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Peace Mediation and Transitional Justice: Key Lessons for Practicioners

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Executive Summary

The 2023 EEAS Peace Mediation Guidelines underscore the need for mediators to understand transitional justice frameworks. Previously viewed as a post-conflict issue, ignoring transitional justice in peace processes often led to peace deals lacking credibility and public support. Lasting peace necessitates addressing the legacy of past large-scale abuses through transitional justice measures. While concerns exist regarding the disruptive potential of addressing criminal accountability or blanket amnesties prematurely in peace negotiations, transitional justice offers a broad range of judicial and non-judicial mechanisms that can be incorporated constructively into a peace mediation process. This paper provides examples of entry points, strategies, and sequencing.

Main concepts and context

The EU Policy Framework on Support to Transitional Justice defines transitional justice as processes and mechanisms that help societies deal with legacies of large-scale abuses. Its elements include criminal justice, truth seeking, reparations, and guarantees of non-recurrence, encompassing both formal (such as truth commissions, courts) and informal measures (e.g. psychosocial support, memorialisation). Transitional justice aims to affirm norms, dismantle criminal networks, build civic trust, facilitate reconciliation, strengthen the rule of law, ensure accountability and contribute to sustainable peace. Transitional justice processes must be nationally owned, victim-centred, and context-specific, recognising the diverse needs of victims and the political factors influencing their scope and timing.

According to the 2020 EU Concept on Mediation, peace mediation aims to help conflict parties reach satisfactory and implementable agreements to end a conflict. The EU concept highlights a broad understanding of peace mediation, including various functions beyond direct negotiations, such as facilitating dialogue, offering support, and promoting conflict resolution. Both peace mediation and transitional justice are interconnected parts within the wider peacebuilding framework, working towards sustainable peace. Changes in the global order, such as a shift from ´liberal peace' to transactional pragmatism, competing peace-making models (e.g. ´governance-first´, ´development-first´ or 'security-first´), increased militarisation as a response to armed conflicts, hybrid mediation models, and a focus on temporary ceasefires rather than addressing root causes, have made peace-making efforts more challenging for actors like the EU. The paper argues that the main tension lies within peace mediation itself due to the global decline of norms, rules, and institutions.

Practical considerations: integrating transitional justice into peace mediation

Understanding specific conflict dynamics, existing justice systems, power asymmetries, and local needs is paramount in all phases of a peace mediation process. Solutions must be tailored to the nature of the conflict and the specific context. Thereby, defining the timeframe for proposed transitional justice processes is crucial, balancing responses to immediate needs and long-term grievances while ensuring public consultation and legitimacy. Additionally, avoiding excessive focus on high-level processes at the expense of grassroots initiatives is vital, as is managing expectations by not overloading peace agreements with highly ambitious transitional justice measures.

Copy-pasting transitional justice models from other contexts should be avoided at all costs. While lessons from different contexts are valuable, they should inform and support, not supplant, locally grounded understandings of justice, reconciliation, and cohesion and foster national ownership, while ensuring that transitional justice provisions are gender- and culturally sensitive, inclusive and within the scope of international law. It can be helpful to explore and build upon existing formal and informal ways to deal with injustices (traditional/customary), while acknowledging their limitations. It is also crucial to adapt terminology to the local context and foster understanding of the purpose and ultimate aims of transitional justice among key stakeholders and the broader public. It is critical to recognise that both peace mediation and transitional justice are highly politicised processes that largely depend on the parties' willingness to genuinely engage, and on existing power dynamics. External support must be politically informed and responsive.

During the pre-negotiation phase, transitional justice is often introduced discreetly since this is a fragile and sensitive moment in a peace process. Addressing concrete fears of parties regarding legal consequences (prosecution, imprisonment) and outlining potential solutions can incentivise participation. This can be supported by confidence-building measures, such as legal protections during negotiations, prisoner releases, or delisting from designations. While blanket amnesties for grave international crimes are incompatible with international law, conditional amnesties (e.g. linking immunity to truth-seeking, demobilisation, or reparations) can help to bring parties to the table. In this phase, it is key to support active and meaningful victim engagement, which may lead to a shift in perception of the negotiating parties. Addressing humanitarian issues (e.g. access, humanitarian corridors, missing

persons, family reunifications, and political prisoner releases) can serve as an entry point. Early procedural agreements include guiding principles or preliminary commitments to a transitional justice-related goal. In some contexts, transitional justice was introduced conceptually early (e.g. by facilitating peer-to-peer exchanges, promoting shared understanding of legal frameworks, establishing clear red lines on amnesties, and preparing victim groups for participation), while details were formalised at a later stage in the negotiation process.

During the negotiation phase: This structured phase of peace negotiations addresses core conflict issues, including dealing with past grievances. In this crucial phase, mediators can highlight the parties' self-interest in addressing transitional justice. Sensitive transitional justice issues (e.g. criminal accountability) are best introduced strategically when parties are invested in reaching an agreement. This can be done gradually, indirectly through expert presentations, or by involving broader stakeholders ('concentric circles approach'). Agreements can include broad principles or detailed chapters on transitional justice, with clarity in language, while allowing for constructive ambiguity for flexible implementation. Direct (e.g. Colombia) or indirect inclusion, through victim hearings and civil society pressure, can significantly influence transitional justice integration. For a meaningful inclusion of transitional justice in this phase, it is key to balance timing with (external pressure. Mediators should make clear that transitional justice cannot be indefinitely postponed and that strong monitoring mechanisms should be established. The 'justice-peace' debate highlights that outcomes depend on context, timing, and actors. While some argue that international arrest warrants can disrupt talks, others suggest they remove spoilers or encourage domestic accountability solutions. The ICC has shown adaptability and supported domestic prosecutions in several contexts as part of the complementarity framework.

Transitional justice in the implementation phase: The signing of an agreement often marks the start of setting up formal transitional justice mechanisms, while more informal transitional justice initiatives are often already implemented by different actors during armed conflict and peace negotiations. Sustained political will, meaningful victim and civil society participation, consistent pressure, and robust monitoring are crucial for the implementation of negotiated outcomes, including transitional justice. Prompt implementation builds momentum and signals commitment. Continued international support in the implementation phase is key, but there must be an understanding that transitional justice is a continuously renegotiated, long-term process requiring ongoing dialogue and consultations. International support actors, such as the EU, should remain involved (as guarantors, monitors, donors, technical supporters etc). Support to civil society organisations and victim associations remains key (e.g. to break political deadlocks and reduce manipulation risks). While the operationalisation of formal mechanisms is pertinent, promoting and supporting informal transitional justice initiatives and public communication are equally important.

Conclusions and recommendations

Peace mediators should view transitional justice as a cross-cutting issue with various entry points, at different stages of a peace process, rather than a mere add-on. A holistic approach to transitional justice helps to identify entry points beyond formal transitional justice mechanisms and to include victims and civil society from the outset. The EU should align principled engagement with pragmatic flexibility in its support to transitional justice in mediation processes. The paper recommends that the EU and EU Member States speak with a unified voice in multi-mediator settings and communicate norms transparently, particularly regarding amnesties, where developing clear, practical guidelines akin to the UN's allows engagement without legitimising problematic clauses. Furthermore, a holistic transitional justice approach across EU services and missions (with specialised transitional justice knowledge through tailored training and systematic collection of lessons learned) should be systematically embedded and collaboration with local NGOs and victims' groups ensured so that transitional justice truly reflects community needs. This will help to better align and coordinate policy frameworks, financial instruments, diplomatic engagement, technical assistance, and partnerships, guided by context-specific theories of change. This implies comprehensively assessing transitional justice needs and existing mechanisms, including understanding stakeholders' perception of transitional justice, supporting them in articulating their transitional justice vision aligned with EU principles. Mobilising the EU's mediation and transitional justice expert network to provide tailored technical support strategically, establishing longer-term financing mechanisms, and ensuring consistent follow-up on transitional justice outcomes is key.

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List of Abbreviations

ANC	African National Congress
CAB	Comprehensive Agreement on the Bangsamoro
CBMs	Confidence-Building Measures
CHD	Commission on Human Rights and Development
CODESA	Convention for a Democratic South Africa
CSDP	Common Security and Defence Policy
CSO	Civil Society Organisation
DDR	Disarmament, Demobilisation and Reintegration
ECOWAS	Economic Community of West African States
EEAS	European External Action Service
EOD	Explosive Ordnance Disposal
EU	European Union
FARC-EP	Revolutionary Armed Forces of Colombia – People's Army
FSD	Swiss Foundation for Mine Action
GPH	Government of Philippines
ICC	International Criminal Court
ICG	International Contact Group
IL	International Law
IMT	International Monitoring Team
LRA	Lord's Resistance Army
LTTE	Liberation Tigers of Tamil Eelam
MEL	Monitoring Evaluation and Learning
MHPSS	Mental Health and Psychosocial Support
MILF	Moro Islamic Liberation Front
MoU	Memorandum of Understanding
NGOs	Non-Governmental Organisations
NVP	National Volunteer Program
PM	Peace Mediation
PMTJ	Peace Mediation and Transitional Justice
SGBV	Sexual and Gender-Based Violence
SSR	Security Sector Reform
TJ	Transitional Justice
TPLF	Tigray People's Liberation Front
TPMT	Third-Party Monitoring Team
UN	United Nations
UNDP	United Nation Development Program
UNSR	United Nations Special Rapporteur

1. Introduction

The European Union (EU) recognises that lasting peace requires justice. Transitional justice plays a vital role in addressing the legacy of large-scale past abuses through truth-seeking, criminal justice, reparations, and guarantees of non-recurrence. The EU further recognises the importance of integrating transitional justice into peace negotiations.[1] The 2023 European External Action Service (EEAS) Peace Mediation Guidelines emphasise that mediators must have a comprehensive understanding of international human rights, international humanitarian law, and the transitional justice frameworks.[2]

Transitional justice has often been framed as something to be addressed after a political transition, an armed conflict, or after securing a peace agreement, and relegated to an 'afterthought' in peace mediation. However, it is recognised today that peace deals lacked credibility and struggled to gain the broad public and victim support needed for effective implementation when transitional justice was not addressed.[3]

At the same time, practitioners and academic discourse highlighted potential risks, such as blanket amnesties in peace agreements; the disruptive effects of premature involvement of criminal accountability mechanisms, such as the ICC, in peace processes; and the potential alienation of powerful actors.[4] Transitional justice is sometimes wrongly reduced to criminal justice, with some arguing that this strong emphasis on criminal justice can hinder negotiations and obstruct peace. Conversely, mediation approaches have been criticised for privileging short-term stability over accountability, often at the cost of transitional justice. In doing so, they risk entrenching impunity and undermining the foundations of a durable and just peace.[5] However, transitional justice encompasses a wide array of judicial and non-judicial, formal, and informal mechanisms. These tools not only serve long-term justice goals but can also contribute meaningfully to the mediation process itself. Likewise, peace mediation is increasingly understood not merely as a mechanism to end violence, but as a tool to address the root causes and to contribute to transforming conflicts into just peace.

Today, the compatibility of these two fields is increasingly accepted. The primary challenge remains finding effective and hands-on ways to integrate them in support of sustainable peace. This requires careful consideration of practical questions regarding entry points, strategies that facilitate convergence, and sequencing.

1.1. Objectives of the lesson learned paper

This paper systematically examines how to include transitional justice in the three key phases of a mediation process: pre-negotiation (section 3.2), negotiation (section 3.3), and implementation (section 3.4). It identifies concrete opportunities for integrating transitional justice into each phase, grounding its analysis in real-world cases and current scholarly debates.

