



# Understanding Human Rights

## 06. Transitional justice

## Transitional justice

- United Nations:

“Transitional justice is an approach to systematic or massive violations of human rights that both provides redress to victims and creates or enhances opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses.”

## Transitional justice

A transitional justice approach thus recognizes that there are two goals:

- 1) gain some level of justice for victims.
- 2) to reinforce the possibilities for peace, democracy, and reconciliation.

To achieve these two ends, transitional justice measures often combine elements of criminal, restorative, and social justice.

## Transitional justice

- An attempt to make sure human rights are respected by ensuring that human rights abuses are dealt with; that those responsible are found, held accountable, put on trial and punished accordingly

## Transitional justice

- Accountability
- Compensation
- Reconciliation
- Democracy

### Overview

- Origin of transitional justice back to World War II
- To establish accountability



Nuremberg Trials in Germany

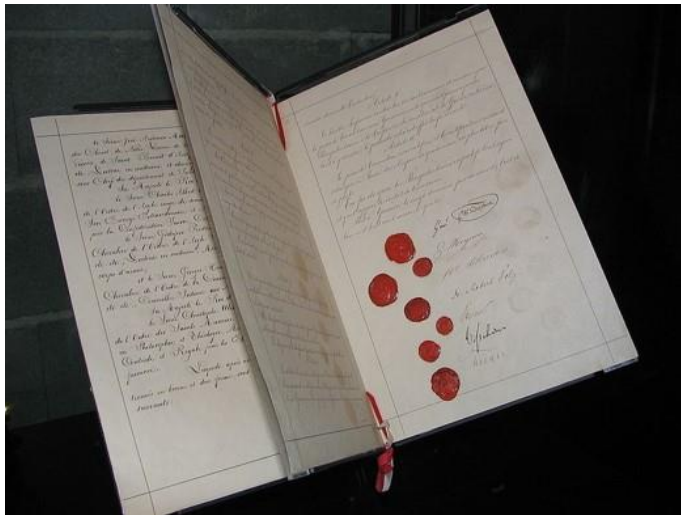
the Nuremberg trials served as a milestone to the establishment of the International Criminal Court



Tokyo Trials

## Transitional justice

Sentenced 12 Nazi leaders to death, 3 three defendants to life imprisonment  
Four to prison terms ranging from 10 to 20 years  
Acquitted three of the defendants



the Geneva Convention



the Genocide Convention

## Transitional justice

How to effectively address the systematic abuses of former regimes but still reinforce—and not derail—the political transformations that were underway.

Backward- and forward-looking.

Aim not only to dignify victims, but also to help prevent similar victimhood in the future.



## Transitional Justice: Objectives & Strategies

- **Objectives** and **Strategies**
- *what* transitional tries to achieve and *how* it does so

## Objectives

- Ending Abuse
- Truth
- Accountability
- Justice
- Compensation
- No impunity
- Reconciliation
- Due Process of Law
- Democracy
- Peace and Stability

## Strategies

- 1) Criminal prosecutions
- 2) Truth commissions
- 3) Reparation programs
- 4) Security sector reform
- 5) Memorialization efforts

## 1) Criminal prosecutions

- Criminal prosecutions are judicial investigations of those responsible for human rights violations. Prosecutions frequently give great weight to investigating those considered most responsible for massive or systematic crimes.
- conducted by domestic authorities or internationally or by a combination of both.
- 'hybrid court'
- 'hybrid tribunal'

## 2) Truth commissions

- Ad hoc commissions of inquiry established in, and authorized by, states for the primary purposes of investigating and reporting on key periods of recent past abuse.
- They often make recommendations to remedy such abuse and to prevent its recurrence

## 2) Truth commissions

- Aims to uncover the truth of what has occurred
- Which crimes/abuses have taken place
- Who is responsible

Only focused on what happened in the past

Focus on members of the civilian population

### Examples

- Aftermath of the Pinochet regime in Chile 1991
- Post-apartheid South Africa in 1994
- The 2000 Panama Truth Commission

