

How to Integrate Dialogue into the Processes of Transitional Justice in Ukraine

POLICY BRIEF

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MOVING FORWARD
TOGETHER

Contents

- 4 Executive Summary
- 5 Challenge Addressed
- 6 **FACILITATED DIALOGUE**
as an instrument of conflict resolution
- 7 **NEED**
for facilitated dialogue in the process of transitional justice
- 8 **ADVANTAGES**
of dialogue in the field of transitional justice in the Ukrainian context
- 9 **SPECIAL FEATURES**
of facilitated dialogue as an element of transitional justice in Ukraine
- 11 **FUNCTIONS**
of facilitated dialogue in the process of transitional justice
- 12 **PROSPECTIVE THEMES**
of potential dialogues
- 13 **PRACTICE**
of dialogue initiatives and the potential of the dialogue facilitators
community in Ukraine
- 15 **NEXT STEPS**
and recommendations for kicking off integration of dialogue into the
process of transitional justice
- 19 **INFOGRAPHICS**

Executive Summary

Based on the findings of comprehensive academic research¹, this policy brief:

demonstrates the effectiveness of the facilitated dialogue approach for the successful implementation of transitional justice and reaching the goal of safe reintegration of the non-government controlled areas and local population into the single constitutional space of Ukraine

justifies the need for including facilitated dialogue into the conceptual background and practice of transitional justice in Ukraine

identifies the principles and features of facilitated dialogue as an element of transitional justice

identifies the functions of dialogue in the processes of transitional justice in Ukraine:

- 1) dialogue as an instrument of consultation on the issues of transitional justice
- 2) dialogue as an instrument of inclusive decision-making
- 3) dialogue as an instrument of reconciliation and formation of public narratives

outlines prospective areas for development of facilitated dialogue in the domain of transitional justice in Ukraine

proposes concrete steps and recommendations:

- 1) for the Ministry of Reintegration of the Temporarily Occupied Territories and other state agencies involved in the development and implementation of public policy in the domain of transitional justice
- 2) for dialogue facilitators' organizations and associations, civil society and mass media
- 3) for donors and the international community

¹ Brunova-Kalisetska I., Kyselova T., Martynenko O. Dialogue in the Model of Transitional Justice. Features and Functions. — Kyiv, 2020. 60 p.
URL: http://www.ucipr.org.ua/index.php?option=com_content&view=category&layout=blog&id=42&Itemid=205&lang=ua

Challenge Addressed

Ukraine needs to initiate processes of transitional justice to prepare and implement the secure reintegration of the non-government controlled areas, as well as to overcome the consequences of the conflict. Currently state agencies and civil society are actively developing a national model of transitional justice and its main components: criminal prosecutions, truth-telling, reparations, and institutional reforms. Transitional justice is a very complicated and controversial process; therefore, international legal instruments and experience of post-conflict societies suggest the need for synergy of transitional justice and dialogue mechanisms in order to ensure the sustainability of transitional justice and a positive societal attitude towards it.

Recently, several attempts to organize national dialogue platforms on various topics have been made, yet none of them has

been fully implemented. We hear more and more that Ukraine “needs national dialogue”. However, a clear understanding of the process and principles of professionally facilitated dialogue in the context of safe reintegration is lacking at the official level as well as among experts' circles. Documents on transitional justice being drafted in Ukraine also do not properly integrate the dialogue approach. Thus, the processes of development of the national transitional justice model and dialogues on different levels of Ukrainian society require greater synergy.

To provide the research basis for such synergy, a group of scholars conducted research on the role and place of facilitated dialogue in the model of transitional justice, and crystallized practical approaches to the integration of facilitated dialogue into the processes of transitional justice in Ukraine in this policy brief.

FACILITATED DIALOGUE

as an instrument of conflict resolution

First of all, it is necessary to distinguish between dialogue in conflict resolution and dialogue in everyday life and philosophical discourse. In modern conflict resolution theory and practice, a facilitated dialogue is a specific technology with its own rules and approaches; it is a prepared group process of professionally guided communication that is supported by third persons — facilitators. Dialogue aims to enhance the mutual understanding and relations between participants and, in certain cases, to make decisions in a way that offers equal possibilities for the participants to express their thoughts in a safe space². The facilitators, who possess the required competencies and are responsible for the quality of the process, design and conduct facilitated dialogues.

In order to ensure the quality and impact of a dialogue, the main principles of facilitated dialogue must be followed.

