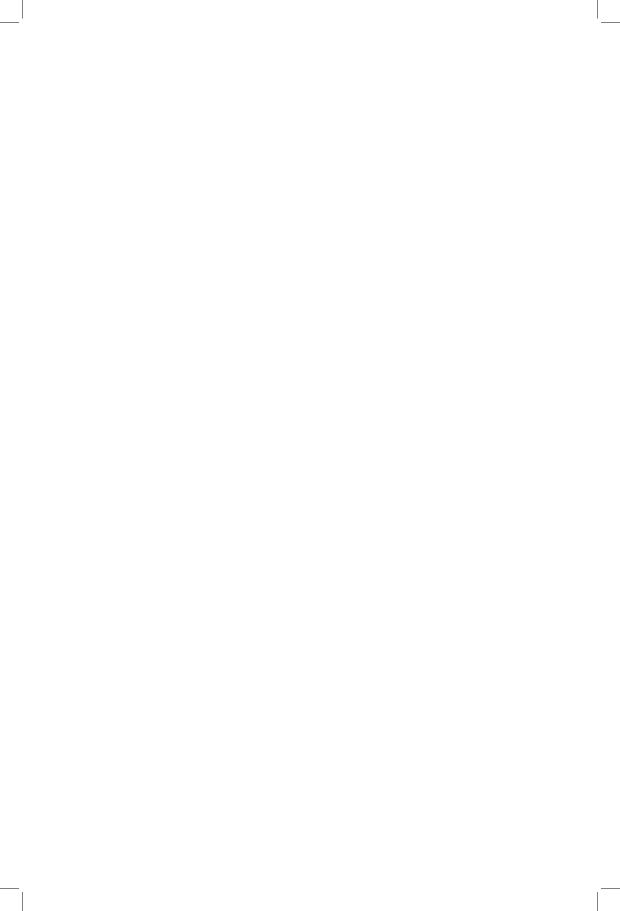# Section I
Justice in Theory

1
The Three Dimensions of Justice in Post-conflict Peacebuilding

Introduction: justice, a political and social imperative

Today's wars are devastating in human and material terms. Since the end of the cold war alone, wars have cost over five and a half million lives.[1] The overwhelming majority of war's victims, over 80 per cent it is commonly estimated, are civilians, not combatants. The vast majority of armed conflicts today are located in low-income or developing countries, whose indigent populations and fragile economies are further impoverished in the process. Violent internal conflicts today are no longer distant military and political phenomena fought in remote battlefields, but direct personal events that ravage each household and affect all aspects of social and economic life in war-torn countries. Conflicts in recent decades have occurred primarily within rather than between states, pitting former neighbours, friends or family members against each other. Alongside the loss of life, limb and livelihood, war-torn populations suffer immeasurable trauma and psychological damage prior to, during and long after conflict.

Given the nature of contemporary conflicts, it is as much a political imperative as a social necessity to address issues of justice in the aftermath. Politically, it is difficult if not impossible for rival sides to agree to terminate hostilities and conclude peace until their major grievances are addressed. Socially, the causes, ramifications and effects of conflict on the daily lives and experiences of citizens make

it imperative to address their claims for justice. Indeed, it is not only political leaders and combatants who claim redress for injustices in the aftermath of conflict. It is, overwhelmingly, ordinary civilians who suffer and claim redress for the direct and structural injustices inflicted during conflict. The litany of injustices may include discrimination, hate crimes, targeted rape, ethnic cleansing, genocide, involuntary displacement, forced conscription, hunger and disease, loss of home and livelihood, lack of access to economic opportunity and to legal redress.

Rebuilding peace after contemporary conflicts requires not only political will but also civic investment and confidence. If the injustices experienced by ordinary people during and often also prior to conflict are not redressed, it is unlikely that citizens will place their trust in the new peaceful dispensation and participate in efforts to build peace. And peace will flounder as a consequence. As expressed by Guatemalan Nobel Peace laureate Rigoberta Menchu: 'Peace without justice is only a symbolic peace'.[2]

International attention has focused increasingly in recent years on the nexus between rebuilding peace and restoring justice. This book addresses that nexus, and makes two arguments. The main argument made is that after conflict, justice must be restored in an integrated manner, covering all its distinct but interrelated dimensions, and recognizing the complexities of each dimension. It argues that so far national and international 'peacebuilders' have not addressed justice in this integrated multidimensional manner, and have failed to recognize and respond to the complexities of restoring each dimension of justice in low-income war-torn societies.

The secondary argument is that there is a chasm between the concept and practice of justice that is partly responsible for this failure. Justice is a universal concept that has been debated for millennia by political thinkers and philosophers around the world. Yet ironically, today's policy makers and practitioners do not possess or seek to possess a conceptual and philosophical understanding of the dimensions and scope of justice to ground their task of restoring justice on the ground. For their part, contemporary philosophers have lacked interest in addressing the particular challenges of justice posed by low-income societies emerging from conflict. The combined result is that justice is addressed in a skewed, partial and piecemeal manner, as much by practitioners as by scholars, and the attempt to marry peace and justice after conflict remains largely incomplete.

