Background Note

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Dealing with legacies of violence: transitional justice and governance transitions

By Pilar Domingo

Transitional justice (TJ) is firmly on the international agenda in post-conflict and post-repression settings. In March 2012 the International Criminal Court (ICC) found Thomas Lubanga guilty of human rights crimes in the Democratic Republic of the Congo and, the following month, Liberian ex-President, Charles Taylor, was convicted of crimes against humanity and war crimes by the Special Court for Sierra Leone. Alongside such high-profile court cases, other mechanisms for achieving transitional justice continue to evolve in a wide range of post-conflict and post-authoritarian contexts, including now stable countries, such as Spain. In fact, in countries with a legacy of violence, oppression or impunity for human rights abuses, there is now an almost automatic expectation that issues of redress, justice, and accountability will feature in the ensuing governance transition.

This Background Note explores some of the key issues and dilemmas that questions about TJ raise in the context of international support to governance transitions. The Note proceeds as follows. First, it looks at how the definition of TJ has evolved to include a broader and more ambitious range of activities and objectives. Second, it reviews the different views within the international community about the merits and perils of TJ. Third, it provides an overview of the four main categories of TJ mechanisms and their intended objectives. Fourth, it examines what is known about the factors that influence TJ choices and trajectories and the impact of these on longer-term socio-political outcomes. Important knowledge gaps are also identified. Finally, it summarises some key issues that international actors should consider when thinking about how to engage strategically with TJ process

in post-conflict settings. Box 1 summaries the key messages from the Note.

Given its focus on TJ, this Note is specifically concerned with contexts where there is a legacy of conflict or systematic human rights violations. In practice, this usually means countries that are in the midst of a (often simultaneous) governance transition from: (i) conditions of conflict to relative peace and stability (post-conflict), and/or (ii) authoritarianism to a (formally) democratic regime (post-repression). More recently, TJ has also been a subject of negotiation *during* conflict, and countries may also experience further cycles of conflict and repression. Therefore, there is no assumption that conflict is in the past or that transitions move only in one direction towards more legitimate or peaceful state-society relations.

> **Box 1: Key messages**
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> - The politics of redress, justice and accountability features in most post-conflict and post-repression settings. This places transitional justice (TJ) firmly on the policy agenda of international support to governance transitions.
> - There is a broad range of TJ mechanisms. Their objectives have evolved from an immediate concern with outcomes for victims to more ambitious goals related to state- and peace-building processes.
> - Where domestic political conditions are conducive to TJ, there are good reasons for the international community to support these processes.
> - However, TJ is a young field of empirical study and little is known about its actual impact on longer-term political and social outcomes. Even less is known about the impact of international support to TJ.
> - There are some key issues that international actors must consider if they are to engage strategically with the specific political dynamics of TJ in post-conflict settings (outlined in the section on implications for the international community).

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What is transitional justice?

There is a rich scholarship on TJ. Early analyses reflected mostly Latin American and Southern European experiences of democratic transition. But current thinking about TJ is informed by a much broader range of experiences, including post-socialist transitions in Eastern Europe and various post-conflict settings, many in sub-Saharan Africa and Asia.[1]

In this Note, TJ is defined as 'the array of processes designed to address past human rights violations following periods of political turmoil, state repression, or armed conflict' (Olsen et al., 2010: 11). The merit of this definition is that it encompasses different transitional settings and is modestly descriptive, but it also avoids the pitfalls of making causal assumptions about the outcomes of TJ. It also does not limit the scope of TJ to situations where the state is seen as the only relevant violator of rights or the only provider of justice.

At the same time, it is important to stress that the definition of TJ is deeply contested. This is because its boundaries change constantly in response to both conceptual developments and country-specific experiences of transitional justice and the changing expectations of victims and other actors about what it should entail.

Early definitions of TJ focused mostly on truth and justice, with an emphasis on criminal (retributive) justice. As the field and practice of TJ has evolved, however, so too has the range of mechanisms, activities and objectives that it encompasses. These include a range of restorative justice measures and goals, such as establishing a new truth about atrocities, recognising the plight of victims and their families, reparations and the restitution of property to victims.

