

**New York University**  
**School of Professional Studies**  
**M.S. in Global Affairs**  
**Transitional Justice in Theory and Practice**  
**GLOB1-GC.2215**

Instructor: Professor Trahan, Associate Clinical Professor  
3 credits, Tuesdays, 3:30-6:10 pm

Fall 2016, WW room **TBD**

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office hours: Tues. 2:30-3:30pm; Wed. 2:30-6:30 pm  
office #446

**Course Description:**

How do states or societies that have suffered massive human rights abuses deal with the complex legacies of their past as they transition to peace and (often) democracy? What can policymakers or activists do to defuse the bitterness of past conflict or repression and meet rhetorical and political demands for justice? These questions are far from theoretical: a significant and increasing number of countries have pursued such policies in recent years, ranging from East Timor, Rwanda, Sierra Leone to Peru, as well as many others countries.

This course examines the ethical, political, legal, and practical challenges of designing and implementing transitional justice policies. It begins by examining the development of transitional justice as a field. It sets out the developing legal framework, as well as the practical constraints and ethical dilemmas that make transitional justice such a complicated field. Policy considerations derived from best practice are also discussed.

The course then examines specific elements of transitional justice strategies in depth. These include, but are not limited to: prosecution of perpetrators, and the growing shift from international-level mechanisms to hybrid and domestic tribunals; truth-seeking, whether conducted as part of official state policy or as a result of unofficial initiatives; the challenges in designing and implementing reparations programs; and complex issues of vetting and institutional reform. Questions related to transitional justice in situations of ongoing conflict will also be explored, as well as the concepts of reconciliation and historical memory. Readings will cover relevant international standards and methodological/theoretical questions. Actual examples from diverse regions will be used throughout the course.

**Course Prerequisites:**

There are no course prerequisites, although it is helpful to first take International Law.

**Course Structure/Method:**

The course will be involve both lectures and discussion, delivered in person. Class assignments are contained below. Added handouts or clarifications will arrive via e-mail to students or will be distributed in class. Class sessions meet Tuesdays, 3:30-6:10 pm.

The course will have both a final exam, and a 20-25 page paper, on a pre-approved topic of transitional justice; class participation, and the outline of the paper, will also form components of the grade.

**Course Learning Outcomes:**

By the end of this course, students will have a basic familiarity with key concepts of transitional justice (identified above). Students will also learn to read legal discussions in detail, and critically, and should be able to discuss them persuasively. Precision of writing, research methods, and analysis will be tested in the final paper (discussed below). Overall familiarity with key areas of transitional justice will be tested in the final exam.

**Communication Policy:**

The professor will be available via e-mail and will also communicate through NYU Classes. Credits students must use your NYU e-mail addresses to communicate. NYU Classes course-mail supports student privacy and FERPA guidelines. All e-mails will be responded to promptly.

**Course Expectations:**

Please complete the first reading for the first class. Students should come to class having read the materials and prepared to discuss them.

**Required Reading Material:**

- Most of the readings can be downloaded from the internet. Certain readings will be distributed.
- Please purchase the following book: Wiesenthal, Simon. *The Sunflower: on the Possibility and Limits of Forgiveness*, (Schocken Books 1997), on order at NYU Book Center. Currently \$9.97 on Amazon.

**Assessment Strategy:**

Your grade will be based on the following:

10% - weekly participation in discussions; presentation of the final paper.

**Tuesday September 20** – paper topic due

10% - outline of research paper. Due **Tuesday October 11**

50% - research paper. 20-25 pages. Due **Tuesday November 22** [This date may be rescheduled to fall slightly later]

30% - take-home exam to be handed out the last day of class, **Tuesday December 6**, and submitted within 24 hours.

**Policies for missed or late assignments:**

A late final paper, or final exam will receive a mark-down in grade, unless there is an unforeseeable, explained circumstances, such as illness.

