JSRP
THE JUSTICE AND SECURITY RESEARCH PROGRAMME

JSRP Paper 6

LOCAL UNDERSTANDINGS AND EXPERIENCES OF TRANSITIONAL JUSTICE: a review of the evidence

Anna Macdonald (King's College London)

July 2013

ISSN 2051-0926

This paper was supported by the following research team:

London School of Economics and Political Science (LSE)
Noemi De Luca, Jillian Feirson, Margeaux Fischer, Yuna Han, Rachel Hoff, Holly Porter, Anouk Rigterink, Vishista Sam, Danielle Stein, Judy Taing, Craig Valters

University of Skopje, Macedonia
Petar Atanasov

Executive Summary

Scope and purpose

- Since the late 1980s, 'transitional justice' (TJ) principles and practices have gradually become normalised in international relations diplomacy and international development policy and yet we know very little about how transitional justice interventions are experienced locally, i.e. at the sub-state, community and individual level. This review sets out to examine and interrogate the extant literature on the local effects of transitional justice debates and processes.
- The review is discursive rather than conclusive and does not seek to impose a summary judgment on whether transitional justice 'works' or not.

Methodology

- The evidence review uses a rigorous bibliographic search methodology to identify existing literature that includes 'local-level' empirical data. Three searches were conducted: a systematic database-driven search, a snowball search and a peer-led search.
- The literature yielded from the searches was 'graded' for evidential quality and quality of analysis using the Justice and Security Research Programme's (JSRP) grading method. Shortcomings and limitations of the search methodology are explored.

Key findings and implications for future research and policy

- **Overall knowledge of local experiences of transitional justice remains limited and fragmented.** Individual pieces of research can be very high in quality but the overall picture is less satisfying.
- **Local attitudes and experiences are complex and do not conform to widely held normative assertions about what transitional justice 'should' or 'ought' to accomplish.** There is important evidence on the unintended consequences of transitional justice at the local level, which should be taken into consideration by policymakers.
- **The 'end-user' evidence base is made up primarily of ethnographic work and public attitude surveys.** The former tend to be premised on critiquing ideas around human rights universalism and are therefore generally negative in their assessments. The latter are widely and uncritically cited in the broader literature as a 'nod' to the local, and this is problematic.
- **There are areas that are particularly 'under-researched' and on which we have very little empirical evidence:** these include certain countries where TJ has been proposed e.g. Chad and Central African Republic, and thematic areas such as the gender dimensions of transitional justice, the relationship between transitional justice and the media and the experiences of perpetrators with transitional justice.
- **There is a fundamental and existential problem with transitional justice: it does not really know what it is.** In part due to a lack of what development practitioners term the 'theory of change', it is very difficult to delineate what and who transitional justice is for. Both a serious cause and consequence has been the expansion of the concept to incorporate a huge range of objectives and claims, from formal prosecutions to broader development goals, without sufficient critical reflection. Transitional justice is an over-burdened and under-conceptualised idea.

- **Transitional justice is a concept that is highly contested and very difficult to 'translate'.** Research design and/or policy programming must take care not to enforce concepts or impose definitions on 'end-users'. A more productive starting point in policy or research design is to try and understand through deep contextual, cultural and linguistic engagement with ordinary people, local notions of justice or injustice and appropriate means of redress. It should be recognised that this is a fraught and delicate process and is highly vulnerable, for example, to elite manipulation and/or romantic and uncritical acceptance of 'tradition' in non-Western contexts.
- **There is a need for cautious mixed-methods approaches, including comparative research at the local level.** Equally, though research design must take into consideration the fact that certain transitional justice themes, including such contextually specific notions as 'healing' and 'reconciliation', might not be measurable or amenable to 'standard' definitions.
- **There is a risk of 'over-localising' transitional justice research at the expense of a broader understanding of the national, regional and international dynamics in any given context.** How transitional justice is shaped, communicated and experienced across different levels of society is an important area of enquiry for future research and policy.

Introduction

In the aftermath of World War Two, Karl Jaspers, the German psychiatrist and philosopher, offered a series reflections on what it means to confront, cope with and even recover from a collective history of violence, suffering and mass crime. Against the backdrop of the Nuremberg trials, he boldly challenged his fellow citizens: 'our only chance for salvation lies in total frankness and honesty…this path alone may save our soul from the life of a pariah. Whatever comes to us we must see it come. This is a daring spiritual and political act on the edge of the abyss' (cf. Hazan 2010:19). When these words were first spoken to a university audience in 1946, they encouraged a radical exposure to history, to wrongdoing and to guilt. In biomedical language, denial was the disease, truth and justice were the treatment and social health was to be the outcome. Today, the sentiments Jaspers expressed have, to some extent, been normalised in international relations and diplomacy. Confronting the past, allocating accountability and dispensing justice for wrongdoing at critical junctures in a nation's history remains a tense, uncertain and morally fraught process. At the same time, it is a process that has been gradually institutionalised and professionalised under the broad umbrella of what today we call 'transitional justice'. Transitional justice is now associated with a set of processes, including criminal trials, truth commissions, community-based dispute mechanisms and reparations; and a set of institutional structures and regimes, including international criminal tribunals and courts and international humanitarian and criminal law (Hinton 2010:4). It is also an inter-disciplinary field of scholarly inquiry, offering perspectives from political science, anthropology, law, geography, sociology and education.

Since the early 1990s, well over a billion dollars has been spent on transitional justice mechanisms (Weinstein 2011:1). The former United Nations (UN) Secretary General Kofi Annan outlined the UN's normative commitment to transitional justice in his landmark report on the topic in 2004, *Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (Bell 2009:9). Diplomats, international lawyers, politicians and scholars have echoed the refrain that transitional justice must be implemented not only to ensure accountability for odious crimes but also to promote peace, reconciliation, truth and societal change. Foreign aid and development agencies now engage with these issues on a daily basis and mediators can no longer escape the call for accountability processes to be included in peace negotiations (Vinjamuri 2010). In 2011 alone the World Development Report made explicit links between transitional justice, security and development (World Bank 2011:166) and the UN Human Rights Council established a mandate for a special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence of serious crimes and gross violations of human rights. Access to justice, including transitional justice, is now widely regarded as a crucial component of the post-2015, i.e. post Millennium Development Goals (MDG) agenda.

Despite the growth of the field and the proliferation of transitional justice practices we still have a very rudimentary understanding of how transitional justice *actually* affects the 'end-user' or, in other words, the intended beneficiaries. This is recognised as a shortcoming. As one scholar notes, 'as a field, we have not been successful at promoting a research agenda that values the study of effectiveness' (Weinstein 2011:1). Books, reports and journal articles have concluded that there is a paucity of evidence-based literature on the effects and experiences of transitional justice and a

need to promote research in this area (Thoms et. al 2008; Van Der Merwe et al. 2009; IJTJ 2007). Of course, there is a powerful argument that transitional justice interventions, like any human rights interventions have an intrinsic value and should be justified on their own terms. Furthermore, there is a danger that in applying simplistic cause-effect measurement criteria to policies as complex as transitional justice you will end up with inaccurate or misleading results which may, in turn, deter future support and funding in this area. At the same time, the concerns and questions being raised are pressing and no policy intervention, however morally unimpeachable it may seem, should be insulated from constructive scrutiny based on sound empirical interrogation.

The first scholars to really engage with the 'local' in transitional justice asked whether 'universalistic assumptions about the benefits of justice accord with what people think on the ground?' and whether 'adequate account is taken of non-western cultures and beliefs and local practices of justice?' (Stover and Weinsten 2004; Fletcher and Weinstein 2008:2). This is an area of inquiry that still remains in its infancy but edited collections and journal issues have been published recently which engage closely with how transitional justice is viewed from the bottom up, across cases (Shaw et. al 2010; Hinton 2011; IJTJ 2012). These are amongst the studies that will be reviewed below, whilst remaining gaps will be highlighted. A parallel development in the field has been a series of quantitative large-n comparative studies which aim to draw linkages between transitional justice processes and systemic, state level outcomes, such as increased respect for human rights or democratisation (these studies are discussed more fully in Box 1). Despite a growing interest in measuring impacts, outcomes and effects, both at the macro and the micro level, the transitional justice field is still dominated by value-driven and normative literature that offers interesting theoretical insights and justifications for transitional justice programmes but very little evidence-based analysis of what is actually happening on the ground. Hugo Van Der Merwe has highlighted the disproportionate emphasis on 'moral-philosophical and jurisprudential aspects' of transitional justice processes and a preoccupation with 'institutional design and implementation', while Oskar Thoms et. al have argued that transitional justice discussions are 'faith-based' rather than 'fact-based' (Van Der Merwe 2009:60; Thoms et. al 2008: 5).

This paper uses a rigorous bibliographic search methodology in an attempt to pull together the extant evidence base and, in turn, to highlight some important findings and gaps. It is hoped that such an exercise will tell us something about how the 'end-user' understands, experiences and interacts with transitional justice processes that are promoted by the international community. The paper will begin with a discussion around key concepts: transitional justice; end-user; and local. It will outline the central research question and approach and provide an in-depth guide to the methodology used. A critical examination of the 'genealogy' of transitional justice and a brief overview of key normative debates will be followed by an analysis of the existing evidence on end-users and transitional justice. The paper will conclude with a summary of evidence findings and research gaps.

Key concepts: transitional justice; the end user; and the local

What is transitional justice and who defines it?

The largest intergovernmental and non-governmental promoters of transitional justice, the United Nations and the International Centre for Transitional Justice, define the concept as follows:

'*the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation*' (UNSC 2004:4).

'transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programmes and various kinds of institutional reforms'. (ICTJ http://ictj.org/about/transitional-justice)

The dominant narrative suggests that transitional justice is a set of state-centric legal and quasi-legal responses to abuses perpetrated by a former regime or during a conflict and that dealing with the past will help consolidate liberal values during a transition (Hansen 2011). In this narrative, civil and political rights tend to be prioritised or at the very least emphasised over economic and social rights. The origins of the concept will be explored in more detail below. The question is, do these generalised concepts and practices resonate in the societies in which they are being promoted and implemented today? Some of these places are transitioning politically, some are transitioning from war to peace, others are barely doing either. They are places as politically and culturally diverse as Columbia, Uganda, Timor-Leste, Afghanistan and Libya. The very word 'justice' has no direct translation in many of these contexts and even where it does, individual and group perceptions about what justice actually means can range from access to healthcare to the ability to pay for school fees or a decent burial (Allen 2006; Winterbotham 2012). The 'translatability', universality and relativity of transitional justice concepts, conceptions and practices is a pressing and often uncomfortable question.[1] A useful starting point is to view transitional justice, in any given context, as conceptually and epistemologically contested and unresolved.

Who is the end-user?

For the purposes of this paper, the end-user is understood as somebody at the receiving end of transitional justice arrangements, who should experience a relevant and meaningful sense of justice, accountability or redress for injustices experienced during episodes of conflict or oppressive rule. End-users can be individuals or collectives. They are both the actual and potential victims of war crimes, crimes against humanity and genocide, and the actual or potential recipients or beneficiaries of transitional justice. Yet, at the same time, it is acknowledged that they may have

[1] These debates often echo longer-running debates about the universality/relativity of human rights practice, see for example, Messer (1993) and Donnelly (2003).

the agency (power and resources) to shape the transitional justice agenda, as well as be subject to it, whether as creators of transitional justice (e.g. local level justice institutions), or alternatively as perpetrators of injustice (e.g. child soldiers).

What is the local?

The 'local' is understood broadly as the sub-state, the community and the individual. It is also used interchangeably with 'micro-level', which is understood to encompass the same things. The term 'level' is, indeed, problematic. Cognizant of the dangers of conceptualising the local as a 'level' and the implicit notions of 'remoteness, marginality and circumscribed contours' the approach here will be to borrow Shaw et. al's description of the local as a 'standpoint based in a particular locality but not bounded by it' (Shaw et. al 2010: 6). This fits more broadly with the Justice and Security Research Programme's (JSRP) central premise which is to place the end-user at the centre of research and analysis in order to try and understand the everyday politics of places in which orthodox, ideal-type versions of transitional justice policy might or might not be functioning well.[2] Whilst this evidence review prioritises an understanding of the end-user and the local it is also acknowledged that that some of the most interesting questions for practitioners are about how transitional justice is experienced across the political and social spectrum in any given context and how these experiences fit together.

Research Question

Central research question

An evidence paper is different from a literature review: it attempts to draw findings from a large number of methodologically and thematically diverse studies in order to assemble an 'evidence base'. This is a set of empirical findings that tell us something about a particular policy or set of policies. The central research question has been framed deliberately to ensure that this enquiry did not develop, inadvertently, into a proxy impact assessment or evaluation of transitional justice programmes and programming.

The central research question is: ***How are transitional justice programmes understood and experienced locally?***

This examination is discursive, not conclusive: it does not seek to impose a summary judgment on whether transitional justice works or not. Anything results-orientated becomes very problematic for two reasons. Firstly, it is probably not methodologically sound to compare or generalise across studies that are measuring different things in different ways in order to draw conclusions about whether transitional justice is, for example 'harmful' or 'beneficial'. A second difficulty with drawing results from the available evidence is the lack of what development experts and practitioners have termed the 'theory of change' (Stein and Valters 2012; Duggan 2010). We still do not have a clear understanding of whom and what transitional justice is for and what it designed to achieve (Duggan 2010). Outside observers

[2] For more information about the Justice and Security Research Programme (JSRP): http://blogs.lse.ac.uk/jsrp/.

unfamiliar with the hypotheses and objectives forged during TJ programming run the risk of measuring TJ against criteria it never intended to meet in the first place (ICHRP 2012).

The literature itself rarely defines or differentiates transitional justice goals; policy makers and practitioners are often unclear; and advocacy groups are prone to moulding realities to fit their campaign agendas. It is beyond the scope of this paper to uncover, systematically, the intentions of each separate tribunal; truth commission; traditional ritual, to name but a few relevant processes. Even if it were possible, many of the objectives those processes carry are long term and it is probably too early to understand whether or not they have been met. In the absence of clarity about what a certain measure is being implemented to achieve, what has been termed the 'great rush to understand programmes primarily through the prism of impact or outcomes' seems premature (ICHRP 2012:12). This evidence review will, more amorphously perhaps, assemble a guide to the extant empirical data and examine what it tells us about how transitional justice interventions are understood and experienced locally and how contextual specifics may shape, alter or impact upon these interventions.[3]

Box 1: Measuring the 'macro-level' impacts of transitional justice

The focus of this evidence review is on understanding the local effects of transitional justice, however, quite a substantial amount of work has been done, to date, on the state-level effects of transitional justice. It is worth briefly summarizing the main findings of this research. Scholars have developed several new datasets in order to establish the causal links between transitional justice and broader systemic statebuilding objectives, including, for example: peace, democratisation and human rights (Binngisbo, Elster and Gates 2007; Kim and Sikkink 2010; Payne et. Al 2010). The findings across studies are inconclusive. A recent study examining international and domestic human rights prosecutions in 100 transitional countries between 1980 and 2004 finds that that human rights prosecutions during and after transitions lead to improvements in human rights protections and that human rights prosecutions have a deterrent impact beyond the border of a country (Kim and Sikkink 2010). These positive findings are in contrast to those of Jack Snyder and Leslie Vinjamuri who analyse 32 post conflict cases and conclude that trials present a range of unnecessary risks during peace processes and that success ascribed to truth commissions is misplaced: it is the amnesties which accompany these processes which really allow for constructive bargaining and dialogue between fighting parties (Snyder and Vinjamuri 2003).

Other studies have produced assessments which are less clear cut. In a study of 200 post-conflict phases, Binngisbo, Elster and Gates (2007) find that one-sided military victories are the most robust indicators of sustainable peace and that TJ mechanisms, and particularly trials are only statistically significant once victories are removed from the equation. A newer study examines the influence of transitional justice mechanisms on democracy and human rights during 91 transitions in 74 countries from 1970 to 2004 (Payne et al. 2010). It finds some statistically positive effects of

[3] The research team would like to thank Pablo de Greiff for his insightful comments on evaluation and assessment of transitional justice interventions.

transitional justice processes ten years after transitions began. This appears to be the case when measures are used in combination so, for example, truth commissions are found to have a positive effect in combination with trials and amnesties, on their own, however, truth commissions have a statistically significant and negative effect on human rights conditions. The study also finds that with the exception of trials, transitional justice processes are negatively associated with rule of law scores.

So far, these large-n quantitative/comparative studies have been exclusively focused on macro-level effects of transitional justice related to conventional state-building objectives. They tell us very little about the end-user experiences and we remain unclear about the how macro outcomes and impacts relate to micro impacts and outcomes, if at all. These studies do, however, provide interesting opportunities for future mixed methods and mixed epistemological research (Dancy 2010). For example, if analysis of a dataset tells us that human rights prosecutions improve human rights protections this can and should be supported or challenged by in-depth qualitative work on the ground which examines end-user perceptions and experiences of these apparent improvements and changes.

A recent, comprehensive study of the evidence on the macro-level effects of transitional justice policy (Thoms, Ron, and Paris 2008) has pointed to several methodological and data problems with large-N comparative studies on transitional justice impacts. Some of these concerns are common across quantitative social science research, others are more specific to transitional justice research.[4] A summary of some of the key findings of this report can be found in appendix C.

Methodology

This section contains a discussion of the bibliographic search conducted by a small research team. A mixed bibliographic search strategy was designed to identify existing evidence in the social science literature about local experiences of transitional justice in fragile and conflict affected places. This comprised three stages and was conducted between June 2011 and November 2012.

(i) database-driven search
(ii) snowball search
(iii) peer-led search.

The papers, journal articles and books that were selected were then read, graded and annotated following the Justice and Security Research Programme (JSRP) grading method (see appendix B). From this, the research team was able to produce an annotated bibliography of all the relevant literature (see appendix E).

Database search

While there are a large number of existing databases, those selected for the final search were commonly accepted as the most important search engines for social

[4] For a useful and thoughtful critique of this study, see Dancy (2010), esp. pp. 366-369.

sciences; topically the most relevant for the research question; and yielded the most extensive set of academic and non-academic literature upon initial search.[5]

Two search strings were used: the first emphasised transitional justice themes and mechanisms, whilst the second string had a greater focus on the interaction between transitional justice and the 'end-user' by including 'end-user related' search terms. As suspected the preliminary search indicated that in certain databases, the template search string yielded highly legalistic and theoretical literature. At the same time, it was throwing up some useful evidence-based literature. It was decided that we would keep this search string and supplement it with a second search string that had explicit references to local-level evidence.[6]

The following inclusion / exclusion criteria were then applied:

- Time frame**:** Only studies published after 1983 were selected. This was the date of the first trials of the military juntas in Argentina, a point from which the transitional justice debate gained strong momentum.
- Language: Only studies published in English were selected – this was recognised as a major but unavoidable limitation, given resource constraints.
- End-user focus: In both searches we only selected studies that contained an end-user perspective or provided or referenced local level empirical data.
- Geographic focus: countries and places were selected on the basis that: (i) they were recently or are currently conflict affected and (ii) they are 'developing' economies.[7]
- 'Cut-off' points: In both searches, after a preliminary scan it became clear that the degree of relevance decreased substantially after the first 500 articles on most databases. Thus, results after the 500 mark were not considered.

The first database search produced an initial result of 208,569, which was narrowed down to **160**. The second database search produced an initial result of 18,540 which was narrowed down to **155.** So, the total yield from the database searches was **315.**

[5] The following databases were selected: SCOPUS, ISI, IBSS, EBSCO (selecting Peace Research Abstracts, International Development Abstracts, International Political Science Abstracts, Race Relations Abstracts, Historical Abstracts, Criminal Justice Abstracts), African Journals Online, CIAO, Hein Online, West Law, Google Scholar, Refseek, LSE Library Catalog, COPAC, and WorldCAT.

[6] We decided on a unified template Boolean search strings. The first search string was designed to cross-reference the concepts being studied (justice, truth, accountability, peace, and reconciliation) against the mechanisms in place (court, trial, truth commission, tribunal, amnesty, reparation) and the types of abuses and crimes committed (genocide, war crimes, crimes against humanity, atrocity, violence). The second search string was designed to cross reference 'end-user' involvement (local, grass roots, community, traditional) with transitional justice mechanisms in place (court, trial, truth commission, tribunal). The search terms were limited to those present in the abstracts in order to yield the most relevant material. This template was used in most database searches. However, in cases where the database did not support a Boolean search string, flexible adaptations were made to ensure effective cross-referencing of the same concepts, contexts, and mechanisms in question. It should also be noted that we employed 'cut off' points in both searches. After a preliminary scan we realized that the degree of relevance decreased substantially after the 500th article on most databases. Thus, results after the 500th entry were not considered.

[7] As defined by the International Monetary Fund's World Economic Outlook (April 2012).

Snowball search

It became clear that some key literature, both academic and non-academic was missing from the systematic data-base driven search. A 'snow-ball' technique was employed, in which we: (i) included relevant literature known to us through our own research and expertise (ii) examined relevant footnotes and bibliographies of the articles and books the database searches had yielded (iii) examined the archives of the International Journal of Transitional Justice since its creation in 2007 (iv) examined the literature produced by the International Centre for Transitional Justice since its creation in 2001. Preliminary results were cross-checked against the inclusion criteria. The snowball search produced an additional **67** citations.

Peer-review search

To supplement the database and snowball driven searches we conducted a peer-led literature review. This involved identifying and selecting peers and authorities in the field, both scholars and practitioners. Twenty individuals were contacted with information about the evidence paper and a request to identify at least five relevant sources, including books, articles, working papers and reports. Six replied and provided a total of **27** references (some of which were overlapping).[8] The peer-led search produced a literature that converged significantly with what had been yielded through the previous two searches. In total, it produced only **3** studies that we had not already come across.

Filtering Process

Once the three search strategies had been completed, a more rigorous screening process was undertaken. The studies were divided between research assistants and a closer examination of inclusion of 'local-level' empirical data was carried out. Some articles appeared to include this information but were, on closer reading, entirely theoretical or conceptual in nature. After an initial review of news articles that the search had thrown up, it was decided to exclude these from the grading process as the process was designed to evaluate scholarly and policy literature rather than journalistic work. This led us to cut the number of relevant articles, books and reports from 387 to **273** (see appendix A for a table of citation results from the three search strategies). These were passed onto the grading exercise stage of the process (see the appendix B for the grading matrix used for this process).