More recently, the remit of TJ has been expanded further to include objectives that go beyond an immediate concern with victims to include assertions about how TJ may address the root causes of conflict and violence and contribute to wider political and social change. This set of objectives includes the conceptually ambitious, and in practice difficult to achieve, goal of reconciliation.

Ultimately, definitional debates about TJ reflect different opinions about what it should include – for example, issues of scope, mandate and normative intent – and different assumptions about what it can achieve – that is, whether it can lead to society-wide outcomes, such as accountability, reconciliation, deterrence, rule of law or democracy, or more modest and concrete forms of reparation, restitution and recognition of victims and their version of events.

As the aims of TJ have expanded over the years, so too have the range of measures used to achieve them. Box 2 summarises the main TJ mechanisms.

International perspectives on transitional justice

TJ has a long history that predates even the twentieth century forms that we are most familiar with (Elster, 2004; Teitel, 2003). However, TJ became prominent in transitional processes only in the second half of the twentieth century, and mostly after the Cold War in parallel with the normative ascendance of the international human rights regime. The Nuremberg and Tokyo trials were emblematic, but it was in Latin America during the 1980s that TJ became a regular feature of governance transitions. TJ is now a recurrent issue in post-conflict situations, including where the state is not necessarily the only, or indeed main, perpetrator of human rights crimes.

Box 2: Summary of the main transitional justice mechanisms

Truth-telling exercises: Mechanisms of inquiry and reporting on key periods of human rights abuses. These are mostly official bodies with a concrete mandate, such as identifying perpetrators, analysing patterns of abuse or violence and establishing the facts. Truth commissions may also consider how to address or prevent the reoccurrence of abuse, which can include recommendations about institutional reform (e.g. of the military, police, judiciary).

Retributive justice and criminal prosecutions: Judicial investigations of those accused of human rights violations. Criminal justice includes retributive justice at the national and international levels, most recently through the ICC.

Restorative justice: Other forms of justice, including non-state forms of community justice mechanisms in which reconciliation or reparations tend to feature more prominently than retribution.

Reparations programmes: These cover a range of measures including official initiatives to provide material or symbolic reparations to victims and their relatives (e.g. financial compensation or official state apologies), education programmes, and memorialisation activities, such as museums and memorials to preserve the memory of victims and raise awareness about past abuse.

Vetting and purging of public institutions: Efforts to remove individuals associated with human rights abuses from office. This can involve the mass disqualification of those associated with abuses under a previous regime (lustration).

Source: Adapted from Roht-Arriaza (2006), ICTJ (2009) and Olsen et al. (2010).

As was evident during the Arab Spring, TJ is not only firmly on policy agendas in post-repression and post-conflict contexts but also often considered and negotiated *during* conflict and crisis processes. In the case of Colombia, different social and political actors have strategically used different TJ issues – such as amnesties for human rights crimes in exchange for disarmament, reparations for victims and the restitution of land lost during the conflict years – at different points during the long and tortuous peace process (Theidon, 2007).

However, while the question of how to deal with legacies of violence and systemic violation of human rights is an unavoidable policy issue in post-conflict and other transition settings, there is disagreement about the merits and perils of the various TJ choices.

First, although they approach transitional settings from very different starting points, **humanitarians and those with stabilisation objectives** share a concern that, because of the threat they pose to perpetrators, TJ measures will jeopardise fragile peace processes and put more lives at risk. The peace versus justice dilemma, as it is known, has been present in international decisions about support to TJ mechanisms for some time, including in recent debates about decisions of the ICC.

For example, in Sierra Leone in 1999, key parties were granted amnesties to secure peace as part of the Lomé Agreement. And, in the peace process in El Salvador, the tacit agreement among the parties involved in the conflict was that effective amnesties would occur but that the subsequent truth telling exercise would 'name' perpetrators to counter-balance these. While naming culprits may contradict principles of due process, in this case there was agreement to do so on the basis that cases would not be brought to court and, therefore, the gains in terms of peace outweighed the demands for justice at that particular moment in time. The same logic is often also applied to amnesties.