Principles	
Voluntary participation and self-determination of the dialogue participants	Confidentiality or, in the case of participants providing their informed consent, ensuring effective and safe publicity of the dialogue processes
Inclusivity of the dialogue from the very beginning of the process — engagement of: <ol style="list-style-type: none"> 1) all the interested stakeholders 2) representatives of the groups affected by the conflict, such as women, internally displaced persons, war veterans, families of soldiers, population in the “grey zone” close to the contact line, residents of the non-government controlled areas if needed, etc. 	Responsibility of the dialogue conveners for the safety and quality of the process, in particular for involving professional facilitators to design and conduct a dialogue and for providing the dialogue processes with the necessary time, human and financial resources
If possible — the impact of the dialogue: <ol style="list-style-type: none"> 1) developing mechanisms to implement decisions made during the dialogue 2) informing the government, media and society about the results of the dialogue 	

² Dialogue Standards: Definitions and Principles / Institute of Peace and Common Ground. Kyiv, 2018.
 URL: <https://drive.google.com/file/d/1tVIZrDJHnDO-1d4w-qxoT74F-QZ0NSpS/view>
 OSCE Project Coordinator in Ukraine, The Culture of Dialogue in Ukraine. 2019. 4 p.
 URL: <https://www.osce.org/uk/project-coordinator-in-ukraine/400832?download=true>

NEED

for facilitated dialogue in the process of transitional justice

The need to integrate dialogue into the process of transitional justice is conditioned by the following factors:

1. The use of dialogue in the process of transitional justice, in particular as a part of national consultations involving conflict-affected populations, is a requirement of international legal documents (Concept on Strengthening EU Mediation and Dialogue Capacities, UN General Assembly Resolution 60/251, UN Reports “Rule of Law and Transitional Justice in Conflict and Post-conflict Societies” and “National Consultations Concerning the Design and Implementation of Transitional Justice Measures”, etc.)³. A lack of consultation processes and dialogue support for transitional justice can lead to the escalation of conflicts in society due to rejection of the ideas and values of transitional justice

2. Without dialogue and other instruments of national consultations, it is impossible to fully account for and balance the needs and expectations of citizens towards transitional justice

3. Transitional justice has a dual purpose: it aims at both justice and reconciliation at the same time. The flexibility and openness of the concept of reconciliation give every society the opportunity to determine on its own who should reconcile with whom in the process of transitional justice, as well as to develop meaningful elements of reconciliation ranging from “non-violent coexistence on one territory” to “developing national unity and trust in society together”. Transitional justice without dialogue can work for justice, but it will not work for reconciliation because justice for one group of people may mean injustice for others. This requires dialogue

4. The best practices of transitional justice (Northern Ireland, South Africa, Afghanistan, etc.) included dialogue into the process of transitional justice as an instrument of consultations, decision making, reconciliation and formation of societal narratives

³ For the full list of analyzed documents see Brunova-Kalisetska I., Kyselova T., Martynenko O. Dialogue in the Model of Transitional Justice. Features and Functions. — Kyiv, 2020. 60 p.
URL: http://www.ucipr.org.ua/index.php?option=com_content&view=category&layout=blog&id=42&Itemid=205&lang=ua

ADVANTAGES

of dialogue in the field of transitional justice in the Ukrainian context

A professionally designed and well-conducted facilitated dialogue can:

relieve tensions in a particular group or community

help to fully take into account and balance the needs and expectations of citizens towards transitional justice

increase citizens' sense of involvement in the development and implementation of government policy

provide an opportunity to understand personal responsibility for peaceful coexistence with others in the future and engagement in the processes of transitional justice

increase the likelihood of citizens complying with and supporting government decisions

contribute to prevention of polarization in society

“prepare” society for meeting “uncomfortable” parts of the truth in a safe way

SPECIAL FEATURES

of facilitated dialogue as an element of transitional justice in Ukraine

When dialogues are integrated within transitional justice processes they bear certain features related to the specifics of transitional justice mechanisms, as well as to contextual factors of the socio-political situation in Ukraine.

1. WHO SHOULD BE IN DIALOGUE WITH WHOM?

Taking into account that the mechanisms for bringing the Russian Federation to justice and the accompanying processes of reconciliation between the two countries have to be worked out separately, at this moment in time the main subjects of dialogue in transitional justice are the citizens of Ukraine.