The 273 works sourced were read, graded and annotated following the Justice and Security Research Programme (JSRP) grading method.[9]

[8] The research team would like to thank Mark Freeman, Hugo van der Merwe, Chandra Sriram, Oskar Thoms, Leslie Vinjamuri and Harvey Weinstein for generously sharing their recommendations with us.
[9] This was developed at the London School of Economics (LSE) using the DFID evidence grading guidelines and with input from JSRP partners. See 'JSRP evidence grading template' (Appendix B).

Results

Methodologies and evidential quality

Of the 273 journal articles, books and reports that were graded, 32% were coded as containing less than 10% empirical data; 36% as containing between 10-50% empirical data; and 31% contained 50% or more empirical data. Of those books, articles and reports that contained more than 10% empirical data, 6.6% were recorded as quantitative using an existing data set; 21% were recorded as quantitative using an original dataset; 26.9% were recorded as qualitative, observation-based; 56.9% were recorded as qualitative, interview based and 34.8% were recorded as 'other'. These percentages add up to more than 100% because the articles, reports and books were often coded as containing more than one methodology.[10] Overall then, studies based on primary research were most commonly qualitative, employing interview and focus group methodologies. The 'other' category refers to empirical data derived from archival literature, government reports and films, for example, and is well represented because it tended to be used as a method in conjunction with one of the other four approaches listed above.

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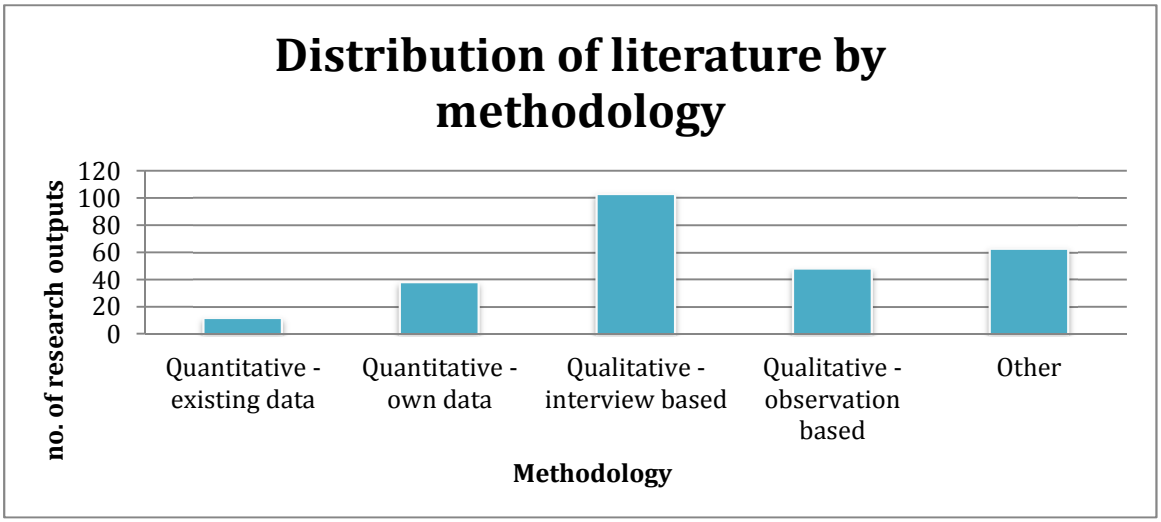


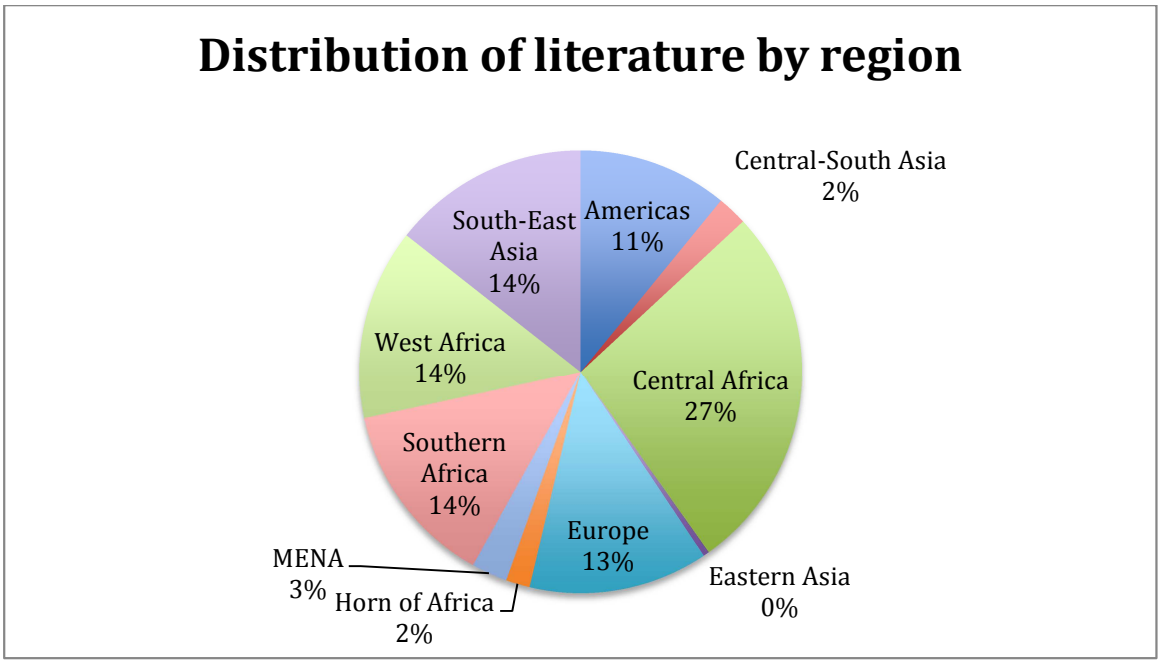
On average the works graded scored 2.55 out of 4 on quality of data; 2.88 out of 4 on quality of analysis and 5.44 out of 8 in total. The lowest grade given to a piece of work which contained more than 10% of empirical data was 2.33 and the highest was 8. Controlling for the identity of the coder, papers marked as 'quantitative, gathering own data' and 'qualitative, interview based' scored significantly higher than papers employing other methodologies. The papers marked as containing 50% or more empirical data scored significantly higher than those containing only between 10%

[10] As a percentage of all 273 papers, including those with less than 10% empirical data, 4.4% were classed as quantitative using an existing data set; 10.3% were classed as quantitative gathering own data; 17.6% were qualitative (observation based). 37.7% were qualitative, interview based and 23.1% were classed as 'other'.

and 50% of data. The results suggest that the former scored almost a full point higher on average. The correlation between the scores on data quality and analysis quality and specific questions regarding the *overall* quality of the work in terms of new data/information provided and new analysis/insight provided is around 0.5. This correlation (maximum of 1) indicates the extent to which data and analysis quality correlate with *overall* quality.

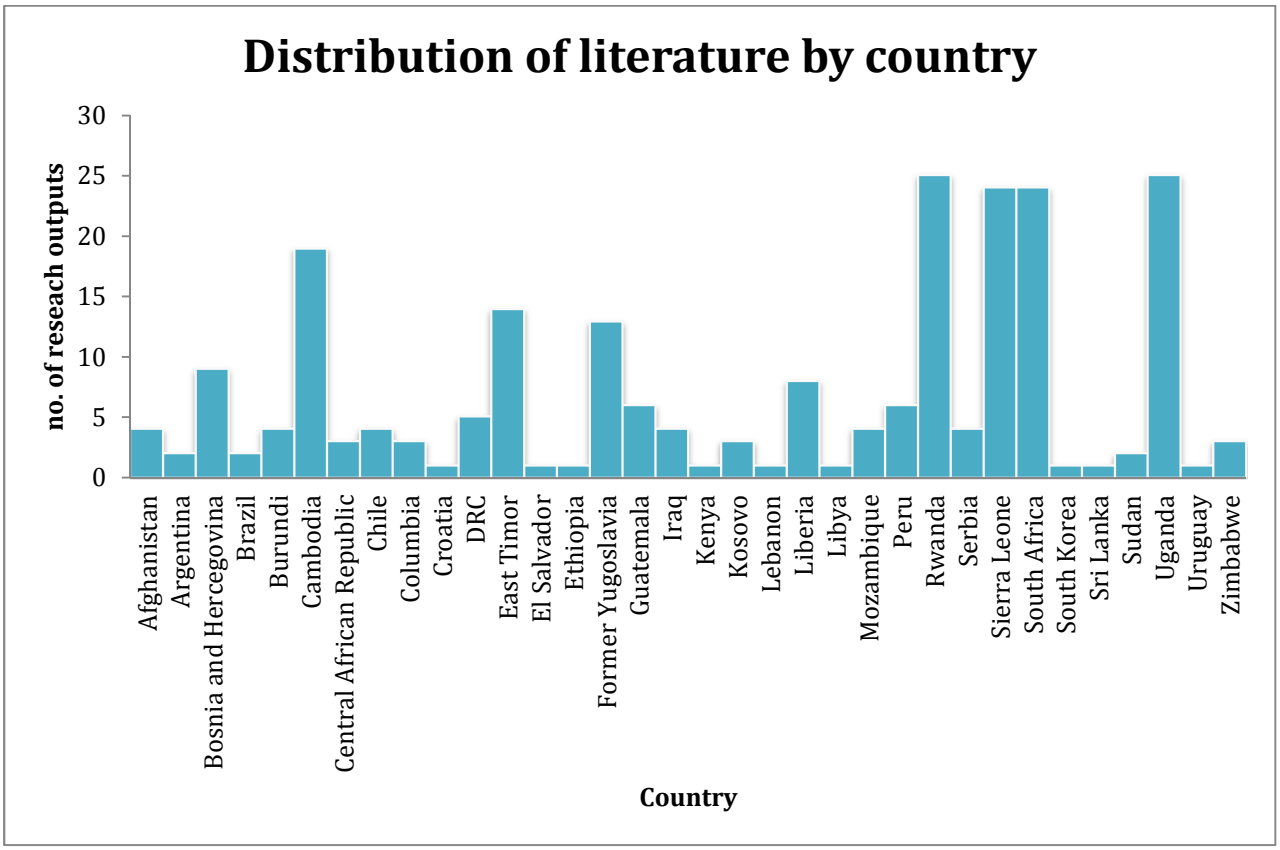
Country and regional focus of literature

The country and regional distribution of individual case studies can be explained by two factors: the first is that we are particularly interested in understanding the effects of transitional justice processes in fragile and war affected places. During the database search and filtering process we were more cautious about including and retaining studies that fulfilled this criteria. Secondly, our 'snowball search' was biased in favour of articles, books and reports that explored transitional justice in these contexts. For these reasons, we gathered a lot of case study material on the former Yugoslavia (13) – particularly if you include single case studies on Bosnia and Herzegovina (9), Serbia (4), Croatia (1) and Kosovo (3) - 30 in total. This area experienced the first major experiment in pursuing justice during conflict in the form of the ICTY. Regionally, we gathered the most material on transitional justice in Central Africa (62). Southern Africa (32) and West Africa (31) were also well represented. All of the ICC's official investigations and active cases are in Africa (Uganda, DRC, Libya, Central African Republic, Sudan, Kenya, Cote d'Ivoire, Mali); and this is a region that has seen multiple attempts to pursue justice after and during mass conflict in contexts where peace remains fragile and uncertain.



Despite this, as Fig 1 demonstrates, there is a huge variation in volume of research per country, particularly within broader sub-Saharan African regions. Rwanda (25), Sierra Leone (24), Uganda (25) and South Africa (24) make up the majority of studies in this area, while Central African Republic (3), DRC (5) and Kenya (1) are noticeably

under-researched, and Chad, another country where transitional justice processes have been widely debated, is not represented at all. Although these areas probably are under researched it is also likely that some literature was not identified because it was not published in English, particularly for the Francophone countries. This may also be the case in other places which did not appear to have generated much relevant literature, in particular Guatemala (6) and Columbia (3). Finally, it is striking that Middle East and North African countries (MENA) are so under-represented in the literature. Despite transitional justice being a key theme during the Arab Spring uprisings, this has been a relatively recent development and our searches did not produce any existing literature relevant to our criteria.[11]



Methodological issues and constraints

The four main issues/constraints that were encountered are described below:

(i) Lack of 'grey' literature

The databases appear to produce a relatively low yield of 'grey' literature, including, for example, research reports, briefing papers, advocacy documents, evaluation literature and policy papers. This is problematic because there is a deep interest and engagement in transitional justice amongst policy-makers, practitioners and NGOs. In order to try and counter the lack of 'grey literature', we searched the International Centre for Transitional Justice, UN and World Bank websites for relevant literature.

[11] It is, of course, quite possible that relevant material has been published subsequently, although a peer-led search on this area in December 2012 did not produce any results.

We also specified that we were interested in influential non-academic 'grey' literature when we contacted individuals for the peer-review search.[12]

(ii) Certain countries/cases/studies 'missing' from the review

A frequent set of responses to the review has been along the lines of: 'surely there's been something published on Lebanon or Nepal?' or 'what about the role that identity politics play? Can't you include something written on that?' In some ways, this review is restricted by its methodology: the methodology was designed to be as systematic and transparent as possible comprising a formal search of web-based databases (academic and more general), complemented with requests to experts in the field to identify key literature, and snowball searches of bibliographies and references. A combination of these methods mitigated the shortcomings of each but there are still cases where relevant literature may not have been captured, especially, as has been pointed out above, grey literature or poorly-indexed sources.

(iii) Trying to use uniform approaches on different search engines

Each database has a different search function. Whilst some are capable of processing extensive Boolean search strings, others are less so. It is impossible to run identical combinations of search terms and search syntaxes in every database. There was a need to be flexible with search terms to ensure results in databases with less sophisticated search functions. The need to adapt search terms was, to some extent, an arbitrary process and based on intuition rather than on objective criteria.

(iv) Issues with grading protocols

The focus of the grading was on strength of methodology and evidence base. Although questions were also designed to assess the analytical, conceptual and theoretical strengths of the literature, the grading did appear to prejudice certain approaches and methodologies. Whilst the overwhelming majority of papers were found to be 'qualitative – interview based', papers in the 'quantitative – gathering own data' category scored systematically higher than others, while those in the category 'other', scored significantly lower, controlling for the identity of the coder and category. It appears likely that the quantitative data scored higher – in part – because these studies tend to be much clearer about their methodology. There was an abundance of qualitative research that appeared to be grounded in fieldwork but contained only fleeting reference, if any at all, to the methodological approach. This was problematic because whilst the quantitative research scored highly, a closer reading of the findings and results suggested a need for much more contextual engagement to understand and interpret conclusions. Meanwhile, qualitative research with an unclear methodology but an apparent evidence base tended to score lower but provided some valuable contextual and conceptual insights. This partly reflects a different culture in social science disciplines and methods towards elucidating and clarifying methodological approaches.

[12] We were cautious in our reading of advocacy literature and most was disregarded during the filtering process or scored low in the grading exercise. This was for two reasons (i) a tendency of human rights NGOs to interpret transitional justice institutions using purely judicial criteria. This approach does not lend itself to an analysis of local effects of these processes and it does not generally view transitional justice institutions as an evolving social-legal practice (Clark 2010) (ii) a tendency in the advocacy literature to over-represent evidence that supports the views that the organisation intends to promote.

The books, articles and reports were graded by a team of ten research assistants. The results of the grading exercise also tell us that the identity of the individual coder matters: that is to say that there is likely something systematic about who gives higher and who gives lower grades. The average score given per grader ranged from 4.8 for the person grading the lowest and 6 for the person giving the highest grades. This problem was addressed by encouraging research assistants to work in pairs or 'share' grading results and discuss them but grader identity certainly remains an important factor in the final scoring.

Conceptual framework for reviewing the evidence

From the mid-1980s onwards, democratisation processes and violent ethnic conflicts have been accompanied by a proliferation of justice and reconciliation practices and institutions. Modern transitional justice had its roots in Nuremberg but during the Cold War governments transitioning from authoritarianism to democracy preferred not to address painful legacies (Huyse and Salter 2008). In Chile for example, impunity was established through formal amnesty legislation. State sanctioned silence was the outcome of negotiated compromises between the successor elites in post-Khmer Rouge Cambodia and post-Franco Spain. During this period, the international criminal, humanitarian and human rights legal apparatus and regimes that exist today were being debated, established and codified, but the political equilibrium created a hiatus in enforcement (Kerr and Mobekk 2007).

From the mid-1980s onwards a major policy shift occurred. During this period the struggle against impunity became a priority for large non-governmental human rights organisations (NGOs), including Amnesty International and America's Watch (now Human Rights Watch) (Arthur 2009; Hazan 2010). These organizations worked with activist lawyers, local NGOs and victim's associations as well as international agencies such as the UN and sympathetic governments (Collins 2010). The outcome was a proliferation of transnational litigation defined by Naomi Roht-Arriaza as 'legal actions bought in the national courts of one country against civil or criminal defendants based in another' (Roht-Arriaza 2006a:40). This litigation had a particular focus on crimes committed during the so-called 'dirty wars' in Central and Latin America in the 1970s and 1980s. One scholar labelled this surge in trials coupled with institutional changes and region-wide policy reform as a 'justice cascade' (Lutz and Sikkink 2001).[13]

The field of 'transitional justice' was emerging simultaneously but its approach was distinct and very much a product of a particular political moment (Arthur 2009). Transitional justice was not just about a 'moral obligation' and 'legal duty' to prosecute. Its emphasis was on the instrumental purposes of justice, and in particular the role that it could play in nation building and peace building (Vinjamuri 2010:191). As Paige Arthur argues, it is only since the late 1980s that the measures we now associate with transitional justice have been '(i) systematically justified through appeals to universal norms such as human rights (ii) seen as legitimate only when undertaken by a democratic polity (iii) seen as having an underlying, determined

[13] The 'justice cascade' theory remains contested: for critical examinations see, for example, Mallinder (2008) and Collins (2008)

connection related to the normative goal of promoting democracy and peace' (Arthur 2009:357). Transitional justice when it emerged was embedded in the 'transition' paradigm, an intellectual framework that had been developed in the US in the 1980s. The 'transitologists' sought to explain and make sense of the multiple democratisation processes underway from Mauritania to Mongolia (Hazan 2010). A new theory was developed: democracy could be established in almost any country through 'a shortened sequence of elite bargaining' and 'legal-institutional reforms' (Arthur 2009:338). Central to this was a moral and practical need to confront past abuse in order to combat impunity and entrench 'social health' whilst averting potential coups (O'Donnell and Schmitter 1986). A powerful normative discourse developed. It was assumed that institutions such as trials, tribunals and truth commissions would develop narratives about past violence, settle accounts and demonstrate the truth. This in turn would play a powerful role in legitimating future institutions and fostering social repair (Popkin and Roht-Arriaza 1995; Kritz 1995).

During the 1990s, transitional justice policies were being formed in the context of seemingly antithetical political developments. As Pierre Hazan points out, 'there was a cautious optimism linked to accelerated democratic transitions after 1989 but the post-Cold War period also witnessed the multiplication of internal conflicts and policies of ethnic cleansing and genocide, marked by Rwanda and Srebrenica' (Hazan 2007:55). The 'cautious optimism' raised questions about the wisdom of systematic prosecutions in contexts where regime change was a fragile operation. Alternative and complementary mechanisms were promoted to mitigate the risks associated with an overly punitive or overly lenient prosecutorial strategy. The South African Truth and Reconciliation Commission (TRC) marked a turning point. With its principle of 'amnesty for truth', it demonstrated how governments constrained in their ability to prosecute, could deploy other transitional justice processes to help societies deal with and recover from mass abuse. During this period other non-judicial transitional justice practices began to emerge, including lustration, memorialisation and reparation policies. The correct balance between restorative and retributive measures and the relative merits of each remained a subject of heated debate.

The latter trend of violent ethnic conflict was interpreted by Western powers as not only 'morally shocking' but also as a threat to regional stability and international security (Kerr and Mobekk 2007; Hazan 2007:41). The international tribunals for the former Yugoslavia and Rwanda were set up in 1993 and 1994 respectively, under the auspices of Chapter VII of the UN Charter. Originally ad hoc responses to serious crises, they began to generate a normative discourse that legitimised what has been termed 'judicial diplomacy' (Scheffer 1996). The most recognised symbol of the 'normalization' of transnational criminal jurisprudence, is the International Criminal Court, established in 2002 (Teitel 2009). The Rome Statute of the International Criminal Court allows for justice to be pursued in conditions of persistent and un-resolved conflict, a development that is 'radically altering how we think about, debate and practice justice' (Vinjamuri 2010:191). In so far as Rome Statute crimes may involve abuse of power by political leaders, no-one, even acting Heads of State, are immune from judgment. Indicting national leaders and rebels pivotal to ongoing peace talks, for example, Slobodan Miloševic, Joseph Kony, Charles Taylor, Omar al-Bashir and most recently Muammar al-Gaddafi, has turned what were once hypothetical debates about peace versus justice into urgent policy dilemmas (Vinjamuri 2010; Sriram and Pillay 2009).

Since the turn of the century and especially with the advent of the International Criminal Court's prosecutorial strategy, transitional justice has become a site of serious contention in international politics. Recent years have witnessed the 'bloc opposition' of the African Union, the most important regional organisation on a continent where the ICC has focused almost all of its efforts (Hazan 2010:160). International justice has always been challenged on the grounds of controversial legitimacy but the pitting of influential blocs of African and Arab-Islamic rulers and to some extent populations against the 'West' is a recent and worrying trend (Hazan 2010; Sriram and Pillay 2009). The hardening of the AU towards the ICC has been explained as 'self-serving' but is also representative of a growing mistrust in what is regarded as judicial neo-imperialism (Branch 2011). Most recently, scholars have questioned the close relationship between international justice and international military force in Libya and Mali, Leslie Vinjamuri highlights the damaging 'perception that the ICC follows the flag of western military interventions in Africa' (Vinjamuri 2013).

