



ACTCJ
African Centre for
Transnational Criminal Justice



FOUNDATION FOR
HUMAN RIGHTS

**AFRICAN CENTRE FOR
TRANSNATIONAL CRIMINAL JUSTICE**

FACULTY OF LAW

UNIVERSITY OF THE WESTERN CAPE

AND

**THE FOUNDATION FOR HUMAN RIGHTS
IN SOUTH AFRICA**

CALL FOR PAPERS

**30th Anniversary of South Africa's
Transition to Democracy**

CONFERENCE THEME:

**SOUTH AFRICA'S DEMOCRATIC TRANSITION:
THREE DECADES ON**

Date: 18-19 July 2024

Format: Hybrid (in person and online)

Venue: Kader Asmal Moot Court Room, Faculty of
Law, University of the Western Cape, Cape Town

[Click here to register for online attendance](#)

Background

In commemoration of the 30th anniversary of the South African transition, the African Centre for Transnational Criminal Justice, the University of the Western Cape (UWC) and the Foundation for Human Rights in South Africa (FHR) will hold a two-day conference at the UWC Campus in Cape Town on 18-19 July 2024. The conference will take place both in-person and online. Academics and members of civil society who work on issues of transitional and transformative justice in the South African context and beyond are invited to register.

The conference aims to bridge a gap between theory and practice by creating a platform for both academics and practitioners to engage on the questions of transitional and transformative justice, drawing on the South African experience. While the history and lessons of the South African experience provides the immediate impetus for this debate, it should by no means limit the frame of reference and scope of analyses of the issues posed by developments in the field and how to respond to them.

Day one of the conference will primarily focus on the principles and theory of transitional justice and it will take an academic format. We would welcome abstracts/applications from representatives of both academia, practitioners, policymakers, and civil society.

Day two will centre on practice, in particular a reflection on civil society strategies to advance the transitional and transformative justice agenda in South Africa, to what extent these strategies have been effective and how to take the work on transitional and transformative justice in South Africa forward, also in the context of a broader social justice struggle.

Everyone registered for the conference will be invited to attend the discussions on both days.

Concept note

South Africa's transition from apartheid to a constitutional democracy in 1994 is often hailed as an example of a successful transitional justice (TJ) process. The Truth and Reconciliation Commission (TRC) approach adopted by South Africa has become one of the most celebrated models for transitional societies. Although the negotiated settlement ended the armed struggle and brought about a political transition, centuries of colonialism and half a century of apartheid left behind a legacy of human rights abuses, a deeply divided society, social and economic inequalities, superficial social cohesion, among other ills.¹ While much progress has been made since 1994, there is much work to be done to achieve the promise of South Africa's TJ programme. After 30 years of democracy, South Africa is still the most unequal society, thus raising not only issues of socio-economic rights but broader questions of social justice.² The decades of oppression and exploitation coupled with non-prosecution of apartheid-era crimes, the government's failure to provide meaningful reparations and the so-called "unfinished business" of the TRC continue to breed resentment and undermine genuine efforts to build bridges of reconciliation and social cohesion among the different groups who live in the country.

(Re)assessing the Apartheid legacies

Our reflection on the apartheid system in South Africa and its legacies requires an appreciation of the regime as an institutional system of racial segregation. Over the last 30 years, South Africa has attempted to address some of these socio-economic, political and cultural issues that persist in the country within the framework of the Constitution. However, the legacy of apartheid has endured—from apartheid urban geography obvious in many South African cities to the exclusivity of the professions and participation in the economy—the imperatives of transformation are self-evident. Thus, it is important to (re)assess apartheid legacies and its continuing impact on post-apartheid South Africa and what is needed to adequately respond to it.

Africa's approach to transitional and transformative justice

At a conceptual level, the idea of TJ elaborated in the Report of the United Nations Secretary-General implies fundamental concepts including accountability, recognition of victims, promotion of the rule of law, and reconciliation.³ However, in 2019, the African Union adopted the African Union Transitional Justice Policy which also sets out principles of TJ but goes beyond its traditional framing and covers new ground in both policy and practice.⁴ Whereas there is significant overlap between the African Union's "African approach" to TJ and the United Nations Secretary-General's approach, there are also divergences with practical

¹ See Karl von Holdt (2013) South Africa: the transition to violent democracy, *Review of African Political Economy*, 40:138, 589-604.

² Jaichand, Vinodh (2017) "In Transition? The Struggle for Socio-Economic Justice in South Africa," Vol. 7: Iss. 1 *Notre Dame Journal of International & Comparative Law* pp12-26.