This paper is intended primarily for use by (European Union) special envoys and representatives, peace mediation professionals, transitional justice experts, and actors working at the intersection of mediation and transitional justice, at the Track One, Two or Three levels. It places particular emphasis on the roles that mediators, support teams or officials can play at each stage of the process, offering practical recommendations to enhance the integration of transitional justice considerations into peace mediation in today's increasingly complex geopolitical landscape.

1.2. Methodology and structure

This study is based on a combination of desk research and qualitative semi-structured interviews with peace mediation practitioners, special envoys, and transitional justice experts. It also draws on insights from the panel discussion *Incorporating Transitional Justice in Peace Mediation – Learning from Regional Women Mediators Networks*, held on 23 October 2024 as part of the EU Community of Practice on Peace Mediation, as well as findings from a one-day workshop on 24 October 2024 titled

[1] EU Policy Framework on Support to Transitional Justice (n 1) 4, 6, 27.

[2] European External Action Service (n 12) 18.

[3] Cox, J., 2020, Lambourne, W., 2014, Hayner, P., 2009 and 2018, Jamar, A. and Bell, C., 2018.

[4] ICTJ 2020, Hayner, P., 2009, Afako, B., 2022.

[5] ICTJ 2020.

Incorporating Transitional Justice in Peace Mediation – Leveraging the Expertise within Regional Women Mediators Networks,[6] and a field trip to Colombia conducted in September 2024.

The paper examines country case studies and specific moments in the transition from violent conflict to peace. It highlights how transitional justice issues were either integrated, partially integrated, or neglected during these processes, drawing attention to the lessons learned, challenges encountered, and opportunities identified. While the case studies may not serve as comprehensive best or worst-practice models, each offers valuable insights and lessons that can inform future practice. They are not intended as direct templates for replication but rather as sources of inspiration, reflection, and guidance.

Following the introduction, Section 2 outlines the conceptual framework, briefly defining transitional justice and peace mediation and the current political landscape. Section 3 explores process design considerations and assesses how transitional justice has been integrated – or omitted – across the three phases of a peace process. Section 4 presents general conclusions, and Section 5 provides recommendations on how to apply these lessons in its practice.

[6] See e.g. https://womenmediators.net/global-alliance/.

2. Main Concepts

2.1. Transitional justice

The EU Policy Framework on Support to Transitional Justice describes transitional justice as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation.'[7] Large-scale abuses refer here to gross violations and abuses of human rights and serious violations of international humanitarian law, particularly crimes against humanity, war crimes, and genocide. Such atrocities are often committed during conflict or authoritarian rule.

Transitional justice's main elements are justice, truth, reparations, and guarantees of non-recurrence. Each element may comprise not only formal mechanisms but also informal measures, such as addressing trauma through mental health and psychosocial support (MHPSS),[8] artistic and cultural initiatives to deal with the past, customary justice systems, and memorialisation. Transitional justice encompasses all efforts a society undertakes to deal with its abusive past.

Transitional justice shares several goals with broader peacebuilding and development objectives. When norm-breaking was the rule, criminals committed horrendous abuses, and trust has been fundamentally shattered, transitional justice measures affirm the validity of basic norms and values and contribute to building civic trust. In doing so, transitional justice facilitates reconciliation, strengthens the rule of law, and contributes to sustainable peace. This requires a holistic understanding of transitional justice that includes various forms of dealing with the past and does not only focus on criminal accountability.

When discussing transitional justice in peace negotiations, a nuanced understanding of the specific conflict dynamics and causes, as well as the political economy, is necessary to introduce context-specific solutions. One-size-fits-all toolbox approaches do not work in transitional justice. While lessons can be learned from other contexts, national actors should develop their own transitional justice approaches in response to the needs and conditions of their specific context, based on justice and reconciliation practices that are used in this context, providing that they correspond to international standards. Gender- and culture-specific considerations may also vary from one context to another and require tailored attention.

A transitional justice process must be nationally owned if it is to address the legacy of large-scale abuses effectively and credibly. National ownership refers not only to the government but also to civil society and, particularly, victims. Providing recognition to victims and repairing their harms is a core concern of transitional justice. Victims are, however, not a homogeneous group: victim-perpetrator identities can change over time. Considering the various overlapping identities of victims, such as ethnicity, class, religion, and gender, helps understand and address the root causes of abuses and harmful power dynamics. The adequacy of transitional justice interventions also depends on temporal factors. During an ongoing violent conflict, the focus will be on addressing the immediate needs of victims (providing MHPSS, search for missing persons, strengthening civil society, etc.) and on preparing for a future transitional justice process (documentation, consultations, policy development, etc.). The scope, sequencing, and timing of a transitional justice process are also determined by political factors, institutional capacities and resources. Transitional justice affects power relations, so those who were responsible for past abuses, as well as those who suffered abuse, may want to have a say in the design of a transitional justice process.

[7] The EU follows the definition provided by the United Nations Secretary-General in his seminal report 'The rule of law and transitional justice in conflict and post-conflict societies' (S/2004/616).

[8] For more information, see: *Integrating a Psychosocial Approach into EU Support to Transitional Justice, A User Guide*, Facility on Justice in Conflict and Transition, 2026.

2.2. Peace mediation

'Mediation is a way of assisting negotiations between conflict parties and transforming conflicts with the support of an accepted third party. The general goal of mediation is to enable parties in conflict to reach agreements they find satisfactory and are willing to implement.

The specific goals depend on the nature of the conflict and the expectations of the parties. In order to ensure peace and stability in the long term, mediation should aim at a process that is inclusive of peace constituencies and be cognisant of and, as appropriate, address the root causes of conflict. Mediation is usually based on a formal mandate from the parties to a conflict, and the parties retain ownership of the outcome of the talks. Mediation can be practised at all stages of the conflict cycle.'

Concept on EU Peace Mediation (2020)[9]

The EU's peace mediation framework is based on a broad and multidimensional understanding of mediation, encompassing dialogue and facilitation while incorporating various functions beyond direct mediation. These functions include (1) leading or co-leading mediation efforts; (2) promoting and leveraging mediation; (3) facilitating mediation and dialogue spaces; (4) accompanying mediation processes; (5) coordinating mediation efforts; (6) providing support to mediation initiatives; (7) fostering the implementation of mediation outcomes; (8) offering financial assistance for mediation; and (9) advocating for mediation as a key instrument of conflict resolution (EEAS Peace Mediation Guidelines, 2020).

In the face of a global decline in liberal norms and values, the EU has reinforced its commitment to these principles and has established a strong policy framework for its mediation practices by adopting the 2020 EU Concept on Mediation.

The illustration below highlights how peace mediation and transitional justice are interconnected sub-processes within the broader peacebuilding framework, both aiming to achieve sustainable peace.

Figure 1: Transitional Justice and Mediation

[9] EEAS(2020) 1336, Concept on EU Peace Mediation, Working document of the European External Action Service; see also: Council of the European Union, 2020a. 'Council Conclusions on EU Peace Mediation', 13573/20, Brussels, 7 December 2020.

2.3. Contextualising peace mediation and transitional justice

Shifts in the global order are fundamentally reshaping the practice of peace-making (i.e. dialogue, negotiation and mediation) that has guided international efforts since the end of the Cold War. These evolving dynamics can be broadly understood through three interrelated trends:

From 'liberal peace' to transactional pragmatism: The post-Cold War era was dominated by the 'liberal peace' model, which promoted democracy, human rights, inclusion, and transitional justice as foundations for sustainable peace. Today, the rise of multipolarity has ushered in more transactional approaches, emphasising short-term stability, strategic national interests, and pragmatic deal-making over transformative ideals.[10]

Competing peace-making models: Multipolarity has fractured the peace-making landscape, with several important states advancing new models that assert state sovereignty, non-interference, and regime security, typically through top-down strategies, contrasting sharply with the 'governance-first' model of the UN, which champions accountability, democratic norms, and transitional justice.[11]

Erosion of norms and institutional credibility: The U.S.-led war in Iraq (2003); the contested use of R2P in Libya; Russia's war of aggression against Ukraine; and the bloody wars in Gaza and Sudan have further eroded trust in the international rules-based order. As trust in the impartiality and effectiveness of multilateral institutions declines, their capacity to manage conflict and uphold global norms has been significantly compromised. Multilateral institutions—especially the UN Security Council—face a crisis of legitimacy, undermining their ability to mediate conflict and uphold global norms. These challenges have, in part, fuelled democratic backsliding and authoritarian resurgence.[12]

While a comprehensive analysis lies beyond this paper's scope, three implications for the inclusion of transitional justice into mediation are clear:

— Increased militarisation and a surge in violent conflicts[13] place mounting pressure on peace mediation as a viable alternative mechanism for resolving armed conflicts sustainably.
— Hybrid models that mix transactional and transformative elements, operating within and outside multilateral structures, are creating an incoherent mediation field, which is marked by competing logics, overlapping and contradictory roles ('conflation of peacemakers and warmakers'[14]), and uncertainty on how to pursue a just and sustainable peace.
— Contemporary peace mediation efforts often focus on forging temporary arrangements aimed at 'de-escalation' and ceasefires, generally without addressing the underlying grievances that sustain conflicts. The comprehensive agreements of the post-Cold War era, which incorporated provisions for transitional justice, increasingly appear unattainable.

Thus, this paper argues that the primary tension does not lie between peace mediation and transitional justice. The most significant tensions exist within the field of mediation itself, marked by the global erosion of norms, rules, and institutions. It is crucial to understand when, where, and how transitional justice can be integrated into peace mediation, despite existing constraints.

[10] Engelke, P., Agachi, A. and Bayoumi, I., 2023, Hellmüller, S. and Salaymeh, B., 2025.

[11] Mariani, B., 2024.

[12] Engelke, P., Agachi, A. and Bayoumi, I., 2023.

[13] According to ACLED's *Conflict Index: December 2024*, the number of global conflict events has doubled over the past five years. Notably, 50 countries are currently ranked as experiencing extreme, high, or turbulent levels of political violence and instability.

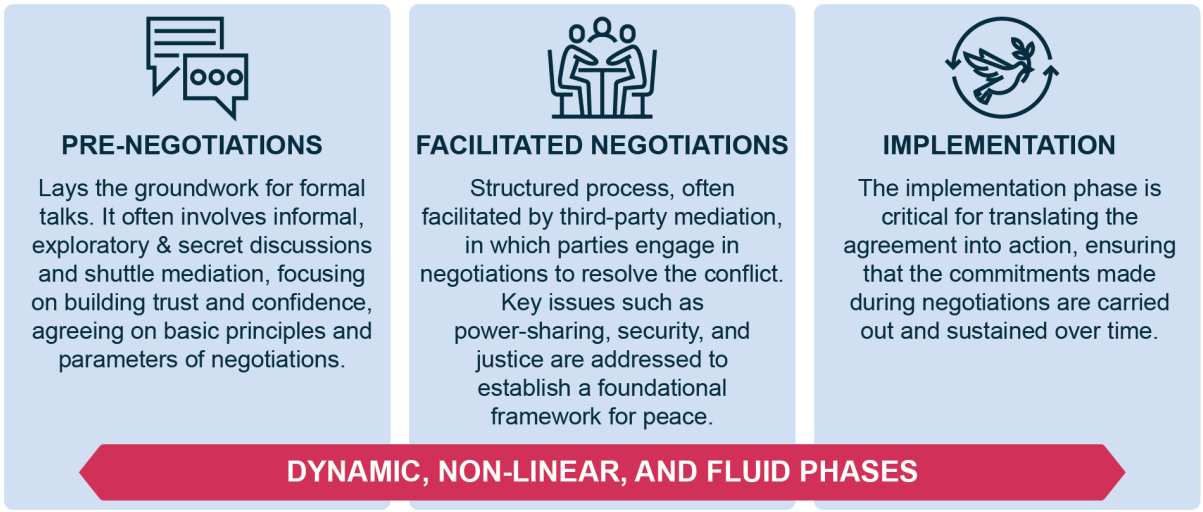
[14] Hellmüller, S. and Salaymeh, B., 2025.

