

Research Brief

Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development

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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.

Countries transitioning from conflict or authoritarianism are often faced with massive challenges regarding land and property rights. The property rights of citizens may have been undermined by population displacement, discriminatory legislation, or destruction of documents and land registries. Underlying inequalities and injustices around land may have been a contributing factor to conflict, and the reconstruction of unpopular land tenure systems may lay the ground for a future resurgence of violence. Most of the literature on transitional justice has looked at only one element of land and property rights, namely restitution of property confiscated or destroyed during a preceding period of conflict or authoritarianism.

This paper examines linkages between transitional justice processes and the broader issue of land tenure reform in countries with a long and complex history of property dispossession or where land has been a root cause of conflict. Land tenure reform refers to a process in which the legal, institutional, and regulatory framework for land ownership is altered. It is often used as the main instrument of achieving more efficient and equitable distribution of land and landed resources. The role of property rights—and particularly the “formalization” of customary rights—in development is also discussed.

It is argued that greater coordination between transitional justice efforts and land tenure reform under the rubric of the rule of law in transitional societies would make for a more effective process of political and economic transition, one that better serves the interests of both justice and development.

Land, Development, Conflict, and Transition

There is a vast literature on the relationship between secure rights to land and development. Strategies based on empowerment of local communities are to be preferred to those that rely primarily on top-down approaches. From a land tenure perspective, activities that empower local people, especially the poorest, to play a greater role in local governance of land will have ripple effects and result in a greater development

impact than those activities that attempt to secure rights to land, narrowly defined, without increasing local engagement in decision-making processes.

Rule of law programs in transitional countries have in recent years started to address issues relating to land rights. There is often, however, an implicit assumption that better enforcement of existing laws, or minor legal “tweaks,” will provide solutions. Experience from many developing countries, especially those in which customary rights remain the predominant social norm, suggest that a more innovative and multi-dimensional approach is needed. Across the developing world, state-administered land tenure systems function in urban areas but have proved to be extremely problematic in rural contexts. In post-colonial countries, land laws often remain fundamentally similar to those used by colonial regimes and patterns of land distribution remain extremely skewed.

Some influential researchers have argued that providing customary rights-holders with state-administered rights (such as land titles) would provide a springboard for economic growth in developing countries. The concept of land tenure security, however, is extremely subjective, and titling programs benefit some at the expense of others. Improved land tenure security for the majority, particularly in transitional countries, is a matter of long-term political determination and a pluriform and evolving set of measures, rather than of a single intervention, massively and systematically applied. Each country is unique, and there is typically great variation in the ways in which customary land tenure systems are conceived and operated at the local level.

Land also relates to conflict in a number of ways. Land access is often a key cause of conflict. In some cases, inequality in landholdings, illegal or unjust dispossession, and other land-related abuses are articulated as a cause; more often, injustices related to land are a background or structural cause of conflict. Changes to patterns of land access are common during episodes of conflict and authoritarianism. Postconflict interventions can potentially be designed and implemented by a combination of stakeholders relating to the protection of land and property rights; efforts to support land administration systems; and interventions related to dispute resolution. Transitional decision-making bodies will, wittingly or unwittingly, support or undermine changes in land access through a variety of actions and policy decisions. The issues are complex, but it is better that governments in transitional contexts make such decisions on an informed basis.

Transitional Justice and Land Tenure Reform

While transitional justice measures are unlikely in themselves to have a significant direct impact on land issues, they can make a useful if modest contribution to achieving the broader aim of reforming land tenure systems in a more just direction.

Greater coordination between transitional justice efforts and land tenure reform under the rubric of the rule of law in transitional societies would make for a more effective process of political and economic transition, one that better serves the interests of both justice and development.

Truth commissions may play an important role in raising awareness of land issues and helping the population agree on a history of land claims. Perceptions of control over land, particularly at the level of ethnically defined “territories,” are extremely polarized in many transitional societies and are key to social and political conflict. To date, some truth commissions have identified land-related inequality and human rights abuses as a root cause of conflict, but few have been able to address land issues in a sufficiently detailed way.

Restitution of illegally confiscated property is of utmost importance for both legal and ethical reasons, and may contribute to social stability and development. In countries where unequal access to land is a root cause of conflict, however, restitution can only complement, not replace, efforts to bring about land tenure reform. The international community still has much to learn about implementing restitution programs in areas of customary land tenure or of generalized land tenure security.

Informal or local justice systems are often incorporated into a transitional justice strategy, particularly for the purpose of addressing less serious crimes. Local justice systems may be based on value-systems that differ from those underpinning international human rights standards, leading to tensions within transitional justice programs. Many local systems make decisions over property claims, which means that the ways in which transitional justice programs support, modify, or undermine them will have implications for future decision-making over land claims. For example, efforts to ensure that women make more decisions within local justice systems could have repercussions for women’s land rights.

Conclusion

Transitional justice and land tenure reform are broad “constellations” of ideas, understood differently by different actors. In countries where the land tenure system is dysfunctional, transitional justice measures could play a role in bringing local and international attention to the need for land tenure reform. However, the relationship between transitional justice and land tenure reform has rarely been very direct or well-coordinated. The following ideas are offered as points for discussion:

- Truth commissions provide the first platform for discussion of land issues within transitional justice processes. The primary focus should be on full disclosure of all property-related abuses and grievances.

About the Author

Chris Huggins is a researcher specializing in the relationships between land rights, violent conflict, and postconflict development, particularly in Africa. He has worked in Eastern and Central Africa since 1998 for several major nongovernmental organizations, most recently as Rwanda researcher for Human Rights Watch.

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- Transitional justice measures should not perceive land only as a commodity to be re-allocated as part of a reparations program. In countries where land access has been a root cause of conflict, it is important that the land tenure system, the land administration structures, and other regulatory aspects are examined. While it is unlikely that transitional justice measures could complete this task on their own, they can still make a contribution to it, at least by placing the issue solidly in the public agenda.
- In some cases, informal justice processes may be supported and altered as the result of the work of transitional justice measures. The influence of the principles, instruments, and vocabulary of transitional justice initiatives are therefore likely to have a lasting impact on the treatment of land issues in the country.
- Capacity-building activities of local state and non-governmental actors should include training in ways in which local, spontaneous agreements on access to land and housing can be supported by government. While transitional justice initiatives must be time-bound, efforts at reconciliation and dispute resolution may take decades to produce lasting results, and require sustained political commitment.
- In many cases, land issues will have an unintended impact upon transitional justice initiatives. Transitional justice measures may be abused by those involved in land disputes for the purpose of score settling. This experience suggests that adequate and legitimate mechanisms for the resolution of land disputes should be put in place, and that information should be shared between these mechanisms and the transitional justice initiatives in order to facilitate the detection of such score settling.
- In countries where productive land is scarce, strategies to promote “off-farm” livelihoods are an essential part of dealing with competition for land. Transitional justice measures can address this, particularly where access to employment has been blocked due to systematic discrimination.

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