Therefore facilitated dialogues need to take place:

- ✓ within Ukrainian society — between people who live in Ukraine and have different ideas about its future, the armed conflict and other socio-political problems
- ✓ between residents of the territories controlled by the Government of Ukraine and residents of the non-government controlled areas, at minimum about the basis of non-violent coexistence in case reintegration proves impossible or undesirable, or concerning the values, mechanisms and practical aspects of secure reintegration if it does take place

2. The necessity to **COMPLY WITH THE RULES OF INTERNATIONAL LAW** and the principle of the rule of law while preparing and conducting dialogues, in particular, the principle of inevitability of punishment for gross violations of human rights

3. The need for society to agree first on the **VALUE FOUNDATIONS OF TRANSITIONAL JUSTICE** including the concepts of justice and reconciliation which will further serve as a basis for all other mechanisms of transitional justice. It is important to understand that reconciliation is not humility, a willingness to forget everything, a “compromise” or a “surrender of the interests of the state”; it is not an order from the authorities to forgive, forget, feel trust, etc.; it is neither a coercion to any feelings and emotions, nor a ban on them. Reconciliation is a way to coexist without armed conflict and violence and to coordinate different narratives on the war and the post-conflict future of society. The specific content of reconciliation for Ukraine needs to be developed through dialogue

4. The necessity to take into account the **TIMELINESS** of the dialogues' topics, and to postpone dialogue initiatives when it is impossible to ensure the security of the participants, when there are risks of manipulative use of the dialogues or use of force to resolve the conflicts, or when there are other serious risks

5. Increased attention to the issue of **LEGITIMACY AND IMPARTIALITY** of the persons who convene, organize and facilitate the dialogue processes

6. The necessity to take into account the **CONTEXT OF HYBRID WAR** — preventing political manipulations, distortion of information about the dialogues, responding preventively to security threats inside and outside the country, taking into account the principle of sovereignty of Ukraine and the restoration of its territorial integrity

FUNCTIONS

of facilitated dialogue in the process of transitional justice

1. **DIALOGUE AS AN INSTRUMENT OF PUBLIC CONSULTATIONS** is the most relevant today. Considering the requirements of international legal documents, there is a need to organize dialogue processes as part of national public consultations to develop basic approaches to the concepts of justice, reconciliation, and specific mechanisms of transitional justice with the engagement of the population, in particular conflict-affected groups. The idea of the Roadmap for Transitional Justice developed by the Ukrainian Helsinki Human Rights Union can become a good foundation for such consultations

2. **DIALOGUE AS A INSTRUMENT OF INCLUSIVE DECISION-MAKING** is the most promising in the field of institutional reforms — police reform, security reforms, decentralization and public administration reforms, etc., and can already be used now. However given its formality and certain specific aspects, the question of a National Dialogue format which has been successful in some countries in Africa and Asia requires a separate study. Taking this into account, the concepts of national dialogue and dialogues at the national level need to be distinguished

3. **DIALOGUE AS A INSTRUMENT OF RECONCILIATION AND FORMATION OF PUBLIC NARRATIVES** can begin with topics related to the historical memory of the Ukrainian pre-conflict past, beginning from Soviet times and possibly earlier. Such dialogic work will lay the foundation and form a positive experience for further work with historical memory concerning the current armed conflict in the process of transitional justice

Below are some potential dialogue topics divided by dialogue functions and pillars of transitional justice. The authors of the study propose the list of topics below which is not exhaustive.



PROSPECTIVE THEMES OF POTENTIAL DIALOGUES

DIALOGUE FUNCTIONS

DIALOGUE AS AN INSTRUMENT

OF CONSULTATION

aim:

1. To avoid misunderstanding between different target groups
2. To develop proposals for the government regarding issues requiring public consultation

OF INCLUSIVE DECISION-MAKING

aim:

1. To avoid misunderstanding between different target groups
2. To apply joint decision-making (adoption of strategies, roadmaps, draft regulations, etc.) taking into account different target groups' interests and experiences

OF RECONCILIATION AND FORMATION OF SOCIETAL NARRATIVES

aim:

1. To avoid misunderstanding and build trust between different target groups
2. To develop coordinated public perceptions of significant issues related to the conflict

PILLARS OF TRANSITIONAL JUSTICE

1

BRINGING THE PERPETRATORS TO JUSTICE:

improving judicial and investigative practices; legal protection of victims of the armed conflict; effective prosecution of those responsible for war crimes and gross human rights violations

What groups and personalities can be granted amnesty? How can persons under amnesty be resocialized? What alternative types of accountability can be applied?

Development of government decision-making that includes a gender component and engages civil servants who are members of the target groups

Speaking out and agreeing on the values of transitional justice: fair prosecution and amnesty, in particular with regard to the different parties of the armed conflict and the terms used

2

COMPENSATION FOR VICTIMS OF THE CONFLICT:

material compensation, psychological satisfaction, restoration of violated rights

What are the criteria for identifying victims of conflict? How can gender aspects be taken into account and victims of sexual violence be recognized? What can be the types of reparations (monetary, symbolic, psychological)? What should nationwide memory policy about the war, its heroes and victims look like? How can the mechanism for restoring the rights of IDPs and citizens of Ukraine who reside on the non-government controlled areas be improved without jeopardizing the national interests of Ukraine?

