciliation Commission](#).

In the Philippines the Framework Agreement on the Bangsamoro (FAB) provides for a transitional justice mechanism to be known as the Transitional Justice and Reconciliation Commission (TJRC) with the mandate is to “undertake a study and recommend the appropriate mechanisms address legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations through land dispossession, towards healing and reconciliation”.¹⁰ For this purpose the TJRC shall, among others, “conduct consultations, assessments, or surveys to determine the legitimate grievances of the Bangsamoro people, including those arising from unjust land dispossession and human rights violations”.¹¹ The consultations allowed for an analysis of the current status of the conflict and the actors involved, which is essential for potential future dealing with the past initiatives.

12 There is a wealth of conflict analysis tools available, see for example Fisher, Simon, et al. 2005; Gattiker, Regula (2007); See also: [DEZA Tip Sheets](#).

3.1.1 Selected tools for conflict analysis¹²

Triangle of violence

Conflict transformation theory draws on conceptual tools such as the [triangle of direct, structural and cultural violence](#) by Johan Galtung (1996) which assumes that direct physical violence usually has a basis in underlying (1) cultural violence - values, traditions and beliefs that justify exclusion and marginalisation of particular groups in society and (2) structural violence – institutions and societal structures that suggest exclusive rules and norms that prevent participation of the entire population particularly in decision making processes.

→ A lesson learned for dealing with the past processes is to systematically take into consideration the cultural and structural dimensions of violence and the question of how they can be transformed throughout the entire process: from the selection, the creation, the implementation of the mechanism to the follow-up.

Actors Mapping

In order to identify the actors who have a direct or indirect influence on a conflict or who are affected by conflict, an [actor mapping](#) is necessary. Such a mapping shows the types of relationships between actors as well as the issues of conflict. It further helps us to identify the actors who are/were decisive for the course of conflict, and thus, represent the key players of conflict. When using the actors mapping tool, it is also important to take account of the intervening organizations.

→ Before a specific dealing with the past mechanism is chosen and set up, it is of utmost importance to identify the actors involved and how they are linked and influenced by or how they influence(d) ongoing

or past conflicts. Such actors are often in influential political positions and significantly impact the course of dealing with the past processes or even prevent them from happening. It is also important to analyse underlying interests of actors involved in dealing with the past, both at the domestic as well as at the international level. An actor mapping helps to identify them and to understand their relationships and interests but also entry points for constructive change. A careful actors mapping helps also to manage expectations, for instance of victims.

Systematically taking into consideration the cultural and structural dimensions of violence could come in the following forms:

- > Mandates of tribunals, truth commissions that are drafted in a way to address such root causes. If the period of time they cover is too short, this might not be possible.
 - > Judgements that go beyond the actual responsibility of the individual, for example the [\(Gotovina et al. trial judgement of the ICTY\)](#).
 - > Judgements addressing sexual violence in conflict like the Special Court for Sierra Leone did, introducing a new understanding of rape as a crime, rather than a socially legitimate practice.
 - > Truth Commission reports that address the root causes of violence such as the Sierra Leone TRC in its [Final Report “Witness to Truth”](#)
 - > Archives, documentation centres and memorials that analyse structural injustices of the past, for instance the [\(Agency of the Federal Commissioner for the Stasi Records \(BStU\)\)](#) in Germany or the [Guatemalan National Police Historical Archive \(AHPN\)](#) in Guatemala.
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13 Find the template of the matrix in the Annex 2.

RPP Matrix

Another key tool used by conflict transformation practitioners is the [Reflecting on Peace Practice \(RPP\) Matrix](#).¹³ From the assessment of 26 case studies the Collaborative Learning Project (CDA) the main lesson learned was that one activity or strategy cannot do it all: in order to achieve the grand objective of just and sustainable peace, there is a need for many actors working at different levels to carry out different activities in parallel. Based on these case studies CDA developed a matrix in order for peacebuilding programmes to reflect on whether they are able to build a momentum for change (see Annex 2.) In this matrix certain lessons are incorporated: that individual/personal level change must be linked to socio-political level change; and that working with a majority of the population (more people) must run alongside working with key people, those who decide about war and peace.