**Grading Scale:**

Grade	Meaning	GPA Conversion
A	Exceptional; superior effort	4.0
A-	Excellent	3.7
B+	Very good	3.3
B	Good; meets program standards	3.0
B-	Meets program standards in most respects	2.7
C+	Requires moderate improvement	2.3
C	Requires significant improvement	2.0
C-	Requires extensive improvement	1.7
F	Fail – Did not meet minimal course requirements	0

**NYUSPS Grading Policies can found here:**

<http://sps.nyu.edu/academics/academic-policies-and-procedures/graduate-academic-policies-and-procedures.html#Grades>

**NYUSPS Policies:**

NYUSPS policies regarding the Family Educational Rights and Privacy Act (FERPA), Academic Integrity and Plagiarism, Students with Disabilities Statement, and Standards of Classroom Behavior among others can be found on the NYU Classes Academic Policies tab for all course sites as well as on the University and NYUSPS websites. Every student is responsible for reading, understanding, and complying with all of these policies.

The full list of policies can be found at the web links below:

- University: <http://www.nyu.edu/about/policies-guidelines-compliance.html>
- NYUSPS: <http://sps.nyu.edu/academics/academic-policies-and-procedures.html>

**Additional Policies**

- **Attendance and Lateness policy:** All students must attend class regularly. Your contribution to classroom learning is essential to the success of the course. Any more than two (2) absences (other than for verifiable medical or similar reasons) during the Fall and Spring and one (1) absence during the summer may lead to a need to withdraw from the course or negatively impact your final grade.
- **Incomplete policy:** Incompletes are only granted in extreme cases such as illness or other family emergency and only where almost all work for the semester has been successfully completed and the basis for the Incomplete can be verified. A student's procrastination in completing his/her paper is not a basis for an Incomplete.
- **Submission of work:** All written work must be submitted via the Assignment Tool

on NYU Classes; student work will be scanned by Turnitin plagiarism-detection software.

- **Statement on Academic Integrity and Plagiarism:** *Plagiarism is presenting someone else's work as though it were one's own. More specifically, plagiarism is to present as one's own a sequence of words quoted without quotation marks from another writer; a paraphrased passage from another writer's work; creative images, artwork, or design; or facts or ideas gathered, organized, and reported by someone else, orally and/or in writing and not providing proper attribution. Since **plagiarism is a matter of fact, not of the student's intention**, it is crucial that acknowledgement of the sources be accurate and complete. Even where there is no conscious intention to deceive, the failure to make appropriate acknowledgment constitutes plagiarism. Penalties for plagiarism range from automatic failure for a paper or course to dismissal from the University.*
- **Accommodations for Disabilities:** Any student who needs a reasonable accommodation based on a qualified disability is required to register with the Moses Center for Student Disabilities for assistance ([www.nyu.edu/csd](http://www.nyu.edu/csd)).

### Course Assignments:

Sept. 6

#### **WEEK 1: WHAT IS TRANSITIONAL JUSTICE? AN INTRODUCTION TO THE COURSE AND THE FIELD.**

United Nations Security Council: *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies*. August 23, 2004, U.N. Doc. S/2004/616.

<http://www.unrol.org/files/2004%20report.pdf>

Beyond the Hague: The Challenges of International Justice, Richard Dicker & Elise Keppler (Human Rights Watch, World Report 2004) at <http://hrw.org/wr2k4/10.htm>

Neil Kritz, "Where We Are and How We Got Here: An Overview of Developments in the Search for Justice & Reconciliation," from *The Legacy of Abuse: Confronting the Past, Facing the Future* (The Aspen Institute 2002) **(to be circulated)**.

Sept. 13

#### **WEEK 2: ETHICAL DILEMMAS AND PRACTICAL CONSTRAINTS**

Zalaquett, Jose. "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43, (1992):1425–1438.

<http://ezproxy.library.nyu.edu:2056/lnacui2api/api/version1/getDocCui?oc=00240&hnsd=f&hgn=t&lni=3S3T-Y6F0-00CW-908B&hns=t&perma=true&hv=t&hl=t&csi=270944%2C270077%2C11059%2C8411&secondRedirectIndicator=true>

Stover, Eric and Harvey Weinstein. "Conclusion: A common objective , a universe of alternatives," in, Eric Stover and Harvey Weinstein Eds., *My Neighbor My Enemy*, Cambridge Univ. Press (2004) 323–341 (xerox).