Second, by contrast, most **TJ advocates and human rights organisations** press the case for pursuing judicial accountability for human rights crimes as a matter of legal and moral principle and because they assume that impunity is more destabilising over the long term. However, it should also be remembered that victims and other parts of an affected population instigate calls for TJ through their demands for accountability and justice for acts of atrocity – and then international activists respond to this.

Developments in international law and jurisprudence – including the establishment of an ICC and the emergence of a transnational network of human rights activists – have complemented and supported demands for justice at the national and sub-national levels. Recognition that political factors shape the plausibility of TJ different options has been less prominent in these circles. In practice, however, domestic and international human rights activists have been politically astute in terms of being able to spot and capitalise on opportunities to renew their efforts to obtain justice.

Third, and more recently, the **international development community** has begun to recognise that concrete experiences of TJ influence governance and development processes in the medium and long-term. This awakening reflects the prioritisation of fragile and conflict affected settings in post-9/11 development policy. In the past, development practitioners tended to mostly ignore TJ issues. But, as the state-building agenda has evolved in post-conflict settings, some development agencies have recognised that TJ policy choices matter for how political settlements are redefined and, at a minimum, they need to understand the implications of different choices.

For example, the World Development Report (World Bank, 2011) acknowledges that TJ is not just about examining the past, or focusing on the victims of human rights violations. Rather, the manner in which legacies of violence, conflict and human rights violations are addressed affects short-term peace processes and longer-term state-building and development processes. For its part, the UN did not explicitly link TJ, (re)building the rule of law and state accountability, and the use of human rights to restructure relations between state and society relations until 2004 (UN, 2004).

Given that supporting transitions from conflict or repression to more inclusive and accountable governance structures is a priority for the international community, it is important to ask how TJ relates to this agenda. Two points should be made. First, the demand for TJ may be less a matter of policy choice for the international community and more a normative and heartfelt cry for justice and an end to impunity by the victims of atrocities and other human rights abuses. Second, political factors will determine whether it is possible and appropriate for the international community to support TJ. However, where it is feasible, there are good political reasons for them to do so: TJ sends a message to perpetrators that impunity will not be tolerated, which may deter future recourse to violence and other human rights violations, and TJ processes can reassure citizens that the government is committed to accountability, justice, rule of law, with the potential to improve public trust in state offices.

TJ objectives and mechanisms

What are the objectives of TJ and what concrete mechanisms are used to achieve them? Lutz (2006) summarises the two main objectives of TJ as giving voice to the experience of past suffering and preventing similar suffering and impunity in the future. In practice, however, TJ has many other desired objectives and uses various measures to forward them.

In early experiences, TJ processes aimed mainly to establish the truth about past events, achieve retributive justice and obtain some degree of material and moral reparations for victims. These outcomes were thought to contribute to reconciliation and peace between conflicting actors. Over time, however, the objectives of TJ have expanded to include more indirect goals associated with longer-term state-building and development objectives. These broader goals include rebuilding the rule of law and trust between state and society, uncovering and addressing the root causes of conflict and violence, such as social exclusion and discrimination, and improving social cohesion (see, among others, de Greiff et al., 2009).

TJ mechanisms and processes fall into four main categories.[2] These categories of actions take very different forms in practice. This is because context-specific factors, arising from the political economy of transition processes, influence decisions about TJ mechanisms, and shape the options available to different actors. In addition, previous experiences have also reshaped TJ options and have added new layers of measures and activities. Finally, developments in international law and international jurisprudence have also affected the choice of options on the ground.

Below is an overview of the four main categories, including a brief discussion of the main objectives of different types of TJ mechanisms and some observations on experiences with using them in practice.

1. **Truth-telling exercises:** Often in the form of a truth commission, truth-telling exercises have four main objectives.[3] First, they aim to establish the facts of past events, thereby giving voice to victims and their relatives. Second, they can be mandated to establish an official record of causes of the conflict and provide recommendations for institutional reforms to prevent future violations. These can include concrete measures for the reform of judiciaries, security sector actors and the establishment of human rights commissions. Third, the findings

of these exercises can be used as a body of evidence for the purposes of reparations, for vetting public institutions of identified perpetrators or criminal justice investigations at a later, less politically risky, time. Fourth, official recognition of the truth, and acceptance of a new 'shared' truth about the past, can contribute to the process of healing and reconciliation.