→ [Dealing with the past can learn from RPP that mechanisms, such as a truth commission, a tribunal, reparations, DDR or institutional reforms need to be complemented by other potentially transformative interventions that have an impact at the socio-political level. Thus, one should ask the following questions when planning dealing with the past interventions: how must dealing with the past processes be designed and set up in order to influence structural changes? Who are the actors that can trigger changes at this level and how must they be included in dealing with the past? How can working with different actors such as media and non-governmental organisations trigger such transformation?](#)

3.2 Process - orientation

Unlike dealing with the past initiatives which often consist of specific (and rarely interlinked) mechanisms

and interventions with limited (and limiting) mandates and short time-frames there is in theory no end point for conflict transformation. In the latter it is the process which is prioritised allowing for a sense of opening and complexity rather than closing and simplicity in an approach to past human rights violations. This means in practice:

- > Issues beyond specific human rights violations would be considered as part of the longer-term processes and contexts in which direct violence occurs. This may include for example land and water conflicts, inequalities and displacement.
- > The mechanisms and 'tools' applied would not come from a pre-determined framework and then be implemented in a linear fashion, but would rather be defined and shaped as the process develops over time.
- > Change would be seen not as an outcome of a specific intervention, for example a trial or an official apology, but as a process of engagement with different actors and issues.
- > Process allows for complexity and change, also with regards to identities of the actors involved, which would move beyond dichotomous victim/perpetrator dynamics often seen in dealing with the past processes.
- > Important process-related questions for dealing with the past are:
 - What is the anchorage of the dealing with the past process in [society](#), i.e. who is involved, what is discussed and by whom?
 - How is the [decision](#) about a specific dealing with the past activity taken and who has a say in it?

- What could the impact of the dealing with the past activity be on **relationships** between people? There is much debate about the individualising of victimhood and guilt in particularly criminal justice processes whereas conflict transformation would see such identities as dynamic and changing as part of a longer-term process of which dealing with the past would be a part.

3.3 Impact

The criterion of impact is used to identify and evaluate the effects of the intervention on the key driving factors and actors of the conflict, as well as on broader processes of political transition, as relevant. An intervention may have a positive or negative effect and it may be produced directly or indirectly, intentionally or unintentionally. The impact of dealing with the past processes has been a subject of intense debate in recent years, leading to a proliferation of quantitative studies, databases and attempts to define what an effective dealing with the past process might look like. The debate has focused almost exclusively on human rights and democracy indicators in the societies in transition, and on linking specific interventions with specific indicators in a causal fashion.

If we were to take a conflict transformation approach discussions about impact would look quite different:

- > Conflict transformation analysis, as highlighted above, includes the role of the intervening actors as well and the impact this may have on transformation. This allows a broader discussion and appreciation of 'do no harm' rather than a sole focus on the society in transition according to a set of indicators.

The Transitional Justice Database Project began at the University of Wisconsin in 2005 and is led by three political scientists: Leigh A. Payne, Tricia D. Olsen, and Andrew G. Reiter. The team created a global database of over 900 mechanisms (trials, truth commissions, amnesties, reparations, and lustration policies) used from 1970-2007. The main task of the project is to better understand how these mechanisms are used and whether they work, with the ultimate goal of improving policy. The team has published findings from the database in their book, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (USIP Press, 2010), as well as several journal articles. For more information follow this link <http://www.tjdbproject.com/>.

- > Conflict transformation works with cultural and structural forms of violence as well as direct violence which means that the impact of dealing with the past can mean more than addressing past human rights violations and include the transformation of relationships and definitions of a decent human life by those who have directly and indirectly been affected by past human rights violations.
- > Dealing with the past impact has often focused on national level indicators of human rights and democracy, but a conflict transformation approach would bring individual, community and social relationships into the analysis and therefore move more easily between different levels at which change occurs.
- > The RPP matrix shows how the different levels and different actors have to be linked in order to make a significant contribution to lasting peace and reconciliation. Dealing with the past processes cannot be reduced to technical numbers and figures but they also have to be measured by their ability to link the different levels and actors.

