

Research Brief

Roads Less Traveled? Conceptual Pathways for Development and Transitional Justice

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Research Project**Transitional Justice and Development**

This project examines the relationship between transitional justice and development, two fields that, academically and in practice, have proceeded largely isolated from one another. The project identifies and analyzes specific synergies between justice and development, and articulates how the two types of initiatives ought to be designed and implemented in order to reinforce the shared goals of citizenship, social integration, governance, and peacebuilding. The project is managed by Roger Duthie, Research Associate in the Research Unit at the ICTJ.

Development theory and practice to date has not engaged extensively with transitional justice. This paper explores tentative pathways to conceive of how development and transitional justice practices connect—from a development practitioner’s point of view. It is argued that transitional justice can be of instrumental value to larger development goals in post-authoritarian and postconflict societies; that, in order to avoid doing harm, development actors operating in contexts where significant parts of the population have been affected by and participated in massive human rights violations need to be conscious of the issues with which transitional justice is concerned; and that development actors have important perspectives and experience to contribute to transitional justice efforts, especially from a practical point of view.

Development, Transitional Justice, and Peacebuilding

At a policy level, development is concerned with capacities and conditions for peace because without peace, development gains are eroded, under threat, or impossible to achieve with equity. Similarly, the development community has come to terms with the fact that its interventions can do harm and fuel violent conflict if it remains ignorant of conflict dynamics extant in every society. At a practice level, development actors therefore have been seeking to adapt their approaches to be more conflict sensitive, and have asked themselves about the kind of capacities, institutions, and processes they should seek to strengthen and support in order to foster conditions for sustainable peace.

Transitional justice can be thought to be an essential building block for peacebuilding, because if a society leaves the legacies of mass atrocities and abuse unaddressed, or deals with them insufficiently, sustainable peaceful coexistence may remain elusive. Furthermore, development should be concerned with the structural conditions of inequality and poverty, which are often intricately linked to the histories of violence that peacebuilding tries to overcome, and that transitional justice tries to deal with. Both fields stand to benefit from an increased conceptual dialogue with regard to the necessary conditions and processes required for sustainable peacebuilding.

Insights from Human Rights in Development Practice

As the relationship between human rights and development has been increasingly scrutinized in recent years, there are useful conceptual entry points emerging that can help inform thinking about development and transitional justice. Development practice has sought to integrate human rights elements through political conditionality, positive support, and the human rights-based approach to development. The rights-based approach, in particular, tells us to think differently about both the *end* and the *process* of development. Those who are supposed to benefit the most from development in terms of ending poverty—that is, the poor—are not to be conceived of as beneficiaries, recipients, or target groups of development and aid (aid as charity, as disempowering service-delivery). Rather, they are to be conceived of as rights-bearers and claimants.

Similarly, in view of transitional justice, the notion of rights-bearers also informs the aim of recognition. Any actors involved in supporting transitional justice measures, but particularly development actors informed by and familiar with rights-based approaches, should consequently seek to shape their programs in a way that accounts for this understanding of the beneficiaries, rather than seeing them as “passive victims.” The language of the rights-based approach, then, is relevant for and applied by transitional justice. In practice, however, rights-based-related policies and tools do not make much explicit reference to dealing with the legacy of human rights violations.

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Challenges and Limitations for Development and Transitional Justice

In light of the conceptual discussion, there are a number of challenges and limitations to consider. To begin with, there are questions about the adequacy of using development tools and approaches for transitional justice purposes. Development actors—by virtue of having an established presence on the ground and the mechanisms to implement projects—may 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. But does the ability to deliver projects suffice to make them a good conduit? Are normal development project modalities well suited to support such political and deeply emotional processes?

The prioritization of resource allocation must also be addressed. In a postconflict context, when needs and actors are many, transitional justice is often faced with the question: How to justify investing millions of dollars in these measures when millions of people continue to live in poverty? Transitional justice processes, though, often take place in moments when a comparatively high amount of official development assistance funds are available. Global media attention may be high—but only for a short time.

The empirical basis in support of transitional justice as being conducive to peace and therefore development is still weak, which poses several challenges: How to convince governments (both donor and recipient) to invest in such measures—and over a long period of time? How does a development agency providing technical assistance to a particular measure know whether it is having the desired success, and can therefore justify a continuation of a new project phase?

Furthermore, supporting transitional justice processes poses a certain risk. Many development actors are risk averse, because they do not want to endanger their maneuverability in other sectors or to compromise whatever political clout or standing their institution may have in a country. There are international standards regarding aspects of the impermissibility of impunity and obligations of reparations; the question is to what extent a development actor in a certain position of influence vis-à-vis state actors understands these, and is willing and able to draw on them.

Capacity development and national ownership are two of the fundamental principles of a developmental approach, but they are notorious for a number of challenges that large development agencies still struggle with. At the same time, capacity development for transitional justice poses risks for those who provide assistance. Capacity development here is not just about the technical capacity to drill a well or run a health clinic. It is about social and political skills and capacities that are difficult to monitor both for immediate results and for mediate impact.

Development actors may also have to face questions of historical responsibility, complicity, and negligence. Often, such actors were operational in countries during periods of human rights abuses, turning “a blind eye” to the actions of an autocratic regime in order to carry out some of their “technical” work, or neglecting to see the writing on the wall. Donor countries may have directly supported a violent regime. In this sense, a developing country’s effort to deal with the past cannot be regarded as concerning only national actors. Development institutions may have to ask themselves what their role has been. This may bring up very uncomfortable issues, but it may be morally and possibly legally necessary.

Finally, in many developing and postconflict contexts, few institutions are fully accountable to their citizens. The rule of law has broken down during conflict, and may never have been extant before either. People need the rule of law to be able to organize and act for social change; the rule of law requires functioning institutions capable of delivering it, and that have the confidence of the people. This is an area where transitional justice and development actors should work well together, to complement one another: human rights actors by focusing on legal frameworks, the judiciary, and other formal human rights mechanisms; development actors by bringing their experience and networks to bear with regard to participatory methods, facilitation of dialogue and consultations, mobilization and organization of groups, and information sharing.

About the Author

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Conclusion

One can best establish useful linkages that would help inform practice by talking about concrete, shared goals, and the ways in which to best achieve these. Peace-building entails a range of goals, and for some it is beneficial to combine the approaches and practices of the different fields. This is certainly the case for efforts to reestablish civic trust and reconciliation. Importantly, neither trust nor reconciliation can be conceived as a static end state. Even if one can measure changes, these will need to be maintained in the long term. This is why development has a role to play here that needs to be much better articulated.

It is not only about longer-term development aid commitments that may be required for some of the measures necessary to achieve these goals; it is also about the fostering of national institutions able to take these issues on seriously and sustainably. Cast in this light, it is also necessary to understand transitional justice not only as short-term measures of “justice in transition contexts.” Rather, it needs to be understood in terms of longer-term measures and capacities required to deal with the past so that present and future generations may never be subjected to the same atrocities again.

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