Regional and local decision-making regarding the commemoration of heroes and victims of armed conflict: monuments, museums, new media products, renaming streets. Regional and local decision-making regarding additional measures/amounts of reparation: payments from local budgets, provision of benefits and services

Speaking out and recognizing that people who were directly or indirectly affected by the armed conflict have different experiences, levels of expectation and narratives of war. Speaking out and recognizing the different kinds of experiences of victims and ex-combatants

3

THE RIGHT TO KNOW THE TRUTH:

documenting events related to the armed conflict, establishing the truth, providing comprehensive and truthful information to the public about the course and consequences of the armed conflict

How to establish a mechanism of documenting the conflict's events that will be most effective for people. Does Ukraine need a Truth and Reconciliation Commission and/or its regional chapters? If so, what might it look like? How can access of citizens to archival materials about conflict-related events be improved?

Joint decision-making regarding information policy and mechanisms for providing a "public voice" to different target groups. Implementation of local educational programs of remembrance of war events, for example, through public funds

Speaking out and recognizing different historical memory narratives, beginning with "different", "uncomfortable" truths about Soviet times. Speaking out and recognizing different experiences and narratives of the events of the current armed conflict. Speaking out and agreeing on the topics which should not be discussed in public for a certain time

4

GUARANTEES OF NON-RECURRENCE,

in particular, through institutional reforms, education and free space for civil society (reforming and strengthening the capacity of the government, organizational and legal support for reforms)

Which groups of people should be lustrated, and under what conditions? How can the lustrated groups of people be resocialized? How can interaction between citizens and new law enforcement officials and other authorities within the potentially reintegrated territories be ensured?

Development and implementation of local community security programs, local educational programs on war remembrance, establishing cooperation between the community, local authorities, police, etc. for example, through public budget mechanisms

Speaking about the conditions and key aspects of reconciliation as a guarantee of non-recurrence. Developing the role of the mass media in reconciliation. Speaking about the expectations of the population of potentially reintegrated territories regarding reforms

PRACTICE

of dialogue initiatives and the potential of the dialogue facilitators community in Ukraine

Ukraine has a well-developed community of professional mediators and dialogue facilitators. Before 2013, more than 3,000 Ukrainians were trained in basic mediation skills in various programs⁴; since 2013, the number of people trained in this area has increased several times. Facilitated dialogues are actively supported by donor organizations.

The Mediation and Dialogue Research Center at Kyiv-Mohyla Academy identified 157 dialogue processes conducted by 66 Ukrainian and international organizations in 14 regions of Ukraine from January 2014 to April 2017⁵

The topics of the dialogues varied from those related to conflict resolution, historical memory, the future of Ukraine and identity, to technical topics such as education reforms, health care, decentralization, establishment of amalgamated territorial *hromadas*, community infrastructure, integration of IDPs and war veterans in host communities, human rights protection, etc. The study found that following successfully facilitated dialogues supported by donor projects, local governments began to independently hire dialogue facilitators and support dialogues in local communities (for example, in Bakhmut, Pyriatyn, Pokrovsk, Severodonetsk).

⁴ Kyselova T. Professional Peacemakers in Ukraine: Mediators and Facilitators before and after 2014. *Kyiv-Mohyla Law and Politics Journal*. 2017. vol. 3. URL: <http://kmlpj.ukma.edu.ua/article/view/120119/115078>

⁵ Kyselova T. Understanding Dialogue in Ukraine: Survey-based Study / Mediation and Dialogue Research Center, Kyiv-Mohyla Academy. Kyiv, 2018. 28 p. URL: <https://md.ukma.edu.ua/publications/>

Dialogues have already been conducted on topics related to transitional justice, despite the fact that the concept is still under development. Some aspects of transitional justice were considered during dialogues of the Svyatohirsk Group (justice, accountability and reconciliation)⁶ and the Donbas Dialogue Initiative (issues of amnesty and reconciliation)⁷.

According to the study, most dialogues were convened and/or facilitated by the following organizations and initiatives:

- ✓ OSCE Project Coordinator in Ukraine⁸
- ✓ Odesa Regional Mediation Group
- ✓ UNDP⁹
- ✓ the Institute for Peace and Common Ground and NGO Women's Initiatives¹⁰
- ✓ NGO Maidan Monitoring Information Center (Ukrainian Peacebuilding School)¹¹
- ✓ Laboratory for Peaceful Solutions¹²
- ✓ Peace Engineers¹³
- ✓ Ideas for Change¹⁴

Since 2020, the Geo-information System for Conflict Analysis and Resolution developed by the UN RPP has been actively working¹⁵.