### 3) Reparation programs

- Reparation programs are state-sponsored initiatives that aim to contribute to repairing, on a massive scale, the material and moral consequences of past abuse experienced by certain classes of victims. They typically distribute some mix of material and symbolic benefits to victims.
- Compensate victims
- Help them overcome the consequences of abuse
- Rehabilitate
- Financial payments
- Social services
- Public recognition or apology

## 3) Reparation programs

### Restitution

"restore the victim to the original situation before the gross violations occurred"

### Examples

- In 2008, Canada's "Statement of Reconciliation"
- Australia's official governmental apology



## **4) Security sector reform**

Security system reform consists of wide-ranging programs to transform the military, police, judiciary, and related state institutions from instruments of repression and corruption into instruments of public service and integrity.

## 4) Security sector reform

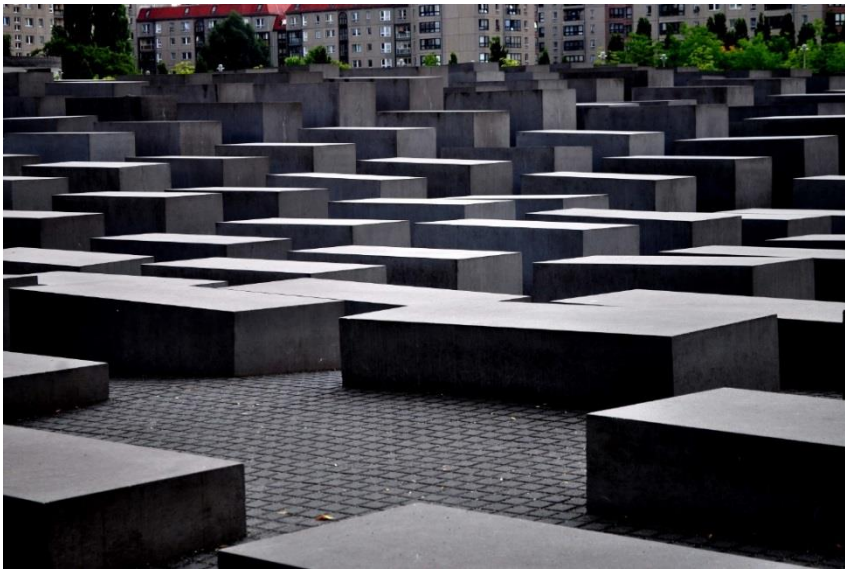
- Aim to draw a line under the past and build a peaceful stable society that will endure long into the future.
- **Vetting**
- **Lustration**
- Vetting is the process of undertaking background checks on people.
- Lustration is the process of purifying or cleansing a regime from the remnants of the past.

## **5) Memorialization efforts**

Memorialization efforts include museums, memorials, and other means of preserving public memory of the victims and of raising moral consciousness about past abuse, in order to build a bulwark against its recurrence.

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Memorial to the Murdered Jews of Europe Berlin



Auschwitz\_entrance

## Challenges For Transitional Justice

A society's attempt to deal with and come to terms with human rights abuses that happened on a mass scale in the past, during a period of political or social transition, uncertainty or disorder.

