

ICTJ Research Unit  
September 2009

## Transitional Justice and Development

Development and transitional justice actors frequently work in the same settings. Many developing countries have histories involving massive human rights violations, and many transitional societies face abiding developmental deficits. These two conditions relate to each other in complex ways. Poverty increases marginalization and vulnerability, which makes it easier to target certain groups for abuse and weakens the institutions that may have offered some guarantees of their rights. Similarly, human rights violations interrupt education, disrupt working arrangements, and undermine support networks, among other effects. Yet despite their shared settings, transitional justice and development rarely connect with one another.

Transitional justice and development, however, can be linked in important ways. Increasing the awareness of the potential contributions that each process can make to the other, the opportunities for mutual support, cooperation, and learning, and the trade-offs that may be required, can make for a more coherent policy response to the interrelated needs of transitional and developing societies. Ultimately, lasting peace and sustainable societies cannot be built in the aftermath of massive abuses without transitional justice, nor without development. Transitional justice must be part of a comprehensive development approach in post-conflict and transitional countries.

### Establishing the Links

Transitional justice refers generally to measures that redress massive human rights abuses, including criminal prosecutions, truth-telling, reparations, and certain kinds of institutional reform. At the most basic level, transitional justice measures are efforts to establish or reestablish social norms and the reliability of institutions in the aftermath of abuses that such institutions could not prevent or were directly involved in. Development, on the other hand, refers not only to measures that aim to improve economic growth and distribution but also more generally to measures related to the social, institutional, and political factors that could impinge on well-being.

Before thinking about the program or policy level, the conceptual links between the two fields have to be clarified. The expanding boundaries of development mean that transitional justice and development programs not only coexist geographically but also overlap thematically around such issues as peacebuilding, judicial and security sector reform (SSR), corruption, land and natural resources, displacement, education, and health. Both fields also share certain goals. At the broadest level, both aim to transform societies by contributing to sustainable peace, the strengthening of legitimate institutions and citizenship regimes, and social integration.

### How Transitional Justice Contributes to Development

One can clarify the links at the conceptual level by analyzing the effects of massive human rights

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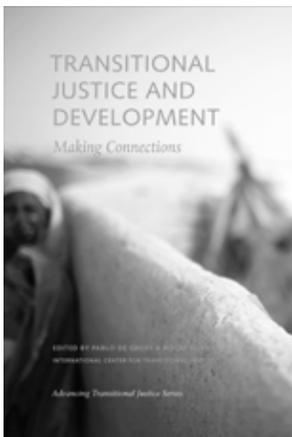
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## Transitional Justice and Development

### About the Research Project

This brief is based on the results of an ICTJ research project systematically examining the relationship between transitional justice and development, two fields that until now have proceeded largely isolated from one another. The document is not intended to summarize the results of the project, but to highlight some of the most important connections between the fields. The project led to the edited volume *Transitional Justice and Development: Making Connections* (Social Science Research Council, 2009). For more information, visit [www.ictj.org/en/research/projects/research5/index.html](http://www.ictj.org/en/research/projects/research5/index.html).



violations in terms made familiar by developmental analyses of the legacies of marginalization. Those who are exposed to chronic poverty and marginalization are liable, among other things, to lower their expectations, and to mistrust other social groups and the institutions that are meant to regulate their interactions. Victims of massive human rights violations, who are frequently the victims of overlapping vulnerabilities, may suffer the same consequences. Additionally, since massive human rights violations involve systematically and deliberately breaking norms that are as basic as they are general, their effects are experienced not simply by those whose rights are violated directly but by everyone. Massive violations weaken the general capacities of agency, the ability to lay claims on others and on institutions, and make it more difficult to coordinate social action.

This clarifies some of the reasons development actors should be concerned with the legacy of atrocities. It also highlights the contributions that transitional justice can make to the development process. The diminution of agency, the depletion of social capital or the growth of distrust, and the weakening of institutions can be curbed through the application of measures whose mission is to reaffirm basic norms and strengthen institutions that give force to these norms. Transitional justice measures aim to:

- provide recognition to victims not only as victims but as rights bearers;
- foster trust among citizens, particularly between citizens and public institutions;
- and strengthen the rule of law.

Transitional justice measures are, in the end, mechanisms of social integration that promote robust citizenship rights that are both inclusive and effective.