Box 2: Transitional justice and the Arab Spring

The initial literature search was conducted just after the Arab Spring uprisings in early 2011. The Arab Spring and the overthrow of regimes in Tunisia, Egypt and Libya have been closely associated with transitional justice efforts. Following a UNSC referral of the situation in Libya to the ICC in early 2011, the Chief Prosecutor of the court issued arrest warrants for President Muammar al-Gaddafi, his son Saif al-Islam Gaddafi and intelligence chief Abdullah Al-Sennussi. In Tunisia, following the trial of former President Ben Ali and his top deputies and the setting up of an investigative commission on human rights violations that occurred during the uprising, the new government has set up a Ministry of Human Rights and Transitional Justice which aims to 'preserve human rights and avoid regression toward old practices'.[14] In Egypt, former President Hosni Mubarak and a group of his senior deputies are on trial for crimes committed since the beginning of the revolution in January 2011 and the current government has created a commission of inquiry to investigate violations during the protests. It is clear that each one of these processes has been fraught with challenges and set-backs (Kersten 2012). Newspaper reports have documented local opinion on these matters but there has been little academic work to date on end-user attitudes towards or experiences of transitional justice debates and policies in the Arab Spring countries.[15]

Charges of neo-imperialism and partiality directly challenge and complicate legalistic assumptions that justice is transcendent and universal, epitomised by due process, legal rights and international norms. Politicians, NGOs and scholars have documented the failure of international institutions to attend to local specificities and priorities. The development of hybrid tribunals in Sierra Leone, East Timor, Lebanon and

[14] Gbribi, Asma (2012, March 8), 'Debating Transitional Justice in Tunisia', *Tunisia Live*, http://www.tunisia-live.net/2012/03/08/debating-transitional-justice-in-tunisia/

[15] Thank you to Mark Kersten, author of www.justiceinconflict.com, for his comments on the available literature on this topic. Kirsten Fisher and Robert Stewart are currently co-editing a book on 'Transitional Justice and the Arab Spring', Routledge, *forthcoming* October 2013.

Kosovo; the principle of 'complementarity' in the Rome Statute of the ICC and a policy consensus that successful transitional justice requires a 'package' of measures are all, to some extent, responses to shortcomings in the first generation of UN ad hoc tribunals. They were seen as excessively costly, frustratingly slow and too detached from the societies concerned, with an inadequate strengthening effect on the judicial systems in those countries. A recognition of these shortcomings, combined with a continued disenchantment with internationally sponsored courts has led to a growing interest in local practices of dispute settlement and reconciliation. Scholars and practitioners have argued that 'traditional' and 'informal' justice systems may be adopted or adapted as part of a broader response to mass violence (Baines 2007; Hovil and Lomo 2005). In his 2004 report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Kofi Annan stated that 'due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition' (12). As Shaw et. al point out the latest phase of transitional justice is, 'marked not only by a fascination with the locality but also by a return to Nuremberg's international norms against impunity' (Shaw, Waldorf, and Hazan 2010:4). It remains to be seen whether it is possible to balance meaningful customary practices with nominally universal principles. To date this remains an aspiration of transitional justice policy but also a serious source of tension and difficulty.

A related challenge is that transitional justice it is now operating in contexts with highly unfavourable process conditions. At the outset, transitional justice policies were designed to resolve specific policy challenges, most notably in the Latin American countries of the Southern Cone (Arthur 2009; de Greiff 2011). Measures were designed and implemented in countries with 'relatively high degrees of both horizontal and vertical institutionalization' (de Greiff 2011:1). Today, we see transitional justice being proposed and implemented in hybrid political spaces of contested or fragile states and in militarised border spaces. These are often territories in which the institutions of the state are largely 'absent' or have been displaced by 'non-state' groups and where the relationships between citizens and between citizens and the state are 'still to be regulated by means of laws' (de Greiff 2011:2). What may have been effective in a Latin American context is not necessarily going to work in Africa, Central Asia or Eastern Europe. Scholars have warned against standardised approaches and the so-called 'templatisation' of transitional justice as promoted by the United Nations.[16] Many scholars and practitioners dismiss formulaic policy prescriptions and would prefer to see transitional societies developing their own transitional justice processes in a contextually appropriate way (Roht-Arriaza 2006b; Hinton 2011; Shaw, Waldorf, and Hazan 2010).

A Brief Survey of Key Debates

[16] The Office of the UN High Commissioner for Human Rights (OHCHR), for example, has a series of *Rule of Law Tools for Post-Conflict States* that emphasizes a 'menu' of transitional justice options, including prosecutions, truth commissions and vetting, arguing that they are central element of an integral transitional justice strategy.

A brief survey of some of the dominant normative arguments linked to transitional justice processes is important.[17] Transitional justice scholarship has revolved, perhaps unhelpfully, around three conceptual debates alluded to above: the merits of retributive versus restorative approaches to transitional justice; peace versus justice; and local versus international interventions. Discussion of transitional justice mechanisms are often framed in these broader debates. In reality positions, principles and processes exist on a continuum between extremes and normative arguments about what transitional justice processes can, should or do achieve should not be conflated with the intentions or objectives of policy makers designing these processes. Nevertheless the theoretical debates about transitional justice processes are worth exploring before the end-user literature is examined in more detail below.[18]

Trials

Trials for conflict related crimes – genocide, war crimes and crimes against humanity - can be pursued by various means including domestic courts, hybrid tribunals and international tribunals. While some experts favour domestic judicial strengthening via national trials others argue that post conflict domestic courts lack the necessary capacity and that international tribunals have greater symbolic, pedagogical and deterrent power (Bassiouni 2002; Meron 1998). Trial advocates argue that widespread benefits will result from legal prosecution, including accountability, truth, reconciliation, peace, deterrence and promotion of the rule of law. A major justification for the creation of the ICTY was the argument that 'war criminals must not evade accountability if there is to be peace in the region' (Akhavan 1998:734). Trials, it is argued, have a retributive *and* utilitarian function: credible threats of punishment will change the calculations of potential perpetrators thus consolidate political stability (Akhavan 1998: 743-51; Kritz 1995:128). According to this logic, criminal trials establish or re-enforce 'acceptable' norms thus promoting the rule of law and consolidating peace and democracy whilst removing potential threats and future abuses (Minow 1998:123; R Teitel 1997:2030-1).

It is argued that formal prosecution will provide the most authoritative and comprehensive 'rendering of the truth' (Orentlicher 1991:5). An incontrovertible historical record based on individual criminal accountability can then serve as a basis to discuss and bring about civil stability and national reconciliation (Teitel 1999; Akhavan 1998; Kritz 1995; Malmud-Goti 1990). Criminal justice also serves the needs of victims and provides therapeutic effects, offering a direct and moral response to the pain they have suffered on behalf of society (Neier 1998:49; Kritz 1995:128; Roht-Arriaza 1995:19).

As has been noted, 'the theoretical foundation for international criminal trials borrows heavily from writings developed in a political and legal context in which such proceedings were mere aspirations and with no empirical data to substantiate the purported benefits of international trials' (Fletcher and Weinstein 2002:584). Normative arguments that make strong claims about the positive effects of trials have

[17] As pointed out in the introduction – normative arguments about what transitional justice can, should or does achieve should not be conflated with the intentions or objectives of policymakers designing these processes. This is an important distinction.

[18] For an excellent summary of some of the key normative and theoretical debates, see Snyder and Vinjamuri (2004).

been critiqued on theoretical and empirical grounds. Political 'realists', practitioners involved in peacebuilding and some humanitarian agencies have long been sceptical of the ability of law to play a productive role in international relations. The two most powerful and enduring criticisms of war crimes trials are that such efforts will perpetuate a war or de-stabilise post-war efforts to build a secure peace (Snyder and Vinjamuri 2003). Pragmatists have also focused on the intersection between law, politics and power, arguing that justice will always be compromised in favour of political settlements because nations are the actors, the legislators, the executives, as well as the judges of international law (Huntington 1991; Peskin 2008; Subotic 2009).

Truth Commissions

Truth commission advocates argue that this form of transitional justice provides a 'narrative' truth rather than a 'forensic' one and as such it achieves a sense of 'historical justice' (Borer 2006; Thoms et. al 2008:22). By conducting official investigations into past abuses, truth commissions reveal not just what happened but also how and why. As Priscilla Hayner has argued, a significant advantage of truth commissions 'lies in their ability to delineate a broad perspective on causes and patterns of violence' (Hayner 2010a:16). This, proponents argue, allows them to go much further in their investigations and conclusions than is generally possible in any trial of individual perpetrators. Moreover, truth commissions – with their analytical focus on state and society – are also well placed to recommend institutional reforms that might prevent future human rights violations (Krtiz 1995; Hayner 2010a). Furthermore, even though truth commissions represent a non-judicial approach dealing with the past, they advance other political and legal goals such as democracy and the rule of law (Hayner 2010b). It is also argued that truth commissions can support other transitional justice mechanisms. They can, for example, provide evidence in support of reparations policy (Kritz 1995).

During the proliferation of TRCs in the 1990s, a theory of 'truth' was developed which highlighted the importance of closing the gap between knowledge and acknowledgement of human rights violations and mass killings (Roht-Arriaza 2006b). This was supported by psychological research, especially with torture survivors, which suggested that victims were helped by telling their story to a sympathetic listener and that the truth in itself was important (Herman 1992; Minow 1998). Proponents suggested that the cathartic effects experienced by individuals could be transposed onto society as a whole and that discovery of the truth would help restore social trust and achieve societal reconciliation (Fletcher and Weinstein 2002).

The South African TRC has been central in shaping modern attitudes towards truth commissions. The experience in South Africa broadened the moral and political justifications for a 'restorative' approach, breathing new life into the truth commission model, which had become tainted by experiences in Latin America a decade or so earlier. As one practitioner remarked, after the South African TRC it seemed as if 'the world has become besotted with truth commissions' (cf. Hazan 2010). There is, however, a growing literature that challenges normative assumptions about truth commissions, arguing that they can, for example, be very remote from local realities. As Priscilla Hayner notes, 'indigenous national characteristics may make truth-seeking unnecessary and undesirable, such as unofficial community based mechanisms that respond to recent violence or a culture that eschews confronting

reality directly' (Hayner 2001: 186). From Peru, to Cambodia to Sierra Leone, scholars have highlighted the danger of what has been termed the 'tyranny of total recall' (Theidon 2009) in places where, for example, silence has an important social function. Rosalind Shaw, meanwhile, has traced the genealogy of truth commissions and finds their genesis in a western tradition of confession that has no immediate resonance in contexts such as Sierra Leone, where a factually accurate depiction of the past is less important to reconciliation than the 'attainment of a cool heart'. (Maguire 2005; Shaw 2006; Theidon 2006; Kelsall 2009:14). On a more practical level, it has been noted that truth commission recommendations are often ignored, 'not because they are unworkable, but because those commissions are inherently weak institutions with short life spans' (Waldorf 2012:117).

Amnesties

Amnesties are central to debates about transitional justice and their function is highly contingent on circumstances. As Christine Bell has pointed out, 'the same connection between a constitutional deal and the past that propelled measures to combat impunity in Central and South America pointed to a requirement for amnesty in Africa ' (Bell 2008:13). She describes how in Central and South America, where impunity was understood as a root cause of recurring conflict, accountability measures were regarded as essential to a healthy transition. In contrast in South Africa, the TRC with its trade-off of 'truth' for 'amnesty' was designed to underpin a new constitutional settlement. In Liberia and Sierra Leone, broad amnesties were included in peace deals in recognition that conflicts were caused largely by structural conditions including state failure and the privatisation of power by warlords (Bell 2008:14). Indeed research has begun to take a more nuanced look at the role that amnesties might play in transitional justice. It is argued, for example, that amnesties may produce societal benefits, especially when used in a circumscribed and conditional way and in concert with other measures that address the rights of victims. Mark Freeman has examined the influence they may have on peace negotiations backed by the UN (Freeman 2009). Louise Mallinder meanwhile provides a more micro-level analysis in her argument that, due to the subtle transformation of the design of amnesties, the concept itself has been under contestation between various stakeholders, such as victims, human rights NGOs, and diplomats (Mallinder 2008). Interestingly, her impressive Amnesty Law Database tells us that despite the so-called 'justice cascade', amnesties are still very much a part of the 'legal landscape'. She shows that over 420 amnesty processes have been introduced during the 1945-2007 period, with many of them occurring since the establishment of ad hoc tribunals. Indeed over 66 amnesties were introduced between January 2001 and December 2005 (Mallinder 2008).

There is a lively and inconclusive debate amongst international lawyers about whether or not amnesties are permissible under international law at all. As early as 2000, the UN opposed the amnesty provision of the Lomé Peace Accord for Sierra Leone and the Rome Statute of the ICC also enables a 'claw-back' on amnesty where beneficiaries have taken up arms again (Bell: 14). Although blanket or partial amnesties remain as policy options, international human rights organisations have argued that amnesties are pernicious: they entrench and encourage impunity and will lead to a recurrence of human rights violations.

Reparations

Post-conflict reparations are both material and non-material and they can enjoy an individual or collective character. They can entail full restitution, compensation, formal apologies, rehabilitation and guarantees of non-repetition (De Greiff 2006; Brooks 1999). The role of reparations in transitional justice has been boosted by the creation of the Victim's Trust Fund as part of the ICC (Kellar 2007). In theory, request for reparation can be directed at any level of society: the state, local government, private actors, individual perpetrators of mass atrocity or the international community. Louise Arbour has argued forcefully that unless transitional justice provides redress for social and economic grievances, it will lack impact and will fail to 'attack the sources of legitimate grievances that, if unaddressed, are likely to fuel the next conflagration' (cf. Waldorf 2012:172). But this remains speculative. On the one hand it has been argued that post-conflict reparations can influence reconciliation and social reconstruction at the community level (Eijkman 2010:8). On the other hand it has been suggested that reparations programmes can create serious tensions between those groups and individuals deemed deserving of compensation and those who are not (Miller 2008). On more practical grounds it has been argued that there are 'enormous … difficulties with having transitional justice mechanisms tackle historically constructed socio-economic inequalities'; those mechanisms are already resource constrained, over-burdened by high expectation and crucially, short term projects which are not institutionally suited to addressing long term socio-economic injustices (Waldorf 2012: 179).

Traditional justice

The actual content of the traditional justice category is rather vague. Other adjectives such as customary, informal, community based, grass-roots, indigenous and local are all sometimes used interchangeably (Allen and Macdonald 2013). The most well-known example of this form of transitional justice is the use of *gacaca* courts in Rwanda to deal with the backlog of cases resulting from the 1994 genocide. There has also been a well-documented debate about the codification of rituals in northern Uganda to deal with the violence perpetrated by the Lord's Resistance Army (LRA) during the civil war which began in 1986 (Allen 2006; Branch 2010). Many activists and some scholars believe that traditional justice is not just an alternative or possible supplement to more formal processes. Rather they take the view that it is better, or at least that a fully-integrated approach is the best option, one in which conventional legal processes are not privileged. The view is premised on an acceptance that both formal trials and truth commissions are not sufficiently attentive to social integration and reconstruction (Alie 2008; Latigo 2008). Traditional justice is laudable, so the argument goes, because it is culturally relevant. It is also suggested that justice built on established customs of reconciliation and compensation is more appropriate and pragmatic in close-knit community settings, where people remain dependent on continuous social and economic relationships with their neighbours (PRI 2002).

The 'local' has become positively signified in much of the transitional justice literature and is often conflated with development buzzwords like 'participation' and 'culturally-embedded'. It has been suggested that a romantic enthusiasm for using traditional justice practices in post-conflict settings has created a knowledge gap that

'produced decision making based on weak data, ex-ante evaluation and speculation' (Huyse and Salter 2008:6). Critics have warned against the 'facile' embrace of community-based processes and have highlighted the unintended consequences of reifying and providing external support for local rituals (Theidon 2009:296; Allen 2006, 2010; Branch 2010). It has also been pointed out that traditional processes can be patriarchal, discriminatory towards women and youth and readily captured and manipulated by the state in order to advance its interests (Huyse and Salter 2008; Waldorf 2006; Allen 2006). International human rights organisations and legal scholars have also questioned whether community-based systems are capable of dealing with atrocities committed on a vast scale in places like Sierra Leone or northern Uganda.

Multi-mechanism and 'holistic' transitional justice

For both normative and practical reasons, scholars and policymakers now tend to see the range of potential transitional justice mechanisms as conceptually complementary. Scholars and others have questioned the efficacy of narrow prosecutions without any institutional effort to promote a broader historical understanding of events; the value of truth commissions to victims without any scope for legal redress; the risk that reparations might be interpreted as 'blood money' without some corresponding form of accountability; and the appropriateness of international judicial structures without corresponding national and local accountability processes (Fletcher and Weinstein 2002; Roht Arriaza 2006). There is an appreciation that the broader aims of transitional justice will only be met by what one scholar refers to as the 'interweaving, sequencing and accommodating (of) multiple pathways to justice' (Roht-Arriaza 2006b:8).

The desire for a holistic approach – one that strikes a balance between meaningful and customary practices and universal principles and between transitional justice and broader development and peacebuilding objectives – is essentially an aspiration whose applicability and efficacy has rarely been tested. As so often in discussions of justice, normative notions of what is inherently believed to be right shape perceptions, rather than evidence about what has been occurring. It has also been suggested that there are very practical reasons for why the transitional justice 'industry' is keen for the concept to have a more 'holistic' approach which encompasses broader development objectives: because development and peacebuilding programmes tend to be better funded (Wardolf 2012:172).

Assessing the Evidence

Below is a summary and analysis of the existing state of empirical knowledge on the local experiences and effects of transitional justice processes in conflict-affected and fragile spaces. Although reference is not made to every study that the literature search yielded, key works are identified.[19] These were selected because they had a strong evidence base (as measured during the grading exercise) and/or because they appear

[19] For a short summary of each study that was reviewed see the annotated bibliography in appendix E.

to fit or generate broader theories. Each section will start with a short summary of key findings and then go on to describe selected case studies in detail.

Trials

There appears to be a leaning in the empirical end-user literature towards examining and understanding victim-survivor perceptions and attitudes towards trial processes and the factors that shape them. These find mixed and interesting results, even though they are only representative of a certain place at a certain time. One way of getting around this limitation is via longitudinal research so it is encouraging that two scholars have undertaken interesting baseline studies in Kenya and Cambodia at the outset of international legal proceedings in those places (Backer et. al 2010; Gibson 2010). A striking finding across studies is the apparent disconnect between international legal priorities and frameworks and local understandings of justice. There is very little data to support or challenge arguments made about the causal links between trials and deterrence, individual and social healing, or reconciliation at the micro-level. Studies which do attempt to understand this relationship – largely in the context of the ICTY – find very different results.

Selected studies in detail

Two studies on victims' perspectives of war crimes trials find mixed results. In a study of the SCSL, Horn et. al interview witnesses to gauge the degree to which their experience of the court was either 'empowering or retraumatising' (Horn, Charters, and Vahidy 2009: 138). The study sample consisted of witnesses that had testified before the SCSL at some point before May 2007. Of the 292 witnesses identified as eligible to participate, 171 were contacted and interviewed. Of these, 81% were male, which is representative of the witness population (142). Structured and unstructured interviews were conducted over the duration of ten weeks. The study found that on average, witnesses did not feel worried while they were testifying and that 74% of witnesses felt supported by the SCSL (144). Those who did not feel supported attributed this to unfamiliarity with the SCSL or fear that they would be arrested for testifying (144). While respondents admitted to experiencing some pain while testifying, 81% generally felt well respected by the Court staff and said that they would testify again if requested (145). This study offers valuable insight into direct experiences of the hybrid court but authors do acknowledge significant limitations. Firstly, the witnesses were interviewed by SCSL staff with whom they had pre-existing relationships, a fact that may well have influenced responses (148). Additionally, witnesses responded to the interviews 'with hindsight' and may have given negative or positive responses about their experiences based upon developments that occurred after testifying (148-149). Lastly, the authors were unable to locate well over a third of witnesses, some whom had relocated due to security concerns (148). This study provides analysis of the effects of the SCSL on witnesses, but does not venture further to assess how the SCSL is viewed by those who did not have the opportunity to testify before the Court.

In another study of war crimes trials in Bosnia and Herzegovina (BiH), Refik Hodzic compares the experiences of those alleged victims who have testified before a criminal court and those who have not. Hodzic undertakes participatory field research and 23 victim interviews (Hodzic 2010). The study is limited to the Municipality of

Prijedor in north western Bosnia and Herzegovina. This is due to the high levels of media and NGO attention the region has received and the extensive outreach efforts in this area by the ICTY and local bodies (117). The author acknowledges that his study cannot be generalised beyond Prijedor and is limited to interviews of those most affected by crimes (117). He finds that personal experiences of being included or excluded from the process shaped views on the ICTY and the Court of BiH (123-124). This highlights a short-coming in Horn et al.'s study, which found positive sentiments towards the SCSL without acknowledging a potentially biased sample selection. He notes that those who testify enjoy a short-term 'therapeutic' effect and tend to shape their views based upon first-hand experience (125). Those who are excluded, meanwhile, base their views on insufficient or incorrect information from the media or word-of-mouth (123-125). Despite this, both types of victim share growing scepticism about the ICTY's and Court of BiH's ability to provide justice for victims and deter future crimes (124).

Other studies have examined local perspectives of UN sponsored judicial processes and have noted a discord between local and international procedures. In one interview-based study, Harper examines attitudes towards the UN Transitional Administration in East Timor (UNTAET) and its judicial framework for addressing crimes committed during the Indonesian occupation. She conducts fieldwork between May 2001 and November 2003 in the district of Covalima, interviewing a total of 116 individuals, ranging from the East Timorese public, local leaders and employees of UNTAET and non-governmental organisations (151). The most common criticism of the Serious Crimes Investigation Unit (SCIU) was its focus on low-ranking East Timorese militia rather than those whom the respondents felt were most responsible for the violence (159). There was also a discrepancy in perceptions about what constituted a serious crime. Respondents defined arson in this bracket, whereas the SCIU would refer arson to the Commission for Reception, Truth and Reconciliation (CAVR) (168). Harper also found that local perspectives on evidence and due process diverged considerably from those of the UN. For the indigenous population, guilt was based upon a 'shared sense of knowing' rather than an objectively applied legal process (165).

In her study of the Extraordinary Chambers in the Courts of Cambodia (ECCC), Tara Urs conducts ethnographic research and 117 in-depth interviews to assess the court's ability to deliver justice to Cambodian victims (Urs 2007). Urs analysed the ECCC from May 2005 to April 2007, and the interviews were conducted from June to December 2005 in rural areas of Cambodia. While acknowledging that the interviews were not statistically random, Urs still found that 20% of those interviewed showed resistance to engaging with the Court, which could indicate a larger issue with perceptions of the Court (77). She notes that people's reluctance to engage with the ECCC is consistent with cultural notions of hierarchy, and that hesitation may be down to a view that the Court is 'above' them (82). This 'stay-in-your-place' mentality also has implications for local perceptions of authority and responsibility for serious crimes (82). Urs finds that Cambodians prefer the indigenous method of problem-solving known as *somroh-somruel*, which is a process of third-party mediation (67). Furthermore, legal concepts such as defence rights, reasonable doubt, and evidentiary standards of proof are unfamiliar to the general Cambodian population (68). Both studies are rather vague about the methodology used, making it hard to understand how the authors reached their conclusions. It is unclear exactly

how interviews were conducted and there is, for example, no data to quantify respondent's answers.