3. Integrating Transitional Justice into Peace Mediation

3.1. Key considerations across all three mediation phases

Peace mediation processes are inherently dynamic and non-linear. They are characterised by frequent setbacks, instances of circular negotiation, and periods of stagnation or complete breakdown. As illustrated by the visualisation below, typically, mediated negotiation processes go through different stages: pre-negotiations, negotiations, and the implementation phase after an agreement. Although they serve as an analytical framework for this paper, these are ideal-typical phases; activities expected in one phase may also occur in another, making peace processes more fluid:

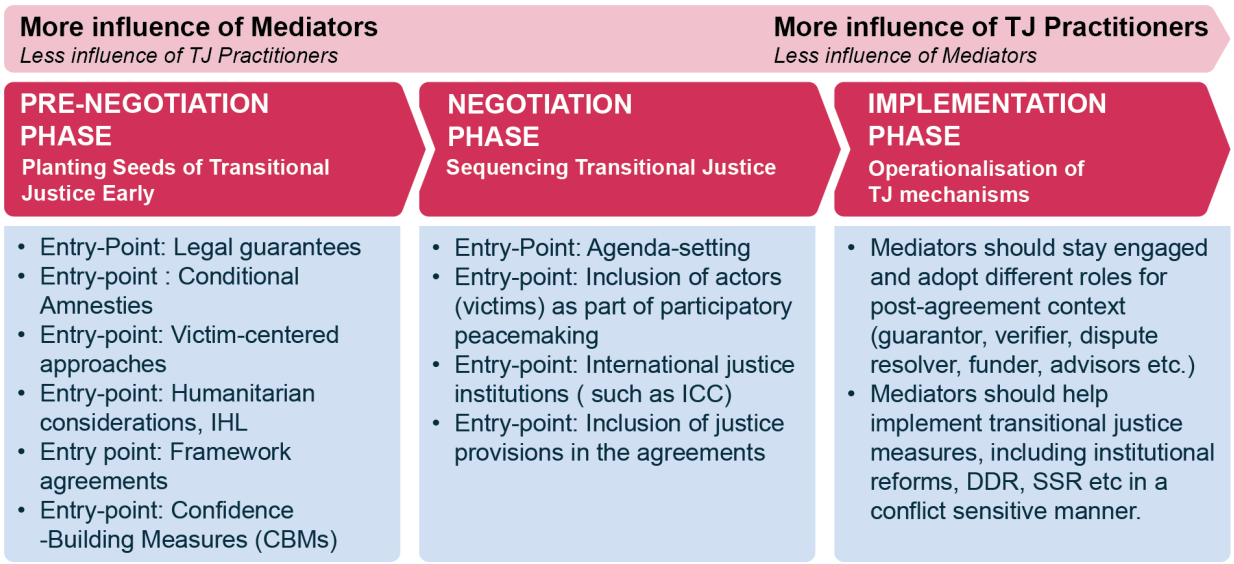
Figure 2: Peace Mediation Phases



If direct mediation is not feasible, indirect support roles, as outlined in Section 2.2, may be more appropriate. This approach ensures the most effective support of mediation and transitional justice.

The pursuit of transitional justice measures such as criminal prosecutions, truth-seeking, or institutional reforms may create tensions with peace mediation efforts. For mediation processes, it is therefore important to foster the understanding that for peace to be sustainable, it is not enough to end the violence, as the wounds of the past must also be addressed. The illustration below shows concrete entry points for integrating transitional justice in peace mediation and are discussed in more detail in the pre-negotiation, negotiation, and implementation part of section 3.

Figure 3: Entry Points for Integrating Transitional Justice into Mediation



The following key considerations apply to all phases of a mediation process:

- **Context matters**: Understanding the specific context of the conflict, including existing justice systems and the nature of human rights abuses; institutional structures; capacities of local public services (justice, health, education); security conditions; affected populations´ perspectives; and public acceptance of proposed measures, is essential. This includes an assessment of both formal and informal justice mechanisms, as well as ensuring that solutions proposed in negotiations are reasonably tailored to local needs and realities. Approaches should also be adapted to the nature of the conflict and the scale of violence (e.g. international or internal armed conflict; proxy or asymmetric warfare; existence of dictatorial regimes, etc.) - ensuring that responses are appropriately designed and context-specific. Additionally, the level of integration of transitional justice depends on whether negotiations seek a comprehensive peace agreement or a more limited, expedited settlement.
- **Conflict-sensitivity matters:** Transitional contexts are marked by power asymmetries.[15] Those with access to resources, influence, and the international community often shape the agenda. It is crucial to recognise these imbalances and to avoid reinforcing them.
- **Clarity about the time to be covered by the transitional justice process**: It is crucial to support national actors in defining the timeframes for the different transitional justice mechanisms, ensuring they address both immediate and long-term grievances. Temporal frameworks of truth seeking, accountability mechanisms, and reparation programs are relevant when it comes to the inclusion or exclusion of specific political regimes, events, and atrocities. While the timeline is ultimately a political decision, it is ideally based on inclusive public consultations and credible, transparent criteria. The process should go as far back as necessary, while ensuring that the chosen mechanisms are acceptable to stakeholders and capable of delivering meaningful present-day impact.[16]
- **Balancing resources and priorities**: Given the limited resources available, the tension between high-level processes and localised and bottom-up approaches must be considered from the outset. While decisions remain context-specific, excessive focus on high-level processes at the expense of grassroots and civil society initiatives should be avoided.
- **Balancing realism and expectations**: Integrating transitional justice in mediation efforts can be undermined by unrealistic goals; overly formalised processes; victimhood competition; rushed timelines; disinformation; resource constraints; differing expectations and personal agendas. For mediators and parties, it is crucial to understand that transitional justice processes are lengthy and complex, and to recognise what is required in order to achieve the best possible impact within existing circumstances. They should avoid overwhelming the process by overpromising or attempting to integrate all transitional justice measures at once.
- **Support locally grounded understandings of transitional justice**: As transitional justice is highly sensitive, engaging with communities, particularly victims, is essential to identify the most appropriate approach and how to incorporate it into mediation in each context. This helps ensure that the process aligns with local perspectives and fosters creativity and a sense of ownership. While it is valuable to draw on lessons from other peace processes - using both successes and failures to illustrate different approaches to transitional justice - it is equally

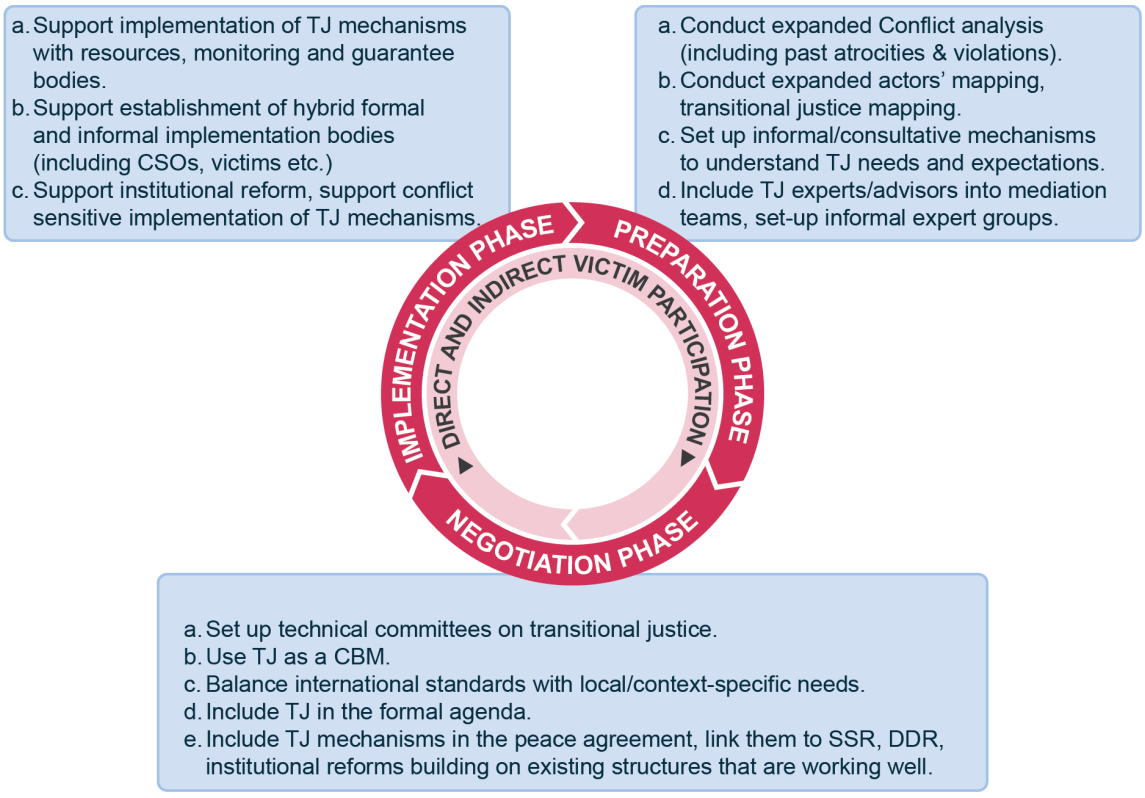
[15] The Pretoria Agreement from 2022, leading to a cessation of hostilities between the Ethiopian Government and the Tigray People's Liberation Front (TPLF), was signed in a highly asymmetric context, with one party having gained near-total military dominance over the other. When both sides agreed to include a very general transitional justice clause in the agreement, despite its politically charged nature, it did not reflect a balanced compromise. As a result, the government-led transitional justice process, initiated in 2023, faces major challenges in terms of legitimacy, credibility, and inclusivity. This impacts the consultations and implementation of planned transitional justice measures. This example highlights the importance of ensuring that transitional justice mechanisms are not simply written into peace agreements but that they are rooted in broadly supported political processes (Interviews with a mediation practitioner, a mediator, and a transitional justice expert).

[16] The Truth, Justice Reconciliation Commission (TJRC) in Kenya (2009-2013) was undermined by being burdened with an extremely long historical time-frame, an impossibly broad range of violations to be examined, and a politically appointed chair. The final report, despite its important findings and recommendations, was not passed in Parliament and was not officially released by the Government. (Servaes/Bloomfield, 2025, National Dialogues x Transitional Justice, p.26. For more details on the process, see the compilation of documents on the University of Seattle website (https://digitalcommons.law.seattleu.edu/tjrc/) and the article by Jemma Blacklaw, Naazneen Kola, Kenya Truth, Justice and Reconciliation Commission (2008-2013), 1 November 2023, African Transitional Justice Hub.

important to avoid a 'toolbox' approach and imposing models from other countries that are not contextualised.

- **Build on already existing formal and informal mechanisms:** Traditional/customary mechanisms can contribute to both mediation and transitional justice processes, especially in contexts with strong traditional structures, cultures, and practices. It is advisable to explore traditional forms of conflict resolution and to what extent they can still be utilised to lay the groundwork for mediation and transitional justice. Yet, it is important to recognise that such customary systems are usually designed to deal with local community disputes and are not apt to manage transitions from violent conflict to peace at the national or international level and to deal with mass atrocities. There might be issues related to gender and trauma sensitivity, and due process. However, they can play a valuable role in specific areas, such as supporting the reintegration of former child soldiers into their communities.[17]
- **Ensure gender sensitivity**: Gender-sensitive provisions are often overlooked and must be intentionally incorporated into mediation and transitional justice. Too often, gender is barely mentioned, women are reduced to victims, and gender issues are minimised as women's concerns in both mediation and transitional justice.[18]
- **Language, framing, and terminology:** The term ‘transitional justice’ should be used carefully, and in some contexts, other terms might be more appropriate, as it might cause fear among some actors. Rather than focusing on clarifying international terminology, it is more effective to adapt the language to fit the local context and foster understanding.
- **Mediation and transitional justice processes are political:** They unfold in highly politicised, polarised, and volatile transitional environments, where former powerholders often retain considerable influence and positions of power. Both processes depend on the willingness of the parties and the balance of power on the ground. It is crucial to recognise these limitations and to avoid over-standardisation and technocratic solutions to inherently political problems.