- › Questions to be taken into consideration from a conflict transformation perspective are:
 - What is the **impact** or the change that the dealing with the past process wants to make, and at which level? Is it explicitly formulated and is the objective realistic?
 - Is it **realistic** to achieve this particular change with the planned activities (verification of the theory of change)?
 - What are the different dealing with the past processes and other interventions (maybe even by other sectors) that add up to an overarching **objective**?

3.3.1 Theories of Change

Conflict transformation practitioners increasingly use a **Theory of Change (ToC)** in order to render implicit assumptions on how to achieve a desired change in context explicit. A theory of change, always based on a conflict analysis which defines the starting point, is a chain of assumptions of how an intervention will contribute to a desired outcome. This chain of assumptions has to be monitored throughout the implementation of a specific intervention. This allows for the adaptation of a given intervention but also revision of the ToC if necessary (for more information about theories of change consult RPP 2009: 24ff). Since DwP is strongly shaped by the human rights field, the assumption amongst dealing with the past practitioners is often that their interventions will automatically lead to a positive change in the context in which they are engaged. They do not work with theories of change. If at all, change objectives are formulated vaguely and it is not explicitly stated how they will be achieved.

If we apply a theory of change to the example of the Truth and Dignity commission in Tunisia it would be like:

- › **Overall change objective:** The society is reconciled and able to transition from dictatorship to democracy.
 - › **Theory of Change:** If the victims feel recognised and reintegrated in society, if people are aware of the importance of dealing with the past, if trust in police and security forces is established, if reform processes suggested and perpetrators of violence are excluded from violence, the changes of non-recurrence to violence are improved.
 - › If the society is thereafter reconciled with the past and reform processes are suggested and implemented the chances that society is able to transition from dictatorship to democracy are increased.
-

→ For dealing with the past processes and mechanisms it would be important to explicitly formulate a theory of change and to understand what is most realistic, thus avoiding falsely raising expectations and working with the most relevant actors. This should be done with local partners and stakeholders.

3.4 Placing Dealing with the Past Mechanisms in Processes of Political Transition

Dealing with the past processes are long-term endeavours which leads us to ask when such interventions will be more effective in terms of their conflict transformation potential. In the context of transitional justice there has been an ongoing debate over the connection between dealing with the past initiatives and political transition towards democracy. Much of the scholarship and practice in this field works on the basis of the

- 14 Mohamedou, M.M.O. and Sisk, T.D. (2013). Bringing Back Transitology: Democratisation in the 21st Century. Geneva Papers 13-2013. Geneva Centre for Security Policy.
- 15 Aoláin, F.N. and Campbell, C. (2005). The Paradox of Transition in Conflicted Democracies. Human Rights Quarterly 27: 172-213. pp.173, 181-182.

assumption that dealing with past violations of human rights will support a political transition towards democracy and a sustainable peace.

Dealing with the past does not always occur in the context of a clear political transition towards democracy. We might think here of cases of consolidated democracies such as Canada where there has been a recent truth and reconciliation commission, cases in contexts of ongoing civil war such as Sudan where the International Criminal Court has indicted President Al Bashir for crimes committed in the region of Darfur, and cases of pre-transitions such as Uganda where the International Criminal Court is active and where there have been historic truth commissions. In addition, political transition itself is not linear and could rather be thought of as a long-term process of change whose outcome is uncertain and contingent. In this sense, historically informed analysis of socio-political change is an important lesson which can be learnt from discussions in the field of democratisation and transitology¹⁴ when designing and implementing DwP mechanisms and programs.

Aoláin and Campbell have written about a “paradigmatic transition”¹⁵ in this field, namely that (1) the previous regime is understood to be illegitimate (2) the changes brought about by the transition are generally relatively uniform throughout the state and (3) that it is a process of closure.