This book addresses the issue of restoring justice in low-income societies emerging from conflict in an integrated manner. First, it identifies the three distinct but interrelated dimensions of justice that

are salient in the process of peacebuilding in societies emerging from conflict, in chapter 1. Then, it examines the rift between theories of justice in contemporary philosophy and the reality of injustice in war-torn societies, in chapter 2. The bulk of the book is devoted to evaluating critically the efforts of peacebuilders to address each of the three dimensions of justice in low-income societies emerging from conflict, in chapters 3, 4 and 5, in order to substantiate the main argument. Finally, in chapter 6, it offers a reconceptualization of the three dimensions of justice and recommends ways to bridge theory and practice, and to rebuild peace with justice in societies emerging from conflict.

Widening the lens: three dimensions of justice

Peacebuilders have focused mainly so far on redressing direct injustices committed against individuals during the period of hostilities, that is, gross human rights violations, war crimes and crimes against humanity. These human 'consequences' of conflict are grave. They impel some form of redress in the transition to peace. Cases in point are South Africa's Truth and Reconciliation Commission, and the *ad hoc* international tribunals for former Yugoslavia and Rwanda, all of which received considerable international attention and support.

   The connection between conflict and injustice, and the consequent linkage between restoring peace and justice, goes far beyond these human consequences, I would argue. Injustice is not just a *consequence* of conflict, but is also often a *symptom* and *cause* of conflict. To restore justice after conflict, that is, to re-link peace and justice after conflict has torn them apart, all three dimensions of injustice embedded in and related to the symptoms, causes and consequences of conflict need to be addressed.

- The first dimension of justice that needs to be addressed is legal justice or the rule of law. The need to address legal justice stems from the rampant legal injustice, exemplified by the breakdown or corruption of the rule of law and absence of legal redress, that is a common symptom preceding and during most conflicts.
- The second is rectificatory justice. The need to address rectificatory justice arises from the direct human consequences of conflict in the form of injustices inflicted upon people including gross human rights abuses, war crimes and crimes against humanity.

● The third is distributive justice. The need to address distributive justice stems from the structural and systemic injustices such as political and economic discrimination and inequalities of distribution that are frequently underlying causes of conflict. These three dimensions are explained below.

Legal justice or the rule of law

Legal justice, or the rule of law as it is referred to here, and the entire apparatus of the justice system, is usually either delegitimized, debilitated or destroyed during or prior to conflict (as in South Africa, Haiti and Rwanda, respectively). The rule of law needs to be reformed or rebuilt entirely. There are compelling rationales for restoring the rule of law after conflict, both as an immediate priority and as a long-term goal. Restoring the rule of law may serve as an indication to combatants and civilians in war-torn societies of a return to security, order and stability. A rule of law regime assures the population that the government is formally subject to the law, and is no longer above it. It implies that all citizens, regardless of their identity, affiliation and background, are considered equal before the law. Additionally, by upholding principles and regular procedures that are resistant to corruption, the rule of law may act as a deterrent to future conflict, by signalling to conflicting groups that future perversions of the law are not permissible. Courts provide a forum for settling disputes without resort to violence, which is of prime importance after conflict. The rule of law is also intended to safeguard personal freedom and enshrine human dignity. Furthermore, it provides a necessary framework for rectificatory and distributive justice to be meted out. These rationales are additional to the arguable *duty* of governments to provide their citizens with the administration of justice, and their international treaty obligations to this effect.

Recently international donors and agencies have become increasingly interested in restoring the rule of law in societies emerging from conflict. Nevertheless, legal scholars diverge in their interpretation of the concept of the rule of law, as examined in chapter 2. Practitioners on the ground also have confused and divergent understandings of what is required to restore the rule of law in the aftermath of conflict, leading to contradictory outcomes, as examined in chapter 3. Concerted efforts are needed to clarify the conceptual confusion, and to understand the requirements of a regenerated rule of law in low-income war-ravaged societies.

Rectificatory justice

Rectificatory justice refers here to the question of dealing with injustice in terms of direct physical violence suffered by people during conflict. This category typically includes gross violations of human rights, crimes against humanity and war crimes, and is exemplified by the Jewish Holocaust and war crimes during the Second World War. Victims in countries emerging from dictatorship or state repression have also sought rectificatory justice for abuses committed by past regimes, most notably in South America in the 1980s. It is commonly acknowledged today that some established process of reckoning is needed for societies transiting out of political conflict or various forms of repression, to move beyond past trauma and begin constructing lasting peace.

Transitional societies have adopted a variety of approaches to deal with past abuses based on their specific needs, capacities, culture, history and political realities, as well as their legal systems.[3] These approaches have included truth commissions, trials and prosecutions, non-judicial sanctions such as purges, 'lustration' or removal from office, compensation, and symbolic gestures such as commemorations and memorials.

There are distinct legal, political, and psychosocial rationales for addressing rectificatory justice after conflict.

The legal rationale hinges on three arguments under international law, as elaborated in chapter 4: state responsibility under international treaty and customary law, including the responsibility of successor governments for abuses committed by former regimes; the non-derogability of fundamental human rights, even during emergencies; and victims' rights to redress. Therefore, even in the tense aftermath of conflict, states are legally bound to respect their international obligations and prosecute past abuses.

