



The transitional justice

A way to the peace

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What is the transitional justice?

These words refer to "*the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation*".

Definition of the United Nations



The objectives

Transitional justice leads to

Democracy

Peace

Justice

Principles against impunity

The principles against impunity, also known as Joint principles, approved in 1997 by the United Nations Commission on Human Rights are the following ones:

1. the right to **know**,
2. the right to **justice**,
3. the right to **reparation**,
4. the guarantee of **non-recurrence**.

Conceptual Framework for Dealing with Past



1. The right to know

It means:

- The right of victims and of society at large to know the truth;
- The duty of the State to preserve memory.

Concretely it may involve:

- ❖ creation of extra-judicial commissions of inquiry;
- ❖ archive opening;
- ❖ search of the missing people.



THE RIGHT
TO KNOW

2. The right to justice

It means:

- The right of victims to a fair remedy;
- The duty of the State to investigate, prosecute, and duly punish.

Concretely it may involve:

- ♣ judicial mechanisms (national, international or hybrid);
- ♣ trial monitoring.

**THE RIGHT
TO JUSTICE**

3. The right to reparation

It means

- The right of individual victims or their beneficiaries to reparation;
- The duty of the State to provide satisfaction.

Concretely it may involve:

- ❖ **Restitution**, i.e. seeking to restore the victim to his or her previous situation;
- ❖ **Compensation** for physical or mental injury, including lost opportunities, physical damage, defamation, and legal aid costs;
- ❖ **Rehabilitation**, i.e. medical care, including psychological and psychiatric treatment;
- ❖ and **collective measures** as well, such as public excuses, memorials, remembrance work.

4. The guarantee of non-recurrence

It means:

- The right of victims and society at large to protection from further violations;
- The duty of the State to ensure good governance and the rule of law.

Concretely it may involve:

- ❖ disband parastatal armed groups;
- ❖ to repeal emergency laws;
- ❖ to remove officials who are implicated in serious human rights violations from office;
- ❖ state institutional reforms.

Why is the transitional justice so important?

For several reasons:

- ✓ reconciliation;
- ✓ rule of law;
- ✓ no impunity;
- ✓ non-repetition.

Every transitional justice is unique, due to each specific country situation. There are no one-size-fits-all formulas.