Tim Kelsall's anthropological study of the trials at the Special Court for Sierra Leone finds similar disconnects between international and local understandings of justice. His study is based on seven months of ethnographic observation of one of the trials – that of the alleged leaders of the Civil Defence Forces, undertaken between 2003 and 2008 and later, discourse analysis of trial transcripts. He notes that in comparison to the UN ad hoc tribunals for the former Yugoslavia (ITCY) and Rwanda (ICTR), the SCSL was intended to be more efficient, cost effective and, crucially, more contextually relevant. The reality however was that the SCSL 'failed in crucial ways to adjust to the local culture in which it worked' (3). The result was less a clash of cultures than a situation in which international legal and local norms appeared to elude one another. Kelsall notes, for example, that the Court 'sidestepped' the issue of magic and the occult during the trial and elected to judge only what it deemed 'material'. This ethnocentric view, he suggests, exposes the gulf between international western understandings of social and cultural contexts and those of other societies. The evidence base for these findings is limited to an anthropology of a particular set of trials – we do not get a broader perspective on how processes and procedure at the SCSL are perceived and experienced by local populations. The evidence does, however, provide an important insight into how cultural specificities complicate the application of international justice and a pressing need to ensure that 'judicial decisions make sense to the communities in which they are made' (170).

Two useful baseline studies provide us with empirical data about public perceptions at the outset of legal proceedings. The first is David Backer et. al's study of early attitudes towards the ICC in Kenya (Backer et. al 2010). He finds that 'a large majority of focus group participants preferred to send those involved in the violence – especially the organizers – to The Hague for trial' (3). This was based on perceptions of corruption in the Kenyan courts; fears that the politicians might subvert the legal process and a concern that trials in proximate settings would re-spark violence. Participants, meanwhile, commonly expressed confidence in the ICC's ability to achieve important outcomes, which were cited variously as 'truth' and an end to impunity. Respondents were selected from areas of Kenya most affected by the post-election violence and two focus groups were conducted in each of the seven locations. The groups were of mixed ethnicity and political affiliation, with an average size of six. Although this approach is limited in scope and lacks a representative random sample, it provides us with very rare baseline attitudes towards a transitional justice process. Similarly, Gibson et. al provide baseline data on Cambodian support for the rule of law on the eve of the Khmer Rouge trials (Gibson, Sonis, and Hean 2010). Analysis is based on a nationally-representative survey of 1017 adult Cambodians conducted in early 2007. In contrast to the findings of Tara Urs (above), the authors find that Cambodians hold a strong preference for strict adherence to legal universalism so trials are unlikely to substantially increase support for the rule of law. Although this remains a hypothesis, the study is useful in that it establishes a baseline of support for the rule of law against which changes over the course of the trials can be assessed.[20]

[20] It should be noted that findings on support for the rule of law and adherence to 'legal universalism' in Cambodia differ markedly from the findings described above in Tara Urs's (2007) ethnographic study.

The majority of the end-user literature is focused on understanding perceptions and direct experiences of trials rather than their broader implications. There have been few attempts to establish relationships between trials and broader objectives such as peace or societal reconciliation. In the context of Cambodia, for example, Tara Urs laments that for all the work done on public attitudes, there has been no systematic study of Khmer villages to determine how widespread the problem of victim/perpetrator animosity is and whether transitional justice processes have had an intended or unintended effect on this (Urs 2007). Eric Stover and Harvey Weinstein actually addressed these kinds of questions in their study of the micro-level impacts of the ICTY and the ICTR. This edited collection brings together ten inter-disciplinary teams over a period of four years. The editors conclude that there is 'no direct link between criminal trials and reconciliation' (Stover and H Weinstein 2004b). They argue that international tribunals work best in conjunction with a variety of other measures including local initiatives more attentive to social integration and reconstruction and to the needs and wishes of those most directly affected by violence.

James Meernik's assessment of the ICTY's impact in post-war Bosnia also reaches pessimistic conclusions about the role of trials in reconciliation (Meernik 2005). He undertakes a statistical analysis of existing monthly time series 'event' data – notably local press reports - from the period January 1996 to July 2003. He uses this to test the effects of arrests and verdicts relating to prominent leaders from each of the three major ethnic groups on levels of inter-ethnic conflict and cooperation. He includes the actions of the governments of Serbia and Croatia, the EU and a 'combined' measure of both the NATO and US actions towards the three groups as independent variables (283). Meernik finds that the ICTY had a very limited effect on improving relations among Bosnia's ethnic groups and no statistically significant effect on societal peace. He finds that the actions of the EU and to a lesser extent NATO and the US were statistically significant and had a stronger impact. He argues that establishing causal links between the ICTY and societal impact is fraught with methodological challenges and acknowledges that his own use of new-based indicators of conflict and cooperation may be skewed by press bias towards covering conflict events rather than routine peaceful interactions.

Akhavan (2001) reaches more positive conclusions and finds that the ICTY has contributed significantly to peacebuilding in the former Yugoslavia. He analyses the ICTY through an examination of political reactions to major court decisions and in particular, the indictments of key Serbian politicians. He finds that the Serbian public was largely 'indifferent' to the indictments and that reactions were 'mild' (13). The ICTY he argues, managed to marginalise ultra-nationalist leaders whilst moderating ethnic politics in both Serbia and Croatia. Akhavan's qualitative study relies largely on anecdotal evidence however, and his causal arguments are questionable. He does not sufficiently explore where the impetus for political reform was coming from. Although he acknowledges the value attached to European integration, he does not fully explain this as a possible factor. Finally, Nettlefield (2010) in a series of studies based on multiple research methods including survey research, interviews, case studies, oral histories, archival materials and ethnography over a ten year period

(1998-2008) finds that the ICTY had a positive effect on democratisation in Bosnia and played a particularly positive role in the creation of new post-war political identities based on the rule of law and in mobilising civil society groups that lobby for justice and accountability (15). Furthermore, she finds that the ICTY successfully challenged extreme ultra-nationalist historical narratives and provided a new space for Bosnians to discuss and debate the past. Nettlefield acknowledges that her positive conclusions may be related to the fact that a large section of her fieldwork was conducted during a period of optimistic political development (2002-5), whereas since 2006, the country has experienced 'almost permanent crisis', a factor that could well affect current attitudes.

Box 3. Public attitude surveys

The bibliographic search threw up a number of survey-based transitional justice studies (see appendix D). The surveys attempt to measure public attitudes, perceptions and experiences at specific times and in specific places where transitional justice policy is being proposed or has already been implemented. Where the sample size is sufficiently large, the surveys can also provide comparative information on various constituencies, including, for example different ethnic groups within a broader population. With varying degrees of success the surveys have attempted to define local interpretations of 'justice', preferences for transitional justice mechanisms, and how those mechanisms should be administered e.g. locally, nationally or internationally. The studies tend to reveal that although transitional justice is rarely a top priority, it does enjoy widespread confidence and support.

Weinstein et. al offer a general overview of population based surveys they have conducted in the Balkans, Iraq, Uganda, and Rwanda. They find that in all countries, the identity group strongly influences attitude towards justice (Weinstein et al. 2010:46). In Bosnia Herzegovina, for example, attitudes towards the ICTY were viewed through a nationalist lens. Serbs and Croats felt negatively because of their belief that their group was being singled out for prosecution, whilst Bosniaks tended to feel positively (Weinstein et. al 2010; Weinstein and Stover 2004). In Uganda, research suggests that ethnicity, specifically Acholi versus non-Acholi identity has influenced attitudes (Weinstein et. al 2010; Pham and Vinck 2007). Local politics also plays a key role in shaping responses: the RPF victory in Rwanda, the US invasion of Iraq and the relationship between Museveni's government in Uganda and the International Criminal Court all influenced attitudes towards the form transitional justice should take. In Rwanda, Uganda, Iraq, CAR, DRC and Cambodia there is a profound lack of awareness of and confidence in legal structures and this shapes people's attitudes towards justice processes. The surveys also found that definitions of 'justice' vary markedly between countries and that attitudes towards reconciliation and levels of psychological trauma experienced by the individual and society were not strongly correlated.

As has been noted, quantitative surveys enable us to 'recognise the heterogeneity of survivors' (Weinstein et. al 2010:47). By examining responses across large geographical areas and by investigating the significance of ethnicity, exposure to violence, demographic factors and other crucial differences, patterns being to emerge. It is often implied, for example, that the practice of 'forgiving and forgetting' is a

cultural given across Africa. The results of two surveys on northern Uganda released in 2005 and 2007 indicated that something more complex was happening. The surveys conducted by researchers from the Berkeley-Tulane Initiative on Vulnerable Populations and International Center for Transitional Justice (ICTJ), found high levels of support for restorative approaches, but a majority of interviewees wanted the perpetrators of grave human rights violations to be held accountable (Pham et al. 2007). Many of the surveys are combined with qualitative techniques such as interviews and focus groups to mitigate the risk of simplistic and inaccurate interpretation of results.

The use of certain terms in surveys can, however, be misleading and lead to ethnocentric interpretations. For example, a 2005 survey in northern Uganda found that 76% of respondents felt that those responsible for abuses should be held 'accountable' (Pham et. al 2005). To a western audience 'accountability' may connote a formal legal process. The respondents, however, specified that perpetrators can be held accountable through a variety of measures including 'reconciliation'. In the follow up survey in 2007, a majority of respondents (70%) considered accountability for human rights abuses important, but when asked whether they favoured 'peace with trials' or 'peace with amnesty', 80% chose the latter and 76% feared that trials could jeopardise peace (Pham et al. 2007).

The current survey literature also tends to provide snapshot estimates of public opinion. This may help policymakers understand the most pressing and urgent transitional justice issues at a given moment in time but is unlikely to provide a deeper understanding of the more dynamic political, social, cultural and economic processes at play. In Rwanda for example, an initial overwhelming enthusiasm for *gacaca* has now been tempered for various reasons (Weinstein et. al:46). If surveys can be conducted at regular intervals over time, they have the potential to assess the longer-term effects of transitional justice by tracking attitudes towards ongoing or past transitional justice processes. Surveys that have been conducted more than once in the same country (northern Uganda 2005; 2007; 2010, Cambodia 2009; 2001) clearly demonstrate how attitudes and priorities remain consistent and also change over time. In northern Uganda the same research team used roughly the same sample design and size but had different respondents. One consistent finding in all three surveys conducted over the five year period is that people's priorities are related to sustenance and basic needs rather than to justice and accountability. Of the transitional justice mechanisms available, the most popular and in demand are reparations. The survey also found that compared to earlier data from 2005, the data in 2007 and 2010 suggested a greater willingness to compromise criminal justice for the sake of peace.

In Cambodia findings were similar. Justice is considered to be important for the population but priorities were jobs and services to meet basic needs. A majority of Cambodians would rather focus on problems that Cambodians face in their daily lives than address crimes committed during the Khmer Rouge regime (82% in 2010 compared to 76% in 2008) or would rather spend money on something other than the ECCC (63% in 2010 compared to 53% in 2008). The 2010 survey also noted changes in perceptions and attitudes, including an increased awareness of the ECCC; higher expectations of the positive effect the ECCC will have on victims and an increase in

trust in the justice sector combined with an increased belief that the judicial system in corrupt.

This over-time data is valuable but is rarely found in the existing survey scholarship. Even rarer are studies that ask the same questions of the same people over a period of time. David Backer's longitudinal panel study of victims' attitudes towards the TRC (see below) is an exception. This is a fairly small-scale study and it has its own limitations but it is this kind of data that helps us understand trends and causal arguments, including which factors shape transitional justice attitudes (Backer 2010). It is important to note that even though over-time surveys and panel studies provide more insight that single snap-shot surveys, it remains a challenge to capture evolving, dynamic and complex shifts in attitudes by collecting data at specified points in time. As has been noted 'attitudes may change quickly and support or discomfort with transitional justice at specific points in time may not provide conclusive evidence of success or failure' (Thoms et al 2008:82).

Some of the surveys listed in the table (see appendix D) also suffer from limitations in their research design. Aggregate national surveys which do not employ stratification or over-sampling techniques will not adequately take into account the difference in views between demographic constituencies – for example different social, ethnic or religious groups. Surveys will also be more effective if they are supplemented with other qualitative research methods, including interviews and focus groups with potential spoilers and key informants and key political factions. As Thoms et al. note, simplistic policy prescriptions may result if transitional justice advocates 'mistake broad public support for transitional justice with feasibility' (Thoms et. al 2008:81).

Truth Commissions

It is now twelve years since the South African TRC issued the first five volumes of its final report and an abundance of literature has been produced in that time. Only a small amount of this is empirically grounded work that sets out to understand the local experiences of the TRC. The extant end-user literature is methodologically varied, employing representative cross-sectional national surveys; longitudinal panel studies, analysis of victim's hearings and ethnographic research. Much of this literature challenges the widespread approbation of the South African TRC, chipping away at its mythical status and trying to understand in more detail how it was actually perceived and experienced by victims, survivors and the population at large. The results are mixed but an interesting finding across studies appears to suggest that victims and survivors placed emphasis on 'truth' over 'reconciliation' and when the latter appeared to be prioritised by the state to the neglect of the former, confidence in the process waned. Another general finding is that perceptions are largely divided along racial lines.

Of course, literature on truth commissions is not limited to South Africa. Important end-user studies have been done on Sierra Leone, Timor-Leste and Peru, for example. As was the case with trials, single case studies comprise the bulk of the relevant literature on truth commissions. In Sierra Leone, for example, two separate ethnographic studies question whether a truth commission is culturally appropriate in a society marked by cultural practices of forgetting and moving on. In both South

Africa and Peru – albeit in different ways – there are large gaps between the meta and the micro narratives around truth and reconciliation. Indeed scholars have questioned the way in which 'truth' is conceptualised in truth commissions and there appears to be some agreement that, due to various political and practical restraints, truth commissions are more effective at developing a 'macro truth' of past violations and crimes, while neglecting the micro experiences of communities and individuals (Chapman and Ball 2001). In her seminal book on truth commissions, Priscilla Hayner notes that 'little work has been done to assess the impact (of transitional justice) in a scientific, quantitative manner, and especially providing a comparison across many countries and commissions' (cf. Kelsall 2009:13). This is changing now, and the kind of work Hayner recommends is being undertaken. The problem is, the focus has been on macro-level impacts and we remain unclear about how these impacts are felt at the micro level, if at all (Olsen 2010).

Selected studies

Single case studies

In four survey studies, James Gibson attempts to measure the acceptance of truth as promulgated by the South African TRC; the awareness of the TRC's activities; and confidence in the TRC. He undertakes a representative cross-sectional national survey of 3727 respondents in 2001, oversampling minorities and using regression of survey results for rule of law analysis. The study finds that the majority of all races 'accept' the TRC truth; that after controlling for other factors, regression analysis shows that that those who accept the TRC truth are more likely to support the rule of law and this in turn was associated with conciliatory racial attitudes and reconciliation at the individual level. In general, however, he finds that acceptance of the rule of law is not high; and that 44% of the population is at least somewhat reconciled, with black South Africans being the least reconciled racial group and whites being the most reconciled. This evidence is illustrative of end-user perceptions at a particular point in time and Gibson acknowledges that one-time cross-sectional surveys cannot conclusively support causal arguments. There is also an inherent danger in equating changing levels of reconciliation with the operations of truth commissions without reference to possible confounding variables or underlying factors. Gibson also falls short in explaining perhaps the his most significant finding: that of the four racial groups studied, there appears to be little correlation between 'truth acceptance' and reconciliation amongst black South Africans. That is to say, the group exhibits the highest degree of 'truth acceptance' but the lowest degree of 'reconciliation'. This highlights important connections between truth and reconciliation and challenges normative assumptions that the former will lead to or at least aid the latter.

A study by David Backer on the South African Truth and Reconciliation Commission is a rare example of longitudinal research on a transitional justice process (Backer 2010). Using panel surveys with 153 victims of apartheid-era violations conducted in 2002-3 and again in 2008 he captures the effect of the TRC over time. He finds that approval of the unique conditional amnesty offered by the TRC was at first surprisingly high (57.5%) but it fell dramatically by 2008 (20.4%). The share of respondents who believed in 2008 that the amnesty had been essential to avoid a civil war fell by 20 percentage points relative to 2002-2003, although 70.5 percent still expressed this sentiment. Finally, the proportion of respondents who believed

amnesty to be fair, dropped from 18.3% to 8.5%. The results also indicate a growing desire for accountability, even at the risk of instability. Backer concludes that respondents' earlier support for amnesty was 'a reluctant, contingent concession that coexisted with a basic interest in seeing at least a degree of accountability' (453). Using multivariate regression models, Backer finds that decline in support for the TRC is most clearly associated with an increased sense of the unfairness of amnesty and dissatisfaction with the extent of 'individualised' truth recovery. By choosing to focus on a group of victims from a particular community instead of relying on a wide representative sample of the population, Backer falls short in providing generalisable conclusions that can be applied to society as a whole. He also acknowledges that his model specifications only explain roughly 20% of the variance in amnesty attitudes and that unobserved factors, or those not included in his estimations require further research and analysis. The study is important, however, in demonstrating the importance of rigorous, ongoing evaluation of transitional justice processes.

Chapman and Van Der Merwe set out to respond empirically to the question posed in their book's title 'Did the TRC deliver'? (Chapman and Van Der Merwe 2008). The book brings together a series of contributions from acknowledged experts and was produced over an eight year period. The analytical point of departure is an examination of how South Africans understood the meaning of broad concepts of 'justice', 'reconciliation' and 'truth'. The book contains four sections, the first examines survivors perspectives on the TRC's victim hearings though an analysis of a random sample of 429 transcripts; the second evaluates the amnesty process by analysing a sample of 220 cases drawn scientifically from 1973 amnesty cases that were heard; the third section takes a more comparative look at 'truth findings' and is examined in more detail below (Audrey Chapman and Ball 2008); the final section focuses on the responses to the TRC, with a chapter analysing public opinion surveys.

The book does not deliver a clear verdict but judgment tends to be negative. There is a recognition that the TRC had contributed to South Africa's transition but the over-arching theoretical argument is that TRC encompassed too many goals related 'reconciliation', 'healing' and 'restorative justice'. The authors argue that the TRC veered too far from the original mandate of truth commissions which was to investigate and understand the causes and consequences of political violence. By prioritising 'reconciliation' over 'investigation', the Commission neglected central issues; most shocking was the 'near invisibility of race' in the final report (252). Theissen analyses public opinion polls conducted by research institutions in South Africa between 1992-2000 and finds that from the outset opinions on the TRC were divided along racial lines and that these divisions became sharper over time. Pigou, meanwhile, concludes that 'most white south Africans did not feel the need to engage with the Commission' (236). Of those who participated in the process, Phakaki and Van Der Merwe, in a series of interviews with 27 survivors and 18 TRC staff who were involved in the amnesty process, find that the main motivation was to find out new information. Chapman, in a study of victim hearing participants, similarly finds that acknowledgement and the desire to learn new information was the priority. For participants then, it was 'truth' and not 'reconciliation' or 'forgiveness' that was paramount. Despite this sound evidence base, the editors go on to advance a theoretical argument that truth commissions are better suited to producing 'macro-truths' and that this should be their focus. There is a tension here because the book is largely grounded in collecting evidence on survivor and victim perspectives on the

TRC process, and yet the arguments derived from this appear to run counter to victims' and survivors' desire to uncover 'forensic', 'micro' truths.[21]

There have been a number of useful anthropological studies on truth commissions – both in South Africa and elsewhere. In the first major anthropological study of the South African TRC, Richard Wilson, argues that the concept of reconciliation was deployed from the top down, leaving insufficient 'space' to discuss feelings of vengeance and a desire for retribution that were found at the local level (Wilson 2001). His findings are based on twelve months of ethnographic study over a four year period (1995-1998) 'inside' and 'outside' of the TRC. This included interviews with half of the TRC commissioners as well as other key officials, staff and researchers. It also involved in-depth interviews with over 50 victims of political violence in African townships to the south of Johannesburg as well as local leaders and officials. Wilson argues that political and religious elites appropriated the term reconciliation as a 'meta-narrative' for reconstructing the state and entrenching their own hegemony following the end of apartheid. As such, the TRC did not enable a translation of 'national reconciliation' to the local level. This study is an important counterpoint to normative assumptions about the inclusiveness of truth commissions. The book, however, only contains two ethnographically-orientated chapters and key theoretical arguments appear to be developed without close reference to the evidence.

In Peru, the national-local gap is also evident, but in reverse. Kimberly Theidon's anthropological research reveals a disconnect in the discourse of political elites and the micropolitics of reconciliation practiced by 'intimate enemies' at the local level (Theidon 2006). In 2003, around the time of the final report of the truth commission, the former were steadfastly distancing themselves from the very notion of reconciliation, adamant that there could be no such thing whilst the Shining Path still existed. The latter, meanwhile, were elaborating and practicing communal justice in attempt to restore daily lives and a moral community. Theidon's research is with communities in the Ayacucho region of Peru that suffered the greatest loss of life during the armed conflict in the 1980s and 1990s. The author is unclear about her methodology but states that she has worked with the affected communities in the region since 1995, and makes reference throughout the work to her interviews, group discussions, participation and observation. Emphasising the extent to which this region experienced a fratricidal war waged between villagers themselves, she attempts to analyse how the enemy was constructed and how practices of communal justice contributed to the deconstruction of these categories. She finds that the conciliatory practices, which combine the religious tradition of confession with legal confession

[21] This argument is also found in Chapman and Ball's study which draws upon the experience of the American Association for the Advancement of Sciences' (AAAS) Science and Human Rights Program in providing scientific and technical assistance to three truth commissions – in Haiti, South Africa and Guatemala (Chapman and Ball 2001). Their methodology remains unclear but appears to be based on direct experience of the truth commissions and an interrogation of the final reports. The focus of the study is on how 'truth' is conceptualised in truth commissions. By disaggregating the meaning of 'truth' between national-level processes and local experiences, the authors find that truth commissions, due to various political and practical restraints, are more apt in finding the 'macro-truth' of past violations and crimes. This contrasts with the micro, or 'forensic' truth held by local communities and neglects the experiences of the communities and individuals. Chapman and Ball's study provides a valuable descriptive analysis of different forms of 'truth', particularly the difference between 'procedural' and micro level truths, but the focus of the study is on the procedural aspects of truth commissions.

and the need for judgement and punishment whilst also allowing for 'porous and fluid' categories of transgressor, have been 'very successful' in terms of reincorporating *arrepentido*s and in breaking the cycle of revenge in these areas (451; 454) .