The political rationales for addressing past abuses have been debated often throughout the past five decades, as various societies have undergone transitions from conflict, authoritarian rule or dictatorship to peace and/or democratization.[4] They include the need to combat impunity, to deter future abuses, to establish the legitimacy and credibility of the new regime, to stabilize peace, and to strengthen democracy and the rule of law. However, political constraints may impinge upon these rationales.[5]

The psychosocial rationale stems from the need to understand and heal the trauma of victims and survivors of conflict. Psychiatrists and psychologists have devoted considerable attention since the Holocaust

to the profound trauma and victimization undergone by survivors of repression, torture and violence. In addition to the long-term effects of trauma on direct victims and survivors, intergenerational transmission to their offspring has also been noted, for example in Holocaust survivors. Increasingly, aid agencies recognize that the long-ignored question of psychosocial healing must be addressed to promote reconciliation within communities and to consolidate peace.[6]

Rectificatory justice has received far more academic and political attention since 1945 than the two other dimensions of justice identified here. This attention has included analyses of the Nuremberg and Tokyo trials following the Second World War, and the treatment of human rights abuses in the democratic transitions in Southern Europe, Latin America, and, more recently, Central and Eastern Europe.[7]

Nevertheless, insufficient attention has been directed to date to the specific needs and constraints of low-income, less-developed societies emerging from violent internal conflict in restoring rectificatory justice.[8] In these societies pressing demands for rectificatory justice are counterbalanced and constrained by the devastation and depletion of human, material and financial resources and the breakdown of the rule of law. Attempts to restore rectificatory justice must compete on the one hand with the demands of economic rehabilitation to avoid economic collapse, and on the other hand with political constraints to avoid a return to arms by disgruntled belligerents. As largely undocumented violations continue in the largely forgotten wars of the world, including Sudan, Colombia and Algeria, there is an urgent and unmet need to understand the parameters and exigencies of rectificatory justice, particularly in low-income war-torn societies.

Distributive justice

The third dimension, distributive justice, entails addressing the underlying causes of conflict, which often lie in real or perceived socio-economic, political or cultural injustice. While it would be erroneous to claim that issues of distributive injustice are the fundamental cause of or a necessary underlying feature in all current internal conflicts, they emerge as salient facilitating factors in the terrain of internal political conflicts. The United Nations identified 'the deepest causes of conflict' as 'economic despair, social injustice and political oppression'.[9] Scholars observe that where deep inequalities particularly between groups exist

and are not readily justifiable, they are easily exploited by leaders to mobilize groups around shared grievances, on ostensible claims of identity, ethnicity, religion or other factors.[10]

The concern of distributive justice is how post-conflict societies deal with grievances such as inequitable distributions of and access to political and economic resources that underlie conflict. The rationale for addressing distributive justice is both to prevent a recurrence of conflict and to build the foundations of peace. Redressing underlying causes of conflict located in real and perceived distributive inequalities can help to avert a relapse into conflict and prevent future conflicts, and also to consolidate peace.

Until recently the attention accorded to issues of distributive justice and the demand for greater economic equity and political equality was largely rhetorical. The Guatemalan peace accords mark a potential turning point, as unprecedented attention was paid during the peace process to identify underlying structural and systemic causes of conflict, and redress social and distributive injustices. There is an urgent need for scholars and practitioners to accord greater priority to the underlying causes of conflict linked to distributive inequities, and to address distributive justice issues coherently when rebuilding war-torn economies.

The interdependence of the three dimensions of justice

The three dimensions enumerated above capture the central demands of justice that become both pertinent and pressing after internal political conflicts, although they may not be exhaustive. The relative salience and urgency of each of the three dimensions varies between countries, but in most cases some combination of the three is present.

The tendency today to focus primarily on rectificatory justice (and neglect the other two) is ill-advised, I would argue, as, although distinct, the three dimensions of justice are interdependent and mutually reinforcing, specifically in the post-conflict context. The process of rectifying past wrongs through the criminal justice system is vitally dependent on a functioning rule of law. To arrest suspects, a competent police force is required; to incarcerate them securely, an adequate prison system is needed; and to try suspects, an independent and impartial judiciary with trained lawyers and judges is essential. Abuses cannot be rectified and impunity cannot be countered without restoring the institutions and ethos of the rule of law.

Rectificatory justice also depends on distributive justice. Indirect violence inflicted on civilians through systemic and structural injustice

usually falls outside the remit of formal rectificatory justice measures. Consequently, to address the generalized systemic and structural injustice suffered by targeted groups or by the population at large, some simultaneous measure of distributive or social justice is necessary. Many South Africans recognize today that the Truth and Reconciliation Commission was not designed to address the institutionalized injustice of apartheid that faced all blacks daily. They recognize too that justice will remain incomplete till the deep socio-economic inequalities produced over generations of apartheid are eliminated. Distributive justice, such as economic equality between races in South Africa, could bring a partial rectification to the larger society that suffered injustice indirectly and collectively. Narrowly defined and targeted measures of rectificatory justice undertaken by states such as trials or truth commissions do not provide such recompense.

