

Submission to the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence on ‘Economic, Social and Cultural Rights in the Context of Transitional Justice’

March 2025

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Summary

This submission explores the relationship between socioeconomic rights violations and the root cause and recurrence of violence and discusses addressing socioeconomic rights violations through transitional justice processes. The submission highlights that socioeconomic rights violations take place before and during (and may continue after) defined periods of conflict, and may both lead to violence and be violated through (direct and structural) violence. It also highlights that how transition periods – and the remits of transitional justice processes – are defined affect whether and how socioeconomic rights violations are addressed in transitional justice contexts.

Introduction

Transitional justice has tended to conceive of violence primarily, if not only, as direct, interpersonal violence comprising or related to violations of civil and political rights, particularly bodily integrity rights (see, for example, Gready and Robins 2014; Evans 2016). However, increasingly, this focus has been criticised, with scholars and practitioners highlighting the importance of violations of socioeconomic rights prior to, during and after defined periods of conflict that established transitional justice mechanisms (such as truth commissions, trials, reparations programmes and institutional reforms) have tended to address (see, for example, Evans 2016, 2019a; Lambourne 2009; Gready and Robins 2019). Drawing on this scholarship, this submission focusses first on the relationship between violations of economic, social and cultural rights and the root cause and recurrence of violence. After this, the submission turns to discussion of whether and how violations of economic, social and cultural rights might be addressed through transitional justice processes, before brief conclusions are set out.

The relationship between violations of economic, social and cultural rights and the root cause and recurrence of violence

Socioeconomic rights issues frequently underlie conflicts (Arbour 2007; Muvingi 2009; Wickeri 2010). Socioeconomic rights are also frequently violated during conflict (Sharp 2012, 2019).

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Two key ways in which violations of economic, social and cultural rights may be understood as linked to the root cause and recurrence of conflicts are through understanding to the role of economic violence and understanding the role of structural violence (Sharp 2012, 2019; Galtung 1969; Evans 2016, 2018). Whilst ‘[d]irect violence is intentional, directed against a specific group or person, and involves hurting or killing people’ (Fischer 2013: 11), ‘[s]tructural violence refers to a condition in which violence occurs without being precipitated by the direct actions of specific individuals against other specific individuals’ (Evans 2018: 34, citing Galtung 1969: 171).

Structural violence has been identified as a phenomenon which motivates conflicts (including direct violence) and which precedes, continues during and often endures after the end of defined periods of conflict of the sort transitional justice tends to focus on. Economic violence, on the other hand, ‘refers to violations of economic and social rights, corruption, and plunder of natural resources’ (Sharp 2012: 785). Whilst these may be less direct than interpersonal violence, they contrast somewhat with structural violence – such as ‘racism, rampant inequality, historic deprivation’ (Sharp 2012: 801) – in that the roles of specific individuals and intent can more easily be identified in at least some forms of economic violence. All this is to say that socioeconomic rights issues may be root causes of violence and may be violated through – structural or direct – violence.

Responses to conflict ought to consider both structural and direct forms of violence. Moreover, in transitional justice contexts it is important to consider violations of economic, social and cultural rights *as violence*, not only as the background or root *causes of violence*. On the one hand, ‘[w]hen armed forces burn houses, destroy crops, loot healthcare infrastructure or poison drinking water, these are violations of [socioeconomic rights]’ and are directly violent (Schmid and Nolan 2014: 373). On the other hand, these are not the only kinds of violations of socioeconomic rights which lead to or take place during (or, indeed, endure after) periods of conflict (Evans 2016). Profound socioeconomic inequalities affect many conflict-affected, post-conflict and post-authoritarian societies, including, for instance, those relating to access to land (Evans 2016, 2018, 2021). Such injustices are both structural (‘because they are embedded in the political and economic organization of our social world’) and violent (‘because they cause injury to people’) (Farmer et al. 2006: 1686). These injustices ought to also be addressed whether or not that is through established transitional justice processes (Evans 2018, 2019b, 2021).

