Since the end of the Cold War we have seen an evolution in the approach taken by the international community towards transitional justice in the aftermath of violent conflict in which international human rights and humanitarian law have been violated. Following the Second World War and the creation of the United Nations, the protection of human rights developed as a new focus of international law. However, the Nuremberg precedent of accountability was held hostage to the Cold War for almost 50 years. It was only after the ideological rivalries and concerns of the Cold War were removed that effective enforcement of international humanitarian law in the form of prosecutions returned to the agenda.

In the aftermath of mass violence and genocide in the former Yugoslavia and Rwanda, the UN Security Council in 1993 and 1994 respectively, established international criminal tribunals with a Chapter VII mandate – to counter ongoing threats to international peace and security as well as to promote justice and reconciliation. Following the post-referendum violence in East Timor in 1999, the UN's peacebuilding mandate included a Serious Crimes Unit to investigate the atrocities and prosecute those responsible. In Sierra Leone, the UN instituted a Special Court to try those who committed violations of international humanitarian law and domestic law during the latter stages of the civil war and in the aftermath of the 1999 Lomé Peace Agreement. Following five years of negotiations, the UN General Assembly approved a draft agreement between the UN and the Cambodian government in May 2003 for prosecution under Cambodian law of crimes committed by the former Khmer Rouge nearly 30 years ago. The Rome Statute of the International Criminal Court came into force in 2002 and the first investigations are being planned in relation to atrocities committed by the Lord’s Resistance Army in Uganda and the massacres in the Ituri region of the eastern Democratic Republic of the Congo.

1 The Special Court, established jointly by the UN and government of Sierra Leone, issued its first indictments for crimes against humanity in March 2003. ‘Sierra Leone: Five indicted by Special Court’, IRIN, 11 March 2003.
This evolution towards a greater willingness to prosecute those responsible for mass crimes may perhaps be more apparent than real. It can be argued that decisions about how to deal with transitional justice issues reflect the particular conflict circumstances rather than any change in attitude of the international community. However, I would argue that both play a role, mediated by the interests and capacities of the local community involved.

The move towards legal justice for the perpetrators of war crimes, crimes against humanity and genocide may also be seen as a movement from below – from the survivors of these mass crimes who are living with the trauma and open wounds that require psychological as well as physical healing. Policies of impunity ignore the effects of individual and collective trauma and the unmet need for justice in societies attempting to rebuild in the aftermath of mass violence.

However, even when legal trials are held, they may fail to engage with the local population as actors or participants who have needs and perceptions, rather than as passive recipients of ‘justice’ as defined by others.

In this paper I firstly analyse the evolution in the international approach towards transitional justice and the various factors that contribute to decisions about pursuing accountability versus amnesties. Rather than attempt to evaluate the advisability or efficacy of the different approaches, I concentrate on how peacebuilding goals are affected by the motivations and methodology of the decision-making process. It is important to see decisions about transitional justice as part of a peacebuilding process that aims to meet human needs and transform relationships. I argue that engagement with the local population is critical in this process as supported by evidence from my field research in Cambodia and Rwanda, as well as a preliminary analysis of experiences in former Yugoslavia, East Timor, Sierra Leone, Afghanistan and Iraq.

**Accountability vs Amnesties**

In the aftermath of mass violence, societies may choose various options for dealing with transitional justice. These options include, but are not limited to, criminal trials, amnesties, truth commissions, lustration laws, compensation, rehabilitation, memorials and indigenous justice or reconciliation processes.4

In 1995, Neil Kritz of the US Institute of Peace produced a massive three-volume study of transitional justice, including detailed studies of twenty-one countries and discussion of the issue from political, historical, legal, psychological and

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