Figure 4: Anchoring Transitional Justice in Peace Mediation



[17] Salvioli, F., 2022.

[18] Jamar, A. and Bell, C., 2018.

3.2. Early / Pre-negotiation phase

The preparatory or pre-negotiation phase of a peace mediation process lays the foundation for formal negotiations, encompassing a discreet, unofficial stage that runs alongside preparatory initiatives that precede the official process. This stage is highly fragile and susceptible to collapse. Consequently, it typically takes place away from public scrutiny, in confidential and exclusive settings involving mainly the leadership of key parties in the conflict. Activities during this phase may range from informal, exploratory discussions to testing the waters for package deals or ceasefires. They can also include identifying early, achievable agreements ('framework agreements') and implementing confidence-building measures to build trust in both the process and among the negotiating parties.

Colombia: Early inclusion of victims in the pre-negotiation phase

Before the official launch of the Havana peace negotiations with the FARC-EP, which culminated in the historic 2016 Peace Agreement, the Colombian Government introduced its position on justice during an informal meeting with the FARC-EP leadership around January 2014. At that time, the FARC-EP rejected the term 'transitional justice', despite it being a priority for the government. Over time, however, the issue was reframed as the *victims' point* on the agenda, making it acceptable to all parties. Although formal negotiations on transitional justice began only later, the topic had already been introduced during the pre-negotiation phase. This case highlights the value of introducing transitional justice early and allowing the language to evolve gradually.[19]

3.2.1. Entry points for transitional justice issues in the pre-negotiation phase

a) Entry point: legal guarantees

During the pre-negotiation phase, non-state armed groups, security forces, political leaders, and other actors may fear legal consequences, including prosecution and imprisonment. For armed groups in particular, a key concern is how their members will be judged and what their future will look like after negotiations.[20]

The pre-negotiation phase offers opportunities to incentivise participation in formal peace talks and discuss legal avenues, such as legal guarantees, prisoner release, delisting from terrorist or criminal designations, and offering pathways to political involvement.[21]

b) Entry point: victim-centred approach

During active conflict, the urgent need to end violence often overshadows demands for transitional justice, which may be seen as a secondary concern. However, neglecting a victim-centred approach in the preparatory phase can deepen societal divisions over time and risk perpetuating cycles of violence.

While there is broad agreement that the role of victims is crucial from the preparation phase onward, and although the definition of a victim is established in soft international law,[22] its interpretation, specifically, who qualifies as a victim in a particular context, is often contested. Drawing clear lines between victims and perpetrators is sometimes not possible.[23]

Victim groups should be supported at an early stage in organising, prioritising demands, and presenting them. As civil society organisations and victim groups are often fragmented, support to overcoming divisions is key. International actors can assist by facilitating meaningful participation, providing safe

[19] Based on interview with mediation practitioners, special envoys, and transitional justice experts.

[20] As one interviewee noted, 'Transitional justice is always on the agenda. The major concern for parties is how to avoid jail.' Interview with transitional justice experts in October 2024.

[21] Additional incentives that can already be introduced in the pre-negotiation phase may include integration into the security sector (e.g. police or military) and support for civilian reintegration through a DDR process (Jamar and Bell 2018, p. 5 ff.).

[22] The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims define victims as 'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term 'victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization'.

[23] Afako, B., 2022, p.14.

dialogue spaces, and enabling peer exchanges on victims' experiences from other contexts. Providing Mental Health and Psychosocial Support (MHPSS) from the outset ensures victims are emotionally prepared for participation in the negotiations. While thorough preparation enhances victims' ability to influence negotiations, it is equally important to respect those who choose not to participate.

During pre-negotiations, pressure from civil society and victim groups was critical in many contexts, to ensure that victims' concerns were included in the agenda. In some cases, grassroots organisations successfully reframed the process as a three-party negotiation, demanding their voices be heard alongside the main parties—the Government and the non-state armed group.

Colombia: Early participation of victims in the Havana peace negotiations with the FARC-EP

In the lead-up to the Havana peace negotiations between the Colombian Government and the FARC-EP, which culminated in the 2016 Peace Agreement, victim groups came together to prioritise and articulate their concerns. This groundwork allowed them to engage in the negotiation process in a structured and impactful manner. Crucially, psychosocial support was provided to prepare participants emotionally for the challenges of engagement. The 2016 Peace Agreement thus demonstrates how inclusive preparation and international and national backing can support victim participation, starting from the pre-negotiation phase.

c) Entry point: humanitarian and urgent justice considerations

Other entry points for transitional justice during the pre-negotiation phase are: addressing the fate of missing persons, humanitarian issues, family reunifications, and the release of political prisoners. International human rights and humanitarian law emphasise the obligations of conflict parties to enable the search for those who are missing, both during and after the conflict.[24] These laws also require parties to facilitate family reunifications.

Sri Lanka: Human rights adviser in the Sri Lankan–LTTE peace process

In the negotiations between the Sri Lankan government and the LTTE (Liberation Tigers of Tamil Eelam) that were facilitated by Norway from 2002 onwards, a human rights adviser accompanied the official facilitation team. The adviser proposed a civilian protection framework during the ceasefire, which served as an entry point for discussions related to transitional justice. However, the parties ultimately delegated oversight to Sri Lanka's National Human Rights Commission—a body lacking the capacity and authority to enforce protections. This significantly undermined the effectiveness of monitoring efforts.

d) Entry point: negotiating framework agreements

In many peace processes, parties opt to establish procedural agreements before engaging in substantive negotiations. These framework agreements serve as early confidence-building measures and can provide a critical entry point for incorporating elements of transitional justice.

Framework agreements typically define key procedural aspects—such as venue, timelines, composition of negotiating teams and modes of communication—but they also often include guiding principles that affirm the parties' dedication to a negotiated solution. Importantly, they can provide space to articulate preliminary commitments to transitional justice-related goals. Such agreements often address security and immunity guarantees or conditional amnesties, which are crucial in transitional contexts where fears of retribution or prosecution may obstruct engagement.[25]

Philippines: Addressing transitional justice comprehensively in a framework agreement

The 2012 Framework Agreement on the Bangsamoro between the Government of the Philippines and the Moro Islamic Liberation Front contains several transitional justice elements in the Chapters on Basic Rights and Normalisation, ranging from the right to recognition of the right to redress of grievances, and

[24] For more details, see: Londoño, X., and Ortiz, A., Implementing international law: An avenue for preventing disappearances, resolving cases of missing persons and addressing the needs of their families, in *International Review of the Red Cross*, 99 (2), 2017, 547–567.

[25] Historical examples include the Declaration of Intent from South Africa's CODESA (Convention for a Democratic South Africa) process, which laid the groundwork for post-apartheid transitional arrangements, and Article 3 of the General Framework Agreement between the Philippine government and the Moro Islamic Liberation Front, which outlines mutual commitments in six concise articles (Månsson, K., 2023).

other basic rights, to the commitment of addressing land issues, DDR, rehabilitation and reconstruction and the establishment of a Trust Fund and a transitional justice program.

These elements were included in more detail in the Normalization Annex of the 2014 Comprehensive Agreement on the Bangsamoro (CAB), which provided for the creation of a Transitional Justice and Reconciliation Commission (TJRC). The TJRC was tasked to undertake a study and to make recommendations to promote healing and reconciliation of the different communities that have been affected by the conflict and to propose mechanisms to address legitimate grievances of the Bangsamoro people, to correct historical injustices, and to address human rights violations, including marginalisation through land dispossession.

e) Key considerations for integrating transitional justice into pre-negotiations

- **Introduce early, prioritise later**: While transitional justice can be introduced conceptually and informally during the pre-negotiation or confidence-building phase, it often becomes a formal topic only in the mid-to-late stages of the process. Raising it too early risks derailing talks, particularly when trust is still fragile. Once the process is more stable, parties are more likely to engage constructively with difficult issues.
- **Leverage informal entry points early**: Integrate informal transitional justice early and creatively, e.g. when negotiating framework agreements or when addressing humanitarian concerns. Addressing fears of legal consequences, including prosecution, early in the process can also serve as an informal entry point for transitional justice. Clarity about legal procedures, conditional amnesties, and delisting offers strong incentives for non-state armed groups to engage in peace talks and transitional justice discussions.
- **Facilitate peer-to-peer exchanges:** Conflict actors are often more open to learning from peers with comparable experiences. Facilitating structured exchanges between negotiating parties and former conflict actors, particularly those who have navigated transitional justice processes effectively, can provide practical insight, reassurance, and credibility to the process.
- **Promote shared understanding of international legal frameworks and international legal obligations related to transitional justice:** All actors, including the EU and negotiating parties, should operate from a common understanding of international legal standards, particularly International Human Rights Law, International Humanitarian Law, and International Criminal Law.[26] Clarifying these legal obligations early can establish a shared reference point and manage expectations around accountability, truth-seeking, reparations, and necessary reforms to ensure non-recurrence.[27]
- **Establish red lines regarding amnesties and accountability**: Define clear parameters at an early stage regarding which crimes may be subject to amnesty, and which are not, particularly regarding the most serious crimes under international law, such as war crimes, crimes against humanity, genocide, and aggression. In contexts of widespread abuse, where full prosecution is not (immediately) feasible, prioritising the most serious cases sends a strong signal of commitment to accountability and can build public trust in the process.[28] Conditional amnesties may be one of the few tools available to level the playing field, creating a more balanced negotiating environment and incentivising conflict parties to come to the table. However, amnesties remain contentious in peace negotiations, with debates on their timing, scope, and effectiveness.
- **Prepare victim groups and provide MHPSS support**: As mentioned above under 3.2.1 b), early engagement with victims can foster legitimacy and guarantee victim-centeredness, if such engagement is handled with care and victims are emotionally supported.

[26] See A/HRC/54/24, International legal standards underpinning the pillars of transitional justice: Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Salvioli, F., 10 July 2023; UN Basic Principles and Guidelines on the right to an Effective Remedy.

[27] The FARC-EP initially believed that the Additional Protocols to the Four Geneva Conventions did not apply to them because as non-state actor, they had not signed them. However, they were unaware that these Protocols apply to individuals and not just states. Once this was clarified, they realised that IL posed both a threat and an opportunity for protection (Interview with mediator, special envoy, transitional justice expert).

[28] UNSR Report, Prosecutorial prioritization strategies in the aftermath of gross human rights violations and serious violations of international humanitarian law (*A/HRC/27/56*, de Greiff, 2014).

3.3. Transitional justice in the negotiation phase

The official negotiation phase is a structured process in which conflicting parties, often facilitated by third-party mediation, engage in negotiations to resolve the conflict. During this phase, key issues such as power-sharing are addressed. Incorporating a transitional justice lens during this phase is essential for addressing victims' multifaceted needs and setting the groundwork for future transitional justice mechanisms, including truth-seeking, guarantees of non-recurrence, reparations, and criminal justice. Although including these topics in the negotiation phase does not guarantee their implementation, it significantly enhances the chances of their effective realisation.

a) Agenda-setting

To ensure ownership of the parties to the conflict, mediators tend to avoid dictating the agenda or imposing victim-related issues on the parties. In fact, in many instances, it is not the mediators but the parties to the conflict themselves, driven by political considerations or public pressure, that advocate for including victims' concerns.[29] The most effective mediation strategy that ensures ownership often involves highlighting the self-interest of powerful actors and negotiators.