³ United Nations Secretary General, *The Rule Of Law And Transitional Justice In Conflict And Post Conflict Societies: Report Of The Secretary General* (23 August 2004) S/2004/616.

⁴ African Union (2019) *Transitional Justice Policy*. Available at https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf

implications that are worthy of further interrogation. In particular, it is crucial, to interrogate how the United Nations and African Union framework on TJ inspired South Africa's approach towards transitional and transformative justice.

South Africa's transition and the rule of law

The health of a country's democracy is mirrored by its adherence to the democratic principle of the rule of law. The 1996 South Africa's Constitution lists the supremacy of the Constitution and the rule of law as key foundational values of the South African state, and sets out processes and institutions aimed at safeguarding and promoting the rule of law. Despite the strong check and balances entailed in the Constitution, South Africa's young democracy has suffered from multiple setbacks. These include a large scale collusion between the private and public sectors, which has demonstrated itself in the State Capture, the Arms Deals, or the debacle around the Public Protector, to list a few. In this context, the conference will reflect on the following questions: to what extent do state and private actors comply with the rule of law and in what ways has this impacted South Africa? Considering that apartheid used law as an instrument of oppression and human rights abuses, to what extent has the democratic State been able to utilise the rule of law as an instrument to protect and promote human rights in view of persistent racial tensions and xenophobic attacks?

South Africa's transition as blueprint for other African countries – Comparative study

Many countries within and outside Africa have embarked on TJ processes since 1994 and some of them have been influenced by South Africa's experience.⁵ While some have recorded modest successes, others have been less so. The occasion of the 30th anniversary of South Africa's transition to democracy provides the opportunity to (re)examine some of our fundamental assumptions about TJ,⁶ evaluate its promises, its shortcomings and its prospects through country case studies.

South Africa's transition, memory and new technologies

In the same vein, the emergence of new technologies is also exerting pressure on fundamental assumptions and understanding of TJ - memory, what constitutes truth, how we collect, archive, and remember the "truth" are undergoing paradigm shifts under the influence of new digital technologies. Artificial intelligence, whether at the hands of activists or agents of state security apparatus in the service of authoritarian rulers, is playing an incredible role either as a tool of repression or mobilization for TJ and warrant interrogation. Consequently, it would be important to interrogate how has the emergence of new technologies and modes of communication affected the perception and implementation of TJ processes in South Africa and elsewhere.

⁵ Sierra Leone, Liberia, Tunisia, The Gambia, Burundi, South Sudan, Tunisia, the Central African Republic, Chile, Argentina, Peru, or countries of Eastern Europe.

⁶ There are several key assumptions including recognition of past injustices, need for accountability, importance of truth and reconciliation, rule of law and the discern of a victim-centred approach.

The Unfinished Business of the TRC – the Practitioners’ Perspective

The “unfinished transition” or the unfinished business of South Africa’s TRC is evident in the government's failure to fully implement the recommendations of the TRC coupled with a lack of or slow transformation of institutions and systems. These shortcomings have led to violations of people's rights to justice, truth, reparations, and guarantees of non-recurrence. Similarly, the failure to fully implement TRC’s recommendations and transform institutions and systems (i.e., the National Prosecuting Authority, the South African Police Services, the access to public information and apartheid-era documents), have contributed to the erosion of the rule of law and human rights culture.

One facet of this unfinished business is the government’s decision neither to investigate nor to prosecute hundreds of gross human rights violations cases flagged by the TRC for further action, particularly when amnesty was denied or not sought. Another aspect of this 'Unfinished Business' involves unmet promises concerning reparations. The government's arbitrary restriction of reparation eligibility solely to those recognized by the TRC, coupled with a fragmented approach to the recommended TRC Reparation Policy and a poor implementation of reparations, have left thousands of victims without meaningful redress for apartheid-era atrocities. Consequently, many survivors and their families are left continuously searching for truth, justice through reopened inquests, and acknowledgment of their suffering via reparations.

Significant memorialization and educational efforts have been undertaken by both the state (e.g., Constitution Hill, the Apartheid Museum, and Freedom Park) and civil society (e.g., oral history archives, community projects, books, podcasts, educational materials, documentaries, and dialogues). However, there has been little public debate regarding how to maximize the impact of these memorialization efforts in preserving collective memory and imparting the lessons learned from the past (the 'never again principle'). There is a need for concentrated educational and awareness-raising initiatives aimed at achieving this objective. Likewise, although concerns regarding the preservation of TRC archives and associated materials, as well as accessing public information from apartheid-era archives, have likely been discussed within a limited circle of specialists and experts, this issue has yet to permeate broader discussions on memory preservation within both civil society and government spheres.

