

## Chapter 15

# Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice

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### Introduction

Transitional justice was defined by former United Nations Secretary-General, Kofi Annan, in his report to the Security Council in August 2004, as comprising '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, in order to ensure accountability, serve justice and achieve reconciliation'. He went on to say that these mechanisms may be judicial or non-judicial, 'with differing levels of international involvement (or none at all)' which may include 'individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof' and that the approach to transitional justice must balance 'a variety of goals, including the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy and the rule of law'.<sup>1</sup>

As suggested by Kofi Annan, while transitional justice is linked to criminal justice in theory, it is not necessarily judicial in practice. It is, however, intrinsically associated with some form of legal justice or accountability after mass human rights violations, and the goals of reconciliation and peace building.<sup>2</sup> Charles Call captures this well in his explanation that 'transitional justice refers to how societies "transitioning" from repressive rule or armed

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1 Report of the United Nations Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc S/2004/616 (2004), paras 8, 25.

2 This chapter will avoid the all too common conflating of the terms 'peace building' and 'reconciliation' and will focus on peace building rather than reconciliation as a more practical means of operationalising the goals of transitional justice. For a useful discussion of the relationship between reconciliation and peace building, see Borer TA, 'Truth Telling as a Peacebuilding Activity: A Theoretical Overview' in Borer TA (ed), *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies* (University of Notre Dame Press, Notre Dame, Indiana, 2006), pp 1-57.

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