These dialogue initiatives and platforms can serve as a basis for scaling up dialogue practices in Ukraine, in particular within the process of transitional justice.

⁶ Five Years of War: 1825 days... How Many More? 2019. 42 p. URL: <https://www.sviatogorskgroup.com/wp-content/uploads/2019/11/5-%D1%80%D0%BE%D0%BA%D1%96%D0%B2-%D0%B2%D1%96%D0%B8%CC%86%D0%BD%D0%B8.pdf>

⁷ Third Dialogue Marathon. Ways for Resolution of the Armed Conflict. Donbas Dialogue — Touchstone of Peacebuilding. 28.09.2017. URL: https://www.donbassdialog.org.ua/2017/09/dialogue-marathon-online-dialogue-ru.html?fbclid=IwAR1V_jc3KCz5Y0mIWp_qoCpelr9vWdV5sostdsBGO7cjZGjEw18Y42EbJQ

⁸ Merging Local Hromadas and Amalgamated Hromadas of Large Cities: Report on the Series of Dialogues between Stakeholders in Kyiv, Donetsk, Lviv, Odessa, Dnipropetrovsk and Kharkiv regions. Kyiv, 2019. 54 p. URL: https://decentralization.gov.ua/uploads/library/file/551/%D0%97%D0%B2%D1%96%D1%82_2019.pdf

⁹ UN RPP. Dialog-UA.org. URL: <https://dialog-ua.org/>

¹⁰ Dialogue for Understanding. Kherson. Community. Initiative. 04.03.2019. URL: <https://hgi.org.ua/article.php?id=567>

¹¹ Lyashenko H. Social Dialogue about Reconciliation in Holaya Prystan. Ukrainian Peacebuilding School. 28.12.2015. URL: <https://peace.in.ua/sotsialnyj-dialoh-pro-porozumynnya-u-holij-prystani/>

¹² Laboratory for Peaceful Solutions. 19.03.2018. URL: <https://nakipelo.ua/uk/organisation/laboratoriya-mirnyh-reshenij/>

¹³ Dialogue between Hromadas, Police and Public Servants in Chuguiv. Peace Engineers. 13.11.2018. URL: <https://peaceengineers.com/news/dialogova-zustrich-mizh-predstavnykamy-riznyh-gromad-natspolitsiy-taderzhsluzhbovtsyamy-u-chuguvi-42/>

¹⁴ Women's Initiatives for Peace in Donbas(s) (2017–2020). Ideas for Change. URL: <http://ideizmin.com.ua/projects-ukr/pidstorinka-dva/>

¹⁵ UN RPP. Dialog-UA.org. URL: <https://dialog-ua.org/>

NEXT STEPS

and recommendations for kicking off integration of dialogue into the process of transitional justice

TO GOVERNMENT AGENCIES

Recommendations to the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Representative of the President of Ukraine in the Autonomous Republic of Crimea, the Ministry of Justice of Ukraine, the Working Group on Reintegration of the Temporarily Occupied Territories of the Legal Reform Commission, other government agencies involved in the development and implementation of public policy in the field of transitional justice, reconstruction and peacebuilding, development of the temporarily occupied territories of Ukraine after their reintegration, and other policies:

1. To use the concept of facilitated dialogue in internal and external communications according to the definition developed by the community of Ukrainian dialogue facilitators; to distinguish dialogue from other formats of public events such as round tables, presentations and conferences¹⁶

2. To establish a Working Group at the Ministry for the Reintegration of the Temporarily Occupied Territories of Ukraine and involve dialogue facilitators and experts in the field of transitional justice to develop a mechanism for integration of dialogue into the model of transitional justice:

¹⁶ Dialogue Standards: Definitions and Principles / Institute of Peace and Common Ground. Kyiv, 2018.
URL: <https://drive.google.com/file/d/1tVIZrDJHnDO-1d4w-qxoT74F-QZ0NSpS/view>

- 2.1. To include dialogues in the concept and information strategy of transitional justice, and action plans of the Cabinet of Ministers and the Ministry of Reintegration of the Temporarily Occupied Territories, which are currently under development
- 2.2. To develop a concept of dialogues in various areas of transitional justice, their priority, topics, target groups, necessary resources, etc.
- 2.3. To develop a mechanism for coordinating local dialogue initiatives and a mechanism for bringing the results of dialogues to the attention of decision-makers, in particular negotiators in the Minsk negotiation process and government agencies, to ensure synergies between different levels of the peace process
- 2.4. To develop a methodology for collecting information and monitoring those transitional justice processes that bear conflict risks,¹⁷ and include it into the general monitoring and evaluation of the effectiveness of peacebuilding currently under development. To publish a quarterly report on monitoring results