### How Development Contributes to Transitional Justice

If there are reasons for development actors to take an interest in the potential contributions that transitional justice can make to their work, there are also reasons for transitional justice promoters to consider the contributions that development actors can make to theirs. At the broadest level of generality, successful transitions often depend on progress in development. So, by addressing the economic legacies of authoritarian regimes—unproductive expenditures, undisciplined rent seeking, and macroeconomic destabilization—development actors and policy can contribute to the overall success of a transition, enabling successful transitional justice efforts.

Furthermore, transitional justice programs require resources and institutional capacity, which are often scarce in transitional and developing contexts. Trials require operative courts; reparations programs require resources to distribute and institutions to distribute them; vetting requires institutions strong enough to remove certain individuals and to withstand having personnel removed. Development support to rule of law programming, anticorruption campaigns, and educational and health sector reform also enables transitional justice. Finally, development—a more established field than transitional justice—has much to offer the latter by way of lessons learned about participatory approaches and working with grassroots and civil society organizations.

There are also specific opportunities for development actors to directly support or facilitate transitional justice efforts. They can provide funding and technical assistance to transitional justice measures or, after building up the requisite expertise, they can play a direct role in the design and implementation of those measures. Development actors—by virtue of having an established presence on the ground and mechanisms to implement projects—can be a conduit for delivering certain transitional justice projects, such as supporting the implementation of a truth commission or delivering training on international criminal law to national judges. Development actors can also provide support to state institutions or to civil society with a specific eye to improving their ability to engage with transitional justice measures in the future.

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In addition, development actors can work to build consideration of transitional justice measures into initial discussions of government budgets and plans for the post-conflict years. To the degree that development actors play a role in peace accords and in the formulation of government plans, they can ensure that transitional justice measures are at least a viable possibility. Similarly, international development actors frequently can convene local stakeholders and press official institutions to work in a coordinated fashion with one another more effectively than local participants. Finally, as partners in political dialogues with governments, they can use their political clout to push for commitments to transitional justice.

## **Transitional Justice Measures and Development**

Truth commissions, reparations, justice-sensitive SSR, and criminal prosecutions, among other measures, should ideally be supported as a holistic transitional justice program, regardless of their relationship to development. It is, nevertheless, worth highlighting the specific links between each measure and development, including opportunities for support, cooperation, and learning.

### **Truth Commissions**

Though truth commissions have only words as their output, they can make significant contributions to development processes for two fundamental reasons. First, they contribute to the understanding of the structural and institutional dimensions of mass violations. While truth commissions have typically focused on violations of civil and political rights, in developing a report the aim usually is primarily to shed light on the factors that made violations possible, rather than solving questions about individual responsibility. Frequently, this has led commissions to provide an account of the root causes of the violations, including the marginalization of certain communities, structural inequalities, and institutional deficits of various types. This in itself can be an important contribution to development.

Truth commissions can provide insight on development-related issues such as the rule of law, natural resources and land, and educational and health system reform. Given the generally accepted relationship between the rule of law and development, one of the most important functions of truth commissions, from a development perspective, is to promote the rule of law by:

- appraising the role of the judicial system in past abuses and exposing compromised personnel;
- making recommendations to improve the efficiency and independence of the judiciary;
- promoting a richer understanding of the rule of law;
- stimulating debates about what constitutes a “good society”;
- and promoting trust in the judicial system by both signaling and reaffirming society’s commitments to basic principles.

Truth commissions in Sierra Leone, Timor-Leste, Liberia, South Africa, Peru, and Guatemala have also examined the links between natural resources and abuses, including: the role of natural resources in facilitating conflict and the targeting of victims; linkages between this form of economic criminality and human rights abuse; and specific institutional weaknesses that enabled resource crimes. Truth commissions can also play an important role in raising awareness of land issues in past abuses, helping the population agree on a history of land claims, and drawing attention to the need for land tenure reform in a more just direction. Few commissions, however, have addressed land issues with sufficient detail.

Truth commissions in such countries as Peru and Sierra Leone have examined the role of the education sector in conflict and abuse, making wide recommendations for reform. In Timor-Leste

and Sierra Leone, they have addressed the failure of health institutions and providers during conflict—although such insight has not led to specific strategies for reconstruction. Translating the recommendations of truth commissions into specific programs is, indeed, a significant area of potential collaboration between transitional justice and development agents.

In considering the expansion of the focus of truth commissions to include more development-related issues, attention must be given to the constraints. Commissions typically face short deadlines, tight budgets, and low institutional capacity. Additionally, those who may have benefited from resource extraction, for instance, and remain in government may obstruct commission operations should they believe the commission endangers their economic interests. At the same time, though, popular pressure for attention to economic crimes may overwhelm resistance, with the public demanding a full accounting of such abuses, as in Liberia.