Colombia: Agenda-setting to ensure the inclusion of transitional justice

In 2012, the Colombian Government and the FARC-EP signed a landmark agreement to end the conflict that established the framework for peace negotiations.[30] Notably, Point 5 of the agreement was dedicated to addressing the rights and needs of the conflict's victims. Compensating the victims is at the heart of the agreement between the National Government and FARC-EP. This formulation was widely regarded as both strategic and effective, broad enough to encompass essential transitional justice-related concerns without binding the parties to predetermined outcomes.[31]

b) Timing and sequencing

Sensitive issues such as transitional justice are often best introduced at a strategically chosen moment during the negotiations, when the cost of walking away is high and parties are more invested in reaching an agreement. It could either be raised by one of the negotiating parties or during a facilitated exchange with victim groups or civil society organisations. Another approach is to introduce the issue indirectly, using technical presentations by third-party experts outside the formal negotiation space. This can help lay the groundwork while presenting some of the entry points mentioned above in section 3.2.1.

— Gradual introduction: A peace mediator should gradually weave transitional justice into discussions about the negotiation agenda. Some mediators stressed that they subtly introduced the topic to enable it to naturally become part of broader conversations, thereby opening space to address accountability and past abuses without explicitly naming them as transitional justice concerns.[32] When setting the agenda, gently reminding parties that these issues will eventually need to be addressed, without placing undue emphasis on them, is advisable. The goal is to thoughtfully integrate transitional justice over time, while helping parties grow accustomed to the idea that it cannot be avoided.

— Early introduction and tabling later: Transitional justice issues are typically addressed in the mid-to-late phases of negotiations; however, it is important not to address them too late in the process, as they risk being rushed or deprioritised. While the topic may be introduced conceptually in the pre-negotiation phase, it is more advisable to have it as a substantial negotiation topic later. As one of the most difficult issues, raising it too early may provoke a breakdown of talks. Once working trust has been established and parties are more committed to the process, they are less likely to disengage when confronting difficult subjects.[33]

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[29] Jonathan Powell recalls that Sergio Jaramillo, Colombia´s High Commissioner for Peace, pushed for the inclusion of victims on the agenda and their active participation when informally planning the process at the outset in 2011 (Månsson, K., 2023).

[30] Acuerdo General para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera, 2012.

[31] Månsson, K., 2023.

[32] Based on interviews with mediation practitioners, special envoys, and transitional justice experts.

[33] In the FARC-EP/Government negotiations, discussions on transitional justice began 1.5 years after the negotiations started, with easier issues addressed first. By the time the Havana negotiations addressed the 'victims' point' on the agenda, agreements had already been reached on points 1 (rural reform) and 2 (political reform),

El Salvador: Timing of transitional justice measures

The Commission on the Truth for El Salvador was established in 1991 according to the 1991 Mexico Agreement between the Government of El Salvador and the Frente Farabundo Marti para la Liberación Nacional (FMLN) by the UN. It was assigned to investigate 'serious acts of violence that had occurred between January 1980 and July 1991' and was granted broad powers, including unrestricted access to information and to enter any location without prior notice. The Commission had just eight months to complete its work (July 1992 - March 1993). During this period, peace negotiations continued, and the 1992 Chapultepec Agreement foresaw comprehensive reforms of the armed forces; civilian police; justice system; electoral system; economic and social arrangements; and solutions to the land and property issues. The agreement also includes provisions for the political participation of the FMLN and a final ceasefire and DDR.[34]

The 1993 Commission Report From Madness to Hope: The 12-Year War in El Salvador documented over 22,000 cases of killings, torture, and enforced disappearances, mostly attributed to state forces, and named specific individuals involved (some of them still in power).[35] While the report was formally presented to the UN Secretary-General, who then made it public, it was not passed in parliament, and within days, the Salvadoran government passed a blanket amnesty law shielding both government and FMLN actors implicated in international crimes for 23 years from prosecutions.[36] Despite close monitoring by the UN and the Inter-American Commission on Human Rights (IACHR), it was only in 2018 that the first cases related to the armed conflict could be brought to justice, and it took 20 years for the Government to publicly apologise to the victims of one of the worst massacres.[37] A negotiator indicated that the release of the truth commission report with the recommendations for prosecutions came at a critical moment of negotiating the implementation of the Chapultepec Agreement, and that prosecutions at this moment would have derailed the process.[38]

— Working in concentric circles: If parties are unwilling to put transitional justice on the agenda, mediators can suggest the enhanced engagement of victims' groups, civil society actors, and other stakeholders. If direct involvement of these groups at the table is not possible, mediators could encourage side tables and consultation circles around the main table (concentric circles approach) to include their voices and perspectives in the mediation process. These voices legitimise the inclusion of transitional justice and reflect grassroots demands.[39]

— Using the leverage of international law: Another strategy is to refer to binding international obligations.[40] One could assert that ignoring international law, victims' rights, and transitional justice norms is increasingly unavoidable. In today's context, shaped by international judicial bodies, a robust global human rights movement and established legal frameworks, such issues are unavoidable. However, while this approach appears straightforward, it requires awareness of the shifting geopolitical environment, as outlined earlier in the paper (section 2.3). Appealing to international obligations is still effective, especially when linked to reputational or sanction concerns, regional frameworks, or the desire of conflict parties to engage with international actors like the EU. Referring to the risk of international prosecutions either by an international or hybrid court or a domestic court abroad in the framework of universal jurisdiction might also be useful.

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building sufficient trust to approach this sensitive topic (based on interview with mediation practitioners, special envoys, and transitional justice experts).

[34] Segovia, A., Transitional Justice and DDR: The Case of El Salvador, ICTJ 2009.

[35] Human Rights Watch, Accountability and Human Rights: The Report of the United Nations Commission on the Truth for El Salvador, HRW, 10 August 1993.

[36] Martínez-Barahona, E., Rubio-Padilla, S., Centeno Martín, H. and Gutiérrez-Salazar, M., La Comisión de la Verdad para El Salvador: Manteniendo la paz a cambio de justicia, Christian Michelsen Institute, CMI Report 2018:12.

[37] Amnesty International, El Salvador: No justice 20 years on from UN Truth Commission, AI 15 March 2013; Inter-American Commission on Human Rights, IACHR Urges El Salvador to Comply with the Recommendations from the Truth Commission's Final Report, 25 Years after its Publication, IACHR, 2 April 2018.

[38] President Alfredo Cristiani's envoy, Joaquín Villalobos, later reflected that without the amnesty, the entire peace process could have collapsed. He argued that justice, at that moment, was realised through non-repetition, and that truth-telling—not prosecution—was the essential outcome in the immediate post-conflict period. Månsson, K., pp. 115-117.

[39] Based on interviews with mediation practitioners, special envoys, and transitional justice experts.

[40] Based on interviews with mediation practitioners, special envoys, and transitional justice experts.

Colombia: The New York Group - a sounding board on transitional justice

During the Havana peace negotiations with the FARC-EP, an influential informal and confidential mechanism known as the 'New York Group' was established with the support of both negotiating parties and facilitated by Norway. Comprising Colombian and international experts, this group provided a discreet space to explore justice-related ideas before their formal introduction in the peace talks. The group met thirteen times over a two-year period. Individual papers were shared informally with the parties, and members also offered expert analysis on specific proposals under negotiation. The group is widely credited with proposing the idea of the Special Jurisdiction for Peace, a crucial step that significantly contributes to the legitimacy of the overall peace process.[41]

Mali: Creative technical mechanisms in a challenging mediation environment

In the Algiers negotiations leading to the 2015 Accord pour la paix et la réconciliation au Mali, tight government control and the strong presence of security forces made it difficult to address sensitive justice issues. Despite these constraints, justice-related topics were reintroduced into the negotiation via expert-level engagement. The discussion was shifted away from the formal negotiation table to an expert forum where greater progress could be made. Expert discussions typically occur in environments with less scrutiny, allowing for a higher level of collaboration.[42]

c) Inclusion of transitional justice provisions in the peace agreement

Mediators play an important role in facilitating peace agreements, but the success of these agreements ultimately depends on the parties' genuine commitment to implement them. This underscores the importance of ensuring that the parties maintain ownership over both the negotiation process and the final agreement. To promote long-term stability and address post-conflict challenges effectively, peace agreements could establish an official post-agreement phase in which new legislation can be introduced, centred on transitional justice and to be activated following the formal signing of the agreement (for the implementation phase, see section 3.4 below).[43]

When drafting a peace agreement, different approaches are taken regarding the level of detail of provisions related to transitional justice ranging from the inclusion of broad principles only, while deferring specific details to the implementation phase (such as the 2022 Pretoria Cessation of Hostilities Agreement (CoHA) for Ethiopia[44] or the 2005 Aceh Memorandum of Understanding in Indonesia[45]) to very detailed chapters on Transitional Justice (e.g. Chapter IV of the 2016 Peace Agreement in Colombia[46]).

The vagueness of transitional justice provisions can reflect a deliberate strategy to reach an agreement, offering sufficient flexibility to accommodate diverging views and deferring highly sensitive issues to the implementation phase.[47] Ideally, peace agreements use clear language regarding transitional justice-related issues while preserving a degree of constructive ambiguity to allow for subsequent broader public consultations that were not possible during the negotiations.[48] Experience from different contexts

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[41] Segura, R. and Mechoulan, D., Made in Havana: How Colombia and the FARC Decided to End the War, International Peace Institute, New York, February 2017.

[42] Input in workshop by mediation expert in October 2024.

[43] Based on interviews with mediation practitioners, special envoys, and transitional justice experts.

[44] Article 10 III of the CoHA only mentions that 'the Government of Ethiopia shall implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing, consistent with the Constitution of the FDRE and the African Union Transitional Justice Policy Framework. See: Tadesse Simie Metekia, Does Ethiopia's transitional justice amount to quasi-compliance?, 05 February 2024, ISS Today.

[45] The 2005 Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement provides in Section 2.3: 'A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures.'

[46] For an overview, see: https://www.ila-americanbranch.org/wp-content/uploads/2022/10/The-Columbian-Peace-Agreeement.pdf.

[47] Månsson, K., 144-145.