Distributive justice is also intrinsically dependent on the rule of law. However, equity in resources and power cannot be meaningfully instituted unless the normative and institutional framework of a rule of law regime is put in place to safeguard equitable distributions. For example, this may include a constitution guaranteeing equal treatment to all citizens and defending socio-economic, cultural and political rights.

The interdependence of the three dimensions is testified in practice, as in Rwanda. Faced with the enormity of genocide in Rwanda, the new government set up by the victorious Rwandan Patriotic Front (RPF) arrested all suspected *génocidaires* with the aim of prosecuting them. However, the debilitated penal system was unequipped to incarcerate such numbers, and the devastated legal system was unprepared to prosecute them. It proved impossible to provide rectificatory justice under the criminal justice system in Rwanda without simultaneously rebuilding and reforming the rule of law. Nevertheless, even when the rectificatory measures undertaken by national trials and the international tribunal are completed, 'justice' will remain incomplete until the persistent political and socio-economic inequalities that preceded and underlay Rwanda's prolonged conflict and culminated in the 1994 genocide are also redressed. In Namibia and South Africa overturning apartheid's racially discriminating legislation was a first step towards distributive justice for the majority black population – that is, legal justice provided an avenue for rendering an initial measure of distributive justice. Police reform in various post-conflict countries including Namibia, Haiti and El Salvador was necessary not only to restore the rule of law, but also to implement rectificatory justice and safeguard distributive justice.

The three dimensions of justice may also be mutually reinforcing when they are addressed concurrently after conflict. The rule of law was shown above to be a necessary fulcrum for rectificatory and distributive justice measures. Similarly, the process of restoring rectificatory and distributive justice serves to test and strengthen the principles and institutions of the rule of law, such as the equality of all citizens before the law, the guarantee of humane treatment to prisoners and the right to a fair trial.

The interdependence and mutual reinforcement between the three dimensions of justice make it desirable and even necessary to address all three simultaneously in the aftermath of conflict. The time frame for the realization of each dimension may differ. Often, rectificatory justice is treated as a relatively short-term order. Nevertheless, in some cases the issue is taken up only years or decades after the end of conflict, as for example in the current attempt to prosecute Khmer Rouge leaders in Cambodia.[11] In others, the issue continues to be addressed over many decades, as with the prosecution of Nazi war criminals even today in Germany, France and elsewhere. Restoring the rule of law in its plenitude and instituting distributive justice measures are longer-term objectives. These measures are usually initiated shortly after conflict formally terminates, but may not be fully effective for some time.

The three dimensions of justice identified here are important and urgent after conflict, but they cannot be addressed in a vacuum. The endeavour to restore justice is shaped by the exigencies of peacebuilding in societies emerging from conflict.

The context: peacebuilding in 'post-conflict' societies

This discussion must begin with a clarification of the term 'post-conflict'. The term is at best a simplification to describe countries that have nominally terminated hostilities, either through negotiation or on the battlefield, and that have not – or not yet – relapsed into violence. However, violence and conflict rarely end with formal settlement. Continued political tension, social instability, economic disruption and heightened crime often mark what are described as 'post-conflict' societies. Insecurity and violence frequently arise with arms proliferating through 'post-conflict' societies and into neighbouring countries, as former combatants sell or use their weapons to earn their livelihoods. In El Salvador, owing to soaring crime, the death toll rose after conflict formally concluded with a final peace agreement in 1992.

Many 'post-conflict' countries have relapsed into political conflict either rapidly, as in Angola and Sierra Leone, after the failure of their negotiated peace agreements, or only gradually, as in Zimbabwe after two decades of 'peace'. It has become commonplace to describe societies that formally conclude hostilities as 'post-conflict societies'. The term is used with caution and humility in this book in full recognition of the insecurity and instability that continue to mark these countries, and the ever-imminent possibility of a relapse into political violence.

The concept and scope of peacebuilding

A quarter-century ago, the peace researcher Johan Galtung drew the distinction between three approaches to peace: peacekeeping, peacemaking and peacebuilding. Galtung described peacebuilding as the associative approach, peacekeeping as the dissociative approach, and peacemaking as the conflict resolution approach. Peacebuilding, in his view, seeks to identify the 'structure of peace': 'Structures must be found that remove causes of wars and offer alternatives to war in situations where wars might occur.' He describes peacebuilding activities as directed at 'building structural and cultural peace'. In Galtung's description,

$$\text{Peace} = \text{direct peace} + \text{structural peace} + \text{cultural peace.}^{12}$$

While peacemaking and peacekeeping are long familiar in UN terminology and practice, peacebuilding formally entered the UN lexicon only in 1992. In the Secretary-General's 'Agenda for Peace' that year, post-conflict peacebuilding was described as 'actions to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict'.[13]

From a peace research perspective, peacebuilding, as defined above by the UN, has two distinct but related and complementary objectives. Peace research distinguishes between *negative peace*, which represents an absence of direct violence such as a cessation of hostilities; and *positive peace*, which represents the removal of structural and cultural violence. Accordingly, the 'negative' task of peacebuilding is that of 'preventing a relapse into overt violence'. This can be distinguished from the 'positive' tasks of peacebuilding, which include 'aiding national recovery and expediting the eventual removal of the underlying causes of internal war'.[14]