Two studies of the Sierra Leone Truth and Reconciliation Commission find that the imperatives of 'truth telling', institutionalised through the TRC were external to Sierra Leonean communities and influenced more by global developments in transitional justice than by the locally-rooted practices of the participants themselves. Despite this, both studies identify ways in which participants were able transform and re-shape the TRC hearings to make them more immediately relevant. Rosalind Shaw's *Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone* (2005) is an ethnographic study of the local experience of the TRC. She carries out multi-sited ethnographic research, both participant observation and informal interviews, in four TRC District Hearings from May to July 2003. This was supplemented by follow-up ethnographic research in two of the districts in July and August 2004. Her interview subjects are both participants and observers in the hearings although it remains unclear how many interviews took place. While Shaw does attend TRC district hearings in the south of Sierra Leone, most of her research is conducted in both urban and rural locations in northern Sierra Leone. Thus, her findings are more applicable to that region, although they are consistent with her research in the south. This research is particularly useful in that in tracks 'translocal' processes, examining similarities and differences across place and time (189). Shaw finds that the imperatives of truth-telling institutionalised through the TRC ran counter to the local desires to 'forget' as a means of reconciliation. At the same time, those who engaged with the TRC managed to transform 'truth-telling' into new techniques of forgetting and remembering (207). The TRC process represented by a 'friction' between 'subjugation' and 'triumphant local creativity' but even the best 'creative efforts' were 'unable to transform' the TRC into a mechanism that would respond to local needs (207).

Tim Kelsall observes a five-day-long TRC hearing in the Tonkolili district of Sierra Leone in 2003 and finds that particular political circumstances, such as the relationship between the TRC and Special Court for Sierra Leone (SCSL), as well as cultural factors, inhibited the TRC from acting as a truth-telling forum in which objective facts could be documented (Kelsall 2005). Instead, he finds that the public hearings were transformed into discussions and rituals for reconciliation. He concludes that the re-imagining of the TRC suggests that greater importance should be placed on local cultural ceremonies of reconciliation, rather than modern truth-telling institutions. Both studies provide rich, textured accounts of how 'universal' structures such as truth commissions are critiqued and re-shaped their local settings. As single case studies, however, they can only be illustrative of the experiences of truth commission in Sierra Leone at particular moments in time. Neither study attempts to draw conclusions about the broader effects of transitional justice, rather the focus is on the local experience and engagement with a particular process.

Finally, in a study of local understandings, interpretations and evaluations of the TRC in Sierra Leone, Gearoid Millar finds that the primary characteristic influencing perceptions proved to be educational status (Millar 2010). The research is based on 10 months of participant observation and 62 semi-structured interviews with the

residents of Makeni and surrounding villages in northern Sierra Leone. Twelve of the interviews were conducted with the educated, English speaking elite minority, and the remainder with non-English speaking, non-elite majority – all identified through both snowball and random sampling of TRC hearing attendees. Non-elite interviewees held overwhelmingly negative attitudes about the TRC. This was largely due to a disconnect between what the TRC did and what local people expected of it. Millar argues that 'a norm in Makeni is that words such as help, support, remember and appreciate all mean to provide resources or money' (492). By using such terms in its 'sensitisation' campaign, the TRC was inadvertently misrepresenting its role and function. Elite interviewees on the other hand comprised an unrepresentative 'interconnected group of professionals, NGO workers and self-professed 'civil society' leaders' – all of whom had been 'incorporated into the postwar NGO establishment' (493). So, whereas the non-elite felt that the TRC was having no discernible positive impact on their lives, the elite minority were often directly employed by the TRC or by another development organization that was active at the same time. This study suggests that the differentiated impact of transitional justice on the 'end-user' is partly attributable to educational status, the resulting level of exposure to dominant global norms and degree to which one can benefit directly these.

Box 4: Psychological aspects of transitional justice[22]

Arguments in support of transitional justice often rely on a core assumption: there is a psychological benefit to victims in the act of bearing witness, testifying, and otherwise remembering the truths of past atrocities. Literature captured in the systematic review failed to conclusively corroborate this underlying assumption. The literature that critically interrogated the relationship between psychology and transitional justice largely adopted two approaches: those assessing the psychological effects of transitional justice and those concerned with the implications of victims' psychological state on the functioning of transitional justice. The first category included diverse papers that arrive at largely similar conclusions: transitional justice can have both positive and negative psychological impacts on those involved, as demonstrated by Henry (2009) through an analysis of ICTY testimony.

Similarly, O'Connell (2009) suggests that though trials may have mixed impact on survivors, those participating directly suffered the most negative effects. The Martin-Berstain (2010) assessment of individual and communal-level psychologies confirms the mixed results of transitional justice mechanisms on micro and macro levels of society. In the second category, studies by Vinck et al. (2007) and Pham et al. (2010) find high rates of PTSD and depression in populations in northern Uganda and eastern DRC. These conditions, it is argued, are linked to a disinclination toward non-violent and restorative means of securing peace and justice and carry significant implications for future design, sequencing, and implementation of transitional justice mechanisms.

In exploring psychology and transitional justice, these papers employed a range of methodologies, including field surveys and interviews and as well as empirical analyses of new and existing quantitative data. All stress the need for future research in this area. Obtaining a representative sample was the most significant shortcoming

[22] This box was authored by Danielle Stein, researcher, JSRP

of these studies, which likely reflects the larger difficulties of working with vulnerable populations at emotionally fragile junctures. Though diverse in approach and perspective, these studies reinforce the heterogeneity of victim experience between and within cases. Like much work in this evolving field, their results contribute to the argument that transitional justice mechanisms need to be grounded in localised conceptions of healing, justice and reconciliation.

Amnesties

The bibliographic search did not produce a lot of relevant end-user literature relating to amnesties. One of the striking findings across case studies was the extent to which experience of amnesties are contingent on other processes. In both South Africa and Uganda, perceptions towards amnesties appear to alter in the presence (hypothetical or otherwise) of other transitional justice processes, including reparations and criminal prosecutions for high-level commanders.

Selected case studies

Single case studies

James Gibson's survey of South African public's attitude towards amnesty investigates local perception and impact (Gibson 2002). The research is based on a nationally representative survey of 3727 South Africans conducted in 2000/2001. It was designed as a social science 'experiment' in which the respondent was asked whether amnesty was 'fair' for four different categories of people – people who fought against apartheid, the victims, their family and 'ordinary people like you' - in four hypothetical scenarios. The scenarios were designed to represent principles of procedural, retributive, restorative and distributive justice (545). In both the survey and the interview the respondents overwhelmingly found the amnesty to be 'unfair', not only to the victims and their families but also to 'ordinary citizens'. Perceptions of the 'fairness' of amnesty change by nearly 40 percentage points when other forms of justice are present. Monetary compensation for the victims and their families had the strongest influence on perceptions of fairness in granting amnesties, however, other types of justice – particularly procedural (voice) and restorative (apologies) - were also influential. This study appears to challenge some of the existing assumptions regarding truth telling and non-prosecution. It also appears to show that strict economic instrumentalism is not the only motivating factor in judging amnesty and people are also concerned about receiving symbolic and 'non-material' justice. (554). The author, however, notes that "little scholarly progress" has been made through this study regarding the impact "apologies" have on members of society (554).

The Refugee Law Project at Makerere University (RLP) conducted a survey of local perceptions of the Ugandan Amnesty Act, which came into force in 2000 (Hovill and Lomo 2005). The study examines the effectiveness of amnesty in achieving long-term reconciliation. Conducted in 2005, the survey questions 409 people who had experienced the northern Ugandan conflict first hand. Additional interviews were carried out in other areas where the Amnesty Act was applied as well as the capital. The study found that the Amnesty Act was widely perceived as a vital tool for conflict resolution and long-term reconciliation. However, public opinion also demanded

greater opportunities for truth telling to accompany the amnesty. The government's inconsistent position towards the Amnesty Act and subsequent pursuit of criminal prosecution for high-ranking rebel leaders were cited as factors that hindered the Amnesty Act from performing its reconciliatory function. The survey, however, cannot be said to be especially representative – it has a relatively small sample size and a non-random method of population selection.

Comparative studies

Helena Cobban's comparative study of three African countries, South Africa, Rwanda, and Mozambique goes further in conceptualising amnesties as a policy that affects daily lives (Cobban 2007). She argues that Rwanda stands on one end of the spectrum, exhibiting a desire to prosecute or hold to account all who are charged with genocide and Mozambique stands on the opposite end, with a 'forgive-and-forget' approach that led to a blanket amnesty and a significant benefits package to facilitate the reintegration of former combatants. South Africa is situated somewhere in the middle with a conditional amnesty provision built into the TRC. While Cobban eschews a direct evaluation of the different outcomes each approach had, she navigates the complex web of moral, political, and social decisions each country was facing. By tracing the trajectory of such approaches, Cobban describes the friction between local realities and international human rights norm of criminal prosecution for gross violators, critiquing a uniform approach towards transitional justice. It is not entirely clear how Cobban's research was conducted. She makes reference to research trips to The Hague, Rwanda, Tanzania (Arusha), Maputo, Johannesberg and Cape Town. Beyond this, we are not provided with any information about the number of people that were interviewed; whether they were representative of a particular group or the population at large and how the interviews were conducted. Further, she acknowledges that 'I had to draw and present my own conclusions from all I had heard' – beyond this it is unclear the extent to which conclusions were based on the evidence gathered.

Box 5. Transitional justice and gender[23]

Scholars who focus on gender and transitional justice have argued that the transitional moment presents an opportunity to upset the status quo and challenge structural violence against women. This recognises both a continuum of violence against women before, during, and after war and times of widespread human rights abuse as well as the way in which times of upheaval upset gender norms. Although there are assertions of the right to remedy in the aftermath of such grave crimes, the gender-focused literature goes a step further, arguing that attempts to restore victims to their prior situation is undesirable and, instead, efforts to unsettle the conditions which made for gender-based vulnerabilities in the first place is crucial. Not surprisingly then, most literature poses normative arguments in this vein and is critical of transitional justice mechanisms for their failure to achieve feminist transformation while still maintaining that such goals are possible and desirable.

[23] This section was authored by Holly Porter, doctoral candidate, Department of International Development, London School of Economics, h.e.porter@lse.ac.uk.

Christine Bell and Catherine O'Rourke's article, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) argues 'that feminist theory should focus on how transitional justice debates help or hinder broader projects of securing material gains for women through transition'. There is also an increasing demand from international actors and NGOs, that transitional justice 'must address structural inequalities that negatively shape women's and girls' lives' (Women's Rights Coalition 2007). Research to date includes the effect of truth recovery processes for women, gendered dimensions of peace-making and peace processes and a substantial literature on accountability mechanisms in post-conflict societies and how they accommodate sexual violence experienced by women. However, few studies have inquired how 'end-user' women gain through transition. The little evidence there is suggests that justice processes have yet to accomplish significant goals toward greater gender equality, and that in some situations attempts to do justice for the victims has actually had negative effects on them.

A particularly glaring gap is the area of masculinities in transitional justice. An exception is Brandon Hamber's article, 'Masculinity and Transitional Justice: An Exploratory Essay' (2010). It focuses on continuing violence against women in South Africa and questions how violent masculinities are considered in transitional justice. However, it is primarily an analysis of existing literature on masculinity linking it to studies on prevalence and attitudes on violence against women in South Africa. It points to the need for further research and makes some insightful suggestions. The author urges a realistic assessment of what TJ can reasonably accomplish, such as the ability of TJ to shape public discourse and attitudes. He argues that, 'to fully understand the role of masculinities within the transition from conflict to "peace," the continuities between past and present need to be tackled. This is a challenge to many transitional justice processes, which are often founded on liberal legal frameworks that demand the delineation of what is considered political violence and what is not'.

The World Bank's report, 'Gender, Justice, and Truth Commissions', iterates the potential of truth commissions to help bring about change in laws and patterns of behaviour that discriminate against women if they are gender-sensitive. The report focuses on the practice of gender-related work across three truth commission, those in Peru, Sierra Leone and South Africa and also assesses their reports and recommendations. The study describes how the truth commissions worked and the rationales and constraints each had in their approaches to gender and how this forced them to concentrate on certain aspects of gender analysis to the exclusion of others. They discuss important contributions in each case, for South Africa the importance of public hearings; for Peru the difference that establishing a dedicated gender unit made; and for Sierra Leone the technical assistance provided by UNIFEM to gather and highlight more cases of gender violence to include in the final report.

Kirsten Campbell's, 'The Gender of Transitional Justice: Law, Sexual violence and the International Criminal Tribunal for the Former Yugoslavia' (2007) explores the relationship between gender norms and the practice of international law by examining cases and counts of crime disaggregated by sex. She shows that although a surprisingly high percentage of sexual violence cases were perpetrated against men, most men who testified did so regarding other conflict related charges. On the other hand, more women testified regarding rape, instantiating a gendered notion of women

as passive victims in war and men as active, whilst also rendering male victims of sexual harm invisible.

Michelle Staggs, Tim Kelsall and Shanee Stepakoff provide a psychological and legal assessment of the exclusion of sexual violence testimonies in their article entitled '"When we wanted to talk about rape": Silencing Sexual Violence at the Special Court for Sierra Leone' (2007). They juxtapose post-trial interviews with ten victim-witnesses and trial records to examine what the women wanted to say versus what they were allowed to say. They critique the gendered biases in international criminal law and how the need for expedience and efficiency usurped prosecution of sexual violence. They point out the negative psychological effect this had on victim-witnesses and argue for traditional notions of protection to go beyond physical protection and to provide 'psychological protection' during judicial proceedings. Although the author's observations are limited to the work of the Special Court of Sierra Leone, they point out the relevance of their inquiry and findings to other trial contexts in which decisions might be made to exclude sexual violence from proceedings and how this impacts 'end-users'.

Moses Okello and Lucy Hovill provide an overview of the nature and causes of gender-based violence in four internally displaced persons (IDP) camps in northern Uganda in their field note (Okello and Hovill 2007). The research was conducted in Amuru and Gulu districts from 24 January to 3 February 2007. Sixty-six interviews were conducted with a UNICEF Uganda IDPs Camp GBV Safety Audit questionnaire and 139 qualitative semi-structured interviews were conducted with a variety of community members identified through a snow-balling technique including representatives from community groups, military, NGOs, local government, churches, elders, UN agencies and police. The authors describe the nature of GBV in two main categories: insider, and outsider, referring to domestic violence and defilement in the case of the former and rape or violence by the UPDF and LRA in the latter. Interviews focused on people's perceptions of gender based violence, for example the fact that interviewees associated UPDF presence with an increase in rape. Insider violence was seen to be exacerbated by the conditions of the camp, for instance, women exercising control of their sex lives with their husbands because of fear of the prevalence of HIV in camps or tiredness resulting from difficulty of camp life. The authors link this to a need for transitional justice, suggesting a nexus between gender-based crimes and the conditions of conflict. It was unclear what benefit they believe using transitional justice mechanisms to address domestic or 'insider' violence would have. Significant among their observations was the link between GBV and the diminution of men's roles and loss of ability to provide for their families in displacement camps. The authors also discuss the weakened community structures to manage and respond to GBV in camps and the inefficiency of other more formal judicial mechanisms.

Holly Porter's 'Justice and rape on the periphery: the supremacy of social harmony in the space between local solutions and established judicial systems in northern Uganda' (2012), has specific emphasis on response to sexual violence, using that focus to reflect on responses to a variety of forms of violence. The author argues that what appear to be contradictory phenomenon: brutally violent retribution and extraordinary forgiveness in northern Uganda are motivated by the same supremely important value of social harmony, which is made necessary because of the specific

dynamics on the periphery of justice. She provides evidence from women who have been raped to show the importance of social harmony and the distrust of institutions to act in their interest. The author conducted 200 in-depth interviews with a random sample in two Acholi villages conducted during 2009 to 2011 as well as collecting ethnographic data over the same time. The author compares the situations of women who were raped under war-related circumstances by combatants and 'ordinary' circumstances, by relatives, strangers, co-workers or partners. She suggests that for the women in her study, 'justice means achieving safety and establishing responsibility for the concrete, social and metaphysical consequences of the act of rape'. The author discusses the gap left by the decay of former ways of responding to crime such as revenge and traditional family structures, and how other actors have found new prominence on a local level such as NGOs, churches and local government councillors. Porter finds that their response to rape inadequately redresses women's lived experience of rape as a crime to be punished and an impurity to be cleansed. Similarly, 'distanced' justice actors, the Ugandan judiciary and the International Criminal Court, have failed to gain moral jurisdiction with women who have suffered rape in northern Uganda.

Reparations

In an accurate summation of attitudinal survey findings, Lars Waldorf tells us that 'reparations are the most victim-centered transitional justice mechanism' (Waldorf 2012:177). It is abundantly clear from the evidence that in almost all cases reparations and compensation are prioritised over other processes, including, for example, trials (see summary of survey findings in appendix D). This is may be because both monetary and non-monetary reparations are central to the kinds of customary justice processes that exist outside of formal state law. It may also be indicative of a very pragmatic sense that criminal justice for 'extraordinary' crimes such as genocide will not ameliorate the everyday structural injustices that blight people's lives and require some form of socio-economic redress (Waldorf 2012).

Reparations programmes have a very poor implementation record. Of the eighty-four transitions that took place between 1970 and 2004, reparations were only implemented in fourteen cases (Olsen et al. 2010:53; Waldorf 2012). So, we know that reparations are a popular intervention in theory and we also know that they are rarely implemented. Beyond that, we know very little about what works, what does not work and what the unintended consequences of reparations and compensation for mass crimes might be. A common conclusion in evidence-based studies of reparations is the need for a better examination of the practical design, implementation and impact of reparation programmes (Laplante and Theidon 2007: 230). In Peru, South Africa and Chile, the evidence suggests that reparations programmes were divisive. In Bosnia on the other hand, policies of house restitution and compensation for property loss appear to have had some success, partly because they were attuned to local needs and priorities (Eijkman 2010).

Despite the lack of evidence on the outcome of reparation programmes, the transitional justice 'industry' as one scholar has termed it, has taken a keen and active interest in expanding beyond its narrowly legalistic origins and embracing socio-

economic interventions (Waldorf 2012). This is clearly evidenced by the current trend in TJ literature and practice to develop conceptual links between transitional justice and development and to supplement the focus on legal-institutional reforms with socio-economic interventions (ICTJ 2008; Waldorf 2012). Confronting socio-economic wrongs would take transitional justice into relatively new territory. While some scholars present evidence which suggests that TJ cannot be legitimate without offering these kinds of interventions; others question whether the field is capable of broadening out to encompass socio-economic and broader development discussions and programming (Mani 2008; Laplante 2007; Waldorf 2012). Despite an awareness that reparations and compensation are a high priority for victims, we remain unclear about whether transitional justice mechanisms are well served to carry out these interventions, or whether such a task is better suited to longer term development and peace-building programmes, and where, if at all, the programmatic link might exist between the two (ICTJ/DFID 2007).

Selected case studies

The existing survey literature (see box 3 and appendix D) shows that people strongly support material compensation for victim-survivors and afflicted communities. The 2007 survey conducted by the UNDP in Kosovo for example, showed that the vast majority of respondents supported reparations regardless of ethnicity (UNDP 2007). Widespread support is also reported in Afghanistan, Iraq, Columbia, Uganda, CAR, DRC, Sierra Leone and Liberia. In the Berkeley Human Rights Center surveys (see appendix D) respondents were asked to determine what would be the most pressing and important approach in establishing justice for the victims. While many agreed that formal apologies and prosecution - achieved through truth commissions or trials - are important to victims, the majority, across all the surveys conducted, said that material support in forms of direct monetary, housing, and food support is the most crucial for victims of mass atrocities (Pham et al. 2007). Views about reparations become more complicated and nuanced at the community level and different cultural contexts provide different understandings of the concept. The enormous popular support for material compensation highlights the need for further study on perceptions, processes and effects of reparation policy.

Laplante and Theidon (2007) in their study of reparations in post-TRC Peru, argue that both practitioners and scholars have overlooked the impact reparations can have on community reconciliation. Their 'exploratory' study describes the struggle over reparation policies between government agencies, NGOs, civil society agents and victim-survivor associations in post-TRC Peru. This qualitative study draws upon victim-survivor interviews and observations conducted both before and during the Peruvian Truth and Reconciliation Commission (2001-3).[24] Although the study appears to be based on in-depth fieldwork, it is unclear how large and/or representative the interview sample was. There is some reference to one of the authors interviewing twenty victim survivors but this is not the entirety of the sample used in

[24] In another article, Laplante further elaborates on the relationship between individual material reparation and broader community-wide compensation by highlighting the importance of development as a form of reparation in the Peruvian context (Laplante 2007). She argues that the narratives uncovered by the TRC – not only in the case of Peru but also in the case of South Africa – highlight the 'indivisibility of rights' and the interconnection between declining economic rights and basic civil liberties.

the analysis (239). It appears that interview subjects were those who had provided testimony to the TRC (238). The study finds that there was a high expectation for both monetary and non-monetary reparations separate from the desire for criminal prosecution. While the process of truth-telling itself was found to have a temporary cathartic effect on the participants, most victim-survivors felt that reparations were a crucial to achieving justice and longer-term reconciliation. Furthermore the authors inferred from their interviews that victims viewed reparations, regardless of their form, as a way of keeping the state accountable for failing to protect its civilians from gross human rights violations.