While some truth commissions are seen as models,[4] their context-specific mandates and timescales mean that they vary considerably in practice. Truth-telling exercises also differ according to the extent of their credibility, the degree to which they are 'owned' by victims and other domestic constituencies and their ability to give voice to victims. In some cases, expectations about what a particular truth-telling exercise can achieve far exceed the possibilities. For example, Bosire (2006) contrasts the specific mandate of the Chilean truth commission, which aimed only to address disappearances and killings in a given period and presented its findings in a way that could inform later criminal cases, with the Burundi commission, whose ambition of clarifying 'the entire history of Burundi' made it far less effective.

However, political context also influences the experience and outcomes of truth-telling exercises. Inevitably, these are contested processes and, particularly when causes of conflict have not been addressed, warring parties find it difficult to establish a 'shared' truth. Ongoing conflict or unresolved power struggles can also undermine the effective voice of some constituencies. Some governments, such as those in Mozambique and Cambodia, even decided that revisiting the past would be too devastating for their traumatised populations (Mobekk, 2005).

2. **Justice:** Justice mechanisms fall into two further sub-types. First, the criminal prosecution of human rights crimes to obtain *retributive justice*. Second, measures that seek other, non-punitive, forms of justice for wrongdoing, in particular restorative justice.

A government may chose the retributive justice route for several reasons, including to give victims and their families a means of justice and catharsis, to officially confirm the facts and to end impunity and deter potential future perpetrators. If trials are perceived as legitimate, they can also signal the commitment and ability of a government to uphold the rule of law, due process and human rights. Alongside, justice sector reform, criminal prosecution can

also help to build the rule of law (Kritz, 1995; Mendez, 1997).[5]

However, in circumstances where the minimum institutional and political conditions are not in place to ensure that due process is observed, and that domestic trials will be perceived as legitimate, criminal prosecution may not be either feasible or desirable. Where domestic trials are not an option, the international community has, in some cases, stepped in to support retributive justice. This development has gone hand-in-hand with some fairly far reaching changes in international law and institutions. First, international war crimes tribunals were established to deal with genocide and crimes against humanity (e.g. in Rwanda and Yugoslavia). Second, General Pinochet's arrest in London in 1998 paved the way for new universal jurisprudence on some human rights crimes. Third, the Rome Statute of the ICC came into force in 2002, establishing a permanent international tribunal to judge crimes of genocide and war crimes.[6]

In other cases, local community justice mechanisms have been established to provide justice for acts of violence, such as the *mato oput* (a community rite of reparation and reconciliation) in Northern Uganda and more reinvented institutions, such as *gacaca* in Rwanda. Where the state is fractured and/or there are conditions of legal pluralism, community dispute resolution can be an appropriate TJ option. Sub-Saharan Africa has been particularly fertile ground for 'localised' forms of TJ but with mixed results (Huyse and Salter, 2008; Shaw and Waldorf, 2010). This contrasts with the view that only TJ mechanisms that are in keeping with legalistic approaches to retributive justice are likely to act as a deterrent.

3. **Reparations and restitution:** This category includes actions where the state accepts responsibility for human rights crimes committed and undertakes to compensate victims and their families for their losses. The objective is to provide concrete remedies, to acknowledge injustice and, possibly, to restore confidence and trust in the state.

Reparations can take different forms. Non-material forms include the restitution or recognition of the rights of victims, rehabilitation programmes for victims and symbolic measures, such as official apologies, commemorative ceremonies or the establishment of monuments. Material compensation has tended to be politically more difficult but there are cases where the state has disbursed compensatory funds to victims and their families, such as in Chile and Honduras (the latter as a result of a ruling by the Inter-American Court).

The restoration of property rights is particularly difficult because it involves the redistribution of private resources – and it is in these cases that (violent) resistance, notably by those who benefit from impunity, is most likely to be encountered. For instance, the Colombian Government is currently testing whether it will be able to restore land to internally displaced people following recent legislation to overturn illegal land takeovers during the years of conflict.

