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# Art and its Support for Transitional Justice

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## ABSTRACT

*Different countries around the world have a history of their own that shaped their status and form as it is today. Often such history is marked by conflict and blood which remains a thorn in the memory of people as the country or State (usually) moves into democracy. It becomes important to come to terms with the atrocities and injustice suffered by people and to make efforts to soothe the pain. In such efforts, considering art as a mechanism to enhance and promote Transitional Justice goals would be a valuable area of research and exploration, owing to the distinctiveness of art in expressing what law and words cannot. The traditional mechanisms of transitional justice process such as criminal trials, truth and reconciliation commissions, reparations, memorializations, etc. are crucial but have their own shortcomings. This is where art can step in and fill the gap. While considering this, it is also essential to be mindful of the challenges that can come up with art based approaches to transitional justice. Nevertheless, promoting an art- based approach to transitional justice along with the formal mechanisms can give a push to this beautiful medium which can be used to express and present non- quantifiable impact of past violence. Art cannot replace the traditional mechanisms, but it can very well complement the goals of the formal mechanism of transitional justice in ways that are not temporal but eternal.*

**Keywords:** Transitional Justice, Art based approach.

## I. INTRODUCTION

Different countries around the world have a history of their own that shaped their status and form as it is today. Often such history is marked by conflict and blood which remains a thorn in the memory of people as the country or State (usually) moves into democracy. It becomes important to come to terms with the atrocities and injustice suffered by people and to make efforts to soothe the pain. Transitional Justice, which emerged in the late twentieth century post World War I, is such an effort that involves adoption of different mechanisms to facilitate the rebuilding of post conflict countries and help victims and their families to cope. Some mechanisms adopted in transitional justice are criminal prosecutions, truth commissions, reparation programs, gender justice, memorialisation efforts, etc.<sup>2</sup> Peacebuilding is prioritised

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<sup>2</sup> “What is Transitional Justice?” INTERNATIONAL CENTRE FOR TRANSITIONAL JUSTICE, Pg. 1, (Aug. 22, 2024, 10:08 AM), <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

when conflict is an ongoing process. However, transitional justice is not just about peacebuilding. It is also about rebuilding the communities that have been torn by armed conflicts. Thus, transitional justice focuses on transforming these communities in a way to aid them in building their future. Ruti Teitel defines transitional justice as the “conception of justice associated with periods of political change, characterized by legal responses to confront wrongdoings of repressive predecessor regimes”.<sup>3</sup> Being a developing field, transitional justice is exploring new ways of responding to the troubled histories of different communities. The goals of transitional justice are multifold. Enumerating these goals, David Crocker puts forth some goals that shape transitional justice: investigating the truth and telling it, creating public platforms for victims to speak, ‘accountability and punishment’, compensation to victims, ‘institutional reforms and long-term development’, reconciliation, public deliberation, etc.<sup>4</sup> These goals shape the organization of transitional justice mechanisms. However, the formal mechanisms have their own limitations. What then can be a way that helps people to come to terms with their struggles and pain of the past? This article intends to explore the role of art in the process of transitional justice. To facilitate the exploration, the following section of the article briefly looks at some formal mechanisms of transitional justice and their shortcomings. This section is followed by an exploration of the role of art in transitional justice by looking at different examples from the past. The article will then look at the possible challenges that can arise in art-based approaches to transitional justice and analyse the pros and cons of the approach.

## **II. LIMITATIONS OF TRANSITIONAL JUSTICE MECHANISMS**

The various mechanisms of Transitional Justice have played a significant role in redressing past violence. These mechanisms such as Truth and Reconciliation Commissions (TRCs), criminal prosecutions, reparations, memorialization, amnesty, etc., have given an identifiable shape to the field of transitional justice. However, it is also true that these mechanisms have their own shortcomings. When the whole field and scope of transitional justice is not properly defined, these mechanisms are bound to have certain challenges in delivering justice to all the victims and also to the world which witnessed the atrocities. There can be friction and challenges between two or more mechanisms. For example, in Sierra Leone, there were disagreements and friction that developed between the decisions of the Truth and Reconciliation Commission and the Special Court for Sierra Leone. On one hand the TRC upheld amnesty to stop the conflict, while on the other hand, the Court expressed that amnesty was not in consonance with

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<sup>3</sup> Ruti G. Teitel, “Transitional Justice Genealogy.” 16 HARV. HUM. RTS. J 69, 69 (2003).