Given these discussions over the type of transition which is ongoing at the time of a dealing with the past mechanism or process, we could reasonably identify periods of greater or lesser fragility and also moments of opportunity where dealing with the past could be more effectively used to enhance conflict

transformation. In order to operationalise such an approach it is useful to think of specific cross-cutting issues and questions to pose in the context of certain cases, such as:

The Role of External Actors

As well as being non-linear, political transitions do not happen in isolation from other processes and actors. In particular the role of external actors can be harnessed or may be damaging to dealing with the past and conflict transformation. We might ask:

1. Can external pressure forestall, encourage or change the dynamics of a transition?
2. Under what conditions will external actors have more or less influence on a transition?
3. With regard to funding, donors should consider that dealing with the past is a long term process which is not linear and funding schemes should consider set-backs, political dynamics and sequencing.

For instance, funding for the implementation of the peace process in Guatemala was oriented towards short term project management schemes and not towards the particular timing and sequencing of a transition from a dictatorial system in a country that has undergone more than 30 years of extremely violent armed conflict. Structural changes, for instance a genuine police reform, could only start decades after the peace agreement, when donor funding was scarce.

Scope and Mandate of Dealing with the Past

Dealing with the Past Processes are long-term, as are transitions, leading to the question of the scope and mandate of a given mechanism. We might ask:

1. Can we address certain violations of human rights before a political transition has taken place, in contexts which are often referred to as 'pre-transition'?
2. In early stages of transitions can dealing with the past interventions weaken or strengthen such change?
3. Which 'past' is the focus of a dealing with the past intervention in a context of historic abuses of human rights?

Type of 'transition'

The different stages of transition are much discussed and debated in the literature, including the 'paradigmatic' transition often assumed to accompany dealing with the past processes. However, dealing with the past interventions increasingly take place in a wide variety of contexts with implications for its conflict transformation potential. We might ask:

1. Will dealing with the past have a greater or lesser impact on conflict transformation when there is no transition?
2. Is conflict transformation different in consolidated democracies?
3. Can dealing with the past interventions have a greater effect in terms of conflict transformation during a 'forwards' or 'backwards' movement of transition?

The analysis of different forms of transition and the dealing with the past processes taking place in those contexts may help to better understand transitions to come. The example of the transition in Tunisia shows that processes of transition can last for many years and that dealing with the past mechanisms, such as the Truth and Dignity Commission (Instance de Vérité et Dignité, IVD) require a strong legal basis and consequent (external) financial, technical and political support in order to be able to withstand major changes in the political context. In other contexts, where dealing with the past initiatives take place without being connected to clear-cut political transitions, such as in Sri Lanka, where the decade long armed conflict ended without a peace agreement, scrutiny of the proposed transitional justice mechanisms through civil society and international organisations is intense. As for contexts where a transition from an internal armed conflict to a situation with less open violence without major political transitions took place, such as in Northern Ireland, structural and societal changes may take a very long time and transitional justice mechanisms may be limited in their impact. The case of Argentina shows that even in a context of transition from a military dictatorship to a democratic system, dealing with the past processes take decades.

In the previous three chapters we have outlined the important potential synergies between dealing with the past and conflict transformation. Drawing on and using the differences between conflict transformation in theory and the current practice of dealing with the past we have identified potential, although of course not exhaustive, points of synergy: conflict analysis; process; and impact. In this final chapter we build on this overview and reflect on what a dealing with the past process would look like if each phase was approached with a conflict transformation lens.