Other studies have highlighted the potential of *ad hoc* or badly conceived reparation policies to create animosities between victims and survivors. There is evidence to suggest that reparation policy has created tensions at the community level in both Chile and South Africa. Anna Crawford Pinnerup has completed the most in-depth analysis of the impact of the South African TRC's policy for Urgent Interim Reparations (UIR), launched in 1998 (Crawford Pinnerup 2000). She undertook 30 qualitative, semi-structured interviews, roughly half with recipients of the UIR and the other half with community leaders involved with the process. Victims reported that many of those who did not receive UIR, because they were not considered urgent cases, became 'jealous or mad', and sometimes 'threatened violence'. The majority of those who did receive UIR reported increases in family and community conflicts. Many recipients informed neither their neighbours nor their immediate family members for fear of having the money stolen or creating tensions. Similarly, a research team that studied the impact of reparation measures on the families of Mapuche victims in Chile observed that in very poor communities economic reparations disrupted family relations and negatively affected family and community networks. Those that were interviewed felt that non-monetary forms of compensation that had a stronger link to cultural conceptions of reparation would have been more appropriate (Lira 2000:97).[25]

Traditional justice

It is difficult to draw general conclusions about traditional justice processes in conflict and post-conflict settings because it not always clear exactly what is being discussed. Measures associated with social accountability vary widely within population groups as well as between them and the kinds of mechanisms selected to be called traditional justice by advocates are rarely more than a selection of activities that conform with normative ideals, usually linked to the notion that they ought to be restorative (Allen and Macdonald 2013). Evidence reveals that local justice measures may be linked to state interests or may have qualities that are highly problematic from an international human rights and legal perspective. It is clear that local rituals and customs are important for populations caught up in violent conflict and dealing with its aftermath. However it also appears to be the case that those local rituals and customs do not form a coherent alternative to formal national and international processes and that traditional justice cannot be harnessed to the transitional justice agenda in a straightforward way (Allen and Macdonald 2013). A striking finding is the heterogeneity of attitudes and experiences towards customs and rituals within and between different groups. This should guard against what Adam Branch has called the

[25] http://www.derechos.org/koaga/x/mapuches/

'ethnojustice' agenda, which mistakenly views traditional systems of justice as 'a single, coherent and positive system…universally, consensually and spontaneously adhered to by all members of that culture' (Branch 2011:163).

Normative approaches to post-conflict traditional justice as part of transitional justice are being gradually replaced with empirical studies, although the evidence base still remains weak. There is remarkably little scholarship on how traditional justice functions at the local level and what impact it has. Understanding the way in which community based justice strategies and state organised and/or internationally sponsored transitional justice mechanisms interrelate is a real policy challenge. 'Complementarity' is a concept central to the International Criminal Court but there remains little clarity on how different institutions, which carry different understandings and modes of justice and reconciliation are able to cooperate and coordinate effectively (Allen and Macdonald 2013).[26]

Selected studies

Single case studies

While customary laws and 'homegrown' responses to mass violence have been selectively deployed to complement more formal transitional justice processes, for example in Sierra Leone and East Timor (Drexler 2009; Kelsall 2009) they have also been developed as standalone transitional justice mechanisms. It is said that post-genocide Rwanda 'responded to mass violence with mass justice', creating 11,000 community courts based on 'gacaca', a modernised form of a traditional dispute resolution practice (Waldorf 2006:3). There is a fierce debate around the functioning, role and effects of the gacaca courts in Rwanda. Scholars who have undertaken extensive fieldwork draw different conclusions about community-based justice in this context.

Lars Waldorf is unclear about the methodology of his qualitative study, but it appears to be based on in-depth fieldwork including interviews with gacaca officials and participants and observation of gacaca trials. Bert Ingelaere's ethnographic study is based on twenty months of fieldwork in Rwandan villages between 2004 and 2009. He followed gacaca proceedings (over 2000 trials) in ten locations in different areas. Ingelaere's research team engaged with roughly 1,300 'ordinary' Rwandan peasants through surveys, focus group discussions, individual and life story interviews and informal encounters. These studies provide a comprehensive analysis of the macro socio-political dynamics surrounding the gacaca courts. Despite such a large evidence base (especially in case of Ingalaere) there is less clarity on specific micro-level justice and reconciliation dynamics within and between communities and little detail on the actual gacaca hearings. Broadly speaking both Ingelaere and Waldorf argue that the modern gacaca courts are controlled by the Rwandan government and have been used by an increasingly oppressive and authoritarian state to regulate reconciliation and justice processes across Rwanda. The argument follows that the state has interfered in the hearings in order to collectivise the guilt of all Hutu and in doing so has coerced Rwandans into publicly sharing the details of the genocide, thus

[26] William Schabas (2007:175) has argued that the relationship between international and national justice is far from 'complementary': rather the two systems function in opposition and to some extent with hostility vis a vis each other.

violating a cultural and pragmatic inclination towards silence. Thus legislation has transformed the original gacaca institution into something qualitatively different: spurious legalistic procedures, state control and forced participation mean that the current process bears only partial resemblance to that which it was originally modelled on.

Phil Clark's research provides a more nuanced picture of the discrete communities in which gacaca operates including analysis of local personal and power relations and religious and other cultural beliefs and practices. Clark's research covers eleven communities in five provinces over the full duration of the gacaca courts making it the first academic analysis of the entirety of the process. Fieldwork was undertaken from January 2003 until April 2010 as gacaca was completing its final cases. The book draws on 459 interviews with all relevant categories of actors in gacaca combining 'high' and 'low' investigations and including multiple interviews with the same individuals over the seven year period. Clark also includes analysis from first hand observations of sixty seven gacaca hearings (2010:8-9). An important contribution of the study is a series of longitudinal interviews with confessed genocidaires which provides valuable insight into the changing attitudes of perpetrators over time, both towards gacaca and broader themes related to justice and reconciliation. Clark's findings suggest that there is a risk in attempting to draw generalisations about local experience, as 'gacaca in one village can differ enormously from gacaca in another only a kilometre away' in terms of conduct, vibrancy of debate and 'societal impact' of the hearings (Clark 2009:5; Clark 2010). He argues that while it is important to recognise the traumatic impact of gacaca for many, the argument regarding silence risks essentialising Rwandan culture and stands in contrast to his own experience of wide ranging and animated public debate at many of the gacaca hearings. Furthermore, in his analysis, arguments about the government's role in gacaca tend to neglect the 'importance of individual and communal agency in gacaca and the vital role of the general population in running and shaping the institution, often with highly unpredictable results' (2010:87). Empirical data – direct quotes from interviews and descriptions of observations - serves as the primary evidence for his conclusion that 'Gacaca has..proven effective in many communities at initiating processes of restorative justice, healing, forgiveness and reconciliation, although these objectives inevitably stretch beyond the time frame of gacaca…In other communities, however, these objectives are very distant prospects or have in fact been undermined by people's experiences of gacaca' (Clark 2010:342-3).

The debate over the use of traditional justice in conflict/post-conflict settings has been equally animated in the northern Uganda context. Here controversy erupted over the promotion of Acholi reconciliation ceremonies in the context of the ICC's first arrest warrants for the Lord's Resistance Army (LRA) and ongoing peace negotiations between the LRA and the Government of Uganda. Claims and counterclaims arose concerning the status of these 'local' practices; the value of restorative versus retributive justice and the danger of pursuing justice during conflict. In her study of local justice processes and their potential to foster reconciliation in northern Uganda, Erin Baines illustrates the potential and limitations of locally relevant mechanisms. She draws upon 21 months of fieldwork (2004-6) with affected communities and cultural leaders. The author and her research team employed different qualitative research techniques including participant observation, focus group discussions,

structured and unstructured questionnaires, drawing, dance and drama. Interviews include 'hundreds' of elders, chiefs, youth and women and over 700 former captives of the LRA and ex-rebels. The author has also witnessed and documented nine communal cleansing ceremonies for former combatants and captives of the LRA as well as several other rituals and ceremonies adapted by those who have returned from the LRA (97). Baines concludes that Acholi approaches, particularly the 'reconciliation ceremony' of *mato oput*, have an important role to play in that particular subregion but that they are limited in terms of scope and would therefore require complementary national approaches. She accepts that *mato oput* may not be relevant of all Acholi; some Christians for example, reject ritual practice as 'satanic' and women and youth are not involved in the process (107). Local mechanisms, it is argued, would also require strengthening in order to meet the challenge of dealing with mid- and high-level commanders as well as the Ugandan army.

Tim Allen, in his book *Trial Justice*, reaches different conclusions about the status of local rituals such as *mato oput*. Whilst Baines and others accept local leadership assertions that international approaches to justice are inappropriate in northern Uganda, Allen argues that attitudes are more nuanced. Allen's research took place in November 2004 and March 2005 in Gulu, Kitgum, Pader, Liraa and Adjumani municipalities and in IDP camps across the region. Group meetings were held with local council offices with NGO staff and soldiers but an effort was also made to 'spend time with individuals and solicit their views in private' (xv). This was supplemented by further fieldwork undertaken between May and September 2005 as part of a large research project on the return of 'formerly abducted people', making it possible to visit many more camps. Around 400 interviews were conducted with a broad range of actors from district officials to peace negotiators to former LRA combatants and over two hundred people living in the IDP camps. The research also draws on earlier long-term fieldwork in northern Uganda from the early 1980s until 1991. Allen argues that rituals of healing are common in northern Uganda but that most of them have nothing to do with the Acholi leadership. NGOs, he suggests have come under donor pressure to transform rituals and have been complicit in 'reinventing' tradition. He finds no widespread enthusiasm for *mato oput* or other ceremonies performed by the Acholi Paramount Chief, on the contrary the research shows that many Acholi are adamant that 'such public rituals are useless' (167). Madi, Lango and Teso informants – ethnic groups that are less extensively researched, are even more dismissive. Furthermore, Allen finds that the 'majority' of Acholi, Madi, Lang and Teso who have been affected by the war want 'a more adequate security response to the situation and some form of legal accountability for those who have abused them' (167). He finds that it is unusual for people to admit in a public venue that they want revenge or recompense but in private people express a clear desire for accountability and support for the ICC.

Sverker Finnstrom's analysis brings further clarity to seemingly confusing and contradictory findings. His findings are based on his ethnographic research among Acholi communities for over a decade. Finnstrom describes a 'pragmatic pluralism' in which people 'select in different contexts and different historical moments, which of several strategies will best allow them to survive and reconstruct their lives' (22). Layered, contextual analyses of this kind – which are by no means restricted to northern Uganda – broaden our understanding beyond the 'snap-shot' view offered by surveys. He finds that the tendency to dichotomise ritual action against international

justice systems is misdirected because 'Ugandans are, and always have been, realists and pragmatic pluralists'. The ICC and ritual action in northern Uganda are both 'human made' interventions designed to cope with the Ugandan government's failure to bring peace to the country (147). In contrast to Allen and Baines, Finnstrom also notes that the interclan *mato oput* rituals he has attended 'involved no structural inequality between the parties' and that the ritual performances actually 'manifest equality' (153). He opposes academic attempts to 'delineate Acholi ways of life' and 'ritual detail' arguing that 'the flexibility of ritual action promotes the acceptance of the necessity for social interaction and every day coexistence'; international justice, on the other hand is restricted by 'static principles' and a rigid mandate and cannot therefore 'tune into this flexibility of ever-changing meanings and local social realities' (154).

Comparative studies

Luc Huyse and Mark Salter's edited collection provides a rare comparative overview of community-based transitional justice processes in Africa (Huyse and Salter 2008). Whereas most edited collections draw out general trends in a non-systematic manner, Huyse and Salter adopt an empirical case study approach. The methodology of each study is different but all research is carried out against a common checklist of issues and topics developed by the editors. African scholars with intimate knowledge of their societies were selected to guard against the pitfalls of ethnocentrism, especially with regards cultural and language barriers (with the exception of the chapter on Rwanda) (9). The study on Rwanda is by Bert Ingalaere and is based on the same fieldwork he used in his article explored above. Despite his extensive fieldwork, there is little in the way of direct quotations or use of material in this article. The remaining four studies – on Rwanda, Burundi, Mozambique and Sierra Leone, give the sense that they are based on an 'intimate knowledge' of their subject and the editor argues that the case studies are 'evidence based', nevertheless, the authors are unclear about the precise methodologies that they employ (iii;9). Interestingly, the conclusions that the contributors and editors draw are often consistent with other findings in the traditional justice ethnographic literature.

Huyse and Salter give what they call a 'cautious analysis' of 'actual' and 'potential' strengths and weaknesses of traditional justice practices (204). They highlight the 'relative effectiveness' of traditional mechanisms, arguing that indigenous conflict resolution tools do have an added value and positive effect particularly with regard to the transitional justice goals of healing and social repair (208). One common concern, however, across cases was that traditional justice can also help reconstitute pre-conflict structures of exploitation. Huyse and Salter highlight the persistent ethnic, religious, generational and gender hierarchies and divisions that complicate and limit the effectiveness of traditional practice.

Transitional justice and 'everyday' methods of social repair

A relatively new and important epistemological departure in transitional justice scholarship is the study of the how 'justice and social repair are variously negotiated and constructed in the context of everyday life' (Alcala and Baines 2012: 385). This is related to the interest and study of 'traditional justice' but is preoccupied with two central questions: how people who have experienced armed conflict and repression experience the transitional justice mechanisms are that designed to benefit them and;

how individuals and groups in these places 'restore the basic fabric of meaningful social relations' in a way that is relevant to their lives (Shaw et. al 2012; Alcala and Baines 2012:386).

This is a bottom-up end-user approach to understanding how individuals, families and communities reconstruct their social spaces or at least construct a co-existence after fratricidal conflict and intra-communal violence; and how local processes of social repair shape or are shaped by interaction with more formal transitional justice processes (Alcala and Baines 2012). The starting point here is to see the local as the genesis of conceptions about justice and social repair, rather than as the blank repository of international knowledge and interventions (Shaw et. al 2010). It requires, conceptually, what was originally termed by Veena Das as a 'descent into the ordinary' and a willingness to put aside conventional normative assumptions about transitional justice in an attempt to uncover the kinds of processes and practices that are 'meaningful to individuals' every day lives' (Alcala and Baines 2012:387).

This approach is perhaps an implicit recognition of the problems associated with talking about 'traditional' justice and an acknowledgement that the term is usually a misnomer. The existing evidence tells us that people and groups in conflict and post-conflict places adopt a range of 'mundane' and unspectacular reparative and restorative activities (Alcala and Baines 2012:386). These can include spirit possession and ritual cleansing; community exhumation; silence, forgetting and forgiveness. The emphasis in the literature is not on whether these processes are effective or ineffective but rather that they are often the only game in town; they are what is *actually happening* outside of the narrow reach of international and state-sanctioned transitional justice processes. This literature also tells us what happens when formal and external transitional justice norms and processes interfere with or engage with local beliefs and practices. A common finding is around the unintended consequences of transitional justice formulations such as the application of the 'victim'/'perpetrator' dichotomy in a context like Sierra Leone or northern Uganda or Peru where people inhabit very complex identities and there exists a risk that such analytical terms might lead to a 'polarising discourse' (Shaw et. al 2010; Duthie 2010).

Studies that examine the intersection of transitional justice and locality tend to have an analytical focus on complicating and contextualising normative transitional justice paradigms. In doing so there is a risk of settling for a description of local realities and an abjuration of clumsy international interventions without an interrogation of problems associated with everyday practice. The everyday is also a site of violence, contestation and discrimination (Alcala and Baines 2012; Allen and Storm 2012). There is a danger in the ethnographic work and particularly in the 'everyday' approach to understanding transitional justice that scholars are making a virtue of necessity. The literature highlights a need to describe what is actually happening on the ground. The conclusion commonly drawn is that policymakers need to engage more seriously with the practical justice provision that is part of people's everyday realities in ordinary places. But beyond that, there is little sense about whether these processes are locally desirable or whether they are more aptly described as locally present. There is not much clarity on whether the everyday practices that are being described are regarded as interim measures that exist in the absence of a functioning

state or as a viable, long-term formula for contextually relevant accountability and reconciliation.

Selected studies

Single case studies

In November 2012, the *International Journal of Transitional Justice* published a special issue entitled 'Transitional Justice and the Everyday'. The articles cover a range of countries and all employ qualitative research approaches, primarily ethnographic and interview-based methods. These articles examine important but hard to define concepts associated with transitional justice, for example time and silence, and draw out the disconnections between everyday realities and macro-level transitional justice and peacebuilding processes and assumptions (Igreja 2012; Eastmond and Selimovic 2012). In Mozambique for example, Victor Igrega, in his ethnographic study, shows how the western conception of time, which is 'linear and calendrical', is different from non-western 'notions of temporality' which are 'embedded within the totality of the sociocultural cosmovision' (Igreja 2012:408). The implication is that if transitional justice is to be relevant in a place like Mozambique, then practitioners and policymakers have to be more cognisant of the 'dynamic flow of time' and 'multiple temporalities' in which people's thought processes work – particularly, for example, in analysing testimony. Rigid notions of transitions and linear conceptions of time as 'before and after' make little sense in a society where, for example, spirits 'bring the past to the present and threaten to jeopardise the future' (Igreja 2012: 419).

Juan Diego Prieto focuses on every day experiences of coexistence in Columbia. His interview-based study examines the local interaction between victims, ex-combatants and their surrounding communities in four Columbian neighbourhoods and finds that while there are some tensions – for example a perception that ex-combatants receive disproportionate attention and resources from the central government – interactions between ex-combatants and the community are quite common, and regularly take place in the informal labour market. The four research sites are marked largely by a peaceful coexistence which Prieto argues is not dependent on 'external interventions…explicit reconciliation ceremonies … or notions of forgiveness or spiritual transformation' (540). What Prieto appears to identify are two separate processes – the local realities of social repair, which may or may not be sustainable and state level socio-political reconstruction – which many of his respondents were supportive of but did not require in order to move on with their lives.

Erin Baines and Laura Arriaza and Naomi Roht-Arriaza - have highlighted the need to take more seriously the socio-cultural, reconstructive processes that occur outside the purview of the state or even local customary leaders. Erin Baines study of spirit possession and ritual cleansing in northern Uganda is the result of 22 months fieldwork in the region over a period of six years. Her ethnography involved interviews, focus groups and observations. The methodology used by Roht-Arriaza in her study of local post-conflict initiatives in Guatemalan communities is less clear. Neither study challenges the need for *national* transitional justice processes but both question the extent to which trials and truth commissions affect people's 'daily experience' (Baines 2010:429; Arriaza and Roht-Arriaza 2008:160). Both authors

highlight the need to understand ordinary people's attempts to seek social repair in the settings where horizontal violence was experienced and 'victim-perpetrators' or 'intimate enemies' must live side by side.

While the Guatemalan study explores a whole range of initiatives - history projects, community museums, community-influenced psycho-social interventions, and community-generated exhumations, the Ugandan study focuses on local cosmologies that people draw upon in times of crisis to 'achieve moral renewal' and find a way forward (Baines 2010:409). Both studies understand the local as a 'set of micro-level relationships between everyday people striving to get on with life and each other after mass violence' (Baines 2007:412). Both studies conclude that local practices can fulfil vital reconstructive roles which formal processes cannot (Baines 2007:429; Arriaza and Roht-Arriaza 2008:153). The authors' generalize from their research to argue these methods should be more systematically identified and supported in transitional justice efforts (Arriaza and Roht-Arriaza 2008:152). They also provide a coherent call for further research at the micro-level. While Baines accepts that spirit possession or spiritual haunting may be 'messy territory' for transitional justice scholars, practices like these are, 'for most….the only recourse to social reconstruction'. (430). These are illustrative cases. A limitation is that the arguments tend to conflate the characteristics of process - they are culturally embedded, home grown and locally owned - with effectiveness and success. Both studies lack a sufficiently rigorous analysis of the disadvantages (if there are any) of such practices. It would, for example, be interesting to know whether they perpetuate any of the structural conditions or divisions that led to the violence in the first place.

A useful study in Burundi shows how practices of redress and repair may not involve ritual at all, but rather draw upon the 'performance of everyday life' as a means of remaking relationships (Nee and Uvin 2010). Nee and Uvin carried out a qualitative study of perceptions of justice and reconciliation in two communes (one highly divided and the other displaying less ethnic division) in postwar Burundi in 2006. They refer to their own conclusions as 'provisional' and accept the limited geographical scope and interview sample of their study. The study is augmented by the findings of a longer, open-ended project that included one more rural commune and ran over a nine month period (Uvin 2008). In total, the two research projects conducted three hundred and ninety interviews. The authors claim to have identified some 'real' trends. One of the most striking is that although the traditional mediation institution of *bashinganthe* represents 'widely held values', in most areas of Burundi where personal survival depends upon a network of relationships, people found ways of restoring these relationships without any rituals or mechanisms: 'people seemed just to return and to arrange themselves with their neighbours. They negotiate, talk it out, sometimes check with local authorities, usually find a compromise and move on'. This leads to the conclusion that 'only a minority of Burundians in 2006 adhere to the transitional justice agenda as proposed by the international community' (181).

Comparative studies

Rosalind Shaw, Lars Waldorf and Pierre Hazan's volume, *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (2010) goes further than any other in providing an analytical framework to understand the 'local' in transitional justice. They use a place-based approach to depart from the 'model of collision'

between the local and the universal to a 'model of engagement' (5). This underscores the importance of exploring the complex encounter between international norms, national agendas and local practices in particular contexts and in particular, the 'power relations and heterogeneous interests that critique, evade, reshape and drive accountability mechanisms in unexpected directions' (3).[27] The collection itself includes qualitative, ethnographic, participatory and interview-based analysis in nine diverse countries, ranging across Central and South America, Eastern Europe, Africa, the Middle East and South East Asia. It also examines a range of transitional justice mechanisms, from truth commissions to trials and 'customary' practices. The editors refer to an 'impressive' range and depth of experience amongst contributors and 'careful work on the ground' (1). In general though, methodologies are implied rather than described and the evidence base therefore remains unclear.

The editors identify general trends in local engagement with transitional justice. The first is the risk inherent in imposing the 'victim' and 'perpetrator' dichotomy in intrastate conflicts originating in part from structural violence. In the case of Uganda, Sierra Leone and Peru the authors find that this legalistic division has adverse effects on truth-telling, peacebuilding and reconciliation efforts (8-9). This finding ties into other research which argues that people often occupy 'ambiguous victim-perpetrator statuses' which include bystanders, collaborators, informants, forced perpetrators, forced combatants, victims turned perpetrators, perpetrators turned victims (Baines 2009:164); Theidon 2006:451). Shaw finds that in Sierra Leone, the perpetrator/victim categories fail to recognise the complexity of the 'moral grey zones' of these civil wars; increase ethnic animosities; and neglect the underlying 'structural violence' which caused these wars in the first place (Shaw 2010: 114).