4. Finally, TJ has also involved putting in place mechanisms to **vet and purge the security forces and other state offices of individuals who are perpetrators of crimes** (or who had some degree of complicity with them) (Roht-Arriaza, 2006). The main objectives of this process is to restore trust in public bodies and to remove the risk of further human rights abuses by removing those who committed or allowed others to commit violations from office. This has been particularly important in post-conflict settings where significant numbers of perpetrators remain at large. The UN also sees vetting of public offices as part of a wider institutional-reform approach to TJ, which aims to turn abusive institutions into law-respecting bodies that can help to build the rule of law.

In practice, real life experiences have mostly failed to match expectations in all four categories of TJ. The more normative or optimistic readings of TJ posit causal relations – such as its ability to end impunity, strengthen the rule of law, or achieve reconciliation and forgiveness – that the evidence does not always bear out. The moral imperative of TJ objectives may still stand but the question remains: how much do we know about the actual impact of TJ on governance transitions in post-conflict or post-repression settings?

TJ in practice: what the evidence says

TJ is a comparatively young field and, to date, analysts have struggled to move away from approaches that are normative, descriptive and/or legalistic rather than derived from empirical observation. Therefore, assertions about TJ are often based on uncritical assumptions about whether and how it contributes to desired outcomes, such as justice, accountability and

reconciliation. More recently, however, there has been attempts to investigate, systematically and empirically, the actual role and impact of TJ in wider transitional processes.[7] Researchers are using a range of analytical approaches, from ethnographic and other qualitative studies (e.g. Clark, 2010; Shaw and Waldorf, 2010; studies in Sriram and Pillay, 2009) to ambitious large-N databases that seek to establish statistical correlations between TJ mechanisms and political or development outcomes (as championed by Olsen et al., 2010). Skaar et al. (2012) take an intermediate position by using by rich context-analysis and comparative methods.

This new body of (qualitative and quantitative) work creates a knowledge base about what TJ looks like in practice, the factors that explain its different trajectories and, increasingly if unevenly so, what its consequences are. Some emerging findings from this literature are reviewed below.

Explaining TJ choices and trajectories
More is now known about the political economy factors that facilitate or inhibit TJ choices and explain the trajectory of TJ once it is underway. The following are recurrent factors that seem to influence whether and how TJ takes place:

- The **nature, extent and timing of relevant crimes** can make a difference. In the case of Spain, the fact that most crimes were committed some time before a transition process began has contributed to the politics of de facto amnesty, and indeed amnesia, borne out of a political pact between key political forces at the time of the democratic transition.
- The **balance of power between different social, political and armed forces** at the time of regime transition or at the end of a conflict establishes whether TJ is possible – either because those involved in, or complicit with, human rights crimes are still effectively in charge or because demands for justice are quashed in the name of protecting a precarious peace. But, crucially, changes in the balance of political power can, over time, enable TJ option and opportunities to resurface. This has even happened in countries where TJ was assumed to be a closed issue (such as in Argentina, Cambodia, Spain and Uruguay). In practice, there is no effective 'deadline' for TJ and even apparently solid amnesties agreed or imposed at the moment of a peace agreement can be overturned.
- Human rights organisations and victims associations often ensure that the momentum for TJ

is maintained. Therefore, **associational capacity of TJ-related organisations, the nature of political voice and the de facto guarantee of civil rights** are also important factors. For example, the campaign by the Mothers of the Plaza de Mayo (the Mothers of the Disappeared) in Argentina was crucial to the reopening of criminal prosecution cases almost two decades after the transition to democracy and in spite of earlier political decisions to close the door on domestic trials.
- The **timing of TJ efforts at the domestic level in relation to developments in international human rights jurisprudence** and/or attempts at international or foreign prosecution is important. Human rights organisations mobilised very effectively to seek action by the ICC in the wake of the 2007 elections violence in Kenya. In some cases the contagion effect of experiences in other (neighbouring) countries can also alter expectations about, and opportunities for, TJ.