[48] For instance, the Statement of Principles on Long-term Issues and Solutions of the Kenya National Dialogue and Reconciliation listed several aims to be achieved in a quite detailed manner, but left the details to subsequent legal drafting, including the 2008 Truth, Justice and Reconciliation Commission Act that created the TJRC with the

shows that the level of detail in transitional justice-related provisions is not decisive for a genuine, victim-centred and gender-sensitive implementation. A conducive political environment, pressure from civil society, as well as additional external factors, play more important roles.

d) Victim and CSO inclusion in peace negotiations

Victim inclusion in peace negotiations can take place via victims at the table or without their direct presence. In some cases, pressure from outside without presence at the negotiation table also proved effective.[49]

Liberia: Women of Liberia Mass Action for Peace (WLMAP)

With their mass manifestations in Monrovia and Accra, women of Liberia's Christian and Islamic communities, organised by Leymah Gbowee and Asatu Bah Kenneth, united in one strong movement, the Women of Liberia Mass Action for Peace (WLMAP) that ultimately heavily influenced the peace negotiations in Accra between Charles Taylor and the rebel groups LURD (Liberians United for Reconciliation and Democracy) and MODEL (Movement for Democracy in Liberia) in 2003. The Accra Agreement ended decades of bloody civil wars in Liberia.[50]

Victim hearings have the potential to significantly influence the integration of transitional justice in peace negotiations. Through storytelling, victims can create critical turning points by highlighting the urgency of addressing past harms and reaching a negotiated agreement to end violence, but also by humanising abstract suffering, generating empathy among negotiators. These hearings have also been found to challenge the apparent victim–perpetrator dichotomy by revealing the complexity and fluidity of individual experiences in conflict or authoritarian contexts. Testimonies often uncover narratives that do not fit neatly into binary categories. Such encounters, at times, can also serve as a reality check for negotiators, reminding them that perpetrators are entering a society where they are not necessarily seen as national heroes celebrating their victories, but as individuals who must confront the consequences of their actions and contribute to healing and reconciliation.[51]

In some cases, victims have felt exploited: 'Victims are marched to the top of the hill, then marched back down. They wonder who owns their agenda, who is using it, and who benefits from it.'[52] Similar issues arise with the hierarchisation of victims.[53] While the inclusion of transitional justice provisions in peace agreements represents a significant achievement, it remains crucial to carefully manage victims' expectations throughout the negotiation process.

Nepal: Transitional justice provisions serving as long-term tools for victim and CSO mobilisation

In Nepal, transitional justice provisions were formally included in the 2006 Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal - Maoist (CPN-M), but genuine victim inclusion was very limited. No single organisation represented all victims, and divisions within victim groups undermined their collective influence. The process involved significant international engagement, which contributed to the inclusion of transitional justice language in the agreement.

The Truth Commission and the Commission on Investigation of Enforced Disappearances failed to deliver and were perceived as having been created to fail, as they received almost no resources or political support and were never operational. Victims and civil society perceived this as political instrumentalisation of transitional justice, seeking to satisfy demands from the international

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mandate to 'establish an accurate, complete and historical record of violations and abuses of human rights and economic rights on persons by non state actors, the state, public institutions and holders of public office'; see: The Kenya National Dialogue And Reconciliation: Building A Progressive Kenya, African Union and Government of Kenya, 2011.

[49] Schernberg, N. and Vimalarajah, L., 2017, Afako, B., 2022.

[50] Barbosa, C. How Women Ended Liberia's Civil War: Women of Liberia Mass Action for Peace, The Nonviolence Project, University of Wisconsin, Department of History, 2024.

[51] Based on interviews with mediation practitioners, special envoys, and transitional justice experts.

[52] Quote from an interview with a mediation practitioner in Brussels in October 2024.

[53] For example, the plight of missing Greek Cypriots received significant attention, while Turkish Cypriot families were told to accept their losses in silence, to avoid deepening the pain. At times, media and international actors reinforced this unequal treatment, further marginalising certain victim groups. Input by a women mediator at the EU Community of Practice on Peace Mediation 2024 and the workshop with Women mediators on 24 October 2024 in Brussels (for more information see: https://www.eupeacemediation.info/eu-cop24-videos).

community while not challenging high-level impunity. Two decades after the formal end of the conflict, there remains no meaningful truth-seeking or accountability mechanism in place, as new efforts to establish commissions have again become politically stalled in 2024. Therefore, the focus of victims has shifted from the long-frustrated advocacy for an acceptable truth-seeking process, to identifying and implementing alternative and localised memorialisation initiatives that are more concrete in addressing the needs of victims and are receiving some support from local governments.[54]

Despite all the setbacks, the inclusion of transitional justice in the 2006 peace agreement gave victims a platform from which to continue advocating for their rights. This illustrates that such provisions can serve as long-term tools for mobilisation, even if political will is lacking.[55]

Colombia: Comprehensive involvement of victims

The pressure from civil society during the Havana peace negotiations with the FARC-EP in Colombia was crucial throughout the negotiations. Grassroots organisations and civil society groups clarified that this was not just a two, but a three-party negotiation, because their voices needed to be heard. Their involvement was so effective that the ethnic chapter was included, driven by demands from the indigenous and Afro-Colombian populations, who insisted on having a specific role. They made their case by demonstrating in the streets, wearing t-shirts that said, 'Afro-Colombians, we are part of this too'. Furthermore, during the Havana peace negotiations, restorative sanctions, rather than solely punitive ones, were incorporated based on the expressed wishes of the victims.

e) Key considerations for integrating transitional justice into the negotiation phase

- **Integrate transitional justice issues gradually**: Mediators should weave transitional justice issues into broader discussions without necessarily explicitly framing them as transitional justice issues. However, transitional justice should not be delayed until the end of negotiations. Instead, it should be introduced gradually throughout the process, bringing in experts who can share comparative experiences and help frame options.
- **Ensuring authority and credibility:** For agreements on transitional justice to be credible, those at the negotiation table must have the legal and political authority to implement the decisions reached. This may include the power to amend constitutions, enact legislation, or reform institutions. Without such authority, the process risks losing credibility, and stakeholders may disengage.
- **Balance timing with pressure**: While it is essential to avoid overwhelming parties early on, mediators should also make clear, through tone and timing, that transitional justice cannot be indefinitely postponed and that there are binding international norms to be respected.
- **Establish strong monitoring and compliance mechanisms**: Peace agreements should include clear and enforceable monitoring mechanisms from the outset to ensure the effective implementation also of envisaged transitional justice provisions.

3.4. Excursus: Amnesties and prosecutions

3.4.1. Amnesties

A central challenge in peace negotiations is balancing the need to incentivise disarmament and demobilisation, particularly among non-state armed groups, with the imperative of ensuring accountability for conflict-related crimes. In the pre-negotiation phase, amnesties are at times granted for political offences to remove the threat of future prosecution and facilitate the inclusion of armed groups in peace talks.[56] However, mediators must approach amnesty negotiations cautiously, as poorly designed or poorly justified amnesties can undermine future transitional justice efforts and be contested. Amnesties are more effective when they are part of a comprehensive transitional justice framework that can potentially offer options for alternative sanctions.[57]

[54] Bhandari, R. K. and Robins, S. 2024, 5.

[55] Tyynela, J. 2014, 73-82.

[56] Mallinder, L., 2018.

[57] The Belfast Guidelines on Amnesty and Accountability provide useful guidance on how to ensure that amnesty remains linked to accountability.

A distinction must be made between blanket and conditional amnesties. Blanket amnesties for serious international crimes such as genocide, war crimes, and crimes against humanity are considered incompatible with international law.[58] While early peace agreements, such as the 1998 Good Friday Agreement in Northern Ireland,[59] the 1999 Framework Agreement in Togo,[60] and the 1990 Political Accord between the M-19 and the Colombian Government,[61] still foresaw blanket amnesties, such clauses were rejected in UN-facilitated negotiations since the early 2000s, or were invalidated by international and hybrid courts.[62]

More recently, conditional amnesties have been introduced, linked to specific requirements such as genuine participation of the suspects in truth-seeking, demobilisation, reparation efforts, or guarantees of non-repetition, and typically exclude perpetrators of grave crimes. This approach remains controversial but is generally considered to align with international legal standards if it does not preclude the prosecution of international crimes.[63] Conditional amnesties and legal assurances can be vital incentives for parties to enter negotiations. Some argue that amnesties serve as a 'structural necessity' in asymmetric conflicts, where a significant power imbalance necessitates measures that level the negotiating field.[64]

Even if no amnesty clauses are contained in a peace agreement, amnesties may be discussed later in the process, in transitional justice legislation, for instance, connected to amnesty powers for truth commissions, for instance in Nepal,[65] South Sudan,[66] and Ethiopia.[67] Granting amnesty powers to truth commissions not only overburdens them, but it can also impede future prosecutions, since it leaves the power to qualify the nature of a crime to a non-judicial mechanism.

The UN developed guidance on how to deal with amnesties in peace mediation.[68] While the core principle remains that the UN cannot endorse or support amnesties that preclude criminal accountability

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[58] See e.g. Enhancing the quality and effectiveness of mediation efforts through human rights: DPPA-OHCHR Practice Note, October 2023, 18.

[59] The provision on *Prisoners* in the 1998 Good Friday Agreement foresees 'measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education.' The complete absence of criminal accountability remains controversial today.

[60] Dialogue inter-togolais: accord cadre de Lomé, 1999. While the 1999 agreement contains a blanket amnesty clause, the 2006 Dialogue inter-togolais: accord politique global, contains some transitional justice elements.

[61] Acuerdo Político entre el Gobierno Nacional, los Partidos Políticos, el M-19, y la Iglesia Católica en Calidad de Tutora Moral y Espiritual del Proceso, 09.03.1990.

[62] The 1999 Lomé Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front (RUF) included a blanket amnesty for participants in the Sierra Leone civil war, raising questions about its legality under international law. In the RUF case, the Special Court for Sierra Leone (SCSL) Appeals Chamber ruled that this amnesty does not prevent prosecution for international crimes (Meisenberg Simon, Legality of Amnesties in International Humanitarian Law: The Lomé Amnesty Decision of the Special Court for Sierra Leone (2004) 84(856) International Review of the Red Cross 837). In several contexts, constitutional courts ruled that previous amnesty laws were unconstitutional (Peru, Argentina, El Salvador, Nepal).

[63] Article 6(5) of the Additional Protocol II to the Geneva Conventions stipulates that '[at] the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict'. However, this provision does not justify amnesties for war crimes and other international crimes (see: Rule 159 on Amnesties in the ICRC Customary IHL Database).

[64] Freeman, M., interview in Hazan, P., Making Good Use of Amnesties in Peace Processes, *Justiceinfo.net*, 17 April 2020. See also the discussion of the *obiter dictum* in the African Commission's finding in the communication *Thomas Kwoyelo v Uganda*: Dersso, S. A., Interrogating the status of amnesty provisions in situations of transition under the Banjul Charter: review of recent jurisprudence of the African Commission on Human and Peoples' Rights *African Human Rights Yearbook*, 3, 2019, 374-388.

[65] The Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) provided the Truth and Reconciliation Commission with the power to recommend amnesties for gross violations of international human rights law or serious violations of international humanitarian law. For a critical discussion see the OHCHR Technical Note.

[66] Article 31 of the Act to establish a Commission for Truth, Reconciliation and Healing (CTRH), adopted on 11 November 2024.

[67] The provisions on amnesty in the draft Transitional Justice Code of the Federal Democratic Republic of Ethiopia do not exclude amnesties for international crimes and grant broad powers to a potential future National Truth and Social Cohesion Commission.