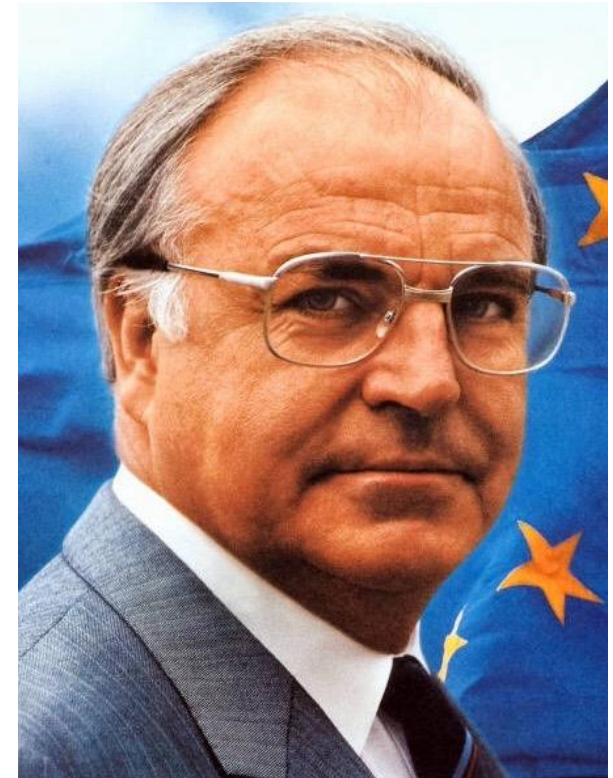
Transitional justice seeks to ensure accountability, serve justice and achieve reconciliation.

## Challenges For Transitional Justice

- Identifying victims
- Who to Punish
- Avoiding 'Victor's Justice'
- Ensuring the proper application of transitional justice procedure
- Appropriate resources
- Temporary vs. permanent effects
- Justice vs. peace

## Conclusion

- Can the "truth" ever fully be discovered?
- Can all victims be given compensation or a public platform?
- What is an acceptably compensation?



Helmut Kohl

## **Intro.**

- 1) Has justice been served?
- 2) Has accountability been realized?
- 3) Have the victims been adequately compensated?  
Can the victims feel reconciled?



## Background info. to the case

- Tried twice, unsuccessfully, to transfer out of the camp
- Did not directly take part in any violence or killings
- He failed to act to stop it



## Background info. to the case

New German court ruling set in 2011 which stated former Nazis, such as Groening, could be charged as accomplices — even if they might not have actually carried out the murders themselves.

September 2014 Groening was charged with 300,000 accounts of accessory to murder and economically advancing Nazi Germany.



Nazi soldier to stand trial for the murder of 300,000 Jews in WWII

## Trial & Verdict

- Put on trial in 2015, at the age of 93
- "For me there's no question that I share moral guilt... but whether I am guilty under criminal law, you will have to decide."
- "small cog in the gears"
- In July 15th, 2015, Oskar Groening was found guilty of being an accessory to the murder of 300,000 Jews at Auschwitz.
- He was sentenced to four years in prison.

## Victims Reaction to the Verdict



Eva Kor

"How does it make any sense to make an old man go to jail? We could use him to teach young people what happened; his statement about Auschwitz carries a lot more weight with a young neo-Nazi who doesn't want to believe me as I am a survivor".

"I do not think the court has acted properly in sentencing him to four years in jail. It is too late for that kind of sentence... My preference would have been to sentence him to community service by speaking out against neo-Nazis. I would like the court to prove to me, a survivor, how four years in jail will benefit anybody."

## Victims Reaction to the Verdict



Susan Pollack

"You volunteered freely for this duty. You knew what went on in Auschwitz. I hope the images of what went on there will stay with you for the rest of your days. You were allowed in your freedom to grow old. My parents weren't allowed that."

"I cannot forgive him. He did not have to work at Auschwitz. If he and other Germans had have stood up to the Nazis it [The Holocaust] would not have happened....Everyone who participated in it has to take responsibility for it."

## Victims Reaction to the Verdict



Susan Pollack

“Really I don’t care if he [Groening] got one year or ten years in jail, or even a life-sentence, it’s not important. What difference does it make now? But putting him on trial was very important. It was vital because every generation has to learn about what happened, about the Holocaust.”

## Conclusion

- 1) Was the 4 year sentence given to Oskar Groening for 300,000 counts of accessory to murder justice? Was this an appropriate decision or punishment? Was there really any outcome that would have been fair or just on either Groening or the victims?
- 2) Has accountability been realized? Do you feel Oskar Groening was accountable in this case?
- 3) Do you think the verdict in this case will leave the surviving victims feeling as though they have been adequately compensated? Do you think Groening's sentencing will help reconcile with the victims?