Cobban, Helena. "Think Again: International Courts," *Foreign Policy* (March/April, 2006).

<http://www.amicc.org/docs/March-April%202006%20Foreign%20Policy.pdf>

Scheffer, David and Michael Scharf. Letters, *Foreign Policy* (May/June 2006): 4–7.

<http://ezproxy.library.nyu.edu:2116/stable/pdfplus/25462026.pdf?acceptTC=true&jpdConfirm=true>

**[Possible guest speaker, Sept. 13 or 20 – Velma Saric, Founder & President, The Post Conflict Research Center (PCRC), Sarajevo, Bosnia; filmmaker – discussing transitional justice in Bosnia]**

**Sept. 20**

**WEEK 3: THE UNDERLYING FRAMEWORK: DEVELOPING LEGAL NORMS**

United Nations Independent Expert Report. *Promotion and Protection of Human Rights: Impunity: report of the independent expert to update the Set of principles to combat impunity*, Diane Orentlicher. Addendum: *Updated Set of Principles for the protection and promotion of human rights through action to combat impunity*, February 8, 2006, U.N. Doc. E/CN.4/2005/102/Add.1 (19pp).

<http://www.refworld.org/docid/42d66e780.html>

United Nations High commissioner for Human Rights. *Promotion and Protection of Human Rights: Study on the Right to Truth. Report of the Office of the United Nations High Commissioner for Human Rights*, U.N. Doc. E/CN.4/2006/91 (15pp).

<http://www.unhcr.org/refworld/category,REFERENCE,UNCHR,,,46822b6c2,0.html>

United Nations General Assembly Resolution. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, March 21, 2006, U.N. Doc. A/Res/60/147 (9pp).

<http://www.unhcr.org/refworld/docid/4721cb942.html>

*Velasquez Rodriguez case*. Judgment, July 29, 1988, Inter-American Court of Human Rights (Ser. C) No. 4 (1988) (38pp), available at,

[http://www1.umn.edu/humanrts/iachr/b\\_11\\_12d.htm](http://www1.umn.edu/humanrts/iachr/b_11_12d.htm)

**PAPER TOPIC DUE**

**Sept. 27**

**WEEK 4: FILM/CASE STUDY: PERU**

**Film:** State of Fear (2005) (94 minutes)

Gonzalez, Eduardo. "The Peruvian Truth and Reconciliation Commission and the challenge of impunity," in Naomi Roht-Arriaza and Javier Mariezurrena Eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge Univ. Press (2006) 70–93. <http://goo.gl/KOt9L> [click "online version" and you will be prompted to log in. This will give you access to the whole book in which the article is located.]

Gamarra, Ronald. "Human Rights, Justice, and the Transition to Democracy: Institutional Review" in, Lisa Magarrell and Leonardo Filippini Eds., *The Legacy of Truth: Criminal Justice in the Peruvian Transition*, ICTJ (2006).

<http://heller.brandeis.edu/academic/coex/pdfs-docs/transitional-justice/ictj-peru-legacy-truth-2006-english.pdf> [Note: the reading is part of this document; you don't need to print the entire document.]

**Oct. 4**

**WEEK 5: TRUTH-TELLING**

Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, U.N. Doc. HR/PUB/06/1 (2006).

<http://www.unhcr.org/refworld/category/POLICY/OHCHR,,,46cebc3d2,0.html>

Bickford, Louis. "Unofficial Truth Projects," *Human Rights Quarterly*, 29(4), (November 2007): 994–1035.