Addressing violations of economic, social and cultural rights through transitional justice processes

Transitional justice mechanisms have frequently neglected socioeconomic rights and socioeconomic rights tend to be absent or ‘downplayed’ in peace agreements (O’Connell, Malagón and Ní Aoláin 2022: 56; Arbour 2007; Gready and Robins 2019). Transitional justice mechanisms and processes might be able to incorporate socioeconomic rights more (Laplante 2008; Sharp 2019). However, in their established forms, transitional justice mechanisms are only likely to be able to partially incorporate socioeconomic rights issues (Evans 2019b, 2021). Dustin Sharp (2019: 578–579), for instance has argued that transitional justice mechanisms could include “economic violence”, including violations of economic and social rights and crimes of

corruption', in their remits but not 'structural and every-day violence'. This leaves open the question of how structural violence might be addressed.

The emerging concept of transformative justice has been defined explicitly in relation to addressing such violations of socioeconomic rights and structural violence (Evans 2016, 2018, 2019a, 2022a; Gready and Robins 2014, 2019; Lambourne 2009; McAuliffe 2017; Hoddy and Evans 2020; Balasco 2018). In this vein,

[transitional justice] mechanisms might under some circumstances set the conditions for the pursuit of non-reformist reforms in this area, for instance by stretching the boundaries of liberal understandings of the rule of law or of human rights in ways that allow for – but do not guarantee – transformative or revolutionary change. This might happen by enshrining more collective understandings of rights and more socioeconomic rights in constitutions, and/or by recognising structural violence and systemic injustices, and conferring legitimacy upon attempts to address these (through the state or other actors), in the outcomes of transitional justice processes such as truth commission reports, reparations programmes and memory work. This could provide space and motivation for ongoing grassroots mobilisation outside formal or state-led structures with a view to pushing reforms that contribute to altering the structures within which they take place (Evans 2021: 652).

Applying transformative justice as a lens of analysis also 'invites consideration of looking beyond transitional justice' in two ways (Evans 2022b: 38). Firstly:

a need to look beyond the standard toolkit, methodology and theoretical assumptions of transitional justice in order to better address the kinds of injustices experienced (and prioritised) by communities affected by armed conflict, authoritarian rule, mass atrocities, and the other contexts out of which societies might be said to transition (Evans 2022b: 38).

Secondly:

it is necessary to look beyond the straightforwardly defined transitional period – in both directions. This is because deep-seated injustices frequently have their roots in periods prior to specific instances of atrocities, periods of armed conflict or spates of authoritarian government and injustices – especially structural, societal social and economic injustices – frequently cannot be fully addressed in a short period of time (months to years). Instead, a period of years to decades (or more) may be necessary to transform the structures (including colonial and settler-colonial structures) that lead to, maintain and reproduce enduring injustices (Evans 2022b: 38).

Conclusion

To conclude, first, it is important to recognise the impacts of both direct and structural forms of violence on the violation of economic, social and cultural rights. Socioeconomic rights violations may take place before or during (and may continue after) defined periods of conflict, and may both lead to violence and be violated through (direct and structural) violence. Established

transitional justice processes may not be well-suited to addressing all of these aspects, so it is necessary to consider how they *can* be addressed. Second, it is important to take account of the role of time in transitional justice and the ways in which defining periods of conflict and ‘the pinning down of the completion of transition to a date... can lead to neglect of the importance of pre-transition conditions to contemporary circumstances’ (Evans 2019b: 39), particularly as this relates to socioeconomic rights issues. The ways that transition periods – and the remits of transitional justice mechanisms and processes – are defined (and limited) affect the extent to which violations of economic, social and cultural rights are visible in transitional justice contexts, and the extent to which attempts are made to address them. Finally, some areas are necessarily beyond the scope of this submission but nevertheless warrant further consideration. For example, this submission has largely focussed on socioeconomic rights in the context of transitional justice, not on cultural rights. This is a gap that warrants attention – and some literature has begun to address this (see, for example, McAuliffe 2023).