<sup>4</sup> David Crocker, “Reckoning with Past Wrongs: A Normative Framework.” 13 EIA 43, 43- 64 (1999).

international law.<sup>5</sup>

The Truth and Reconciliation Commissions have been a major mechanism in the transitional justice process. These commissions have faced multiple challenges when it comes to finding the truth. The most basic of these challenges is “distilling a conflict down into achievable terms of reference.”<sup>6</sup> The concept of truth itself is complex and presenting it before the world would not always lead to the complete ascertainment of the truth. Further, the decisions and actions of the TRC may not always be acceptable to the victims and people in general. The TRC in South Africa had extensive powers, like subpoena and summons. However, to many it felt that the commission did not use its powers enough and the powers it did exercise, it focussed on giving amnesty rather than prosecuting the perpetrators.<sup>7</sup> This commission was involved in a number of legal battles with respect to its powers and authority. Three victim families challenged the commission’s power to grant amnesty which was eventually decided in favour of the commission.<sup>8</sup> Here, the formal mechanism of TRC led to major disputes which resulted in legal battles, adding to the sufferings of conflict affected people and leading to drainage of resources.

Criminal prosecution is a mechanism to make the perpetrator of atrocities pay for the human rights violations that took place. However, this mechanism too faces a number of challenges. Armed conflict that violates human rights at a gross level reflects some level of structured violations which are inflicted by multiple actors. Criminal prosecutions cannot prosecute each and every actor and has to ultimately narrow down the number of persons that can be held accountable by a criminal tribunal or the International Criminal Court. Noting the many questions on responsibility and punishment, Crocker asks “How...can accountability be explained and fairly assigned? How should we understand the degrees and kinds of responsibility with respect to the authorization, planning, “middle management,” execution, provision of material support for, and concealment of atrocities?”<sup>9</sup> Coupled with these questions are the political and financial concerns. Criminal prosecutions also depend on the political will of the State to prosecute the perpetrators. Lack of financial resources is another major hindrance to not just criminal prosecutions but other mechanisms such as TRC, reparations,

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<sup>5</sup> WILLIAM A. SCHABAS, *The Sierra Leone Truth and Reconciliation Commission*, in TRANSITIONAL JUSTICE IN THE TWENTY- FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE, 36-37 (Naomi Roht-Arriaza et al. , eds., Cambridge University Press 2006)

<sup>6</sup> CATHERINE TURNER, *Transitional justice and critique*, in RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, 63-64 (Cheryl Lawther et al., eds., Edward Elgar Publishing 2017)

<sup>7</sup> Priscilla Hayner, *The Five Strongest Truth Commissions*, in UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 28-29 (2nd ed. 2010).

<sup>8</sup> *Id* at 30.

<sup>9</sup> Crocker, *supra* note 3.

memorialisation, etc., and there is always this concern of some victims wanting prosecutions while some preferring amnesty. The long periods of time that these formal mechanisms take is another major challenge in transitional justice. Naomi Roht- Arriaza rightly notes, “it does seem like frustration exists with the uncertain results of time-consuming and resource-intensive endeavors like truth commissions or international trials. This frustration is in part born of a desire to see results quickly, when social change is a generations-long process.”<sup>10</sup>

Reparations is a significant mechanism for the victims which involves providing damages to the victims (in money or in kind). However, it is a complex matter to give reparations to the victims owing to a range of challenges. To give reparations, it is vital to define who is a victim. People can be affected by armed conflict in various ways. This makes it difficult to fix who is entitled to reparations. Reparations also require financial resources which are scarce in conflict torn countries. Since the impact of an armed conflict cannot be measured in quantitative terms, it becomes very difficult to decide how much reparation must be made. It may also be that no amount of reparation, in money or in kind, can ever be a good enough compensation for victims.

The mechanisms discussed are just a few of many that are essential to the transitional justice process. While these formal mechanisms are irreplaceable, alternative means like art can complement them to achieve broader transitional justice goals. As a non-formal and free medium of expression, art can address gaps that arise when focusing solely on traditional mechanisms.

### **III. ART AND TRANSITIONAL JUSTICE**

Art is a beautiful medium to freely express one’s emotions and pain that may not be easily expressed in words. Owing to the formal and structured nature of traditional mechanisms of transitional justice, a limit develops on the reach and delivery of these mechanisms. In such a case, individual voices of victims, each having its own stories and tales of armed conflict and violence, do not reach the eyes and ears of the world at large. The formal mechanisms that are limited by resources and time are not able to afford giving attention to each and every person who has a story to tell. Art being an informal mechanism in transitional societies is not limited by the procedural and technical obstacles encountered in formal mechanisms. It helps in creating “a time and a space to remember, to mourn, to forgive, to heal, and to glimpse a new future.”<sup>11</sup> Art and Transitional Justice is not a new relation but has been the subject of study.