Truth commissions can make a second general contribution to development: they may also catalyze political will. Although short-lived, truth commissions give rise to an intense mobilization of those committed to the fate of victims, who often belong to the most underprivileged sectors. Truth commissions have the potential to bring together a plurality of actors. Part of their potential is contextual in nature, being instituted in situations in which public decisions are more likely to be adopted. As highly public mechanisms, they can draw attention to the need for a long-term process of change and mobilize support.

Cooperation between truth commissions and actors in rule of law, natural resource, education, and health sectors from the beginning of the process should serve to reinforce any contribution to development that truth commissions might make. For example, the participation in truth-telling processes of practitioners with expertise in development-related areas should increase both the legitimacy of the insight provided and the likelihood that recommendations are implemented. Similarly, ensuring that information gathered by truth commissions is actually provided to development actors should help facilitate the implementation of development-related recommendations. Mutual exchange of expertise and information should be part of any truth commission engagement with development issues.

### Reparations Programs

Reparations programs offer particularly promising opportunities for establishing links between transitional justice and development. Reparations are the transitional justice measure that aims most directly at improving the quality of life of victims and, in the case of collective reparations, of communities as well. Complex reparations programs—those that offer a variety of benefits in addition to the distribution of cash, such as health and education support—clearly overlap with areas of concern of development agents.

How the links between reparations and development are established is of great importance. Governments are frequently tempted to assume that reparations and development programs can substitute for one another, usually trying to pass existing development projects as reparations. While reparations and development programs should coordinate with one another, and may distribute similar benefits to groups that largely coincide, they are distinct initiatives that rest on separate grounds and relate differently to other dimensions of justice. For example, reparations involve an acknowledgment of responsibility, which development programs generally do not.

Reparations aim at providing recognition to victims not just as victims but primarily as citizens, and at strengthening trust, particularly in state institutions. Reparations programs can contribute to the achievement of these aims in part because they involve repeated interactions with state institutions. Distributing benefits in the manner of pensions, rather than lump sums, magnifies

this effect since victims periodically receive an expression of state responsibility.

Reparations may also have spillover effects that are beneficial for purposes of development. For instance, offering victims medical services may catalyze the creation of similar programs for non-victims, as has sometimes happened with mental health care programs originally created for victims. By the same token, civil registry and titling initiatives sparked by property restitution programs can lead to broader efforts to clarify registry of land. Spillover can also occur in the areas of budgeting, oversight, and procurement.

There is also potential for reparations programs to strengthen local and regional governments more generally in the context of greater democratization. For example, implementation of the reparations program in Peru has been spearheaded by provincial and municipal administrations. The infusion of resources and attention that the program has brought may allow those governments to become more effective service providers across the board. Finally, reparations can stimulate the creation and growth of civil society organizations that lobby for and implement such programs. Examples include the key role of the Human Rights Advisory Council in formulating and delivering the reparations ordered by the Moroccan truth commission, and the reliance on civil society intermediaries for carrying out the projects of the Victims Trust Fund of the International Criminal Court. In Peru, civil society organizations have played a key role in monitoring the implementation of community-level reparations.

*A development focus on service delivery to the poor, or on the anticorruption efforts needed to ensure those services actually arrive, can critically improve the delivery of reparations, and will expand the range of possible reparations benefits.*

The relationship between reparations and development should be considered from the opposite perspective as well. Reparations programs would not get off the ground if there were no resources to distribute. Furthermore, a development focus on service delivery to the poor, or on the anticorruption efforts needed to ensure those services actually arrive, can critically improve the delivery of reparations, and will expand the range of possible reparations benefits. Finally, since reparations aim to provide recognition to victims, reparations programs need to establish methods of consultation and participation. This is something that development programs have a long history of doing or attempting to do.

In terms of international cooperation, in addition to providing technical and material support, international agencies can exercise influence in favor of establishing reparations programs to begin with, facilitating the necessary coordination of various government and nongovernmental institutions. Most important, they can make sure that discussions about the national budget, particularly between national governments and international lenders, leave space for the establishment of reparations programs. International financial institutions can make a deeper contribution to reparations programs than they previously have by: giving serious consideration to pleas from different countries to help finance reparations through debt reduction and other initiatives; providing technical advice to national governments on the possibility of establishing special taxes for purposes of reparations; and guaranteeing that the agreements they reach with debtor countries leave open the possibility of establishing programs for victims.