Where the state has failed, survivors, victims’ families and civil society organizations have persisted in their struggle for the meaningful implementation of the TRC’s recommendations and the broader social justice and transformative change in the country. Their strategies range from advocacy, litigation and provision of psycho-social support to awareness-raising and community mobilization. While the initial strategies in the early 2000’ included efforts at the international level, the more recent TJ interventions by civil society have largely focused on the domestic avenues.

In light of the above, the focus of the second day of the conference will be on the strategies adopted by civil society (understood as civil society organisations, movements, grass-root initiatives, media) in pursuing the transitional and transformative agenda in South Africa. By examining the accomplishments and shortcomings of civil society's efforts thus far, the conference aims to spark a dialogue on civil society's strategies and approaches regarding

prosecutions, reparations, memorialization, access to information, education, and psychosocial support. The goal is to challenge prevailing assumptions, focus on refining and enhancing civil society approaches to transitional and transformative agenda for the future and link the work of civil society in the transitional and transformative space with a broader struggles for social justice in South Africa.

Call for Abstracts

The occasion of the 30th anniversary of South Africa's TJ process is an opportunity to invite experts working in TJ and associated fields to examine the range of conceptual, legal, policy and practical issues identified above. Presenters are welcome to submit individual abstracts to address a specific thematic focus. Abstracts should explore these issues with a view to generating robust debates and new ideas on how to better tackle these challenges. It is hoped that the conference will foster the much-needed exchange between academics and practitioners and stimulate further debate on complex questions and grey areas of transitional and transformative justice and their legal and policy implications.

We invite abstract that address, but not limited to, the following thematic areas:

- South Africa's TRC and the prosecution of apartheid era crimes in South Africa;
- Apartheid legacies and South Africa's transformative constitutionalism model;
- Accountability for human rights violations and competing approaches to reconciliation in divided societies;
- Addressing socio-economic inequalities in South Africa's TJ process;
- Balancing victims' and perpetrators' right to justice in a TJ process and the implications for reconciliation or/and the rule of law;
- The abuse of power and disregard of the rule of law by corroded state institutions and undermined confidence in the TJ process;
- Regional approach: African Union Transitional Justice Policy and its impact;
- South Africa as a blueprint and comparative approaches to TJ and lessons from other regions;
- The impact of new technologies including AI on the design and implementation of TJ processes;
- The future of TJ: South Africa and beyond;
- Civil society strategies in pursuing transitional and transformative agenda in South Africa, and beyond. Lessons learnt from South Africa, Africa and the Global South;
- Protracted transitions? Linking civil society's mobilisation around the transitional and transformative justice with a broader social justice struggles.

Abstracts should not exceed 500 words should clearly identify the theme to be addressed the names of the proposed presenters and their institutional affiliations. Abstracts should be sent to actjconference@gmail.com and cc Prof. John-Mark Iyi (jiyi@uwc.ac.za) and Dr Anzanilufuno Munyai (amunyai@uwc.ac.za)

Authors of selected papers will be invited to present their papers at the hybrid conference scheduled for 18-19 July 2024. Full papers will be subjected to double-blind peer review for publication in an edited volume or special journal issue expected in 2025.

Registration for the conference

Presenting at the conference

Authors of the selected abstracts will be invited to present at the conference, and do not have to register. Additional experts and activists will be invited to speak at the conference.

Attending the conference

Individuals working in academia and civil society on issues broadly related to transitional and transformative justice in South Africa are welcome to register to attend the conference at no fee. While the in-person participation might be restricted due to the space limitations, the conference will also be available online.

While registering to the conference, the interested individuals will be required to disclose their organisational affiliation and demonstrate an interest in the issues of transitional and transformative justice in South Africa.

The in-person participants will be required to cover their own transport and accommodation costs for the conference. The FHR will provide funding to cover the accommodation & transport costs of invited civil society participants based in South Africa.

To register please contact hmayet@fhr.org.za and actcjconference@gmail.com for more information.

IMPORTANT DATES:

Deadline for abstract submission: 28 June 2024

Feedback on abstract outcome: 2 July 2024

Date of conference: 18-19 July 2024

Deadline for revised papers: 30 October 2024