The relationship between different TJ dimensions
Studies show that the politics of TJ and memory take place at different levels – individual and collective psychological, attitudinal and cultural levels and at the international, domestic and sub-national levels – and that these interact in complex ways. For example, Lutz and Sikkink (2001) note a 'thickening' of the normative human rights framework at the domestic, regional and international levels.[8] They argue that this increases the opportunities for TJ, not least because action at one level can trigger events and alter dynamics at another (the 'justice cascade'). For example, landmark rulings by the Inter-American Court of Human Rights have influenced national decisions about TJ in Latin America.[9]

Particularly dramatic events can also create strategic opportunities for, or alter the tempo of, TJ efforts in other locations or domains. For instance, the arrest of General Pinochet in London in 1998 speeded up domestic criminal processes in Chile and prompted similar international action in a number of other cases in other countries. Such events can also cause 'irruptions of memory', whereby domestic public perceptions about what is possible and desirable change (Wilde, 1999).[10]

However, while there can be a connection between TJ processes at different levels, this is not automatic, linear or necessarily mutually reinforcing: international TJ norms and processes do not trickle or cascade down to the national and

Box 3: 'Localised justice': a mixed picture

Studies on community-level forms of TJ in Mozambique are positive. Following the civil war, the Mozambican Government adopted a TJ policy of reconciliation and non-retribution. Subsequently, the institution of spiritual healing emerged as a way to deal with conflict-related trauma This ritual allows the spirit of the dead victim, through the medium of the healer, to attribute a particular act of violence to a particular individual. Restorative justice is obtained through a collective ritual of accusation, confession by the perpetrator and forgiveness by the family of the deceased.

Some argue that taking the justice process down to the community and individual level can neutralise the zero-sum logic and, potentially, conflictual consequences of retributive justice. Therefore, spiritual healing is presented as a less politically disruptive way to deal with collective trauma than some other forms of TJ and one that can also contribute to reconciliation and the reconstruction of bonds of trust and social harmony at the community level (Igreja, 2009; Igreja and Lambrace, 2008).

By contrast, studies of *gacaca* in Rwanda are divided about its merits and perils. Some argue that it is a local institution that is more accessible for affected communities and is, therefore, an effective means of dealing with the legacy of the genocide. Others point out that *gacaca* decisions inevitably mirror the balance of power between ethnic groups in the communities in which they are located. This means that the truth is not necessarily privileged in the proceedings and that victims are not always assured a voice. It is argued that such political dynamics mean that *gacaca* cannot be sincere processes of reconciliation (Clark, 2012; Waldorf, 2010).

sub-national levels in an unimpeded fashion. In fact, international actions can be construed by oppressive elites as the product of Western imperial design. This emphasises that the risk of unintended consequences of international action or support for TJ needs to be assessed, not least in the name of 'do no harm'. For instance, some thought that the indictment by the ICC against President Bashir in Sudan exacerbated conditions on the ground and put more lives at risk (OTJR, 2010). Choices by international actors are inevitably controversial because international strategies to pursue or resist TJ are as political as domestic ones. Therefore, the role of international actors also needs to be assessed against the global political economy.

At the other end of the spectrum, recent ethnographic and qualitative research has also shed light on how people experience 'localised' and non-state forms of TJ. As the examples of Mozambique and Rwanda illustrate, sub-national forms of TJ are neither intrinsically good nor bad

(see Box 3). Therefore, their merits need to be assessed on a case-by-case basis.

What we (don't) know about the impact of TJ

Analysis of the place of TJ in the post-conflict and post-repression transitions has, therefore, become more reflective and less intuitively prescriptive. Important questions about how TJ relates to wider processes of political change emerge from this more recent research. For example, the work in de Greiff and Duthie (2009), and the International Centre for Transitional Justice more generally, has contributed to the conceptualisation of the *potential* long-term impact of TJ on governance and development processes. Loading ambitious transformative goals about the redefinition of the basic political settlement on top of the narrower goal of addressing legacies of violence may overburden the TJ agenda. However, in spite of this risk, the linkages between TJ and state-building or other development objectives still merit further inquiry – and some potential connections are particularly relevant, such as (re)building the rule of law, addressing social exclusion and strengthening social cohesion.