Transitional justice and development actors should work together to support, design, and implement reparations programs that complement development efforts. Opportunities for cooperation include ensuring an emphasis on social integration; determining appropriate levels of complexity and balance between individual and collective benefits; maximizing potential spillover effects on state and civil society capacity; and securing reparations a place on the national agenda.

### **Institutional Reform**

Certain kinds of institutional reform can constitute measures of transitional justice if they directly address the legacies of massive human rights abuses. Vetting—the process of screening

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for and dismissing human rights abusers from public institutions—can be linked to development if applied to certain sectors. Broader kinds of institutional reform, which focus not only on the behavior of individuals, may connect with development even more directly by helping to change the very policies that both led to abuse and negatively impacted development.

Judicial reform, which can include vetting, is generally considered to be connected to processes of development, by strengthening the rule of law and by promoting the formation of social capital. While in many post-authoritarian contexts vetting focuses on the judicial sector, this has generally not been the case in developing countries emerging from conflict. This is because of the frequent incapacitation or virtual nonexistence of judicial institutions in the latter contexts, and because judges are generally more complicit in abuses under authoritarian regimes, where there is a formal rule of law, than in armed conflicts, where rule of law can be nonexistent and the military, police, and non-state actors are usually most responsible for abuses.

In developing countries, vetting may play an role in institutional reform in sectors such as natural resource management. As part of the Liberia Forest Initiative—an initiative for assisting comprehensive institutional reform—for example, human rights advocates collected statements regarding abuse suffered at the hands of logging companies and their security during the war. These findings contributed to the decision to establish a vetting policy for concession bidders. According to this policy, individuals providing security for forest companies are vetted using criteria based on those established by the UN Civilian Police’s process for vetting the Liberian National Police—criteria that exclude those who have credible allegations of abuse against them.

Security sector reform is another area in which transitional justice can make a contribution to development, and in which there can be closer collaboration between transitional justice and development actors. Indeed, a “justice-sensitive” approach may help SSR to achieve its goals, including development, by calling attention to the systemic causes of abuse and mobilizing support behind systemic reform efforts that address such causes, and by helping SSR programs to effectively confront the legacy of such abuses. Addressing these legacies through SSR involves measures aimed at:

- accountability for past abuses;
- participation, representation, and empowerment of victims and other marginalized groups;
- the legitimacy of institutions;
- and coherence of SSR efforts with transitional justice measures.

At the same time, justice-sensitive SSR faces the constraints and challenges of all SSR work, including those related to capacity, local ownership, and coherence. Furthermore, since transitional justice and development objectives will not always align in the short run, tensions may exist around resources, methods, and priorities.

A justice-sensitive approach may have implications for development aims, such as poverty reduction. First, vetting can be coordinated as part of larger downsizing efforts that reallocate spending from security to development. Second, since transitional justice is concerned with the prevention not just of conflict but of the recurrence of widespread human rights violations, justice-sensitive SSR may contribute to a deeper kind of security, and a more sustainable development, in the long run. Third, efforts to increase the participation of victims and the poor in SSR and the provision of security may be mutually reinforcing.

On the other hand, SSR can serve to reinforce the prevention of the recurrence of widespread and serious human rights abuses. In the absence of SSR, then, transitional justice is less likely to

achieve its final goals of democratization and reconciliation. Furthermore, SSR at its best provides for effective and accountable security institutions often required for the successful implementation of transitional justice measures, such as prosecutions and truth-telling. In both these ways, development support to SSR can facilitate and reinforce transitional justice.

Further dialogue and cooperation is called for between development and transitional justice practitioners engaged in institutional reform work. Opportunities for cooperation include applying vetting to development-related sectors in which perpetrators may exist; ensuring that narrow reform efforts, such as vetting, are carried out as part of a broader program of institutional reform; and adopting an approach to SSR that is both development-oriented and justice-sensitive.

### **Criminal Prosecutions**

Criminal prosecutions of perpetrators of human rights abuses may, through their deterrent effects, contribute to the long-term stability that is necessary for sustainable development. Trials may also contribute to judicial reform and the rule of law through demonstration effects. In addition to demonstrating that no one is above the law—in contexts in which law has been more a tool of marginalization than of equal and fair treatment—well-run trials observing all due process requirements may be the first to do so in many post-authoritarian and post-conflict societies.