Striving for the balance between these twin objectives is seen as a defining feature of peacebuilding as conceptualized in this book. We

discussed earlier how prone 'post-conflict' societies are to relapsing into violence. If peace is defined solely as the absence of violence, and if peacebuilding limits its goal to ending hostilities, it will lack foundation and will face failure all too often, as in Angola. Peacebuilding has to aim to achieve its objectives of negative and positive peace simultaneously – and not consecutively – in order to be sustainable. It must constantly attempt to balance its task of maintaining the absence of open violent hostilities with the parallel task of deepening and consolidating peace to make a relapse into hostilities ever-less probable. This is not an easy or natural task, as often the two tasks may seem to contradict each other. Often political imperatives may lead peacemakers to prioritize negative peace, such as obtaining or maintaining a cease-fire agreement, in the short run. The challenge here is to ensure that such imperatives do not allow the parallel task of positive peace to be overlooked or marginalized. The twin objectives of peacebuilding and the necessity to balance them constantly is of particular relevance for the pursuit of justice which is often caught in the cross-fire between the two, as will be seen in chapters 3, 4 and 5.

Lederach emphasizes the associative, social and cultural aspects of peacebuilding. Like Galtung, Lederach views peacebuilding as a dynamic process: 'metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct'. Lederach defines peacebuilding as 'a comprehensive term that encompasses, generates and sustains the full array of stages and approaches needed to transform conflict towards sustainable, peaceful relations and outcomes'. Lederach proposes a conceptual framework offering 'a comprehensive approach to the transformation of conflict that addresses the structural issues, social dynamics of relationship building, and the development of a supportive infrastructure for peace.'[15]

Boutros-Ghali also underlines the social and economic aspect of peacebuilding. Peacebuilding is the 'construction of a new environment', which not only avoids a relapse into conflict, but also aims to 'advance a sense of confidence and well-being among people'. Boutros-Ghali specifies that 'only sustained, co-ordinated work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation', and most writers acknowledge the importance of the socio-economic dimension.[16]

An important characteristic of peacebuilding is its political nature. Earlier, the approach to peacebuilding consisted primarily of developing an inventory of necessary tasks and functions to be performed.[17] In recent years, there has been a gradual but growing recognition within international circles and in the UN that successful and sustainable peacebuilding requires not merely technical expertise to execute a

checklist of tasks but political direction as it is essentially a political undertaking.[18] Some scholars have articulated 'peacebuilding as politics': 'At its base, and at its best, peacebuilding should bolster the possibility of vibrant, responsive political life in societies where politics has been supplanted by military contest and violence.'[19]

This political conception of peacebuilding is intimately dependent on the simultaneous revival of civic life. Peacebuilding needs to be domestically rooted and 'owned' by the local population, and not imported or imposed. Lederach emphasizes 'the need to build on the cultural and contextual resources for peace and conflict resolution present within the setting'. Cockell observes that 'a sustainable peace can only be founded on the indigenous, societal resources for inter-group dialogue, cooperation and consensus,' and identifies indigenous capacity as one of four criteria for success.[20] Operationally, this need is often translated through attempts by international peacebuilders to revitalize civil society and engage civic actors in peacebuilding.[21]

If peacebuilding is described primarily as a domestic task and initiative, it raises the question of what role, if any, there is for international actors. Based on the conceptualization presented here, there is a definite but circumscribed role for international actors in peacebuilding. Countries that undergo violent conflict are very often low-income or middle-income countries that are severely set back during hostilities. They urgently require international financial assistance and expertise to rebuild. However, the goal of peacebuilding is 'moving a given population from a condition of extreme vulnerability and dependency to one of self-sufficiency and wellbeing', where the society can govern itself peacefully and resolve conflicts without recourse to violence.[22] Consequently, the international role must be to *facilitate* peacebuilding, but not to impose or dictate its terms. Lederach points to the need for the international community to 'adopt a new mind-set', and to move beyond what he describes as: 'A simple prescription of answers and modalities for dealing with conflict that come from outside the setting and focus at least as much attention on discovering and empowering the resources, modalities, and mechanisms for building peace that exist within the context.'[23]

The UN General Assembly passed a resolution as early as 1993 clarifying that 'each situation in which post-conflict peacebuilding may be undertaken is unique and therefore should be considered on a case-by-case basis'.[24] Yet in practice, the international community's attempts at peacebuilding have been sharply criticized, and described as 'an enormous experiment in social engineering' that 'involves transplanting Western models of social, political and economic organization into war-shattered states in order to control civil conflict'.[25]

These critiques underline the need for external actors to exercise caution and cultural sensitivity and eschew 'one-size-fits-all' stand-ardized approaches to diverse post-conflict situations. As envisaged by the General Assembly above, and expressed by Cockell, 'successful peacebuilding is context-specific'.[26]

Combining the perspectives presented above, peacebuilding is de-fined for the purposes of this study as follows:

- Peacebuilding is a dynamic process with the twin objectives of consolidating peace (building positive peace) and averting a re-lapse into conflict (preserving negative peace), which must be balanced.
- Peacebuilding aims to identify, alleviate and if possible eliminate underlying causes of conflict, in the interest of conflict prevention.
- Although comprising many technical elements, peacebuilding is essentially a political task; it depends critically on domestic or indigenous initiative, capacity and political will, while requiring international support to facilitate the process.
- Peacebuilding is also a social and associative process that rebuilds fractured relationships between people and is 'survivor'-focused.