Moreover, the shift in emphasis from the *desirability* of addressing legacies of violence to exploring the *consequences and implications* of concrete forms of TJ has raised new questions about causality. Some recent research uses quantitative methods to establish relationships between TJ and other socio-political variables. For example, Olsen et al. (2010) find correlations (though not causal connections) between both different and combined TJ mechanisms, on the one hand, and democracy and levels of human rights violations, on the other, and Kim and Sikkink (2010) find that countries that hold trials to deal with legacies of violence tend to be less repressive.

However, testing assumptions about the impact of TJ is difficult. Some causal connections can be observed directly. For example, reparations or institutional reform of the justice and security sectors can be the direct outcome of a TJ process when a truth commission recommends it. However, other recommendations of truth commissions, such as substantive reconciliation or measures to address the structural causes of violence (e.g. disputes over land or specific patterns of horizontal inequalities and social exclusion) are more ambitious and are less directly observable outcomes. And, for other potential long-term TJ objectives, such as rebuilding civic trust or social cohesion, it is even more difficult to attribute outcomes to particular actions and establish causal pathways between them.

In sum, much more is now known about the process and experience of TJ in different contexts. The move from normative claims about the desirability of TJ to a deeper analysis of its process and impact is also an extremely important step forward. However, there remain significant gaps in knowledge about the medium- to long-term impact of TJ (Skaar et al., 2012; van der Merwe, 2009). In part, this is because this body of work is relatively new and the empirical base for assessing impact remains limited. This means that writing about TJ is still largely premised on somewhat untested assumptions about how different TJ mechanisms contribute to such lofty goals as truth, justice, accountability, peace and reconciliation and the general movement towards democratic rule of law.

However, gaps in knowledge also arise because TJ processes are complex and inherently political. This complexity means that understanding of TJ and its place in wider political and social processes of change will necessarily be context-specific. Finally, even less is known about the impact of international interventions and the role of international actors in the field.

Implications for the international community

The development community is at pains to know how to position itself on TJ issues. As international commitments to state-building processes in post-conflict settings have intensified – both in level of funding and scale of ambition – the language of international interventions has moved increasingly in the direction of the need to address issues of accountability, exclusion and the root causes of violence and divisive grievances. And much of this is the stuff of TJ.

This section offers some reflections on the kinds of issues and caveats that international actors must consider in their strategic planning on how to engage with TJ.

Context is all

The mantra that understanding context is critical to effective international interventions is well established. But the field of TJ is particularly susceptible to falling back on normatively derived assumptions about what is necessary to achieve accountability for past actions and the possibility of reconciliation. Emerging evidence reinforces the need to work with context-specific conditions to understand the possibilities of different TJ options and their real impact.

Move beyond the justice-versus-peace dichotomy

The crude dichotomies of peace versus justice that populated earlier analyses of TJ are increasingly a thing of the past (Sriram, 2009a). But this positive development should not obscure the fact that policies intended to support TJ may still be fraught with internal contradictions or be in tension with other policy agendas in post-conflict settings. For instance, there is no doubt that the security objectives of maintaining a precarious peace can mean that stabilisation is prioritised over accountability.

At a minimum, 'do no harm' imperatives mean that international action should not increase the risk of human rights violations. But this requirement does not resolve the hard dilemmas that are faced when peace agreements are precarious. In part, doing so requires better cohesion and coordination across policy spheres and communities of practice within the international community. For instance, security sector reform – including disarmament, disintegration and demobilisation – is still not attuned to thinking strategically about TJ options and its consequences for TJ goals (Davis, 2009).

Move beyond absolute categories

The complexity of many post-conflict and post-repression settings means that practitioners must move beyond the fixed categories that were a feature of earlier understandings of TJ. For instance, the categories of victim and perpetrator are not absolute in many post-conflict settings – with a case in point being child soldiers who are forced to commit rights abuses or are themselves victims of abuse (Bosire, 2006).

Practitioners must also outgrow the tendency to use absolute meanings. In reality the kinds of concepts that feature in TJ – such as accountability or impunity, truth or justice, reconciliation or conflict – are rarely manifested in clearly bounded phenomena. Instead, they carry different meanings for different actors in different settings, and their socio-political significance is shaped by particular histories of conflict, violence and political development.