Planning and Designing

- | | |
|--|--|
| <ul style="list-style-type: none"> > Undertake a conflict analysis, including local partners > Plan a long-term legacy and impact strategy > Work jointly with dealing with the past and conflict transformation experts | <ul style="list-style-type: none"> → How is this mechanism part of a long-term process? → What mechanisms are most relevant when looking at the conflict analysis? → What is the theory of change? → What can be learnt from other contexts? |
|--|--|

Implementation

- | | |
|---|---|
| <ul style="list-style-type: none"> > Regularly revise conflict analysis throughout implementation > Work jointly with dealing with the past and conflict transformation experts > Regularly check on the theory of change | <ul style="list-style-type: none"> → Which conflict actors are being included and which are excluded? → Has the conflict analysis changed from the first phase? → What languages are being used in the course of the work (both spoken and technical) and what impact will this have on communication? |
|---|---|

Phasing Out/Follow-up

- > Put in place long-term and sustained engagement

→ Is the theory of change still correct or does it need revision? Does this imply a change and adaptation of activities?

- Plan and secure archives of the different mechanisms
- Work with civil society groups and with relevant government institutions to guarantee effective follow-up and implementation of recommendations (including local communities, media, educational and cultural institutions etc.)

A conflict transformation approach renders dealing with the past more than a series of mechanisms and short-term interventions and provides actors with the tools to be able to see dealing with the past as a **process**. An ongoing conflict analysis would ensure that mechanisms are chosen not from a 'tool box' of dealing with the past mechanisms but according to **context**. By so doing conflict sensitivity of the actors and mechanisms is included. The effects of such an approach are that expectations could be managed at each step and in turn that there would be more understanding of both intended and unintended consequences of dealing with the past on the conflict context itself. Such an approach would eventually strengthen a transformative impact of 'dealing with the past' processes in society and it would help to prevent potential violent conflicts in the future.

The realities of dealing with the past processes are that they are always limited: in terms of finances, human resources, time, and ability to engage with relevant actors. A greater understanding of such complex processes and conflict transformation is also hugely important for donors and external actors, experts and practitioners involved in dealing with the past. Short term and tool-box oriented funding schemes are often rather hindering than enhancing in terms of conflict transformation in dealing with the past. The purpose of using a conflict transformation lens and conflict transformation tools is to develop practices which will mitigate to a greater extent these limitations, to ensure a greater understanding of how dealing with the past interacts with the social, political, cultural and economic contexts in which it is embedded, and in order to aim at making a long-term contribution to reconciliation.

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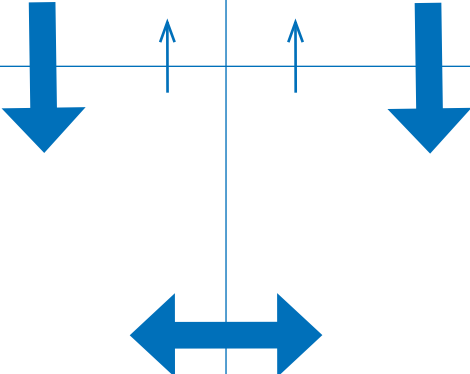
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Annex 2: RPP Matrix

	<p>More People Aim to engage increasing numbers of people in actions to promote peace. The assumption is that peace can be built if many people become active in the process, i.e., if “the people” are broadly involved.</p>	<p>Key People Focus on involving particular people, or groups of people, critical to the continuation or resolution of conflict, due to their power and influence. “Key people” strategies assume that, without the involvement of these individuals/groups, progress cannot be made toward resolving the conflict.</p>
<p>Individual/personal level Programs seek to change the attitudes, values, skills, perceptions or circumstances of <i>individuals</i>, based on the underlying assumption that peace is possible only if the hearts, minds, behavior and life conditions of individuals are changed.</p>	<p><i>Translate into action:</i> <i>Place your activities and the expected change in the quadrants of the matrix.</i></p>	
<p>Socio-political level Programs are based on the belief that peace requires changes in socio-political structures and processes, often supporting the creation or reform of institutions that address grievances that fuel conflict, or promoting non-violent modes for handling conflict.</p>		

Adapted from RPP 2009: 13f.

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About swisspeace

swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation by producing innovative research, shaping discourses on international peace policy, developing and applying new peacebuilding tools and methodologies, supporting and advising other peace actors, as well as by providing and facilitating spaces for analysis, discussion, critical reflection and learning.

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