Pre-conflict and post-conflict peacebuilding

The term peacebuilding was originally used to describe both pre-conflict preventive peacebuilding that precedes or pre-empts the out-break of conflict, and post-conflict rehabilitative peacebuilding that follows the termination of conflict. In the depiction of Gareth Evans, former Australian Foreign Minister, 'peacebuilding strategies are those that seek to address the underlying causes of disputes, conflicts and crises; to ensure either that problems don't arise in the first place, or that if they do arise, they won't recur'.[27] In 1995 Boutros-Ghali also adopted a broad definition encompassing both aspects, although he had initially used the term preventive diplomacy to describe the former and post-conflict peacebuilding to describe the latter.[28] Subsequently, however, Kofi Annan, United Nations Secretary-General (UNSG), returned to the original idea of peacebuilding as an activity restricted to the post-conflict stage.[29] Some writers like Lederach and Cockell support the broader definition of peacebuilding encompassing pre-ventive and post-conflict dimensions, and argue that peacebuilding needs to begin before a peace settlement is reached.

There is clearly an overlap between the two stages, and between the concepts of peacebuilding and conflict prevention.[30] The aim in

both is similar: consolidating peace and ensuring that conflict does not break out. The difference is in timing: one precedes the outbreak of violent conflict and the other follows it. In this study, the focus is on the latter, for it is in societies that have already undergone conflict that all three dimensions of justice are pressing and pertinent. Justice issues may be pertinent in pre-conflict preventive peacebuilding as well: it may be effective to address distributive justice issues and remedy shortcomings in legal justice in order to prevent conflict. However, it is in post-conflict societies that all three dimensions become pressing simultaneously within the context of peacebuilding. Here, while an argument is made for a broad, dynamic and encompassing definition of peacebuilding, the analysis of justice focuses on the post-conflict stage.

The practice and relevance of peacebuilding

The concept and practice of peacebuilding have developed rapidly since 1992. A range of UN agencies and departments, and innumerable regional, bilateral and non-governmental organizations have undertaken various peacebuilding tasks.[31] Many recent studies have criticized peacebuilding's record in practice, especially shortcomings in the UN's performance in this new and unprecedented enterprise, as noted earlier.[32] In my view, these critiques do not weaken the concept of peacebuilding, but rather indicate the inevitable difficulties of translating into practice an evolving, dynamic and ambitious concept.

Many terms have been employed to describe the task facing societies that emerge from conflict. The World Bank talks of post-conflict reconstruction, while UN agencies refer to post-conflict rehabilitation or rebuilding.[33] The terms 'complex peacekeeping operations', 'new peacekeeping' or 'peace support operations' have been used to describe multidimensional missions that facilitate the initial transition from conflict to peace. Led by the UN and / or regional organizations, these operations usually comprise civilian monitors, police officers and military personnel, and have short-term mandates.[34] Peace maintenance is an innovative concept that proposes to address the challenge of instituting legitimate and integrated international political authority in war-torn countries. Its concern is the comprehensive effort the UN must undertake in states where domestic capacity for governance is destroyed, or where an interim international authority is required to safeguard the transition to peace.[35]

While many valid terms exist, in my view peacebuilding as defined in the discussion above is the concept that best encapsulates and most

adequately responds to the requirements of societies emerging from conflict. Peacebuilding does not preclude either peacekeeping or peace maintenance: it encompasses and goes beyond them. Peacebuilding seeks to identify and address comprehensively the many levels at which peace needs to be built in societies torn by violent internal conflict.

Conflict, as noted in the introduction, is not only a political phenomenon affecting politicians and combatants, but equally a social phenomenon with a direct and usually devastating impact on civilians. This reality provides the backdrop for peacebuilding. A settlement that achieves political accommodation and ends hostilities between belligerents will provide a necessary but insufficient foundation for peace, as this achieves only the 'negative peace' objective of peacebuilding. Peace arrangements need to address not only the political grievances of opposed groups and factions but also the concerns of ordinary inhabitants of society, as the 'positive peace' objective of peacebuilding attempts to do. Peace will be sustainable only if it is founded on the interests of all inhabitants of a society, irrespective of their roles during the conflict.

The concept of peacebuilding as defined here suits societies emerging from conflict because it recognizes and responds to the dual function of building both political peace, between opposed leaders, and social peace, between hostile and estranged citizens. Peacebuilding recognizes that fractured interpersonal relations, as much as damaged infrastructure and disrupted economies, need to be rebuilt after devastating conflict. It is for this reason that this book roots the endeavour to restore justice in the aftermath of violent conflict within the context of peacebuilding as the concept is defined here.

