

Transitional Justice and Human Rights

Skeleton Remarks / Check against Delivery

Dr Andrew Forde

Good morning, everyone,

It is my great pleasure to be with you this morning, and to speak to you about the HELP course update on **Transitional Justice and Human Rights** a topic which is sadly more relevant than ever.

I want to thank the HELP team for inviting me to be with you today.

I speak on behalf of my co-author **Beatrice Canossi**, a brilliant expert on transitional justice who is currently in Colombia carrying out field research in relation to transitional justice and so cannot be with us.

I also want to acknowledge the initial work carried out by **Gabriella Ramdhan (TBC)** and others upon which we developed the update.

Transitional Justice is, in its most basic form, the process of moving beyond and dealing with the legacies of periods of violence.

Achieving justice and sustainable peace requires dealing with the past comprehensively.

As such, Transitional Justice foresees the potential for judicial and non-judicial elements, and is deeply connected to the context.

Indeed, it comprises the full range of processes and mechanisms associated with societies attempts to come to terms with a legacy of large-scale past abuses, in order to ensure **accountability**, serve **justice** and achieve **reconciliation**.

It is the interplay between these elements which is perhaps most interesting to prospective course participants.

I am acutely aware of the fact that TJ might seem untimely, perhaps even verging on offensive to some, given the war of aggression that Russia chose to unleash on Ukraine and which still rages today - but the pursuit of accountability cannot wait. Thankfully, that process has already begun.

With that in mind, we feel this course update couldn't possibly be more timely.

Our intention in reviewing the course was to sharpen and deepen the original design but not to totally revolutionise it.

The discipline of Transitional Justice is developing continuously, even within the CoE there have been enormous developments in recent times which are relevant to the processes of ensuring accountability for international crimes.

In updating this course we prioritised drawing in the discussion not only about **justice** but also **truth, reparations** and, very importantly, **guarantees of non-repetition**

The learning objectives of the course were therefore threefold

1. To provide a theoretical and practical understanding of Transitional Justice
2. To understand the role of the judiciary and the relationship between the formal justice system and any transitional justice process
3. To be able to draw on this knowledge in a practical manner

The new Structure can be summarised as follows

- An introduction to the basics of transitional justice
 - Emphasising the importance of context and that no-one size fits all
 - Emphasising the need for victims to be central
- Justice and Accountability
 - International Criminal Law
 - War Crimes, Crimes Against Humanity and Genocide
 - Notions of responsibility – Superior orders – and common defences or related concepts
 - Note about the critical role of domestic investigations and prosecutions
- Investigations, Truth seeking and Extra-judicial Bodies
 - We look at Truth-Seeking, truth commissions and Investigations, commonalities and differences
 - Look refer to El Salvador, South Africa and Colombia
 - We dwell on the issue of evidence, and in particular have reference to the issue of digital evidence in the modern context

- Finally when it comes to international crimes we explore defining responsibility and prosecutorial strategies
- Legality, Amnesties and the Duty to Prosecute
 - Principle of legality
 - Duty to prosecute
 - Amnesties
 - *Ne bis in idem* principle in international legal frameworks
- Reparations and Guarantees of non-repetition
 - The right to reparation
 - We discuss compensation, restitution, satisfaction and so on
 - Guarantees of non-repetition
- Witnesses and Victims
 - Witness protection

- Mindful of the need to make the course as practical as possible we deliberately tried to include practical material and open-source resources, but also summarizing some of the lessons learnt through TJ processes globally and the main ongoing debates related to TJ
- We wanted the course material to be **accessible** but **precise**, and **foundational** but relatively **comprehensive**.
- We hope to take participants on a journey of reflection on the challenges and opportunities associated with the field of Transitional Justice without forgetting long standing debates that still need to be resolved.
- We hope the course update provides a sufficiently rigorous platform from which participants can read more widely and deeply, and indeed could be further tailored to suit the nuances of different contexts.

Dear friends,

- TJ is a relatively new and evolving field of inquiry, so our main goal **is not to provide ABSOLUTE answers but RATHER to raise questions and open a discussion based on the plurality of law, policy and practice.**
- This course update tries to consider the work of different individuals and institutions in trying to reconcile multiple perspectives, and different lived experiences.

- As an evolving discipline, there are a range of diverse examples to draw on globally.
- It might be tempting to see the exchange of knowledge and lessons learned with country specific experiences as being of limited relevance due to various factors such as language, cultural context, institutional or legal system differences. However, we would caution against jumping to these conclusions.
- We insist that Transitional Justice processes must be **context dependant** and **victim centred**, but there are useful lessons to be learned by casting the net wide.
- Only by considering the experiences of others and critically appraising those experiences can practitioners design better TJ systems.

In Conclusion

- We have tried to provide a solid foundational course in Transitional Justice that reflects contemporary debates in the field.
- There is more to say and there is much to debate, but we hope it will be of interest and will trigger deeper reflection by all who participate in the course.
- We provide a bibliography for the curious reader to dig deeper if they so wish.
- **I will repeat one more time, we believe that victims/survivors, civil society local actors and domestic knowledge must be at the centre of each process as the leading actors and owners of any TJ effort.**
- **Transitional Justice measures that are designed in abstracto, or without local ownership are unlikely to be effective or sustainable.**
- We also believe that TJ is not the panacea for everything is a field of inquiry and a set of tools that might be employed under the adequate circumstances.
- Before I finish, I want to sincerely thank the HELP Team who are doing an extraordinary job, and of course the technical designers who made the practical changes to the course.
- Thank you all for your kind attention, and I look forward to speaking further about the course with you over the course of the Conference.

ENDS