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<sup>10</sup> Naomi Roht- Arriaza, “Introductory Remarks by Naomi Roht- Arriaza” 107 PROCEEDINGS OF THE ASIL ANNUAL MEETING 81, 81-83 (2013).

<sup>11</sup> Paul de Bruyne & Yves de Maeseneer, *Secret and Sacred Places: The Role of Art in Processes of Reconciliation*, in CONCILIUM: INTERNATIONAL REVIEW OF THEOLOGY - ENGLISH EDITION 24-25 (S C M Press

Explaining how art and culture can be instrumental in building communities and giving space to marginalised groups, Cynthia E. Cohen says,

“artistic and cultural forms and processes can be crafted to ‘render the invisible visible’, that is, to facilitate the expression and participation of groups that have been marginalized.... Even in contexts of ongoing violence and repression, the arts can suggest the possibility of accountability, offer glimpses of freedom, and even bring the idea of reconciliation into the communal imaginary. Artistic engagement can cultivate people’s capacities for imagination, so they are better prepared to take creative action if and when space becomes available.”<sup>12</sup>

Being a free and informal medium of expression, art does not require planning or permission to tell the world about the atrocities that the people have experienced and witnessed. Complementing the traditional transitional justice mechanisms, art can fill the gap between these mechanisms and society. As mentioned earlier, for transitional justice mechanisms to function, political will of the State plays a decisive role. If the State is ignorant or disinterested in pursuing redressal of the past violence, art can help victims to reach out to the world and make known the bloodied events of the past. Not always are victims more interested in prosecuting the perpetrators than in seeking acknowledgement of the atrocities of the past that they endured. Art plays a brilliant role in facilitating the aim of memorialisation of the victims and the events of the past. It is also a brilliant domain for the silent. Those who wish to speak of the atrocities but not through words can use art to express. Each individual can get a space to speak through words or visuals, something the traditional mechanisms are not designed to accommodate. One of the most important benefits of promoting art in transitional justice processes is that art gives a domain for marginalized groups, for example women or racial/religious minorities, to come forward and speak to the world through their creations and performances. Thus, art can help in memorialising the past and boosting the impact of communicating with the world, an endeavour that would continue even after the processes of formal mechanisms have been officially concluded. Art is a developing domain in transitional justice and is beginning to be recognised as a useful tool in furthering the spirit and aim of transitional justice.

#### **IV. COHEN NOTES**

“The global field of arts, culture and conflict transformation is beginning to recognize itself as an ecosystem, in which the maximal effectiveness of each sector – artists, researchers, funders,

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2013).

<sup>12</sup>Cynthia E. Cohen, “Reimagining Transitional Justice” 14(1) INT. J. TRANSIT. JUST. 1, 2 (2020).

policymakers, etc.– depends upon the effectiveness of, and collaboration with, all of the others. Envisioning transitional justice as an ecosystem of multiple interdependent parts – organizations, people, theories and practices – could establish a framework for many useful conversations and collaborations.”<sup>13</sup>

Cohen further indicates that art can find ways to communicate beyond censors and express the inexpressible and therefore, can play a crucial role in situations where the violence/ conflict is still continuing and transitional justice talks are prohibited or restricted.<sup>14</sup> Such advantages of art can usurp the underlying aims of transitional justice which can be understood as inclusive of supporting the victims of mass atrocities and facilitating them in coping with the pains of the past. Promoting art in transitional justice processes can help in creating space for dialogues and participation in discussions on transitional justice and facilitate awareness.

There are various examples which illustrate how art has helped people to speak up and express their experiences and opinions in their own unique way:

- In Chile, women have used the art of embroidery to speak about different instances of violence and suppression that they faced during the military regime under General Augusto Pinochet Ugarte during the 1970s and 1980s. These embroideries, known as arpillera, created a movement and space for women to use their talents and communicate about the atrocities of death and disappearance of men. These artefacts were a strong medium for these women to denounce the oppression when normal means of expression were stifled by the military regime. These Chilean arpilleras are not just art but expression of protest that also constitute as historical records.
- In Guatemala, photographer Daniel Hernandez- Salazar formed Angels of Memory, also known as street angels, that shows a mestizo angel with wings formed by the scapulae bones of a victim. Salazar came up with this artifact when the conviction of Efraín Ríos Montt, Chief of State at the height of the military campaign, was dropped because of some procedural concerns. Describing his picture, Salazar says

“The angel in my picture is a man of flesh and bone like the rest of us and is even a bit sensual. Conceptually I think the idea of the angel works very well because in Guatemala people are very religious and therefore familiar with religious iconography. Even if some of them are uneducated or illiterate, they grasp the concept of an angel. They recognize that it is some kind of superior spiritual being that is trying to draw their attention. This is a key element that makes

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<sup>13</sup> *Id* at 4.