Prosecutions also offer opportunities for local capacity building—national and hybrid tribunals more so than international tribunals. This can include contributions to human-resource and professional development, through recruitment, training, and skills transfer, as well as physical infrastructure, including facilities, evidence, and court records. Steps that can be taken to maximize the positive legacy of prosecution efforts include adopting a specific legacy strategy and undertaking broad consultations with civil society and victims groups. International donors' support should be substantial, extended, coordinated, and strategic enough to implement outreach campaigns to accompany locally driven processes. Donor support to transitional justice prosecutions should not be diverted away from existing rule of law programming.

Prosecutions can also be applied to natural resource or economic crimes. Recent cases in the Special Court for Sierra Leone, the International Court of Justice, and Dutch domestic courts provide examples. Arguments for such prosecutions include, first, that pursuing accountability for civil and political abuse is rendered less effective by the neglect of economic crimes facilitating and motivating that abuse. Additionally, persistent impunity for widespread economic crimes sends the message that there is still no rule of law. Finally, trial testimony, evidence, and arguments can generate momentum for change by raising public awareness of the issues, their connection to massive abuses, and the need for institutional reforms.

Challenges to legal accountability for such crimes include prosecutors' and judges' unfamiliarity with pillage charges; multiple jurisdictions; lack of political will to pursue cases that undermine the economic interest of those in power; resistance that could negatively impact accountability in other areas; evidence being located in remote and politically unstable places; and trials leaving untouched large numbers of actors who participated in the crimes. These are serious considerations that must be weighed empirically.

In developing countries, both the legacy of prosecutions and the feasibility of implementing them may depend on prior or parallel efforts to reform the domestic judicial system. Judicial systems in such contexts are often virtually nonexistent, weak, corrupt, and without the trust of citizens, damaged by years of physical destruction and the fleeing, murder, or complicity of judges and lawyers. Post-conflict Rwanda, Timor-Leste, Sierra Leone, and Cambodia are examples. Donors can respond to this lack of capacity by providing support directly to prosecution efforts.

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### Acknowledgments

ICTJ wishes to thank the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Swiss Federal Department of Foreign Affairs (FDFA), whose financial contributions made this research project possible.

The United Nations Development Programme (UNDP), for example, has provided capacity development to the gacaca process in Rwanda and the War Crimes Chamber in Bosnia and Herzegovina. Importantly, though, development support to judicial reform can contribute to the establishment of acceptable norms of behavior and enable future domestic prosecution.

It must be acknowledged that the relationship between criminal justice and development is not seamless. The threat of prosecutions, for example, may make negotiating peace, and therefore development efforts, more difficult. Prosecutions, regardless of venue, are also expensive and therefore consume resources that could be put to other uses. Still, there are international legal obligations that are not simply trumped by considerations of expediency.

In order to minimize tensions and maximize synergies and the positive legacies of prosecutions, it is important for development and transitional justice promoters to coordinate their activities. Opportunities include adopting legacy strategies for hybrid courts, undertaking consultations with civil society and victim groups, and ensuring donor support for such activities. Cooperation can also focus on overcoming the challenges to pursuing legal accountability for crimes related to development, using information revealed in such trials to mobilize support for broader change, and promoting parallel efforts to reform judicial systems.

### Conclusion

Promoting awareness of the connections between transitional justice and development is the first step toward establishing policies that coherently address the concerns of both in contexts in which they coexist. Some actors recognize such connections and take steps accordingly. But much more can be done to maximize the benefits of these connections and minimize the tensions.

Truth commissions can more thoroughly address the structural and institutional dimensions of abuse and make specific efforts to mobilize support behind broader societal changes. Reparations programs can be designed more with an eye to complementing development efforts and maximizing spillover effects on state and civil society capacity. Institutional reform measures can make greater effort to remove those responsible for abuses from the security sector, the judiciary, and natural resource management. Prosecutions can be carried out with a more deliberate legacy strategy, or target more of the perpetrators involved in development-related crimes.

At the same time, if development actors more fully recognize the value of transitional justice measures, they can do more to support them accordingly, providing resources and technical assistance, working to include consideration of such measures into peace agreements and budgets, coordinating stakeholder and institutional activity, sharing lessons learned, and strengthening institutions with an eye to enabling transitional justice efforts in the future.

The idea should be mainstreamed within both communities that transitional justice and development are integral, if different, elements of a coherent transitional program in developing country contexts where massive human rights abuses have occurred.