3. To conduct working consultations with communities of dialogue facilitators and human rights activists in order to develop a mechanism to ensure the inclusiveness of dialogues and consultations on issues of transitional justice, namely: to involve stakeholders and conflict-affected populations (IDPs, war veterans, residents of the “grey zone”, families of the victims, etc.) at the stage of development as well as during the implementation of transitional justice. Given that women are the most vulnerable category of the conflict-affected population, special attention needs to be paid to women’s engagement, in particular at the political level, and implementation of gender expertise when decisions on transitional justice are taken

4. To account for the risk of political manipulation of dialogues in the case of cumbersome centralized dialogue formats at the national level, for example through so-called national platforms. At the initial stages of development and implementation of a transitional justice policy, it is more feasible to build on existing local dialogue platforms and civil society initiatives

¹⁷ For analysis of the conflict potential of the Roadmap of Transitional Justice see. pp. 19—24 in: Dialogue in the Model of Transitional Justice. Features and Functions/ Brunova-Kalishetska I., Kyselova T., Martynenko O. — Kyiv, 2020. 60 p. URL: http://www.ucipr.org.ua/index.php?option=com_content&view=category&layout=blog&id=42&Itemid=205&lang=ua

TO CIVIL SOCIETY

The following opportunities are suggested for organizations and associations of dialogue facilitators, civil society organizations and mass media in their work on human rights, dialogue and mediation, in order to allow dialogue to contribute to transitional justice:

1. To use the concept of facilitated dialogue in internal and external communications according to the definition developed by the community of Ukrainian dialogue facilitators; to distinguish dialogue from other formats of public events such as round tables, presentations and conferences¹⁸

2. To contribute to the development of requests from the central authorities, local governments and society regarding the topics of dialogues

3. To develop and disseminate educational materials that explain:

3.1. the essence, principles and mechanisms of transitional justice

3.2. the essence, principles and rules of facilitated dialogues, as well as specifics of their application in the processes of transitional justice

4. To conduct research and disseminate results of a study on monitoring and analysis of the best dialogue practices in Ukraine

5. To include the following aspects of transitional justice into potential dialogue topics, for example the issues of justice, reparations to victims, historical memory of the pre-conflict past since Soviet times, and others

6. To cooperate with the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Working Group on Reintegration of the Temporarily Occupied Territories of the Legal Reform Commission, other government agencies and NGOs on preparation of documents in the field of transitional justice; development of the design and conducting of dialogues in various areas of transitional justice; development of a mechanism of bringing dialogue results to the notice of decision-makers and a mechanism for ensuring the inclusiveness and coordination of dialogue processes in the field of transitional justice

7. To develop training programs and organize training on the basics of mediation, facilitation and conflict resolution for civil servants who are involved in the development and implementation of transitional justice policy

8. To develop projects aimed at sustainable communication, exchange of expertise and training between communities of human rights defenders and dialogue facilitators (joint research and networking activities; facilitation, mediation and conflict resolution training for human rights defenders; training on transitional justice, methodologies for so-called existential dialogues and dealing with traumatic experiences of participants for dialogue facilitators)

9. To develop recommendations for donors, conveners, dialogue facilitators and other stakeholders regarding the specific aspects and methodological framework of facilitated dialogue in the field of transitional justice

10. To promote media coverage of public dialogues and the results of confidential dialogues on transitional justice, to attract public attention in order to ensure a better understanding of these processes and prevent manipulation of transitional justice issues

¹⁸ Dialogue Standards: Definitions and Principles / Institute of Peace and Common Ground. Kyiv, 2018. URL: <https://drive.google.com/file/d/1tVIZrDJHnDO-1d4w-qxoT74F-QZ0NSpS/view>

TO DONORS AND THE INTERNATIONAL COMMUNITY

The following opportunities are suggested for donors and international organizations working on the conflict in order to expand the use of dialogue processes, in particular in the field of transitional justice:

1. To use the concept of facilitated dialogue in internal and external communications according to the definition developed by the community of Ukrainian dialogue facilitators; to distinguish dialogue from other formats of public events such as round tables, presentations and conferences¹⁹

2. To support projects aimed at education in the field of dialogue and transitional justice; training in dialogue and transitional justice for civil servants; communication, cross-sectoral exchange of knowledge and training between communities of human rights activists and dialogue facilitators (joint events, training, etc.)