References

- Arbour, Louise. (2007) ‘Economic and Social Justice for Societies in Transition’. *International Law and Politics* 40(1): 1-27.
- Balasco, Lauren Marie. (2018) ‘Locating Transformative Justice: Prism or Schism in Transitional Justice?’. *International Journal of Transitional Justice* 12(2): 368-378.
- Evans, Matthew. (2018) *Transformative Justice: Remediating Human Rights Violations Beyond Transition*. Abingdon: Routledge.
- Evans, Matthew. (2016) ‘Structural violence, socioeconomic rights and transformative justice’. *Journal of Human Rights* 15(1): 1-20.
- Evans, Matthew (ed.). (2019a) *Transitional and Transformative Justice: Critical and International Perspectives*. Abingdon: Routledge.
- Evans, Matthew. (2019b) ‘Addressing historical wrongs in post-transition South Africa: What role for transformative justice?’ in Matthew Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives*, 36-53. Abingdon: Routledge.
- Evans, Matthew. (2021) ‘Land and the limits of liberal legalism: Property, transitional justice and non-reformist reforms in post-apartheid South Africa’. *Review of African Political Economy* 48(170): 646-655.
- Evans, Matthew (ed.). (2022a) *Beyond transitional justice: Transformative justice and the state of the field (or non-field)*. Abingdon: Routledge.
- Evans, Matthew. (2022b) ‘Beyond disciplines, beyond fields, beyond transitional justice’ in Matthew Evans (ed.), *Beyond transitional justice: Transformative justice and the state of the field (or non-field)*, 34-42. Abingdon: Routledge.
- Farmer, Paul E, Bruce Nizeye, Sara Stulac and Salmaan Keshavjee. (2006) ‘Structural Violence and Clinical Medicine’. *PLoS Medicine* 3(10): 1686-1691.
- Fischer, Dietrich. (2013) ‘Johan Galtung, the Father of Peace Studies’ in Johan Galtung and Dietrich Fische, *Johan Galtung: Pioneer of Peace Research*, 3-23. Heidelberg: Springer.

- Galtung, Johan. (1969) 'Violence, peace, and peace research'. *Journal of Peace Research* 6(3): 167-191.
- Gready, Paul and Simon Robins. (2014) 'From transitional to transformative justice: A new agenda for practice'. *International Journal of Transitional Justice* 8(3): 339-361.
- Gready, Paul and Simon Robins (eds). (2019) *From Transitional to Transformative Justice*. Cambridge: Cambridge University Press.
- Hoddy, Eric and Matthew Evans. (2020) *Towards a Framework of Practice for Transformative Justice: A Critical Approach*. Research and Practice Brief. Sheffield: University of Sheffield.
- Lambourne, Wendy. (2009) 'Transitional justice and peacebuilding after mass violence'. *International Journal of Transitional Justice* 3(1): 28-48.
- Laplante, Lisa J. (2008) 'Transitional justice and peace building: Diagnosing and addressing the socioeconomic roots of violence through a human rights framework'. *International Journal of Transitional Justice* 2(3): 331-355.
- McAuliffe, Pádraig. (2017) *Transformative Transitional Justice and the Malleability of Post-conflict States*. Cheltenham: Edward Elgar.
- McAuliffe, Pádraig. (2023) 'From the Ashes: Guarantees of Non-Recurrence for Destruction of Cultural Heritage'. *Santander Art and Culture Law Review* 2(9): 263-292.
- Muvungi, Ismael. (2009) 'Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies'. *International Journal of Transitional Justice* 3(2): 163-182.
- O'Connell, Rory, Lina Malagón and Fionnuala Ní Aoláin. (2022) 'Are Economic, Social and Cultural Rights Sidelined in Peace Agreements? Insights from Peace Agreements Databases'. *Gonzaga Journal of International Law* 26(1): 25-56.
- Schmid, Evelyne and Aoife Nolan. (2014) "'Do No Harm"? Exploring the Scope of Economic and Social Rights in Transitional Justice'. *International Journal of Transitional Justice* 8(3): 362-382.
- Sharp, Dustin N. (2012) 'Addressing Economic Violence in Times of Transition: toward a Positive-peace Paradigm for Transitional Justice'. *Fordham International Law Journal* 35(3): 780-814.
- Sharp, Dustin N. (2019) 'What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice'. *International Journal of Transitional Justice* 13(3): 570-589.
- Wickeri, Elisabeth. (2010) 'No Justice, No Peace: Conflict, Socio-Economic Rights, and the New Constitution in Nepal'. *Drexel Law Review* 2(2): 427-490.