



Wilton Park



Image: NASA Goddard Space Flight Center

Conference report

Integrating human rights, justice and development – the post 2015 development goals and agenda

Thursday 17 – Saturday 19 January 2013 | WP1219

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Transitional justice is most frequently implemented in the contemporary world in post-conflict situations where development programmes are simultaneous pursued. Yet there has been little effort until recently to examine their potential relationship. Policy-makers, senior UN representatives, including the Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Recurrence, other human rights and development experts as well as civil society practitioners, from geographically diverse conflict-affected countries met at Wilton Park to explore the linkages between transitional justice, security and development. The aims were: to explore how to shape a comprehensive approach to improve linkages between human rights, justice, including transitional justice, security and development; identify how to translate this approach into concrete policy goals and programmes; to encourage a more consistent integration of transitional and long term goals in the context of human rights, justice, development and security; and to feed into the work of the Special Rapporteur and the High Level Panel on the post-2015 development agenda.

Key points arising from the discussion include:

- Transitional justice measures need to be sensitive to context; efforts should be made to look for local solutions, and listen to the voice of victims. The ambitious, or 'idealist' global agenda needs to meld with local realities, especially in situations where poverty is coupled with inequality.
- Policy-makers should be more modest about what transitional justice can deliver and not over-estimate its impact but make responsible commitments. This also relates to being realistic about institutional capacity. For example, reparations cannot overcome socio-economic inequalities.
- There is a need to create the political conditions in which transitional justice measures can be most effective. This can be done by governments, through actively communicating with its citizens, and with victims helping to drive this process. There needs to be trust in government for transitional justice to work, so that all will invest in it and be made to feel that there will be change. National dialogue can be best created by the stakeholders themselves, the local and national actors.
- Victims need to be at the centre of transitional justice measures; they are often 'invisible' and need to be given recognition, as rights-holders. This needs a clear change of culture in the way victims are treated.
- Framing justice development goals is complicated but can be done, and measured, based on interdependent indicators such as effectiveness and fairness. The gender factor also needs to be taken into account: empowering women and ensuring their access to justice is crucial for the development of any society.

Context

1. The phenomenon of the Arab spring, as well as output from recent meetings at Wilton Park have highlighted the need to rethink the way that transitional justice (TJ), security and development relate to one another. There is a particular interest in the role that TJ can play in addressing the underlying causes of conflict or fragility and this interest is increasingly a focus of the international community.
2. The World Bank's 2011 'World Development Report: Conflict, Development and Security' gives illustrations of the linkages between development and conflict. For example 90 % of conflicts today are in countries that have already been in a state of civil war and recurrent civil war is the most dominant form of conflict in the world today. There are also clear correlations between conflict and poverty, or conflict and malnourishment. Poverty rates are higher in countries that had experienced violence in the period 1981 and 2005 by a factor of 21%. As such, to arrest the cycle of conflict, those actors involved in the re-building of conflict-affected societies need to work together more closely to promote good governance, the rule of law and inclusivity. Additionally, the phenomenon of the Arab Spring demonstrates the desire of people to live in countries with greater equality, security and freedom from corruption. There is an urgent need to shape a comprehensive approach to improve linkages between development and TJ.
3. Field experience now shows that TJ has the potential, when designed strategically, to contribute to long lasting results in fragile contexts. There has also been expansion in the domain of TJ measures as well as some distinctive characteristics identified in situations where TJ was used. For example, in some transitions, claims for justice have been on an equal footing with demands for good governance and economic opportunity. There is thus pressure to demonstrate in practice how TJ can contribute to development objectives as well as to understand better the linkages, outputs (of security, justice and development) and challenges. This should assist in the design of simple indicators to be incorporated within the post 2015 agenda.
4. In relation to the notion of victims having rights and states having duties under transitional justice measures, there is also need for complementarity between local mechanisms and international justice mechanisms such as the International Criminal Court (ICC). Today, new situations are arising in transitions. For example, the idea that TJ is just about addressing the crimes of an abusive state in which the majority of violations were attributed to a single act has - in many ways - to be fundamentally rethought. In many cases none of those characteristics obtain and today there are different issues. How TJ incorporates new demands is still open to question and needs to be assessed.