Transitional justice: a new trend

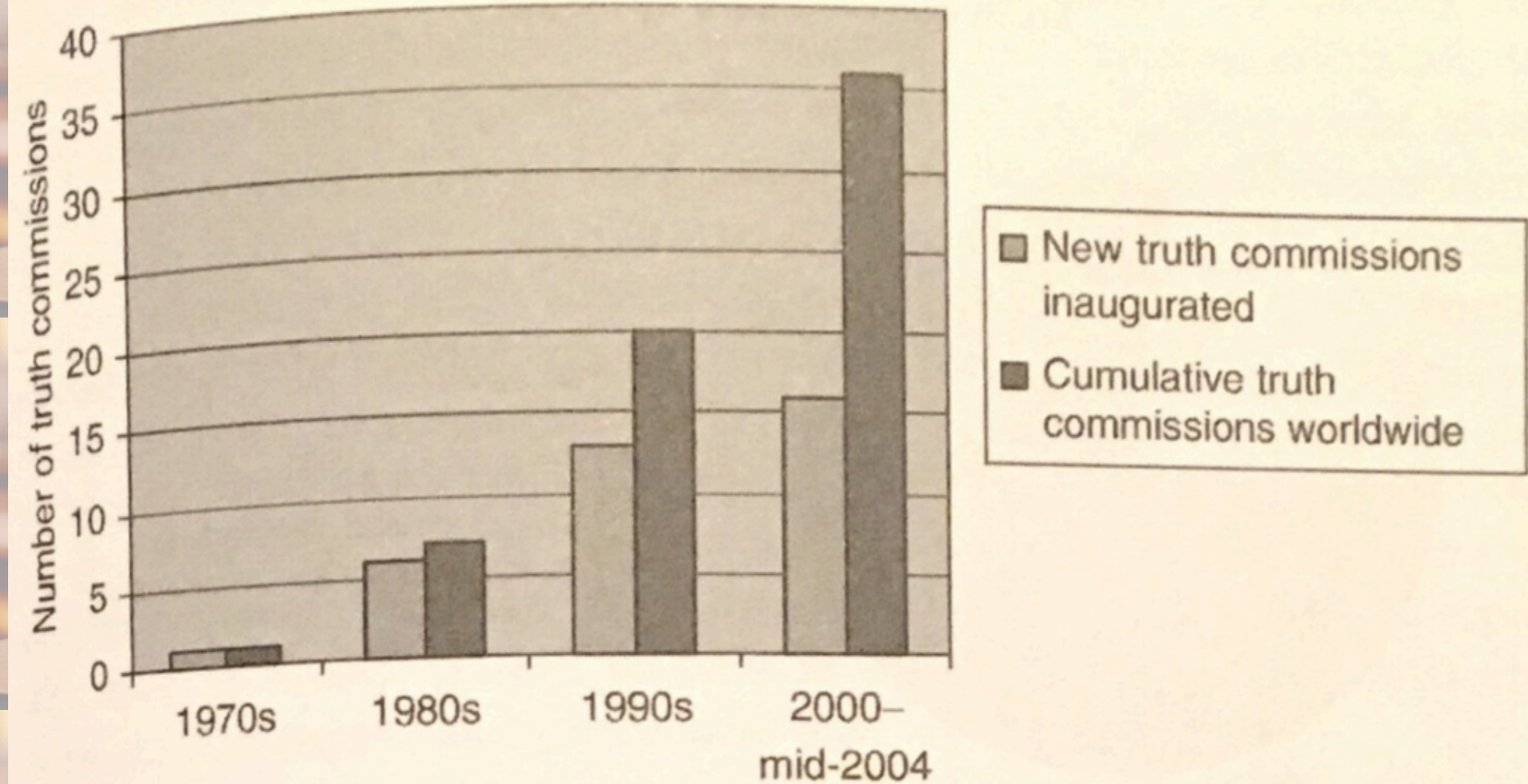


Figure 12.1. Number of truth commissions worldwide.

Implementation challenges

To implement transitional justice may be difficult, in particular because of:

- the identification of the victims;
- the choice to be made as to the level of prosecution (to punish or not the middle actors for example);
- the risk of a "victor's justice";
- the adequate resources for compensation, trials and institutional reforms;
- the insufficiency of the existing judicial system;
- the tension between peace and justice.

Examples of transitional justice

Bosnia and Herzegovina (1995 *et seq.*):

- Establishment of the Human Rights Chamber for Bosnia and Herzegovina and ad hoc commissions, such as Srebrenica Commission, which was created in order to investigate the Srebrenica genocide;
- Vetting process of the the public service: identification and removal of individuals responsible for abuses, especially from police, prison services, the army and the judiciary;
- Prosecution through three different court systems: the ICTY (International Criminal Tribunal for former Yugoslavia), the War Crimes Chamber and the second instances courts of Bosnia;
- Creation of a law recognizing the right to information for the families of missing persons and obliging the authorities to disclose such information on missing persons;
- Property restitutions via the Property Law Implementation Program.

Examples of transitional justice



South Africa (1994 *et seq.*):

- South Africa's Truth and Reconciliation Commission (TRC), which sessions were covered by the media;
- Amnesty for individuals under specific conditions;
- Prosecution of only a few people because of apartheid-era acts;
- Victims registered by the TRC each received a lump-sum payment of R30,000 (\$6,417) from the government;
- Institutional reform of the security sector;
- No institutional vetting;
- Numerous local transitional justice initiatives.

Examples of transitional justice



Georgia (2012 *et seq.*):

- Establishment of a Human Rights and Civil Integration Committee of Parliament and introduction of amnesties;
- Establishment of a Crime Prevention Centre to help with the reintegration and rehabilitation of prison victims and a Special Department for Land Restitution;
- Criminal proceedings against former senior officials;
- Creation of a department to investigate offenses committed in the course of legal proceedings and creation of a special commission on illegal surveillance;
- Institutional reforms;
- Development of a National Human Rights Strategy;
- Consultation of the Venice Commission on several subjects.

What kind of transitional justice for Armenia?

Taking into account the past of the country and the failures of other transitional justices, Armenia should notably put an accent into:

- institutional reforms through an open national dialogue;
- conforming to the principles of the Venice Commission (also known as the European Commission for Democracy Through Law);
- vetting of the judicial system and creation of an independent transitional justice body;
- creation of an Armenian truth-commission;
- the criminal accountability in case of human rights abuses.

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