<http://brownschool.wustl.edu/sites/DevPractice/Human%20Rights%20Reports/Unofficial%20Truth%20Projects.pdf>

Chapman, Audrey R. and Hugo van der Merwe. *Truth and Reconciliation in South Africa: Did the TRC Deliver?* University of Pennsylvania Press (2007) 241–280. (xerox)

**Oct 11**

**WEEK 6: PROSECUTING PERPETRATORS**

**FILM:** "Seeking Truth in The Balkans" – about the impact of the International Criminal Tribunal for the Former Yugoslavia. (by filmmakers/CGA alumna Erin Lovall and June Vutrano)

Koskenniemi, Martti. "Between Impunity and Show Trials," *Max Planck Yearbook of International Law* 6 (2002): 1-35

<http://www.unesco-phil.uni-bremen.de/dokumente/Institutionen/20040805Koskenniemi.pdf>

"Selling Justice Short, Why Accountability Matters for Peace," Human Rights Watch, July 7, 2009 <http://www.hrw.org/en/node/84262/section/2>

**OUTLINE OF PAPER DUE**



**Oct. 18**

**WEEK 7: REPARATIONS**

Magarrell, Lisa. *Reparations in Theory and Practice*, ICTJ, (November 2006).

<http://ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf>

Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007), available at [http://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](http://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf)

Students should refresh their reading of United Nations A/Res/60/147 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. <http://www.unhcr.org/refworld/docid/4721cb942.html>

“The Series of Reparation Programs in Chile,” ICTJ **[to be circulated]**

recommended: Lira, Elizabeth. “The Reparations Policy for Human Rights Violations in Chile,” in, Pablo de Greiff Ed., *The Handbook of Reparations*, Oxford University Press (2006).

[http://books.google.com/books?id=sg38\\_E8hNQIC&printsec=frontcover&dq=handbook+of+reparations&ei=cwTqSo23A4P2zQT2vMXnCw#v=onepage&q=&f=false](http://books.google.com/books?id=sg38_E8hNQIC&printsec=frontcover&dq=handbook+of+reparations&ei=cwTqSo23A4P2zQT2vMXnCw#v=onepage&q=&f=false)

**Oct. 25**

**WEEK 8: INSTITUTIONAL REFORM**

*Security System Reform and Governance: Policy and Good Practice*, OECD Policy Brief, May 2004.

<http://www.oecd.org/development/incaf/31785288.pdf>

Duthie, Roger. “Introduction,” in, Alexander Mayer-Rieckh and Pablo de Greiff Eds., *Justice As Prevention: Vetting Employees in Transitional Societies*, Social Science Research Council (2007) 16–40.

Mayer-Rieckh, Alexander. “Vetting to Prevent Future Abuses: Reforming the Police, Courts, and Prosecutors' Offices in Bosnia and Herzegovina,” in, Mayer-Rieckh and de Greiff Eds., *Justice As Prevention: Vetting Employees in Transitional Societies*, Social Science Research Council (2007) 180–222.

Both the Duthie and Mayer-Rieckh readings are part of:

[http://www.ssrc.org/workspace/images/crm/new\\_publication\\_3/%7B57efec93-284a-de11-afac-001cc477ec70%7D.pdf](http://www.ssrc.org/workspace/images/crm/new_publication_3/%7B57efec93-284a-de11-afac-001cc477ec70%7D.pdf)

**Nov 1**

**WEEK 9: GENDER**

**Film:** *Calling the Ghosts or Grbavica (TBC)* Followed by discussion of the film and issues raised in the readings



Nesiah, Vasuki. *Truth Commissions and Gender: Principles, Policies, and Procedures*, ICTJ Gender Justice Series (2006) 1–55, available at, [http://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English\\_0.pdf](http://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf)

Rubio-Marin, Ruth, Ed. *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council (2006), “Introduction. The Gender of Reparations: Setting the Agenda,” 20-35. [http://www.ssrc.org/workspace/images/crm/new\\_publication\\_3/%7Bd6d99c02-ea4a-de11-afac-001cc477ec70%7D.pdf](http://www.ssrc.org/workspace/images/crm/new_publication_3/%7Bd6d99c02-ea4a-de11-afac-001cc477ec70%7D.pdf)

**Nov 8**

**WEEK 10: TRANSITIONAL JUSTICE IN CONFLICT SITUATIONS**

Pham, Phuong et al., *When the War Ends: Peace, Justice, and Social Reconstruction in Northern Uganda*, December 2007 (pp. 1-23, thereafter skim -- reading charts and recommendations at the end, although I recommend all of it.)