Changing tempos and dynamics are important

TJ mechanisms are rarely fixed in time. They are the outcome of political processes and they can, in turn, reshape incentive structures and unleash processes of change. Therefore, practitioners need to spot the windows of opportunity that arise as dynamics of power change and political transitions progress and adapt their strategies to these.

TJ may be more about process than closure

The 'outputs' of TJ mechanisms are rarely completely satisfactory for any of the parties involved in TJ processes. Victims will never be able to return to the past. Therefore, the process of TJ may be more important than the less tangible objective of closure.

Leave behind the myth that the international sphere is politically neutral

Finally, any international community of practice must accept that it cannot be neutral because the international sphere is never politically neutral. In any case, TJ is an inherently political field because it is about configurations of power and the unrestrained use of violence and abuse, usually to protect concrete interest structures that govern the exercise of power and the allocation of resources.

Conclusions

TJ has become part of the complex patchwork of issues at stake in societies emerging from conflict, armed violence or periods of repression or authoritarian rule. Accordingly, it is one of the many factors that affects both short-term deci-sions and long-term processes of development and state building, and how different actors position themselves in relation to this. At the same time, the possibility of TJ is also the outcome of the (changing) balance of power and the particular experience of conflict and violence that different groups in society have gone through.

The study of TJ has moved from normative approaches to more empirically based analyses of the conditions for, and impact of, different combinations of TJ measures. Issues of impunity, justice, truth-telling and restitution are one more piece of the political economy of many governance transitions. This means that empirical observation of the impact of TJ on other political and developmental processes is not only relevant but also necessary to better understand the dynamics of transitional processes – and what the international community might choose to do about them. However, there are still important gaps in our knowledge and research on the impact of international support for TJ is a priority.

References and endnotes

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Endnotes

1. For earlier analytical thinking, see Barahona de Brito (2001), Hayner (2001), Kritz (1995), Lutz (2006), Roht-Arriaza (2006), Skaar, el al. (2005), Sikkink and Walling (2006) and Teitel (2003). On post-conflict settings, see Clark and Kaufmann (2008), Shaw and Waldorf (2010), Sriram and Pillay (2009a) and Sriram et al. (2011).

2. Measures to address gender-based violence have received special attention in recent years, but they are not put into a separate category for the purposes of this note. Acts of memorialisation are included in the range of measures intended to establish a record of the atrocities and acts of violence.

3. Between 1974 and 2007 at least 32 truth commissions were established in 28 countries (Amnesty International, n.d.) and there have been new ones since. On the role and form of truth commissions, see Hayner (2001) and Freeman (2006).

4. For example, the 1984 Argentine report, *Never Again*, was the first of its kind, the South African truth-telling exercise became a model for the region and a powerful marker of the end of Apartheid, and the 2003 report of the Peruvian truth commission was important because it established that a non-state group (the *Shining Path*) had caused the most deaths.

5. There are *potential* synergies between TJ and the rule of law, such as when TJ helps to build a culture of accountability (Collins, 2008; de Greiff, 2009; Skaar, 2011). The UN 2004 strategy recognises this linkage and it has also featured in some UN practice (e.g. its rule of law work in north Sudan). Other donors have not made a direct connection between TJ and their rule of law work.

6. The ICC has been controversial and views about how its decisions influence delicate peace-building processes are mixed. For recent commentaries on the unfolding role of the ICC, see Sriram (2009b) and Waddell and Clark (2008).

7. Notably, Gloppen (2005) draws attention to the need to move beyond normative approaches to studying TJ in order to increase the analytical value of empirical findings.

8. See also Domingo (2012), Lutz (2006), Sikkink and Walling (2006) and Roht-Arriaza (2006).

9. In 1992, for example, the Inter-American Court of Human Rights concluded that pardons and amnesty decisions in Argentina were incompatible with the American Convention. Such rulings are creating a body of jurisprudence at the Inter-American level that domestic courts are expected, and increasingly inclined, to take note of. Notably, Uruguay repleaed its amnesty law in 2011, in response largely to a ruling against the Uruguayan state in the previous year.

10. Pinochet's arrest is a landmark case for international human rights law because it created new international jurisprudence about the jurisdiction of any court to try certain human rights crimes committed in another country (Davis, 2003).