[68] OHCHR, Rule of Law Tools for post-conflict states, Amnesty, January 2009. Amnesties are also addressed in the revised UN Guidance Note on Transitional Justice: A Strategic Tool for People, Prevention and Peace, OHCHR 2023. More details on the UN approach to amnesties can be found in the following documents: Hayner, P.,

for core international crimes, UN mediators have developed a range of responses that allow it to stay engaged in the peace process without legitimising problematic amnesty clauses. These include adding a footnote to their signatures; issuing a formal note to the parties; making public statements that offer support for the broader agreement without endorsement of the amnesty; or clarifying that the amnesty does not apply to serious crimes if the language is ambiguous. The EEAS Peace Mediation Guidelines and the EU Policy Framework on Support to Transitional Justice endorse the UN position.[69]

3.4.2. Criminal prosecutions

The question of amnesties is intrinsically linked to the question of prosecutions. Even without a formal amnesty clause in a peace agreement, impunity for the most serious crimes is often the reality because, *de facto*, many perpetrators cannot be prosecuted. Nevertheless, the relationship between international, hybrid and domestic criminal prosecutions and peace negotiations has sparked extensive debate. Yet, the interplay between judicial mechanisms and peace negotiations is complex and depends on context, timing and the actors involved. It is impossible to attribute the results of peace negotiations solely to the impact of international criminal justice because different factors influence negotiation dynamics. For instance, the timing of arrest warrants on peace talks is contested. Some argue that arrest warrants issued during early phases of negotiations may disrupt the process, undermining inclusive dialogue.[70] Others observe that outside pressure in the form of an arrest warrant impacted negotiations positively because certain spoilers were removed from the negotiation table or put under pressure to negotiate.[71]

While the ICC was stricter with regards to complementarity assessments[72] in situations that were investigated in previous years (e.g. regarding the arrest warrants against the Lord's Resistance Army during ongoing negotiations with the Ugandan Government in Juba), it became more lenient in other contexts. In some instances, the Office of the Prosecutor supported domestic prosecutions with technical advice and support (e.g. the Special Jurisdiction for Peace in Colombia, the trials for the stadium massacre in Guinea Conakry).[73] Even in the case of Uganda, the ICC arrest warrants ultimately led to a speedier solution because '[t]he court came to be seen by both sides as an intervention that needed to be contained and controlled. This resulted in the politically expedient Agreement on Accountability and Reconciliation […].'[74]

Transitional justice in peace processes: United Nations policy and challenges in practice, October 2022 and Afako, B., A field of dilemmas: managing transitional justice in peace processes, April 2022.

[69] EU Policy Framework on Support to Transitional Justice, Chapter 4: 'By opposing amnesties that establish impunity for serious crimes under international law, this policy seeks to safeguard a space for justice, even when conditions for prosecution are not yet adequately established.'

[70] This point was made in relation to the ICC arrest warrants against LRA commanders in the context of Uganda (see: Kersten, M., The ICC and the Road to Juba, in: *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace*, pp. 64–91, Oxford, 2016), as well as in relation to prosecution efforts against President Omar al-Bashir in the Darfur/Sudan situation. The ICC warrants supposedly hardened positions and limited transitional options (interviews with a mediator, an EU Special Envoy and transitional justice practitioners). In Uganda, ICC indictments against the leaders of the Lord's Resistance Army (LRA) complicated peace talks, with the group demanding amnesty as a condition for disarmament (Afako, B., 2022, p.14). See also: Clark, P., (2021), The International Criminal Court's Impact on Peacebuilding in Africa in: McNamee, T., Muyangwa, M. (eds) *The State of Peacebuilding in Africa*. Palgrave Macmillan, Cham.

[71] Nakazawa, Y., Negotiating Peace and Justice: Norms on Amnesty and the International Criminal Court, in: Shuichi Furuya et al (eds), *Global Impact of the Ukraine Conflict. Perspectives from International* Law, Springer 2023, 455- 478. Nakazawa refers to the Dayton talks, where '[t]he Assistant Secretary of State of the United States Richard Holbrooke, who also led the peace process, excluded Karadžić and Mladić from the negotiations on the grounds that they were being prosecuted. The exclusion of the obstructionist Karadžić and Mladić from the negotiations allowed Milošević to become the point of contact for the negotiations and was credited with facilitating the peace process' (p. 457); Macdonald Anna, 'In the interests of justice?' The International Criminal Court, peace talks and the failed quest for war crimes accountability in northern Uganda, *Journal of Eastern African Studies*, 11(4), 2017, 628–648.

[72] The principle of complementarity is a cornerstone of the ICC and means that national jurisdictions have the primary responsibility and duty to investigate and prosecute international crimes and that the ICC is only complementing, rather than superseding domestic courts, when a state is genuinely unwilling or unable to carry out the investigations or prosecutions (Preamble and Article 17 of the Rome Statute). Seils, P., *Handbook on Complementarity. An Introduction to the Role of National Courts and the ICC in Prosecuting International Crimes*, ICTJ, 2016.

[73] HRW, Guinea: Landmark Verdict in Stadium Mass Killings Trial, 2024.

[74] Macdonald, A., 628.

3.5. Transitional justice in the implementation phase

The signing of a peace agreement marks the beginning of a new phase in a peace process. Ideally, transitional justice mechanisms and processes should be initiated or continued at this stage. Achieving justice and preventing recurrence requires sustained political backing, meaningful victim and CSO participation, consistent international and domestic support, and robust monitoring systems.[75]

It is key to begin implementing transitional justice measures promptly after a peace agreement is signed, building on transitional justice activities and measures that were ongoing during the conflict and the negotiations. Delays can fuel resentment and sap momentum. While post-conflict governments may hesitate to address sensitive issues, such as criminal accountability, too soon—fearing they may reopen recent wounds—deferring often makes them harder to resolve later, particularly because evidence disappears and witnesses forget or die.[76]

Furthermore, transitional justice must be understood as a long-term process that is constantly re-negotiated and is not set in stone in a peace agreement.[77] While not all issues can be resolved immediately, continued dialogue and inclusive consultation are essential to maintaining public trust. However, disinformation—especially through social media—can undermine that trust, and ongoing violence can further disrupt implementation efforts and erode confidence.[78]

Peace agreements often—sometimes by design—contain ambiguous provisions to secure consensus. The real test of the parties' commitment comes during the implementation phase, when many international mediators and sponsors of peace processes have disengaged. International support often ends prematurely due to funding constraints, limited political will, capacity shortfalls, narrow mandates, or weak domestic support,[79] putting the implementation of transitional justice at risk.

In Colombia, a lack of support for continuous victim engagement during implementation was a missed opportunity.[80]

Colombia: Lack of continued support to victims' engagement

In Colombia, the victim group that travelled to the Havana peace negotiations had played an active and visible role during the peace negotiations. Despite the group's leadership and participation in the talks, they were left unsupported once the agreement was signed.[81] Some members attempted to remain engaged, but without resources or official recognition, the group's momentum faded.

Poorly timed or politically manipulated transitional justice processes have, in several contexts, risked undermining fragile peace agreements. The politically motivated establishment of Nepal's Truth and Reconciliation Commission to pre-empt criminal justice, and internationally pressured transitional justice mechanisms lacking local ownership, have all challenged the credibility and effectiveness of post-conflict justice efforts.[82]

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[75] Most of the transitional justice mechanisms established in peace agreements are meant to operate as non-judicial or quasi-judicial investigative and truth-telling bodies. Out of the 102 peace agreements providing for transitional justice mechanisms, 44 provide for a truth-seeking institution and 26 for an inquiry commission (Jamar, A., Bell, C., 2018).

[76] Based on interviews and information obtained during the assignment mission, the EU Community of Practice on Peace Mediation 2024 and the workshop with mediation practitioners in October 2024. Also: Kovács, 2024.

[77] Freeman, M., and Orozco, I., *Negotiating Transitional Justice: Firsthand Lessons from Colombia and Beyond*, Cambridge University Press, 2020.

[78] Based on interview or workshop with mediation practitioners, special envoys, and transitional justice experts.

[79] Tran, R., Guatemala's Crippled Peace Process: A Look Back on the 1996 Peace Accords, CETRI, 2011.

[80] Based on interviews and information obtained during the assignment mission, the EU Community of Practice on Peace Mediation 2024 and the workshop with mediation practitioners in October 2024.

[81] Based on interview or workshop with mediation practitioners, special envoys, and transitional justice experts.

[82] The transitional justice process in Nepal is deeply contested issue, drawing significant critical scholarly attention due to its protracted nature, political interference, and failure to address victims' rights adequately. See: Nepal: Ensure Credible Transitional Justice Appointments, *Human Rights Watch*, 2025; Nepal: New Transitional Justice Law a Flawed Step Forward, *Amnesty International,* 2024; Barma, P. and Thapa, S., Addressing Impunity in Nepal: Political Will and the Future of the TRC, *SUPRA Centre for Research and Publications*, 2, 2025, pp. 20-28; Nepal's Transitional Justice Process: Challenges and Future Strategy A Discussion Paper, *International Commission of Jurists*, 2017.

Where mediators have remained engaged—as guarantors, monitors, dispute resolvers, or facilitators—they have played a vital role in managing post-agreement tensions. In Colombia in 2016, Norway and Cuba continued as guarantors in the implementation phase, helping to preserve public trust, ensure complementarity with the ICC, and support transitional justice mechanisms. In Liberia in 2003, ECOWAS and the UN helped establish transitional governance and the Truth and Reconciliation Commission of Liberia (TRC). In Timor-Leste, the UN acted both as mediator and transitional authority (UN Transitional Administration in East Timor - UNTAET), guiding the design and establishment of several transitional justice mechanisms, such as the Commission for Reception, Truth, and Reconciliation (CAVR) and the Special Panels for Serious Crimes (SPSC).[83]

Philippines: International support in the implementation phase

The 2014 Comprehensive Agreement on the Bangsamoro (CAB) between the government of the Philippines and the Moro Islamic Liberation Front (MILF) ended a decade-long armed conflict. In 2004, an International Monitoring Team (IMT) was established, later expanding in 2009 to include the European Union (EU), which contributed expertise in human rights, international humanitarian law, and humanitarian response.[84] The EU played a key role in both supporting the negotiation and the implementation of the CAB. Within the IMT, the EU was involved in observation, verification, and monitoring efforts, and in promoting third-party engagement. It also funded NGOs participating in the International Contact Group (ICG), which acted as observers and advisers during the talks. Between 2012 and 2015, the EU provided EUR 9 million in support of the peace process and its implementation.[85]

Actively involving conflict parties in the implementation phase can add legitimacy and credibility to the process, for instance, in reparation programs. While the burden of reparations usually falls on the state or international actors, there are examples where non-state armed groups have contributed to reparations as part of broader peace settlements.[86] Immaterial and symbolic reparations, such as commemoration, apologies, memorials and the provision of MHPSS, require fewer resources than financial compensations, yet funding by international partners is often necessary.

Non-state armed groups may themselves agree to provide reparations as part of a broader political agreement. In the Political Agreement for Peace and Reconciliation in the Central African Republic, the parties agreed 'to take appropriate measures, including the establishment of a trust fund, to guarantee the rehabilitation and reparation due to victims' (Article 12).

In the Philippines, the Government and the Moro Islamic Liberation Front (MILF) specified in the 2014 Annex to the Framework Agreement on the Bangsamoro, that the MILF would either return or compensate for destroyed properties and put in place a rehabilitation programme. In Colombia, the FARC-EP agreed to contribute to the material reparation of the victims and, in general, to a comprehensive reparation program in the 2016 Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace. [87]

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[83] Based on interview or workshop with mediation practitioners, special envoys, and transitional justice experts.

[84] Herbolzheimer, K., The peace process in Mindanao, the Philippines: evolution and lessons learned, NOREF 2015; Kovács, B. A., From Entry Points to Sustainable Action: Equipping Peace Processes for Accountability and Integrity: The Case of the Bangsamoro, Berghof 2024.

[85] This included funding the Third-Party Monitoring Team (TPMT) via UNDP, informal dialogue initiatives to build trust (e.g. the CHD-led project on GPH-MILF partnership), and local capacity building for peace structures and early warning mechanisms (implemented by NVP). Additionally, the EU supported the reduction of explosive remnants of war through the Swiss Foundation for Mine Action (FSD), including training EOD teams and assessing ammunition management needs of the Philippine government, Houvenaeghel, J., The European Contribution to the Mindanao Peace Process, *European Institute for Asian Studies*, 2015.

[86] Reparations, Responsibility and Victimhood in Transitional Societies' project, Engaging Non-State Armed Groups on Reparations, Queen's University Belfast, 2022. In several court cases, both at national and international level, reparation orders are part of the sentence, e.g. in the case Uganda v Kwoyelo, before the International Crimes Division of the High Court of Uganda, where a detailed reparation order was issued in December 2024; in the universal jurisdiction case before the Federal Criminal Court of Switzerland, the former minister Ousman Sonko was also sentenced to the payment of compensations to victims (see: English Summary of the Judgement of the Criminal Chamber dated 15 May 2024). For Colombia: Herman, O., Making sense of a duty for non-State armed groups to provide reparations, Armed Groups & International Law Blog, 2021.