Another finding is a need to revaluate assumptions relating to truth and memory. In Sierra Leone, Burundi, Rwanda and Peru the authors highlight the role that silence plays at the local level and the corresponding risk of testimony in these contexts. In insecure and violent contexts, selective forms of speech and silence are often the 'only form of security to which people have access' (11). The editors therefore suggest a need to acknowledge the risks of 'both silence and testimony in chronically insecure conditions' (14).[28] A third finding is that while conceptions of justice remain broad and tend to encompass access to social justice and security, attitudes towards justice are flexible change markedly over time.

The intersection of transitional justice with locality is further explored in Alexander Hinton's edited volume. Hinton highlights the need for an anthropology of transitional justice (6). The scope of the study is similar to the *Localizing Transitional Justice* volume: ten countries, covering a range of regions and transitional justice mechanisms. The editor does not engage directly with the content of the chapters to the same degree but still draws general conclusions from across the cases. The key

[27] As the editors point out, anthropologists studying human rights changed the terms of the intractable debate between cultural relativism and human rights by recasting ideas of 'culture' and examining human rights practice and discourse in particular contexts (eg. Wilson 2001; Merry 2006).

[28] A recent article by Marita Eastmond and Johanna Mannergren Selmovic explores the role and function of silence in post-war Bosnia and Herzegovina through ethnographic field research and finds that 'social strategies of silencing may reveal the interdependency between people in many communities and the need to maintain … social relations… sometimes as a means of survival' (2012:504).

argument of the book is that 'justice is always enmeshed with locality….transitional and other justice initiatives are often quite messy and often fail to attend to critical on-the-ground realities' (17).[29] This is a useful, although not entirely new framework of analysis. It is clear that the collection offers a direct anthropological engagement with transitional justice but again, precise methodologies are unclear and the evidence base therefore remains vague.

The volume is strong on the 'unintended' consequences of transitional justice efforts. The chapters on Bali, East Timor, Bosnia and Rwanda all highlight the degree to which transitional justice measures, which do not sufficiently take into account local dynamics, can feed into a 'polarizing discourse' which leads to new forms of ethno-nationalism, rather than to reconciliation. The related insidious problem of the 'victim-perpetrator' dichotomy is also recognised in many of the cases studied. Roger Duthie, in a conclusion to the volume, suggests a cost-benefit analysis of pursuing transitional justice measures in different contexts. Comparing findings from Argentina, Chile, Rwanda and East Timor, Duthie hypothesises that if levels of disagreement and resistance to transitional justice processes remains below a certain threshold, then achieving long-term goals such as justice, sustainable peace and democratisation, may be worth taking some short term risks (253). On the other hand, transitional justice processes in some settings - he highlights Rwanda and East Timor in particular – appears to have led to 'new sorts of violence and impunity', which are regarded as unintended consequences that were probably risks that were 'simply not worth taking' (253).

Multi-mechanism and 'holistic' transitional justice

It is striking that despite a general consensus on the need for a 'holistic' approach there are very few studies that interrogate the interplay and impact of multiple transitional justice mechanisms in particular contexts. Many studies make reference to corresponding processes but there have been few attempts to systematically analyse the micro-level effects of deploying a package of measures simultaneously. What the current evidence tells us is that the relationship between different processes can be difficult and that this can result in competition, tension and mistrust. There is little evidence about how different transitional justice organs work together and there is also a lack of information about how transitional justice processes interact with concurrent development and peacebuilding programmes, for example security sector reform (SSR) or rule of law (RoL) initiatives. This is despite a call from both scholars and practitioners for policy areas and programming to become less hermetic and more fluid (Waldorf 2012).[30]

Selected studies

[29] Hinton's approach is slightly different from Waldorf and Shaw's: 'local justice is concerned with the ways in which justice is experienced, perceived, conceptualized transacted and produced in various localities, ranging from village level interactions between former victims and perpetrators to offices of NGOs to courtrooms of international tribunals' – so, for example, there is a chapter on the ICTY.

[30] Very shortly before this paper was submitted, a new book was published which attempts to explore these linkages in more detail: Sriram, C. L., Garcia-Godos, J., Herman, J., & Martin-Ortega, O. (2012). *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, Routledge.

In Timor-Leste, Elizabeth Stanley has tracked the experience of one group of human rights victims – torture victims – a category of survivor that is frequently excluded from institutions established to provide truth and justice, where the primary focus is on 'violations that culminate in death' (7). Primary research was conducted over three fieldwork visits to Timor-Leste from February 2004 to December 2005. Interviews were undertaken with 74 individuals and the author engaged in observations of the serious crimes process and truth commission activities. Of these, 35 were victims of torture from regions that experienced varying levels of violence and repression. Interviews were also undertaken with staff from the serious crimes process, the Commission for Reception, Truth and Reconciliation (CAVR) and non-governmental organizations. The methodological approach with victims was to allow people to 'tell stories about themselves' a practice that has the 'capacity to reveal truths that have previously been silenced or denied' (14). Stanley concludes that while the CAVR achieved a high level of participation and made a 'vital contribution to peacemaking' at first, its 'good' work was slowly 'downgraded' by the failings of other transitional justice initiatives and particularly the 'inability to challenge Indonesian impunity or provide redress for serious crimes' (131-2). The trial process was perceived as deeply flawed: most of the convicted were low-level combatants rather than the 'big fish' Indonesian officials who orchestrated the repression; investigative units were poorly resourced; judges incompetent and proceedings a 'shambles' (92). Victims enjoyed virtually no dividend from the processes by way of compensation or basic needs, while fundamental 'economic and resource based inequalities have not been addressed' (105). This is a rare qualitative study that examines the effect of more than one mode of transitional justice and the relationship between them from an end-user perspective. The most striking conclusion is the failure of transitional justice processes to address the structural injustices that made torture possible in the first place.

Elizabeth Drexler comes to similar findings in her anthropological examination of the 'dense interconnections between institutions and representations' of transitional in justice in Timor-Leste (Drexler 2009). She finds that the conditions that enabled mass violence to occur in the first place also structured the transitional justice process. Her precise methodology is not outlined, but we are told by the book's editors that this study has been produced 'through the tools of experience-near, ethnographic methods' (9) and draws on 'fieldwork in post genocidal East Timor'(18). Drexler analyses three transitional justice institutions: the ad hoc tribunal in Jakarta; the internationalized Special Panels and the CAVR. She finds that both the tribunal and the Special Panels supported a 'civil war' narrative that focused on threats to Indonesian national integrity and state sovereignty. As such they became 'theatres for military impunity', creating feelings of frustration and antipathy amongst Timorese (225; 228). The CAVR meanwhile, was criticised by individuals who felt under pressure to accept statements from perpetrators that 'were not as complete or remorseful as they had hoped' (229). Drexler concludes that despite different agendas and constraints, all three institutions 'publicly enacted a version of events that emphasizes violence between Timorese in a time of war' while the structural conditions that led to that violence 'remain invisible in official institutions and representations of historical and legal truth' (230).

Nicola Palmer's work on Rwanda examines the practices of international, national and localised criminal courts in post-genocide Rwanda and argues that although

compatible in law, in practice 'the result has been a stratified and at times competitive set of criminal courts' (Palmer 2012:3). Her research draws on in-depth analysis of ICTR judgments as well as 146 semi-structured interviews with judges, lawyers, witnesses and suspects from the ICTR, the national Rwandan courts and the gacaca community courts. Her interpretative cultural analysis reveals how the judges and lawyers of each court tended to have 'divergent' interpretations of the role and objectives of transitional justice in Rwanda. The ICTR was concerned with developing international criminal case law and the national courts were more focused on domestic legal reform, meanwhile while gacaca personnel saw the role of local courts as providing a historical or 'truth' account of the genocide. This important and unique research examining the interplay of different transitional justice mechanisms in Rwanda via interviews with those directly involved in the process highlights the challenges of effective cooperation and complementarity where a 'package' of transitional justice processes is deployed.

General Findings and Implications for Research and Policy

Preliminary observations

A review of the evidence-based literature tells us that empirical knowledge of end-user experiences and effects of transitional justice mechanisms is limited. What is revealed most clearly is that local attitudes and experiences are complex and do not conform with widely held normative assertions about what transitional justice 'should' or 'ought' to accomplish. Claims about the benefits and disadvantages of transitional justice are exposed as simplistic, inaccurate and sometimes misleading. The end-user evidence base is made up primarily of ethnographic work, a lot of which is high quality; and public attitude surveys, some of which employ sophisticated quantitative techniques. There is very little existing research which has a mixed method approach. There have been insufficient attempts to combine diverse methodological and epistemological approaches to the study of transitional justice. Individual pieces of research can be very high in quality but the overall picture is less satisfying. Once all the evidence is reviewed, we are left with a patchwork, fragmented understanding of how transitional justice is understood and experienced by end-users.

Translating concepts

The ethnographic evidence tells that justice is a concept that is very difficult to translate. In many fragile and conflict affected places the term transitional justice will have little currency or resonance. In Acholiland in northern Uganda for example, there is no word for 'justice' and the words for 'forgiveness' and 'amnesty' are the same (Allen 2006). Any research design that enforces concepts, imposes definitions or whitewashes crucial contextual differences is clearly problematic. It perpetuates a troubling hierarchical paradigm which sees the local as the static receiver of global norms and knowledge. A more accurate and honest starting point is to understand, through a deep contextual, cultural and linguistic engagement with ordinary people, local notions of justice. This requires creativity and a willingness to temporarily abandon preconceived ideas. It may require reframing the questions that researchers

have asked in the past, for example, it may be that it is easier to get at an understanding of end-users' sense of 'injustice' than 'justice' or it may be easier to begin by asking people about locally recognized concepts around 'not being treated the right way', 'revenge' or the notion of needing to 'cool' pain in one's heart (Winterbotham 2012).[31] To date, this kind of approach has been lacking in a lot of transitional justice research. The result is that the dominant transitional justice narratives articulated by donors, the UN and human rights NGOs have largely silenced the voices of ordinary people.

Why is transitional justice so hard to 'measure'?

It is true that the 'great rush' to results-based evaluation of transitional justice is misplaced but it is also important to acknowledge that transitional justice does not lend itself easily to assessment. As Duggan has described, the current demand for linear cause-effect linkages is problematic and 'attribution obsession' has led to an unhelpful focus on 'impact data often at the expense of process' (2010: 323). Demonstrating that transitional justice processes have achieved or failed to achieve a range of social goals in highly complex environments where multiple interventions are ongoing is a daunting research task. Clearly difficulties relating to understanding impact afflict all policy interventions but transitional justice does appear to suffer these measurement problems *acutely*. Even when the scorned linear 'cause-effect' approach is set aside and replaced by context-sensitive and systems approaches, understanding and attributing effects and experiences remains very challenging.

It is important to identify why this may be the case and what transitional justice policy makers and scholars can do about it. Clearly the assumed, yet often untested transitional justice 'outcomes' including, for example, 'peace' or 'accountability' or a 'sense of justice' are much more amorphous than certain interventions in say, education or health policy, where an indictors such as literacy rates or maternal mortality are more quantifiable. But this is still not getting to the crux of the matter. There is a fundamental, existential problem with transitional justice: it does not really know what it is. As Paige Arthur has noted, 'there are no clear theories of transitional justice and the term has no fixed meaning' (Arthur 2010: 359). It is difficult, if not impossible, to delineate what and who transitional justice is for.[32]

This problem is compounded by the fact, already referred to in the introduction, that transitional justice policy lacks a clear 'theory of change', that is to say it lacks clarity on intentions and goals (Van Der Merwe 2009; Duggan 2010). It is also due to what might be termed the 'basket approach' that scholars, campaigners and practitioners take towards transitional justice. The broad perimeters of a normative imperative exist, all that awaits is the substance that will bring it to life. So, everything and anything can be piled in, from criminal accountability, to societal healing to socio-economic redress to ritual cleansing. The intentions of proponents are generally good and the research is sometimes based on evidence but over-burdening transitional justice without revising it conceptually risks turning this sub-discipline, field or 'non' field

[31] During the pilot phase of JSRP research in northern Uganda in August/September 2012, the research team had numerous discussions with local researchers and experts about how to define and conceptual 'justice'. In general it was found that the concept of 'injustice' was easier to think about.

[32] For contrasting views on the coherence of transitional justice as a 'field' of study and practice see Bell 2009 and De Greiff 2012.

into a basket *case*. There is a big analytical leap between saying: this is what transitional justice should do and this is what transitional justice is capable of doing (Waldorf 2012). In a recent special edition of the International Journal of Transitional Justice, for example, the editors argue that transitional justice might be re-conceptualised to 'consider the practices and processes with which people live through violence and seek to make sense of and resist violence' (Alcala and Baines 2012:387). But it is not clear that such a reconceptualization is either desirable or defensible. We lack data on how communities recover after mass violence but we also lack data on the contribution that transitional justice plays in this process. Transitional justice, although rather fluid and hard to define, is still a loaded term with specific meanings attached to it. Anachronistically subsuming all reconstructive practices under the transitional justice framework may distort their meaning and may misrepresent the societies in question. This is not to undermine the importance of 'everyday' modes of social repair; on the contrary, understanding these processes is essential – but they do not need the transitional justice label blindly ascribed to them in order to provide validity or legitimacy. Often links may exist between these processes and local conceptions of transitional justice; but in other cases, such links will be harder to substantiate.

A lack of theoretical and conceptual reflection has meant that transitional justice has become a term of 'wholly uncertain meaning' (Garton Ash 2012). In a recent article, Timothy Garton Ash raises similar points about the notion of 'multiculturalism'. The questions he asks could equally be applied to transitional justice: 'Does it refer to a social reality? A set of politics? A normative theory? An ideology?' (Garton Ash 2012). We do not really know and until there is more reflection and conversation around these central questions, it will be hard to understand what policies described as transitional justice are really supposed to achieve. This is by no means an impossible task but it is certainly a pressing one.

Methodological and epistemological divides

Without strong conceptual roots and a solid theoretical grounding within which to situate analysis and without clarity on intentions, scholars tend to direct their attention arbitrarily to the level of social or institutional structure that they are interested in or that they would like to see transitional justice efforts address (Dancy 2010: 361). Scholars interested in institutional design and implementation of truth commissions may orient their focus towards an analysis of the final report's reception. Success here is often defined by the extent to which the commission fulfilled its mandate. Those interested in macro-level state analysis concentrate on whether accountability processes have aided or jeopardised peaceful transitions and democratic consolidation. Micro-level studies, meanwhile, focus on sub-state, community and individual perceptions and experiences of transitional justice. As Duggan notes, 'in the domain of transitional justice, depending on the mechanism, we are often faced with a panoply of theories and most often they are not well articulated by those involved in the implementation process' (Duggan 2010:320).

Leading on from this is a methodological and epistemological divide in transitional justice research. Macro-level research focusing on the linkages between TJ and systemic properties such as regime stability or democratic consolidation tends to be positivist; is much more likely to employ quantitative techniques; and is also more

likely to contain a comparative element (Thoms et. al 2008; Van Der Merwe 2009). Micro-level research which examines local engagement and responses to transitional justice tends to be qualitative; is much more likely to have an interpretative approach and is therefore rarely comparative in any systematic sense. Because studies 'vary sharply' in both epistemology and methodology, it is very difficult to 'coordinate or talk about important lessons that have been learned so far' (Dancy 2010: 366).

Ethnographic studies provide a strong analytical basis for understanding the 'local' in transitional justice but they are only illustrative and findings are often at odds or contradictory. There is very little comparative research interrogating how transitional justice plays out at the sub-national level, especially across communities and administrative units, as well as between rural and urban areas (Backer 2009:61). Broadly speaking, ethnographies tend to present a negative picture of transitional justice processes, perhaps because the analytical emphasis is on the need to complicate and problematise existing 'top-down' approaches to transitional justice. The focus tends to be on the cultural and political difficulties in implementing transitional justice policies and a critique of methodological processes that do not take sufficient account of local contexts. A general shortcoming in qualitative, interpretative work, is that despite a general call to recast and remodel transitional justice policy and institutions, none of the studies employs research techniques that demonstrate conclusively that transitional justice has a decisively negative impact at the micro-level (Shaw et. al 2010:3; Dancy 2010: 371).

Meanwhile, large-n data-driven positivist research, can tell us broadly whether accountability mechanisms decrease human rights abuses, for example, but cannot tell us why, how or when. Those causal mechanisms and dynamics can only be understood through a deep contextual engagement with the underlying social, political and economic dynamics in any given place. Indeed, despite an increase in large-n, macro-level impact assessments, there has been little effort to understand whether positive findings in relation to, for example, democratisation and rule of law actually percolate down to the micro-level. We are unclear about whether effects diverge, converge or bear little if any relationship across levels of society (Thoms et. al 2008). The fact that a transitional or post-conflict regime has a new human rights framework tells us very little about whether society as a whole is on a new trajectory and in particular how communities and individuals understand and perceive these changes and whether this is reflected in everyday activity and behaviour. It is perfectly plausible that the same policy may have positive macro-level effects but negative micro-level effects, the potential of amnesty legislation to lead to such an outcome has been widely suggested. Interpretative and positivist; qualitative and quantitative approaches all have their strengths and limitations and we have yet to see research that employs mixed methods and mixed epistemologies to optimise the benefits and mitigate the shortcomings of each.

Of course, mixing methods and epistemological approaches is always easier said than done. It is a particular challenge in transitional justice research and especially comparative data driven research. There are, however, some guidelines that it may be wise to follow:

- Be sensible and cautious about what can be 'operationalised'. Say, for example, you are designing comparative, quantitative research that hopes to

draw conclusions about end-user interactions with transitional justice, a first point of departure should be understanding what 'justice' actually means in your chosen contexts.

- Be modest and accept limitations: if generic concepts relating to transitional justice can be identified, then comparative research can be designed. If the lineaments of 'justice', 'truth', 'healing' and 'reconciliation' are too difficult to capture or too place-specific, then it should be accepted that these are particular notions, in a particular place which require contextual and interpretive understandings, rather than 'forced objective definitions' (Dancy 2010: 368).
- Identify objective and quantifiable phenomena: it may be possible to draw out relatively objective quantifiable phenomena that can be compared across cases, such as conviction rates or reparation rates or number of cleansing rituals that have taken place. So far, with the exception of Rwanda, little attempt has been made to carry out this kind of analysis (Van Der Merwe 2009: 127).

Over-reliance on survey research

With important exceptions, the extant literature does not provide a strong sense of the dynamic effects transitional justice processes over both the short and long term. There is a serious lack of baseline data; a problem endemic in most social science research.[33] Perhaps worryingly, public attitude surveys are referred to frequently in the transitional justice literature as 'evidence' of timeless public perceptions, priorities and as a barometer for the success of initiatives. Cursory reference to findings in these surveys often appears as a 'nod' to including the 'local' in research. As has been described, however, these studies face several limitations - not least that they represent a 'snap-shot' in time - and should not be viewed as definitive, enduring assessments of public attitudes towards peace and justice. Research that captures circumstances, attitudes and behaviour before a transitional justice process is initiated will allow for a more accurate assessment of actual impacts on a variety of social environments and sectors as the time goes on. The few longitudinal studies that do exist provide a valuable insight into how effects develop over time and – in some cases - how long term impacts can deviate substantially from short term outcomes.

Biased Country Samples

The transitional justice knowledge base relies on a biased country sample (Backer 2008). This is particularly the case with cross-regional comparisons that tend to comprise some combination of the most notable examples (e.g. South Africa, Argentina, Chile, Timor-Leste). Scholars and policymakers risk drawing lessons from a handful of well documented examples that are not transferrable across cases. A corollary is that certain countries where transitional justice processes have been proposed or implemented are seriously under-researched: these include Lebanon, Central African Republic, Democratic Republic of Congo and Chad. In addition, too few studies make effective comparisons between countries that undertake transitional justice processes and those that do not. One consequence of this is that we do not have

[33] Lack of baseline data is not unique to TJ. 75% of impact evaluations and development projects and programs are conducted without any systematic information on the conditions of the project population prior to the intervention (Duggan:2010).

a clear understanding of positive deviants – that is to say countries where transitional justice was either not applied or was considered to be unsuccessful but where former victims and perpetrators manage to coexist peacefully.

Focus on single modes of transitional justice

Given the broad consensus that transitional justice should comprise a 'package' of measures and the existence of simultaneous TJ measures in countries such as Rwanda, Sierra Leone and East Timor, it is surprising that there is so little analysis examining the interplay, role and impact of multiple processes at the national level, let alone the sub-national level. This is an area in which transitional justice scholarship is failing to keep up with transitional justice policy and programming. Recently, systematic quantitative comparisons have provided a better gauge of the relative impact of different combinations of measures on systemic macro-level properties. However, the vast majority of qualitative single and comparative studies concentrate on a single mode of transitional justice.

Heavily neglected themes

Although the evidence base for assessing the local effects of transitional justice policy is generally limited, there is a particular lack of primary data empirical research on certain themes. These are listed below:

- There is a stark lack of research on the experiences of women, children and minorities in transitional justice programmes. As yet we have a poor understanding of the differentiated impacts of these processes on specific groups (Duggan 2010).
- The functioning and impact of reparation schemes is not well understood. This is all the more surprising given that reparation and compensation is almost universally held to be a transitional justice priority by victim-survivors in public attitude surveys and qualitative work that addresses this question.
- The effects of 'traditional' justice initiatives based on custom or ritual have not been sufficiently examined. The trend towards incorporating 'traditional' justice into the transitional justice 'toolbox' must be accompanied by a close, evidence-based interrogation of the how these localised processes function and what effect they have on victims and perpetrators. This is a particular challenge for researchers as in many cases, we do not have even the most basic data to begin to address these questions (Huyse and Salter 2008:181).
- We do not have a clear understanding of the relationship between transitional justice policy and the media. There is no evidence to suggest the role that the media plays in transitional justice debates and outcomes at the local level and, in turn, how the transitional justice policy may shape the media.
- There is very little empirical research that makes the connection between transitional justice and other peacebuilding interventions at the micro level. Again, this is surprising given that transitional justice is commonly implemented alongside other peacebuilding and security measures, including DDR, SSR and rule of law measures. Studies that do exist suggest that the relationship between transitional justice and DDR/SSR is a complicated one and provide a clear agenda for further research.
- Linked to the above is a lack of clarity on how transitional justice policies are experienced by perpetrators and ex-combatants (Backer 2008:60). This is odd

because conceptually, a central dilemma in transitional justice is the need to balance consideration for victims and survivors with the reality that former perpetrators may be a source of resistance and backlash. Understanding the way in which the latter experience, engage with and are effected by transitional justice should be a pressing concern for transitional justice scholars.