Transitional justice and development

5. In relation to areas where there are key overlaps in work on TJ and development, the following issues arise:
 - Though there are divisions between distributive justice, as reflected by development programmes, and TJ, broadly perceived as corrective justice, this should not preclude the urgency of seeing as complementary the objectives of justice and development.
 - People who are systematically marginalized through the violation of their rights have become a concern of development work.
 - It is important to assess the impact of human rights violations on the possibility of realizing development. What is the impact of leaving those violations unaddressed?
 - What contribution can addressing violations make to development objectives?
 - There is a need to understand how human rights violations undermine

- development capabilities and, conversely, know how the provision of effective redress for violations improves capabilities?
- Mass and systematic human rights violations, left unaddressed, undermine social capital, generally seen as essential to development, and civic trust. How can TJ contribute to the replenishment of social capital?
 - What is the impact of systematic human rights violations on people's willingness to be active in the public sphere? For example, if poverty has the effect of diminishing expectations and makes people adapt preferences to what is feasible, redressing stunted aspirations should be a subject of concern in the development arena.
 - Both TJ and development actors must be more attuned to each other's work, so the two can achieve mutually reinforcing outcomes.
 - What are the contributions that the rule of law, and TJ make to development? There is a need for a better understanding of how to translate conceptual links into policy making. Measures undertaken to redress mass abuse should be better integrated into rule of law programming, which is essentially, otherwise, prospective.
6. One of the constraints to take seriously is the institutional capacity of TJ measures and institutions. It is not clear that simply broadening the mandate is the best way to show that TJ can make a contribution to development. For example:
- Few truth commissions manage to complete their task according to the allotted schedule;
 - Few processes result in pressing charges against as many as should, or could, be ideally prosecuted;
 - No reparations mechanism has managed to distribute benefits as widely as it might or should;
 - No institutional reform project has managed to reform in the short term
7. As such, TJ cannot be seen as a ready remedy and generate unrealistic expectations. It is always necessary to take account of the institutional environment.

Transitional justice and a longer-term agenda

8. It is vital to know how transitional needs feed into the long term agenda and how to address transitional justice so that it contributes to a sustainable political architecture for both the rule of law and development objectives, among others. Drawing on the experience of a number of countries where transitional justice measures have been undertaken, including Guatemala, Argentina, Peru, Burundi, South Africa, Tunisia and Kosovo, a number of lessons have been learned and common themes established despite differing historical perspectives. In constructing future TJ strategies, the following issues should be kept in mind:
- Put victims at the centre of TJ measures with the object of enabling them to become 'citizens' again.
 - Identify the needs of society as a whole, including minority and outlying groups, and shape policies to be both inclusive and flexible.
 - Coordination between the various players involved is paramount, including humanitarian, governmental, developmental and justice related actors.
 - Gender-related inequalities must be addressed.
 - Involvement of business can be a positive incentive for encouraging the implementation of justice mechanisms and the potentially positive role of the private sector should be further explored.

- Criminal justice can be divisive as well as constructive.
 - Transitional justice is essentially part of the political process and can be limited temporarily.
 - Without some form of reparation, and where poverty is endemic, individuals can be less incentivized to play an active role in TJ transformations in society because their basic needs must first be met.
 - Where there is impunity for gross human rights violations, development and reconstruction is compromised.
 - Societal reconciliation is impeded where trust in government, the military and public officials is limited.
 - It is vital to set up legal frameworks for law enforcement early on in a transition as well as to secure access to justice and re-establish the rule of law. Without these measures, corruption will flourish, development will be compromised and the cycle of violence will not be broken.
 - It is important to deal with the issue of 'missing' persons and 'enforced disappearances'. It is a vital component of truth seeking, including 'the right to know'. It is also intrinsic to breaking the cycle of violence.
9. At the same time as learning from previous experience to shape future policy, there is a great need to achieve institutional policy coordination rather than simply expanding the mandate of TJ institutions, which are already overburdened. A more constructive approach would be to strengthen the links with those institutions and initiatives that are functionally designed to be responsible for developmental initiatives.
10. TJ is a powerful mechanism of social integration, the affirmation of basic, fundamental norms and a means to strengthen the rights of social groups. It can thus reinforce development objectives through supporting civil society in both nationally and internationally led processes. TJ measures should be seen as an integral part of the 'toolbox' used during a transition. Linking TJ to development initiatives could help to respond to today's more complex set of demands vis-a-vis improvements in governance and lessening corruption and ensuring better social and economic opportunities.
11. Some see a major opportunity to put justice and rights on the post 2015 development agenda and to impact on the way development is discussed in future. If this is to happen, however, the justice and human rights community must be willing to interact more with the development policy community shifting the conceptual linkages towards concrete policy goals. The challenge is to create goals which will result in measurable outcomes so that the post 2015 development agenda leads not just to a declaration but to laws and substantive indicators.
12. It is suggested that the following goals or indicators, while not specific to TJ, would make a significant contribution towards justice, development and societal cohesion and inclusiveness;
- diminution of murder rate.
 - diminution of impunity rate.
 - lessening reliance on confessions for criminal cases, which can be an incentive for torture. It could have huge systemic effects by providing incentives for better forensics, investigations, court procedures, defense and overall prosecutions.
 - ensuring legal identity, through universal provision of appropriate documentation, promoting inclusiveness and citizenship.
 - personal safety or security or, alternatively expressed, security for ensuring freedom from violence; when broadly defined, this would cover violence in both the public and private spheres.