3. To collaborate with the government and the Ukrainian expert and professional facilitation community to identify thematic priorities for dialogues in transitional justice

4. To support joint initiatives of civil society and state agencies to conduct dialogues in the field of transitional justice at local and national levels, in particular on historical memory, values of transitional justice, and other topics

5. To promote the involvement of Ukrainian dialogue experts as facilitators in dialogue projects, in particular where residents of the non-government controlled areas take part; facilitate their joint work with international experts as a single team, where the experience of international facilitators and mediators serve as a support mechanism to local facilitators

6. To promote capacity-building of the professional community of Ukrainian facilitators: enhance their knowledge of transitional justice; support further improvement of dialogue methodologies; support the introduction of a system to collect and analyze best dialogue practices in Ukraine, support development of coordination mechanisms, etc.

7. To take account of the risks and potential advantages of dialogues on transitional justice and systematically provide dialogue processes with sufficient time, human and financial resources. The recommended duration of projects for dialogue in transitional justice is at least three years

¹⁹ Dialogue Standards: Definitions and Principles / Institute of Peace and Common Ground. Kyiv, 2018. URL: <https://drive.google.com/file/d/1tVIZrDJHnDO-1d4w-qxoT74F-QZ0NSpS/view>

FACILITATED DIALOGUE AND ITS FEATURES IN THE TRANSITIONAL JUSTICE PROCESS



DIALOGUE PRINCIPLES



FEATURES OF FACILITATED DIALOGUES ON TRANSITIONAL JUSTICE IN UKRAINE

1

WHO SHOULD BE IN DIALOGUE WITH WHOM? Taking into account that the mechanisms for bringing the Russian Federation to justice and the accompanying processes of reconciliation between the two countries have to be worked out separately, at this moment in time the main subjects of dialogue in transitional justice are the citizens of Ukraine. Therefore facilitated dialogues need to take part: 1) within Ukrainian society – between people who live in Ukraine and have different ideas about its future, the armed conflict, and other socio-political problems; 2) between residents of the territories controlled by the Government of Ukraine and residents of the non-government controlled areas, at minimum about the basis of non-violent coexistence in case reintegration proves impossible or undesirable, or concerning the values, mechanisms and practical aspects of secure reintegration if it does take place

2

The necessity to **COMPLY WITH THE RULES OF INTERNATIONAL LAW** and the principle of the rule of law while preparing and conducting dialogues, in particular, the principle of inevitability of punishment for gross violations of human rights

3

The need for society to agree first on the **VALUE FOUNDATIONS OF TRANSITIONAL JUSTICE** regarding the concepts of justice and reconciliation which will further serve as a basis for all other mechanisms of transitional justice

4

The necessity to take into account the **TIMELINESS** of the dialogues' topics including the principle "Do no harm", and to postpone dialogue initiatives when it is impossible to ensure the security of the participants, when there are risks of manipulative use of the dialogues or use of force to resolve the conflicts, or when there are other serious risks

5

Increased attention to the issue of **LEGITIMACY AND IMPARTIALITY** of the persons who convene, organize and facilitate the dialogue processes

6

The necessity to take into account the **CONTEXT OF HYBRID WAR** – preventing political manipulations, distortion of information about the dialogues, responding preventively to security threats inside and outside the country