<sup>14</sup> *Id* at 6.

this image very powerful.”<sup>15</sup>

- In Gambia, a collective of young musicians and artists by the name ‘Our Nation Our Voice’, used their creative expression to spread awareness about the transitional justice issues, using slogans like “Never Again”.<sup>16</sup>
- In Peru, Yuyachkani Theatre Group which worked to capture and present issues of conflict faced by common people in Peru, was invited by the TRC to perform a series of theatre acts.<sup>17</sup> *Adios: Ayacucho* is a notable play performed by the group. This is a classic example of how formal transitional justice mechanisms can help in the promotion of art-based approaches to transitional justice.

These examples of using art in furthering different goals of transitional justice reflect the power of art in communicating with people. Supporting and promoting art- based approaches to transitional justice along with the formal mechanisms will significantly improve the effectiveness of the whole process of transitional justice. The formal mechanisms should use the platform they have to promote art- based approaches in societies dealing with ongoing conflicts as well as societies in transition from oppressive regimes to democracy. However, while art has its own distinct merits, it is important to also look at possible challenges in art-based approaches.

## V. CHALLENGES TO ART- BASED APPROACH TO TRANSITIONAL JUSTICE

There is significant merit in art- based approaches to transitional justice. Along with these merits, there are possible challenges that can emerge in the art- based approach which is important to be mindful of in this discussion. While on one hand art can help victims to let out their pain and opinions to the world in the way they like, it may also provoke the victims instead of helping them to reconcile. This challenge however is not limited to art- based approach but can also be found with respect to criminal prosecutions and truth commissions. Although the artist knows what they create and try to speak through their creation, there is no guarantee that the consumer of the art will be able to interpret the message of the artist in the artefact. A major challenge in art- based approaches to transitional justice can be the risk of the artefacts being

<sup>15</sup> Daniel Hernandez- Salazar’s interview *Revealing the image, revealing the truth*, TÉMOIGNER. ENTRE HISTOIRE ET MÉMOIRE (Aug. 22, 2024, 11:00 PM), <https://journals.openedition.org/temoigner/1519#quotation>

<sup>16</sup> Nour El Bejjani Nouredine, *Catalyzing Transformative Change: The Power of Art and Culture to Inspire Action* INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (Aug. 19, 2024, 11:17 AM), <https://www.ictj.org/latest-news/catalyzing-transformative-change-power-art-and-culture-inspire-action>

<sup>17</sup> OLIVERA SIMIĆ & DIJANA MILOŠEVIĆ, *Enacting Justice: The Role of Dah Theatre Company in Transitional Justice Processes in Serbia and Beyond*, in THE ARTS OF TRANSITIONAL JUSTICE: CULTURE, ACTIVISM, AND MEMORY AFTER ATROCITY, 104 (Peter D Rush et al., eds., Springer 2014).



capitalised. It may then result in some persons making money by selling art based on the sufferings of victims. Along with these challenges, there is a possibility that the artist may face danger of being targeted by different groups for creating controversial artefacts. These are all valid concerns that accompany art- based approach to transitional justice. However, these concerns will always remain even if an art- based approach to transitional justice is not promoted and developed. This is the distinct feature of art. It is free and can be taken up irrespective of it being recognised or acknowledged. What needs to be taken note of is that these are not concerns that will emerge only when the art- based approach becomes popular and well recognised. These are concerns that already exist and will continue to exist in the future. In such a case, dropping the idea of promoting art- based approach to transitional justice along with the formal mechanisms does not save anyone from these challenges. If an artist is creating an artefact that can threaten their safety, it is a result of a passion to create such artefacts rather than an obligation of the artist to create art. Thus, art- based approaches merit attention to help people speak for themselves instead of just a formal mechanism that dictates their contribution in the transitional justice process.

## **VI. CONCLUSION**

Transitional Justice is an emerging field where lessons are still being learnt. Although not a perfect system, it has helped in redressing adverse impacts of past conflicts. It is a very important field and efforts, formal or informal, must continue to make it better. Considering Art as a mechanism to enhance and promote Transitional Justice goals would be a valuable area of research and exploration, owing to the distinctiveness of art in expressing what law and words cannot. Promoting the art- based approach to transitional justice along with the formal mechanisms can give a push to this beautiful medium which can be used to express and present non- quantifiable impact of past violence. Art cannot replace the traditional mechanisms, but it can very well complement the goals of the formal mechanism of transitional justice in ways that are not temporal but eternal.

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