13. The 'United Nations Rule of Law Indicators', elaborated by the Office of the High Commissioner for Human Rights, could provide a starting point. Other issues to take into account are the need for effective access to justice, with definitions broad enough to be acceptable for development actors to take TJ into account. Tackling corruption, a problem exacerbated in resource-rich countries, is key to addressing the systemic causes of injustice; it can be linked to TJ goals and the restoration of civic trust and the rule of law. Freedom from violence can be measured by changes in homicide rates; access to information is a key indicator enabling people to obtain information on rights, security, and access to justice.

Looking to the future

Recommendations for strategy and policy include:

- Any approach to TJ should be comprehensive, integrated and long term in perspective; sometimes societies have to wait for justice. It is important not to use a 'one size fits all' model since each context is different, with its own set of challenges and circumstances.
- There is a need for engagement with development actors to seek opportunities for justice – not just criminal - but TJ. There is a role for development actors in supporting national transitional justice processes.
- Although there has been much international effort on security sector reform (SSR), including training police, there are no clear measurements of effectiveness. There is need for a National Criminal Justice Policy model, encompassing police, army, intelligence institutions, the judiciary and prosecution services, to increase accountability and for this to be monitored.
- Platforms, or forums, should be developed for victims groups and civil society to advocate for justice in specific country situations. For this, regional and global mechanisms for coalitions and accountability can be utilized.
- There is a need to acknowledge the political nature of these processes and the challenge this constitutes in addressing power structures.
- More flexibility and conflict-sensitive strategies should be envisaged and programmes which allow longer term engagement
- Diplomats and development actors need to be convinced that addressing past injustice and inequality does not endanger but supports transition. There are examples which can be used to illustrate this.
- Introduce concrete objectives into sector planning, such as in health and education.
- Legal frameworks should be developed to address effectively the issue of corruption, to include accountability in public service provision and in law enforcement. These mechanisms should be available as early as possible in transition, or be written into peace agreements ensuring accountability before aid is given. With accountability fundamental to development objectives, consideration could be given to reopening the debate on 'conditionality' as one means of making governments accountable to their citizens, especially in relation to corruption.
- The concept of complementarity should be revised in view of developing national institutions and capacities with national and local leaders driving transition processes. Multi-stakeholder consultative mechanisms should be established, including government and civil society with international actors.
- It is important to pay more attention to the relationship between conflict and fragility, and the international structures and architecture which address this. There could be more engagement the OECD's International Network on Conflict and Fragility (INCAF), and with the European Union on transitional justice issues. A global focal point on the rule of law has recently been established between the UN

Development Programme and the Department of Peacekeeping Operations (DPKO).

- More attention should be given to the role the private sector can play.
- Be flexible with conceptualization of what TJ mechanisms encompass.
- Establish mechanisms so that victims can become citizens again, enabling them to participate in society.
- Different actors in the process need to have time and space to make the linkages between TJ mechanisms and development, security and justice, and evaluate these.
- There is a need to clarify the relationship between TJ and security. Security Sector Reform needs to be correctly designed, so that the problem of a militarized justice sector does not occur.
- There may be difficult boundaries to draw between TJ and the justice sector, particularly where their remits could overlap.
- In relation to development and TJ, coordination and information exchange with different agencies engaging in development is paramount as is the clear need for coherence and coordination between both international and national actors, for example donors and civil society. There is a need to establish 'teeth' in TJ mechanisms to ensure results.
- There should be a continual emphasis that security, justice and development are mutually reinforcing and should therefore be at the forefront of policy design.
- Transition represents a moment to seize. All actors must do this, complementing and underpinning one another, to bring about effective change. Strong anti-corruption strategies at the outset would address security and development concerns, and thus promote investment. Successful investment is a key link.
- Rebuilding requires trust and faith in democratic institutions. For example in Kenya there was post-election violence five years ago as people had no faith in the security sector to maintain law and order.
- There is a need for global indicators and evidence-based outcomes that look beyond numbers and focus on overall change.
- To achieve the 'end game', one must look at the present, intermediary and long term, and who are the drivers of change. These are invariably the victims.
- Empowering youth and women is vital. This can be done by looking at short term needs and how to translate these into long term goals. Moving from national to local and community level planning is key.
- Programming should be 'needs based' and policy tools should reflect this.

Conclusion

Bringing together some of the actors who work alongside each other in transitional and developing societies, but who are not always together in providing a coherent response to the interconnected concerns of development and justice, the conference made more salient the post 2015 development agenda to the TJ community, which has not been significantly involved in this so far. Discussions indicate that the dialogue needs to continue.

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Wilton Park | February 2013

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