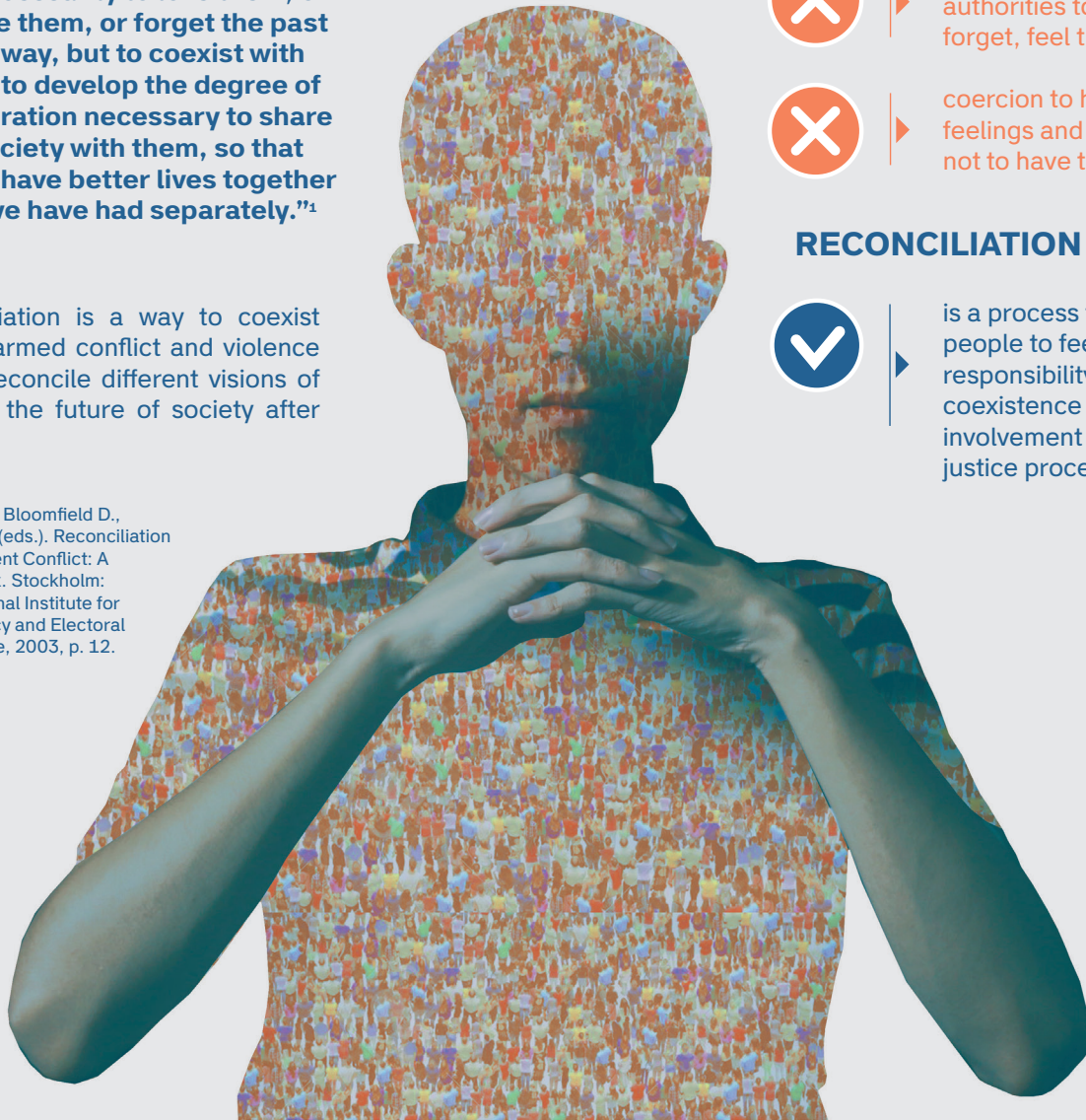
RECONCILIATION IN TRANSITIONAL JUSTICE THROUGH DIALOGUE

THE PURPOSE OF TRANSITIONAL JUSTICE IS BOTH JUSTICE AND RECONCILIATION

“At its simplest, reconciliation means finding a way to live alongside former enemies — not necessarily to love them, or forgive them, or forget the past in any way, but to coexist with them, to develop the degree of cooperation necessary to share our society with them, so that we all have better lives together than we have had separately.”¹

Reconciliation is a way to coexist without armed conflict and violence and to reconcile different visions of war and the future of society after the war.

¹Huyse L., Bloomfield D., Barnes T. (eds.). Reconciliation After Violent Conflict: A Handbook. Stockholm: International Institute for Democracy and Electoral Assistance, 2003, p. 12.



RECONCILIATION IS NOT:



humbleness, willingness to forget everything, a so-called “compromise” or a “surrender of state interests”



an order from the higher authorities to forgive, forget, feel trust, etc.



coercion to have certain feelings and emotions or not to have them

RECONCILIATION



is a process that allows people to feel their responsibility for future coexistence and their involvement in transitional justice processes

The flexibility and openness of the concept of reconciliation allow each society to determine who should reconcile with whom in the process of transitional justice, as well as to develop meaningful elements of reconciliation ranging from “non-violent coexistence on one territory” to “developing national unity and trust in society together”

DIALOGUE

Transitional justice at all stages can work for justice even without dialogue, but it will not work for reconciliation because justice for some people may mean injustice for others.

The specific content of reconciliation also needs to be clarified through **dialogue**.

Dialogue is an opportunity to see human beings with their pain and motives, doubts and internal conflicts behind conceptions of “them”, to learn about their vision of justice, the desired future, and opportunities for coexistence or red lines.

Policy Brief

HOW TO INTEGRATE DIALOGUE INTO THE PROCESSES OF TRANSITIONAL JUSTICE IN UKRAINE

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