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APPENDICES

Appendix A. Search Strategy Results

	Database	# Hits	# Meets Criteria
Database Driven Search: Search String 1	Scopus	597	24
	ISI	257	12
	IBSS	594	62
	EBSCO - selecting Peace Research Abstracts, International Development Abstracts, International Political Science Abstracts, Race Relations Abstracts, Historical Abstracts, Criminal Justice Abstracts	1765	20
	African Journals Online	223	2
	CIAO	1850	7 (of 500)
	HeinOnline	3433	18 (of 500)
	Westlaw		
	Google Scholar	267000	1 (of 500)
	Refseek	786	2 (of 500)
	Library catalogue	159	9
	COPAC	0	
	Worldcat	3905	3 (out of 500)
	Total	280569	160
Database Driven Search: Search String 2	**Database**	**#Hits**	**# Meets Criteria**
	Scopus	19	5
	ISI	16	5
	IBSS	152	18
	EBSCO - selecting Peace Research Abstracts, International Development Abstracts, International Political Science Abstracts, Race Relations Abstracts, Historical Abstracts, Criminal Justice Abstracts	34	8
	African Journals Online	13	6
	CIAO	463	7
	HeinOnline	407	19
	Google Scholar	6270	57
	Refseek	10830	16
	Library catalogue	324	7
	COPAC	0	0
	Worldcat	12	7
	Total	18540	155
Snowballing & additional topic search			67
Peer-Review	Of 27 references provided, 3 were new references		3
TOTAL before filtering process			385
TOTAL after filtering process			**274**

Appendix B. JSRP Evidence Grading Template

EVIDENCE PAPERS GRADING FORM	
Full citation:	
Initials grader:	

1. Please assess the amount of evidence the work contains (enter a '1' to select):

Roughly how much of the work being assessed presents empirical data/information– rather than theory, hypotheses, review of other literature etc.?	50% or more	
	between 10% and 50%	
	10% or less	

2. Please select *main* category/ies of empirical data/information the work uses (enter a '1' to select):		
	A. Quantitative, using existing dataset	
	B. Quantitative, gathering own data	
	C. Qualitative, interview based	
	D. Qualitative, ethnographic / participatory observation	
	E. Other primary sources	

3. Please answer the following questions, *for selected category/ies only:*

A. Quantitative, using existing dataset (enter a '1' to select)

	Strongly disagree	Disagree	Agree	Strongly agree	Score
Indicators used accurately capture the phenomenon the author aims to draw conclusions about (proxies are appropriate, measures are sensitive to changes on the ground).					
The process of compiling the data is transparent: the author provides the source of his data and describes how data is collected by a third party.					
Potential biases in the data are acknowledged: data not missing at random, limited number of observations, measurement error, etc.					
The paper has a sound identification strategy: the author shows that the observed relationship indicates a *causal* relationship and that it is not due to reversed causality, non-random allocation of 'treatment', intervening third (omitted) variables, etc. The author acknowledges limitations and provides robusteness checks.					
Conclusions are supported by the data. Limitations to the internal validity (do conclusions apply to case(s) investigated?) and external validity (do conclusions apply to cases other than those studied?) are discussed.					

B. Quantitative, compiling own dataset (enter a '1' to select)

	Strongly disagree	Disagree	Agree	Strongly agree	Score
Method of data collection is transparent and clear.					
Data collected is representative of the wider population the research question implies: participants are selected in some systematic way. Nonresponse is limited.					
Potential biases in the data are limited/acknowledged: interviewer bias (respondent influenced by characteristics of interviewer), strategic bias (respondent provides inaccurate answers with some personal gain in mind), recall bias.					
The paper has a sound identification strategy: the author shows that the observed relationship indicates a *causal* relationship and that it is not due to reversed causality, non-random allocation of 'treatment', intervening third (omitted) variables, etc. The author acknowledges limitations and provides robusteness checks.					
Conclusions are supported by the data. Limitations to the internal validity (do conclusions apply to case(s) investigated?) and external validity (do conclusions apply to cases other than those studied?) are discussed.					

C. Qualitative, interview based (enter a '1' to select)

	Strongly disagree	Disagree	Agree	Strongly agree	Score
Information collected is adequately representative of the population / group the research aims to draw conclusions about					
The method of interviewing is clear, including the time frame of interviews, number of interviewees.					
Potential interview biases are limited/acknowledged: interviewer bias (respondent influenced by characteristics of interviewer), strategic bias (respondent provides inaccurate answers with some personal gain in mind), recall bias.					
Conclusions drawn are supported by the interviews; findings show that a substantial share of the interviews supports the conclusion(s).					
The analysis is contextualized in a broader literature / history. Generalizability of the conclusion(s) is considered.					

D. Qualitative, ethnographic / participatory observation (enter a '1' to select)

	Strongly disagree	Disagree	Agree	Strongly agree	Score
Information collected is adequately representative of the population / group the research aims to draw conclusions about					
Potential biases in the collection of information are limited. Efforts to triangulate information are made.					
Information is richly textured; nuanced and detailed information about local level experiences is included. Information is not limited to a handful of quotes.					
Conclusions drawn are supported by the observations made. Findings show that a substantial share of observations supports the conclusion(s).					
The analysis is contextualized in a broader literature / history. The broader relevance of the conclusion is considered.					

E. Other primary sources (i.e. archives, government documents, reports, photographs)

	Strongly disagree	Disagree	Agree	Strongly agree	Score
Information collected is adequately representative of the population / group the research aims to draw conclusions about					
Potential biases in the collection of information are limited. Efforts to triangulate information are made.					
Method of data collection is transparent and clear.					
Conclusions drawn are supported by the information collected. Findings show that a substantial share of information collected supports the conclusion(s).					
The analysis is contextualized in a broader literature / history. The broader relevance of the conclusion is considered.					

TOTAL SCORE QUALITY DATA / INFO
TOTAL SCORE QUALITY ANALYSIS
TOTAL SCORE
TOTAL SCORE MENDELEY

4. Please assess the overall quality of the work (enter a '1' to select)

4.1 In comparison to other literature you have reviewed, how insightful do you consider this work to be in terms of data/information?	No significant new data/information presented	
	Some new data/information presented	
	A considerable amount of new data/information presented	

4.2 In comparison to other literature you have reviewed, how insightful do you consider this work to be in terms of analysis presented?	No significant new analysis or theoretical insight.	
	Some new analysis or theoretical insight	
	A considerable amount of insightful analysis or theoretical insight	

5. Please give a 1-3 line summary of the main argument of the work and a 1-3 line annotation (assessment of the quality of the work)	

Completeness check:	Please answer question 1

Appendix C. Some key findings from: Thoms, O, Ron J, and Paris R (2008) "The Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications for Analysis and Practitioners." University of Ottawa Centre for International Policy Studies (CIPS) Working Paper

- **Transitional justice outcomes are inherently difficult to measure (29)**. In theory transitional justice and peacebuilding are linked by the notion of 'reconciliation'. But notions such as reconciliation, justice, and societal repair lack conceptual clarity. This is a particular challenge for large-N studies, as definitions invariably differ based on the particular context of each country and community. The issue of 'measurement validity' is 'particularly acute here and even the most careful dataset will be open to criticisms' (43).
- **Large N cross national quantitative studies suffer from serious data problems (43).** The two major indicators of human rights standards: the Political Terror Score (PTS) and the CIRI Physical Integrity Index offer comparable country level data over time but also have important limitations. Even those who support the use and efficacy of such scales would acknowledge that both the PTS and CIRI indices suffer from missing data for some years and some countries. Furthermore, 'they are coded by Amnesty International and the US State Department, both of which have their own particular biases' (43). Finally, both datasets use limited scales which often conceal substantive gaps and results in the grouping together of countries with real differences. Other datasets used in TJ research use press-based events data, which, for a host of reasons, is only every 'partially accurate' (44).
- **Transitional justice analysts often conflate correlation with causation (29).** Specific observed outcomes such as an improved human rights record may well have been caused by other factors. There tends to be a lack of systematic examination of competing explanations. Furthermore, a truth commission although highly correlated with peace, human rights and democracy is not necessarily causal, rather it might be one of many outcomes 'endogenous' to the transition.
- **Transitional justice processes are never identical (29).** Large N comparative studies rarely take into account variations in mandate, structure and implementation despite the fact that these are key variables that may affect success.
- **Problems of inference:** Most of the transitional justice normative literature is based on the experience of countries that underwent political transitions from authoritarianism to democracy. Post conflict transitional justice efforts in Uganda, Sierra Leone and Iraq, for instance, may have very little in common with transitional justice in South Africa or Latin America (Thoms et.al:27). Comparative research does not take adequate account of 'scope' conditions for effective policy (30). Thoms et al. find that scholars who delimit causal arguments by region, time, transition type and level of democracy and institutional capacity are finding that transitional justice has different impacts across different contexts. Such findings will, however, always have to be supplemented by detailed country knowledge.

Appendix D. Table of survey findings

Country	Author	Year	Methodology	N	Main findings
South Africa	Gibson	2000/ 2001	Cross-sectional national survey	3 727	See p. 33-4
Rwanda	Longman et.al	2004	Cross-sectional regional survey	2091	Assesses level of trauma exposure, prevalence of PTSD, predictors of PTSD and the association between predictors and attitudes towards justice and reconciliation Rwandans supported the local *gacaca* processes (90.8%) and national trials (67.8%) over the ICTR (42.1%). Although the study predated the start of the *gacaca* proceedings, respondents believed that national trials and *gacaca* would make a positive contribution to reconciliation. Importantly, personal experiences shaped respondents attitudes. Respondents who displayed symptoms of post-traumatic stress were less likely to have positive attitudes toward domestic trials and ethnic co-existence, and those who experienced multiple traumatic events during the genocide were more likely to favour the ICTR over local justice and reconciliation.
Afghanistan	Afghanistan Independent Human Rights Commission (AIHRC)	2004	Cross-sectional national survey; regional focus groups	4151 for survey; 2000+ for 20 focus groups	- Study to explore whether Afghans want atrocities to be addressed and if so, how. - Most people consider themselves as direct victims of serious violations of human rights that have occurred during the conflict; strong perceived sense that crimes have been perpetrated continuously for 23 years; profound lack of trust in the government and to a lesser extent the international community for failing to address this; strong perception that impunity is entrenched in the political system; respondents want an approach to justice that encompasses a combination of measures, is respectful of Islamic traditions and also cognizant of challenges that exist in Afghanistan including an absence of security and the corruption of the judiciary; strong public support for removing war criminals from power; strong feeling that any approach to criminal justice should be developed in Afghanistan and led by Afghans but supported by internationals.
Northern Uganda	Pham et. al	2005	Cross-regional survey	2875	- Elucidates views on the relationship between peace and justice in Northern Uganda - Levels of exposure to violence are extremely high; (81%) wanted to speak publically about what had happened to them; availability of food (34%) and sustained peace (31%) named as top

					priorities; peace and justice not seen as mutually exclusive, (76%) wanted those responsible for violence to be held accountable for their actions, only (29%) said they would not accept amnesty if it were the only means of achieving peace; accountability for crimes committed by all sides is a priority (76%) said that UPDF members must also be held accountable; traditional and formal justice mechanisms (including the ICC) are poorly understood but expectations of the ICC are high (91%) believed it would contribute to peace.
Northern Uganda	Vinck et. al	2007	Cross-regional survey; key informant interviews; in-depth interviews with randomly selected individuals	2 875; approx. 1 open-ended interview for every 50 surveys	- Elucidates attitudes towards peace and justice - Main priorities for respondents were healthcare (45%), peace (44%), education for children 31%, and livelihood concerns including food 43%, agricultural land, 37%, money and finances, 35%); Only 3% stated justice as their top priority; compensation was 7 times more frequently proposed than apologies, justice or reconciliation; vast majority believed peace could be achieved through dialogue with the LRA (90%) or through pardoning the LRA for their crimes (86%); (70%) of respondents wanted those responsible for violence to be held accountable; (55%) said they should be put on trial; (49%) said that local customs and rituals are useful to deal with the LRA; (80%) favoured peace with amnesty over peace with trials; an overwhelming majority (around 90%) wanted to establish a truth commission.
Kosovo	UNDP	2007	Cross-sectional national survey	1,250	- Describes Kosovan citizens' perceptions of transitional justice mechanisms. - Majority of K-Albanians (92%) believe their rights have been violated since 1989 compared to (47%) of K-Serbs; majority of K-Albanians (92%) have knowledge of war crimes committed during the 1998-9 conflict; (81%) of K-Serbs have such knowledge; media identified by respondents as main source of information regarding war crimes (36%) of K-Albanians and (54%) K-Serbs; (84%) of K-Albanians do not agree that members of their own community have committed war crimes; same is true for (37%) K-Serbs; (60%) K-Albanians consider judges and prosecutors working in war crimes trials are under threat, as compared to almost (58%) of K-Serb respondents; majorities also perceive witnesses to be under threat; (86%) of K-Albanian respondents consider finding facts about war crimes to be very important; (83%) of Serbs feel the same; other communities display less interest; around (95%) K-Serbs consider reconciliation between ethnic communities to be important for the future of Kosovo and the same view is shared by 85% of K-Albanians and 97% of other

					ethnic communities; material reparation for all victims, regardless of ethnicity is strongly supported.
DRC	Vinck et.al	2008	Cross-sectional national survey	2620 in eastern DRC; 1133 in Kinshasa and Kisangani combined	- To describe the priorities and needs of Congolese civilians affected by conflict; and capture attitudes about peace, social reconstruction and TJ mechanisms - Population of eastern DRC views peace (51%) and security (34%) as their two priorities. These are followed by concerns about money (27%), education (26%), food/water (26%) and health (23%). Among the population of DRC, only (2%) of respondents identified providing justice or arresting those responsible for violence (2%) or punishing those responsible (1%) or encouraging reconciliation (1%) among their immediate priorities; despite this (82%) of the population believes that accountability is necessary to achieve peace; populations of Kinshasa and Kisangani prioritise concerns about the economy and employment (57% and 46% respectively) and are less concerned about security and peace; majority of the population of eastern DRC believes that justice can be achieved (80%) defining justice as establishing the truth (51%), applying the law (49%) and being just/fair (48%); among means to achieve justice, eastern Congolese population endorse the national court system (51%), and traditional/customary justice processes (15%); there is a strong desire for the international community to assist national prosecutions (82%); (26%) of respondents support the ICC as a means of achieving justice in the DRC, while only (27%) in eastern Congo and (28%) in Kinshasa are aware of the DRC.
Cambodia	Pham et. al	2009	Cross-sectional national survey	1000	- To measure awareness of the ECCC and assess level of access and desires for justice and reparations for crimes committed by the Khmer Rouge (1975-1979) - Respondents said their priorities were jobs (83%) and services to meet basic needs including health (20%) and food (17%); justice 'seldom' mentioned as a priority (2%); nine out of ten respondents said members of the KR should be held accountable half (51%); (58%) felt that the Cambodian government should hold them accountable, with (18%) saying international community (17%) saying national judicial system and (9%) the ECCC; (39%) of respondents had no knowledge of the ECCC; nearly half (46%) had only limited knowledge; of those that were aware of the ECCC (68%) felt that the ECCC would have a positive effect on the victims of the KR and their families; most common recommendation (30%) was that the court speed up trials; vast majority (88%) of respondents said that reparations should be

					provided to KR victims and that they should be provided to the community as a whole (68%) in a way that affects 'daily lives'.
Northern Uganda	Pham et. al	2010	Cross-sectional regional survey	2,498	- Describes community views about peace, justice and social reconstruction in northern Uganda - Most respondents (84%) saw accountability as important, and more than two-thirds said the government should be among those held accountable for the violence; (24%) sad that LRA members most responsible for the violence should 'come out of the bush' and that they should be pardoned or given amnesty (23%); one in three (16%) wanted to see them arrested or put on trial (16%) or captured (13%); one in three felt that the national justice system was corrupt while (11%) said it was just for the rich and educated; (45%) favoured peace with amnesties (32%) favoured peace with a truth seeking mechanisms (15%) peace with trials and (8%) peace with traditional ceremonies; the preferred method of prosecuting perpetrators was trials held in Uganda by Uganda courts (35%) - these findings are consistent with 2007 findings; almost 97% said reparations should be granted to victims and (46%) felt they should be given individually while (32%) felt they should be given at the community level; many respondents felt the ICC had helped the general situation in northern Uganda (43%) but many also felt it had no effect (40%) while (10%) felt it had hindered the situation.
Central African Republic (CAR)	Vinck et. al	2010	Cross-sectional regional survey	1,879	- To understand what citizens of CAR believe is the best way to restore peace and what attitudes are towards the issue of justice and accountability for serious crimes committed; - (98%) felt that those responsible for violence should be held accountable; (27%) said they should go to jail and (21%) said they should be killed with or without judicial proceedings; over half (52%) said they should be tried in national courts while 27% said they should be tried in CAR by an international court; (14%) preferred international trials outside of the country; one third of respondents had heard of the ICC, with figures ranging by prefecture; most respondents expected a positive impact from the court; 74% also felt that memorials are important.
Cambodia	Pham et. al	2011	Cross-sectional national survey	1000	- To describe public awareness of the ECCC and attitudes to justice after the trial of Kaing Guek Eav alias Duch a the ECCC; - Respondents priorities were jobs and services to meet basic needs; 83% would rather focus on problems that Cambodians face in their daily lives than address crimes committed by the KR; awareness and knowledge of ECCC have increased since 2008 (see Box 1); Attitudes to

					the ECCC remained positive (82%) felt it would rebuild trust in Cambodia; respondents still had high expectations of the ECCC, over three quarters felt it would have a positive effect on victims and their families with 37% mentioning the idea of bringing justice to victims; compared with 2% in 2008; since 2008, feeling of animosity and desire for revenge toward the KR have decreased only very slightly (81% compared to 83% in 2008); vast majority maintained that reparations should be provided.
Liberia	Vinck et al	2011	Cross-sectional national survey	4501	- To describe the population's priorities for peacebuilding and perceptions of their post war security and existing dispute resolution tools - Education, health and employment are mentioned most frequently as main priorities; majority of respondents is willing to forgive those who were responsible for the violence, proposing financial compensation (65%), housing (45%) and education (45%) as measures; most respondents acknowledged having either no (50%) or little (41%) knowledge of the formal court system; just (28%) described their access to the court system as easy.
Darfur, Sudan	24 Hours for Darfur	2009	Cross-sectional regional survey of Darfurian refugee population living in refugee camps in Eastern Chad; in-depth interviews with tribal, civil society and rebel leaders living in Chad	Survey sample: 1, 872; in-depth survey sample: 280	- Describes the views held by Darfurian refugees in Eastern Chad on issues of peace, justice and reconciliation. - Nearly all respondents attributed a degree of responsibility for the violence in Darfur to the Government of Sudan (80%) and the Janjaweed militia (20%). Only (20%) of respondents attributed any responsibility for the violence to rebel groups. Over three quarters of the population believed that reconciliation between the tribes of Darfur was possible. A slight majority of respondents strongly or somewhat believed that it was impossible for former enemies to live together after war. Women were substantially more likely than men to reply this way. More than half of the respondents thought that tribes whose members committed crimes in Darfur bear collective responsibility. About one-third believed that only the individuals who committed the crimes should be held responsible. - Nearly all respondents reported that perpetrators of violence should be held accountable through criminal trials. Over ninety percent of respondents believed that such trials must occur in international courts. There was virtually no support for amnesty, even for low-level combatants. Nearly 90% of interviewees considered traditional justice mechanisms to be important for enabling the people of Darfur to live together in peace. However, almost no respondents believed that these mechanisms would be sufficient for dealing with crimes of this magnitude on their own. Over three-

					quarters of refugees had heard of the ICC, although most claimed not to know much about it. Virtually all respondents believed that President Bashir should be tried at the ICC. Approximately (85%) of respondents believed that pursuing justice now through the ICC would not endanger the prospects for peace. Virtually all respondents stated that victims deserved to be compensated for their losses during the conflict – both in the form of direct monetary compensation and health and education projects.
Sierra Leone	BBC World Service Trust	2008	Cross-sectional national survey	1, 717	- Describes Sierra Leonean perceptions of peace, justice and reconciliation and awareness of and hopes for transitional justice in Sierra Leone. - A majority (89%) of Sierra Leonean's think that those involved in wrongdoing during the conflict should be put on trial. While 87% say that commanders of warring factions should be prosecuted, only 29% say that lower ranking ex-combatants should be brought before the courts. Almost all respondents (96%) are aware of the SCSL and more than two thirds (68%) think positively about it performance to date. Nearly three quarters believe that the SCSL will deter people from committing crimes in the future. Only half (51%) of respondents said they would go to a national court if they wanted to seek justice in their community. Trust is national courts is lowest in Western Urban (40%) and highest in Kailahun (90%); Most people across the country (89%) have heard of the TRC but less than a quarter (23%) know about its recommendations. The TRC contribution to reconciliation is rated highest, with (73%) giving it 'good' or 'excellent' ratings and its contribution to justice lowest (57%) 'good' or 'excellent' ratings – these scores varied markedly between districts; most people feel than reparations should go to be individuals and communities.
Cambodia	USAID et.al	2009	Cross-sectional national survey	1,600	- Describes Cambodian perceptions on a range of topics from the economy to the EEEC - The majority of respondents (70%) felt that the ECCC was providing justice; (57%) were aware of the trial of Duch with only 32% saying that it the trial was moving fast enough; (60%) were aware that the ECCC trials were broadcast on television, the vast majority (80%) lived in urban areas and of those (80%) actually watched the trials on TV

This publication is an output of a research programme funded by UK aid from the UK Government. However, the views expressed do not necessarily reflect the UK Government's official policies

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The Justice and Security Research Programme is an international consortium of research partners, undertaking work on end-user experiences of justice and security in conflict-affected areas. The London School of Economics and Political Science is the lead organisation and is working in partnership with:

African Security Sector Network (Ethiopia)

Conflict Research Group, University of Gent (Belgium)

Social Science Research Council (USA)

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Contact details:
email: Intdev.jsrp@lse.ac.uk
Web: lse.ac.uk/internationalDevelopment/research/JSRP/jsrp.aspx
Tel: +44 (0)20 7849 4631