<http://www.law.berkeley.edu/HRCweb/pdfs/When-the-War-Ends.pdf>

ICTJ, “Pursuing Justice in Ongoing Conflict: A discussion of current practice,” Paper prepared for Nuremberg conference, June 2007.

<http://ictj.org/sites/default/files/ICTJ-Global-Justice-Conflict-2007-English.pdf>

“Annexure to the Agreement on Accountability and Reconciliation.” Signed by Dr. Ruhakana Rugunda on behalf of the Government of the Republic of Uganda and Dr. David Nyekorach Matsanga on behalf of the Lord’s Resistance Army/Movement, on 19 February 2008, Juba, Sudan, available online at [http://www.iccnw.org/documents/Annexure\\_to\\_agreement\\_on\\_Accountability\\_signed\\_today.pdf](http://www.iccnw.org/documents/Annexure_to_agreement_on_Accountability_signed_today.pdf)

**Nov. 15**

**WEEK 11: RECONCILIATION**

**Film:** *Long Night’s Journey into Day* (94 minutes) followed by discussion of the film and related issues

Bloomfield, David. “On Good Terms: Clarifying Reconciliation,” *Berghof Report* No. 14, (2006): 3–35, available at, <http://www.berghof-conflictresearch.org/documents/publications/br14e.pdf>

Republic of Rwanda, National Unity and Reconciliation Commission (NURC), “Rwanda Reconciliation Barometer,” (Oct. 2010), at [http://www.nurc.gov.rw/index.php?id=70&no\\_cache=1&tx\\_drblob\\_pi1%5BdownloadUID%5D=16](http://www.nurc.gov.rw/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUID%5D=16)

recommended: Bloomfield, David, Teresa Barnes, and Luc Huyse, *Reconciliation After Violent Conflict: A Handbook*, International IDEA (2003) pp. 10-48, available at, [http://www.idea.int/publications/reconciliation/upload/reconciliation\\_full.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_full.pdf)

**Nov 22: WEEK 12**

**RESEARCH PAPERS DUE**

**PAPER PRESENTATIONS – approx. 15 minutes for each student**

[This date may be rescheduled to fall later. There likely will be no class on this date.]

**Nov. 29**

**WEEK 13: COLLECTIVE MEMORY**

Barsalou, Judy and Victoria Baxter. "The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice," *Stabilization and Reconstruction Series*, no. 5., United States Institute of Peace (2007), available at, <http://www.usip.org/files/resources/srs5.pdf>

Wiesenthal, Simon. *The Sunflower: on the Possibility and Limits of Forgiveness* Schocken Books (1997) 3–98. [**PURCHASE**]

Hughes, Rachel. "The Abject artifacts of memory: photographs from Cambodia's genocide," *Media Culture and Society* 25 (2003): 23–44.  
<http://mcs.sagepub.com/content/25/1/23.full.pdf+html>

**Dec 6**

**WEEK 14: MAKING IT RELEVANT - LOCAL FORMS OF JUSTICE**

Baines, Erin K. "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda," *International Journal of Transitional Justice* 1 (2007): 97.

<http://ezproxy.library.nyu.edu:15306/ehost/pdfviewer/pdfviewer?sid=096a6895-0138-41d7-8106-919f5757625c%40sessionmgr4003&vid=8&hid=4106>

Waldorf, Lars. "Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice," *Temple Law Review* 79 (2006): 6. (focus on p. 26 to the end)

<http://ezproxy.library.nyu.edu:2056/Inacui2api/api/version1/getDocCui?oc=00240&hnsd=f&hgn=t&lni=4KM3-Y960-00CV-R005&hns=t&perma=true&hv=t&hl=t&csi=270944%2C270077%2C11059%2C8411&seconRedirectIndicator=true>

**EXAMINATION: The open-book, take-home final on transitional justice will be distributed at the end of class on December 6 and due in 24-hours.**