



## Global Campus of Human Rights - Exchange of Lecturers 2017 ERMA Sarajevo & HRDA Pretoria

Sarajevo, 16-17 May  
Pretoria, 29-30 June

# Comparative Transitional Justice: Retributive and Restorative Approaches

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This course examines transitional justice theory and practice from a comparative perspective. It starts by introducing students to some of the central concepts and debates in the field, focusing in particular on the genealogy, mechanisms, and critiques of transitional justice. It then compares and contrasts two models of transitional justice – retributive and restorative – by drawing on the Balkans and South Africa as case studies. The aim is to provide students with understanding of the pros and cons of retributive and restorative justice from a human rights perspective and appreciation of the factors that constrain the pursuit of justice in negotiated transitions from war to peace and from repressive to democratic rule.

### ***Exchange of professors***

*This activity aims at progressively putting in contact the academics of each programme, with the students and the curricula of the other Regional Masters. It envisages the exchange of one professor for each Regional Master, who shall teach a specific module and unit, short seminar and alike, prepared and offered to the intakes of another Regional during the academic year. These exchanges deepen the global understanding of human rights issues by the students and advance the academic research and international collaborations.*



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## Day One – Thursday 29 June 2017

09:00 – 11:00

### Session One – Transitional Justice: Key Concepts and Critiques (IR and TM)

This session introduces some of the key concepts and debates in transitional justice. It traces the genealogy of transitional justice since the Second World War, examines a range of justice instruments and mechanisms – criminal prosecutions, truth commissions, reparations, vetting and institutional reform – and discusses some of the critiques of transitional justice goals, processes and outcomes.

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11:00 – 13:00

### Session Two – Retributive Justice: Balkans (IR)

This session examines the retributive model of transitional justice by drawing on the Balkan case. It focuses on the International Criminal Tribunal for the Former Yugoslavia (ICTY) and provides critical analysis of the goals, jurisprudence, and impact of the Tribunal from a human rights perspective. The session also considers the tensions between international criminal justice and other instruments employed by the international community in the region such as peacemaking, peace-keeping and peacebuilding.

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14:00 – 15:30

### Session Three – The RECOM Initiative and the Search for Justice in the Balkans (IR speaker, TM chair)

After dozens of trials at the International Criminal Tribunal for the Former Yugoslavia and domestic courts, the limitations of criminal justice responses to mass atrocity are becoming increasingly apparent in the Balkans. The civil society initiative for RECOM advocates the creation of a regional commission to establish the facts of war crimes and other serious violations of human rights committed on the territory of the former Yugoslavia between 1991 and 2001. This event will consider how a bottom-up and regional approach challenges conventional thinking about transitional justice and whether it offers a way forward.

15:30-17:30

Film Screening and Discussion

*Esma's Secret - Grbavica*

Directed by Jasmina Žbanić, Bosnia & Herzegovina/Austria/Croatia/Germany, 2006, 107 min.

Widespread and systematic rape was one of the key weapons of the Bosnian war in the 1990s. Although the Yugoslav Tribunal broke new ground in prosecuting rape as a war crime and crime against humanity, it didn't end the stigma or break the silence of victims of sexual violence. *Esma's Secret* is a powerful examination of the ways in which the war persists after it ends, continuing to shape the lives of women survivors of perhaps the most difficult human rights abuses to confront and talk about publicly.

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## Day Two – Friday 30 June 2017

9:00-11:00

Session Two- Restorative Justice: South Africa (TM)

This session examines the restorative model of transitional justice by drawing on the South African case. It focuses on the South African Truth and Reconciliation Commission (TRC) and unpacks the origins, operations and key lessons learnt from this process. Using the TRC as a case study this session also considers the tensions between the imperatives of peace and reconciliation vis-à-vis those of justice and socio-economic redistribution.

11:00-13:00

Comparative Discussion:

South Africa/Restorative Justice vs. Balkans/Retributive Justice (TM and IR)

This session compares and contrasts the restorative and retributive models of transitional justice by drawing on the experience of South Africa and the Balkans. It engages students in a critical discussion of the pros and cons of these models and highlights the factors that constrain the pursuit of justice in negotiated transitions. The session also considers how in each case, the limitations of the dominant model have prompted the emergence of an alternative set of understandings, actors and agendas in transitional justice.

## Required Readings

Ruti Teitel. 2003. 'Transitional Justice Genealogy'. *Harvard Human Rights Journal* 16: 69-94. Available at <http://www.qub.ac.uk/home/Research/GRI/mitchell-institute/FileStore/Filetoupload,697310,en.pdf>

'What is Transitional Justice?' International Center for Transitional Justice. Available at <https://www.ictj.org/about/transitional-justice>

Patricia Lundy and Mark McGovern. 2008. 'Whose Justice? Rethinking Transitional Justice from the Bottom Up'. *Journal of Law and Society* 35(2): 265-292.

Tshepo Madlingozi. 2010. 'On Transitional Justice Entrepreneurs and the Production of Victims'. *Journal of Human Rights Practice* 2(2): 208-228.

Iavor Rangelov. 2016. 'Justice as a Security Strategy? International Justice and the Liberal Peace in the Balkans'. *Journal of Conflict & Security Law* 21(1): 9-28.

Mary Kaldor. 2016. 'How Peace Agreements Undermine the Rule of Law in New War Settings'. *Global Policy* 7(2): 146-155.

Dejan Djokić. 2002. 'The Second World War II: Discourses of Reconciliation in Serbia and Croatia in the Late 1980s and Early 1990s'. *Journal of Southern Europe & the Balkans* 4(4): 127-140.

Nataša Kandić. 2012. 'RECOM: A New Approach to Reconciliation and a Corrective for Criminal Justice'. *Forum for Transitional Justice* 4: 78-80. Available at: <http://www.hlc-rdc.org/?p=22446&lang=de>

Tshepo Madlingozi. 2007. 'Good Victims, Bad Victims: Apartheid's Beneficiaries, Victims and the Struggle for Social Justice', in le Roux & van Marle (eds.) *Law, Memory and the Legacy of Apartheid: Ten Years after AZAPO v President of South Africa*. Pretoria: Pretoria University Law Press 107-126.

Mahmood Mamdani. 1998. *When Does Reconciliation Turn into a Denial of Justice?*. Pretoria: HSRC, 21 pages.

## Further Readings

Robert Meister. 2002. 'Human Rights and the Politics of Victimhood'. *Ethics and International Affairs*, 16 (2): 91-106

Kieran McEvoy. 2007. 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice'. *Journal of Law and Society*, 34 (4): 411-440.

Iavor Rangelov. 2014. *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond*. New York: Cambridge University Press, especially Ch. 3 and Ch. 6 (69-101, 164-188).

Jack Snyder and Leslie Vinjamuri. 2003/4. 'Principle and Pragmatism in Strategies of International Justice'. *International Security* 28: 5-44.