Restoring justice within the parameters of peacebuilding

Ramsbotham proposes a conceptual framework for post-conflict peacebuilding. He identifies three interlinked deficit areas that positive peacebuilding aims to address: political/constitutional incapacity; economic/social debilitation; and psychosocial trauma.[36] The three dimensions of justice correspond to these three deficit areas. Rebuilding legal justice or the rule of law is an essential component of political/constitutional reconstruction; distributive justice is the *leitmotif* of the socio-economic programme undertaken in post-conflict reconstruction; rectificatory justice is the central component in psychosocial rehabilitation.

Situated within the context of 'post-conflict' peacebuilding, then, the tasks of restoring justice and rebuilding peace are complementary and overlapping, and even mutually reinforcing. The tasks of building peace and restoring justice both stem from a combined political and social imperative. Both processes must strive to balance political goals with societal ones, within the stringent material and political constraints faced by low-income post-conflict societies. Yet although some component parts of the three dimensions of justice have been addressed in peacebuilding, the integral nature of justice and the dynamic linkages between its three dimensions have not been consciously acknowledged or addressed by either scholars or practitioners.[37]

Despite their compatibility in theory, the parallel tasks of building peace and restoring justice often come into conflict in practice. Although peace and justice seem inseparable natural allies in peacetime, their relationship is fraught in the aftermath of conflict. Political and material obstacles are frequently encountered in seeking to restore peace and justice simultaneously. Politically, addressing issues of justice after internal conflict is inevitably contentious and riddled with dilemmas. The end of hostilities and the onset of peace often impose requirements that contradict the requirements of justice; the demands of justice sometimes contradict the conditions necessary to maintain (negative) peace. For example, legal justice may require dismantling a corrupt judiciary; rectificatory justice might require prosecuting popular national leaders; distributive justice may necessitate redistributing land more equitably. Such 'just' changes may seem to threaten negative peace and short-term stability by provoking obdurate resistance from powerful groups and institutions, such as the military, the political leadership or the economic elite. Nevertheless, ignoring justice claims may cause discontent and frustration among disenfranchised groups, and undermine positive peace. It may endanger negative peace as well, if unmet grievances degenerate into renewed violence.[38]

Practically, a significant constraint and limit to actions to restore justice stems from the poverty and material limitations of most post-conflict countries. The task of addressing justice issues must compete with the multitudinous tasks of economic recovery and reconstruction that are often considered higher priority to get a war-torn country back on its feet. Addressing questions of justice and winning public confidence in peace are a bulwark of sustainable peacebuilding, but they may get short shrift when attention is focused on immediate tasks of recovery which yield quicker material results. Addressing issues of justice within the peacebuilding process in low-income post-conflict societies is eminently important but also inordinately difficult.

Restoring justice in practice: drawing on recent experience

This introductory chapter has so far laid out the aims of this book, identified the three interdependent dimensions of justice, described the concept of peacebuilding and situated the task of restoring justice within the peacebuilding process in war-torn societies. The next chapter will demonstrate the current disconnect between theory and practice by examining theories of legal, rectificatory and distributive justice within the field of contemporary philosophy.

Thereafter in chapters 3, 4 and 5, we will move to the main thrust of this book to substantiate the arguments made through an evaluation of the experiences and challenges of restoring justice in practice in societies emerging from conflict. In order to do so, this book draws primarily on the experiences of a small number of developing countries that have emerged recently from violent internal conflict or political crises. The countries were chosen based on the salience of one or more of the dimensions of justice before, during and after conflict. They are: El Salvador, Haiti, Namibia, Mozambique, Cambodia, Rwanda, South Africa and Guatemala. These countries were not studied exhaustively or systematically across all three dimensions of justice, but only insofar as their individual experiences in one of the three was relevant to the aims of this study. The examples drawn from these countries are demonstrative rather than comprehensive, as they are intended to substantiate the arguments made in this book. Occasional reference is made to other societies undergoing or emerging from conflict that are relevant to the themes of this book, such as former Yugoslavia or Ethiopia.

All eight countries experienced significant international involvement in post-conflict peacebuilding, and often also during peace negotiations. This was a deliberate choice to evaluate the performance of international actors, particularly the United Nations (UN) and the Bretton Woods Institutions (BWI), in addressing justice issues within peacebuilding, and to draw lessons for the future.

All except two – El Salvador and South Africa – are classified as low-income countries by the World Bank. El Salvador is classified as a lower-middle-income country. South Africa is classified as an upper-middle-income country.[39] However, on a range of socio-economic indicators, 'if South Africa's indicators were restricted to include only the African population, black South Africa fares as badly as a much poorer country like Kenya', making it comparable to the other low-income cases.[40] Although El Salvador and South Africa are

marginally better off than the other cases, they are nonetheless developing countries with similar socio-economic constraints. Again, this choice of developing countries was deliberate as this book intends to illustrate the particular difficulties faced in restoring justice after conflict in resource-poor settings that middle- or high-income countries might not face.

Conflict was formally terminated in or before 1994 in seven of the eight countries enumerated through either a negotiated agreement or battle victory. This general cut-off date of 1994 provided a short period to evaluate the initial 'post-conflict' peacebuilding process. The only country referred to here whose conflict ended after 1994 is Guatemala, where final peace agreements were signed only in December 1996. Nevertheless, the salience of all three dimensions of justice in Guatemala's peace negotiation process and, consequently, for peacebuilding, make the case important for this analysis. However, due to the short time-lapse since the termination of conflict, most references to Guatemala are to the negotiation process and aspirations expressed in the peace agreements, with only passing reference to post-conflict implementation.