[87] Salvioli F., Role and responsibilities of non-State actors in transitional justice processes: report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, 2022.A/HRC/51/34, 12 July 2022.

The following considerations are key in the implementation phase:

- **Prioritise early operationalisation of transitional justice mechanisms**: Encourage parties to agree on concrete timelines, institutional frameworks, and accountability benchmarks during the negotiation phase. By embedding early implementation commitments into the agreement itself, mediators can help build momentum, ensure continuity, and signal to victims and broader society that transitional justice is a central and immediate concern, not a deferred promise.
- **Promote informal transitional justice initiatives**: Political deadlocks often stall transitional justice efforts. Civil society-led truth-seeking initiatives offer creative, independent alternatives that can be actively supported to break through these barriers. These informal mechanisms can operate independently from formal political processes, which reduces the risk of political manipulation. At the same time, transparency and inclusivity within civil society should be supported to guard against co-optation. Moreover, ongoing dialogue and community consultation should be facilitated throughout implementation. Transitional justice is not a one-time event but a long-term, adaptive process that requires continuous support and engagement, particularly in fragile or volatile contexts.
- **Stay engaged beyond the agreement**: Sustained mediator involvement along with other international partners is critical during implementation, as it is the most fragile phase of the peace process. Therefore, premature withdrawal should be avoided, and roles should be adapted to the post-agreement context. Mediators should take on flexible roles such as guarantor, verifier, dispute resolver, or inclusion facilitator, to support the implementation of transitional justice, security, justice, and governance reform. Mediators should monitor for signs of backsliding, political deadlock, or emerging violence and act early to mediate disputes or mobilise support to prevent relapse into conflict. Mediators should also advocate for mandates that allow continued engagement post-agreement and for adequate financial and political support to maintain a meaningful presence.
- **Bridge gaps left by vague provisions**: Mediators should help interpret and operationalise ambiguous provisions in peace agreements to prevent disputes and maintain momentum during the implementation phase.
- **Support public communication:** Mediators and international partners should assist in building public trust by supporting transparent communication, especially regarding transitional justice processes and the fulfilment of agreement commitments.
- **Monitor risks and anticipate destabilising factors:** Mediators should identify and mitigate risks that may threaten the credibility of the transitional justice process. These risks include links between justice efforts and corruption, and misinformation around transitional justice and renewed violence. These risks should be actively monitored and factored into the support strategy, the strategic communication, and community engagement.

4. Conclusions

The interlinkages between peace mediation and transitional justice are evident, since addressing justice helps find more sustainable solutions to conflicts. This paper highlighted numerous instances where the exclusion of transitional justice from peace processes had significantly weakened post-agreement accountability and legitimacy and acceptance of peace agreements. For instance, the 2005 Comprehensive Peace Agreement (CPA) in Sudan lacked meaningful transitional justice provisions, resulting in a fragile peace and persistent impunity. Similarly, in Bosnia and Herzegovina, the absence of a comprehensive transitional justice framework in the Dayton agreement contributed to entrenching ethnic divisions and left core grievances unresolved. Even where transitional justice was formally included in peace agreements, implementation has frequently been delayed or obstructed by political resistance, as illustrated by the case of Nepal. These experiences highlight a critical need for a better mediation/negotiation process design: one that embeds transitional justice as a fundamental pillar of mediation/negotiation, not a peripheral add-on. A victim-centred mediation process design - integrating justice considerations across all phases of a mediation process is essential to meet both justice and peace objectives.

The paper argues for a shift of mindsets: peace mediators benefit from the spectrum of transitional justice options and from transitional justice as a cross-cutting issue that offers various entry points. For this to happen, it is key that mediators and those supporting mediation efforts gain a better understanding of transitional justice as a holistic approach that is not limited to criminal accountability but also embraces informal and innovative ways to deal with the past. When applied from the outset, it can contribute to the entire architecture of peace mediation processes in complex, evolving contexts without compromising the core principles of transitional justice. Far from constraining negotiations, this approach enhances flexibility and expands the range of opportunities to end violence and build sustainable peace.

5. Recommendations

The European Union (EU) continues to champion norms-based approaches. While some conflict parties might prefer mediators who ask fewer questions and impose fewer normative standards, others seek the EU's assistance not only for its political influence and financial resources, but also because it upholds its foundational values[88] as a basis for sustainable outcomes. Preserving these values is thus a strategic necessity. By aligning principled engagement with pragmatic flexibility, the EU can both enhance its credibility and maintain its leadership within the evolving global peace mediation landscape.

5.1. Coherence and consistency of approaches in multi-mediator settings

The European Union and its Member States must prioritise speaking with a unified voice in mediation contexts. Fragmented approaches risk undermining credibility and allowing other actors to exploit internal divisions, ultimately weakening the EU's influence. Contemporary peace processes often involve numerous stakeholders and mediators, as seen in the Algiers process on Mali, where 18 mediators operated with conflicting goals, metrics, and visions for transitional justice. To safeguard coherence and normative clarity, the EU should communicate its norms and objectives transparently, including transitional justice principles.

5.2. Develop specific EU guidance on sensitive issues

A practical set of EU guidelines on specific issues, such as amnesties and criminal accountability; international prosecutions/arrest warrants; domestic prosecutions abroad; and core elements of transitional justice would be valuable for EU peace mediators and peace mediation support to navigate complex processes effectively.[89]

5.3. Integrated conflict analysis and coherence of actions

In addition to the standardised EU Conflict Analysis framework, a transitional justice approach should be applied more systematically across services and missions. This would foster shared objectives and enable consistent, gender-sensitive, and justice-sensitive conflict engagement.

Collaborating with local NGOs can enrich the EU's understanding of conflict dynamics and inform the design of training. Crucially, the analysis should not remain capital- or elite-centric. It must reflect the distinct needs and perspectives of rural and marginalised communities as well as victims/survivors. Finally, coherence in implementation should be ensured, particularly given the range of EU instruments involved, from CSDP missions to financial assistance tools.

5.4. Strategic use of EU instruments for transitional justice and peace mediation

The EU supports mediation and transitional justice through a broad mix of tools, including policy frameworks; financial instruments;[90] diplomatic and political engagement;[91] operational and technical assistance[92] and partnerships with multilateral actors.[93] To maximise impact, these instruments should link transitional justice goals with broader mediation objectives.

Coordination, coherence and complementarity of the efforts of EU services, EU Member States and other international/regional bodies are also essential to avoid fragmented or competing interventions

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[88] As enshrined in the founding documents of the EU, e.g. in Article 4 of the Charter of Fundamental Rights of the European Union, reflected in the Global Strategy for the European Union's Foreign and Security Policy, June 2016; the Action Plan on Human Rights and Democracy (2020-2024), and the Strategic Framework on Human Rights and Democracy (adopted in 2012), the EU Policy Framework on Support to Transitional Justice, 2015.

[89] Interview with mediator, transitional justice expert, special envoy.

[90] Neighbourhood, Development and International Cooperation Instrument - Global Europe (NDICI-Europe).

[91] Political dialogues with governments, regional bodies, Support to ICC, Common Foreign and Security Policy (CFSP).

[92] Election observation missions, monitoring human rights violations, reparation programmes, supporting truth commissions, supporting domestic mediation and transitional justice processes, civil society support, etc.

[93] The EU works with international CSOs like ICTJ and HRW, as well as regional and multilateral organisations (UN, AU, OAS, OSCE, UN Human Rights Council, etc.).

and to enhance the overall credibility and effectiveness of EU engagement. Rather than developing new instruments, the EU should focus on adapting existing frameworks, methodologies and technical resources to each conflict context.

5.5. Build internal expertise and strengthen learning systems

EU staff should be equipped with specialised knowledge and practical skills on transitional justice and its intersection with mediation. This requires ongoing, tailored training, as well as the systematic collection, storage, and dissemination of lessons learned from both internal experiences and external partners. Fostering a strong internal learning culture will enhance the EU's ability to remain adaptive and ensure greater consistency across different contexts. In addition, monitoring, evaluation, and learning (MEL) systems must be reinforced. Without regular impact assessments of peace mediation and transitional justice interventions, it becomes difficult to justify continued funding or to assess effectiveness. Clear indicators are essential to determine what works, what doesn't, and why.

5.6. Conduct baseline studies

It is recommended that peace mediation actions are linked with an assessment of transitional justice needs and existing mechanisms that can be adapted or strengthened. Where possible, enhancing effective local systems is preferable to creating new ones from scratch. This analysis should include local NGOs, victim associations, communities most affected by violence and other non-state actors and identify key stakeholders. It is essential to assess both formal and informal justice systems, including traditional and community-based mechanisms, examining their structure, effectiveness, scope, and sanctions. Systemic issues such as entrenched corruption, violation of economic, social and cultural rights, as well as structural discrimination, should be identified early on. They may constitute important entry points to ensure buy-in from different sections of society.

5.7. Understand parties' broader justice concerns

It is important to assess how negotiating parties perceive existing justice institutions, particularly in contexts where they are discredited, politicised, or suffer from low public trust. These perceptions will significantly shape each party's willingness to engage with transitional justice and influence the forms of justice or reform they might accept. Identify each actor's key priorities - whether truth-seeking, acknowledgement, accountability, reparations, institutional reform, or guarantees of non-recurrence. Support parties in articulating their vision of transitional justice, while aligning with the EU's core principles of truth, justice, reparation, and non-repetition. This approach reinforces local ownership and ensures that critical dimensions are not overlooked.

5.8. Share EU expertise

The EU possesses considerable experience in transitional justice and rule of law reform. It should mobilise its network of experts to provide tailored technical support and share lessons across contexts. These efforts can be particularly effective when linked to EU funding mechanisms. However, the EU must also clearly communicate its strategic interests, such as concerns around organised crime, drug trafficking, or migration, to build trust and manage expectations around its engagement from the outset.

5.9. Ensure broad-based consensus

Transitional justice must involve more than political elites and armed actors. Identify and engage a broad spectrum of stakeholders, including insider mediators; civil society organisations; victim associations; community leaders; traditional authorities; women's groups and grassroots movements. Broad inclusion enhances legitimacy and reduces the risk of public rejection of the process. Transitional justice must be rooted in the needs and agency of affected communities. Maintaining continuous dialogue between negotiators and society throughout the official process is vital for building trust and securing buy-in. Insider mediators might be particularly apt to facilitate such community dialogues and track 2 & 3 mediation.

5.10. Ensure long-term commitment to transitional justice

Transitional justice is inherently a long-term, multigenerational process, requiring sustained engagement beyond short-term political or funding cycles. However, the EU's typical funding periods of 3 to 5 years, combined with shifting political priorities, often undermine the sustainability and continuity of its support. To address this, the EU should establish longer-term financing mechanisms

and ensure consistent follow-up on the implementation of truth commission recommendations and other transitional justice outcomes.

5.11. Support inclusive and well-planned national consultations

Where appropriate, the EU should support broad-based national consultations on transitional justice during negotiations. These must be carefully designed, participatory, and well-resourced. Rushed or poorly coordinated consultations can undermine rather than enhance legitimacy. Effective consultation mechanisms can increase public ownership and contribute to the design of credible and context-sensitive transitional justice measures.[94]

[94] See reports of the UN Special Rapporteurs on truth, justice and reparation (A/71/567, de Greiff, P., 2016 and A/HRC/24/42, de Grieff, P., 2013).

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