

Executive Summary

May 2012

Dealing with legacies of violence: transitional justice and governance transitions

Key messages

- Transitional justice processes are on the agenda in post-conflict transitions and there are good political reasons for donors to support them.
- There is a broad range of transitional justice mechanisms. These are concerned with outcomes for victims but are now assumed to also support broader state- and peace-building objectives.
- Transitional justice is a young field of empirical study. Little is known about both the effectiveness of international support to these processes and their impact on longer-term political and social outcomes.

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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, the Special Court for Sierra Leone convicted Liberian ex-President, Charles Taylor, of crimes against humanity and war crimes. 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 Brazil and 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.

What is transitional justice?

TJ can be defined as the processes that attempt to address past human rights violations following periods of conflict, violence or repression within a country. The scope and mandate of TJ remains deeply contested, however. This is because its boundaries have changed over time in response to conceptual developments, country-specific experiences of TJ and the changing expectations of victims and others about what it should entail.

Transitional justice mechanisms

There are a range of TJ 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).
- *Gender justice:* Efforts to address impunity for sexual and gender-based violence and to ensure that women have equal access to redress for human rights violations.



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Transitional justice in practice

The political economy of transition processes shapes how TJ features in a specific context. 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. It is one of the many factors that affects both short-term decisions and long-term processes of development and state-building, and how different actors position themselves in relation to these. 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 of different groups in society.

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, talk about the need to address issues of accountability, exclusion and the root causes of violence and divisive grievances has also increased. And much of this is the stuff of TJ. Donors need to consider the following issues to engage more strategically in this area.

- *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.
- *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. 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. At a minimum, ‘do no harm’ imperatives mean that international action should not increase the risk of human rights violations.
- *Move beyond absolute categories:* The complexity of many post-conflict and post-repression settings means that practitioners must move beyond the use of fixed categories – such as victim and perpetrator – that were a feature of earlier understandings of TJ (such

as in the case of child soldiers). Similarly, concepts such as accountability or impunity, truth or justice, reconciliation or conflict carry different meanings for different actors in different settings, and their 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.
- *The value of 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. For instance, 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. And TJ is an inherently political field because it is about challenging the use of violence and abuse to protect the concrete interest structures that govern the exercise of power and the allocation of resources.

Overall, 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. There are still important gaps in our knowledge, however; research on the impact of international support for TJ is a priority.

This summary is drawn from the Background Note of the same name written by Pilar Domingo, ODI Research Fellow, Politics and Governance Programme (p.domingo@odi.org.uk). To read the full version of this Background Note, visit www.odi.org.uk/resources.