The choice of cases and the limited passage of time since their conflicts formally concluded does not reflect a presumption that peace is irreversible in these countries and a relapse into conflict is precluded. As discussed earlier, countries described nominally as 'post-conflict' are almost without exception insecure and volatile, and this is borne out in most of the eight cases used here.

In Cambodia, political crisis peaked in April 1997 when then-joint Prime Minister Hun Sen staged a palace coup, only conceding to elections in July 1998. Yet, political violence again scarred campaigning for the first ever local elections in February 2002,[41] in which Hun Sen's party won a landslide victory amidst complaints of irregularities by foreign election monitors. Political turmoil and violence persist in Haiti despite the internationally assisted ouster of the dictator Raoul Cédras's violent regime in 1994. Jean-Bertrand Aristide, erstwhile torchbearer of social justice, is now suspected of nursing dictatorial ambitions. Since retaking the presidency in opposition-boycotted elections in November 2000, Aristide refuses to concede to opposition and international pressure to call new elections, and accuses the opposition and former army of plotting a coup.[42] Political uncertainty and conflict continue in Rwanda. Alleged hostilities by the Interahamwe forces who perpetrated the 1994 genocide and by former soldiers of Forces Armées Rwandaises (ex-FAR) continue in the north-west, provid-

ing the ostensible rationale for Rwanda's military involvement in the war in the Democratic Republic of Congo (DRC). Increasing defections or departure of senior Hutus and moderate Tutsis from government and Kagame's consolidation of power have shaken political stability and raised ethnic tensions.[43] In Namibia ten years of relative tranquillity were broken in August 1999 by the challenge of the small separatist Caprivi Liberation Army in the north, and the South West African People's Organization (SWAPO) government has been criticized for its heavy-handed response. Namibia is also involved in two of the worst wars on the African continent, in Angola and in DRC. After three terms in office facilitated by a constitutional amendment, President Nujoma seems to want a fourth, casting doubt on Namibia's democratic credentials.[44] Tension has risen within and between political parties in South Africa, particularly since Mandela's passage from power, as has criminal violence and insecurity. El Salvador has seen gains in relatively peaceful bipartisan politics, with the former rebels now exercising political responsibility at local and federal level, but personal insecurity is high owing to violent crime. Even Mozambique, the cherub of the donor community, has been marred by recurrent political violence since general elections in 1999 that were won by the ruling Liberation Front of Mozambique (FRELIMO) with only 52.3 per cent of the vote, and continue to be contested virulently by Mozambican National Resistance (RENAMO) supporters.[45]

In all eight countries, despite instability, a relapse into full-fledged conflict has so far been avoided, and relative peace prevails in some form. Countries where there was a relapse into war before peacebuilding could take root, such as Angola, or where hostilities have not ended decisively, such as Algeria, were not included.

It should be noted that this book does not address transitions to democracy, and consequently does not address the literature on democratization. We refer here to a diverse range of countries emerging from conflict in varied circumstances. Some countries were already functioning or nominal democracies prior to and / or during conflict, like El Salvador. Some transited to democracy via elections as part of peace agreements or after conflict terminated, as in Mozambique. Some averted the democracy question altogether, for instance, when conflict ended through victory in battle, as in Rwanda. 'Peace' and 'justice' as addressed here are irreducible to and distinct from 'democracy' and 'human rights', which more often receive attention in post-conflict transitions.

Conclusion

Experiences and perceptions of injustice underlying or driving conflict do not disappear when peace is concluded. Restoring justice after conflict is not only a political task but also a social and personal imperative in the process of peacebuilding. The stakes involved in peacebuilding are high. The cost of relapse into conflict can be devastating in human and material terms. And such reversals are a real risk. Angola is a case in point: an internationally brokered peace agreement and UN-led multidimensional peacekeeping missions to oversee a peaceful transition have not sufficed to this day to end hostilities.

The call for justice arouses charged political and personal sentiments that are aggravated by the nature of the excesses committed during conflict. Perpetrators and their victims are obliged to live within the same borders in most cases. All survivors of conflict within a society rarely share a common conception of justice, and nor do the international actors involved. The process of restoring justice after conflict is, inevitably, contentious, all the more so when the means to restore justice are limited as in developing countries.

Post-conflict *re*construction and *re*habilitation do not need to imply a return to the *status quo ante*. This is recognized even by traditionally conservative agencies. The World Bank notes that 'conflict can present an opportunity to develop new social, political and economic systems that can better serve the needs of a changing society'.[46] The UN Development Program (UNDP) observes, 'The insights and lessons learned from crisis provide opportunities for constructive change and future reform. They are new points of departure on the path of innovation and sustainable development. Emergencies are often springboards for progress.'[47]

Addressing issues of justice is controversial even in peaceful societies, as it pits opposing conceptions of state, society and wellbeing against each other. The end of conflict and the transition to peace may seem the least promising time to forward the cause of justice. Yet this transition may also provide a watershed opportunity for societies to achieve greater justice while building peace.