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## The pitfalls and politics of holistic justice

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## *The Pitfalls and Politics of Holistic Justice*

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### **Abstract**

This article critically assesses the concept of the complementarity of means, a concept which underpins the ‘holistic justice’ turn in post-conflict policymaking. Our concern is with how global transitional justice strategies are being informed by a compelling but vague ideal of institutional cooperation. Drawing on research into Sierra Leone’s ‘two tracks’ of transitional justice, we argue that political interaction between the two mechanisms and a contentious, ad hoc learning process between the Special Court for Sierra Leone and the Truth and Reconciliation Commission were crucial to the way the complementarity of means has come to underpin the holistic justice agenda. We caution that by treating the complementarity of means as a mechanical outcome of the mere existence of separate transitional justice mechanisms, global policymakers have drawn the wrong empirical lessons from Sierra Leone. Political engagement played a central role in constructing a pragmatic partnership between the competing institutions, and in accounting for some of the long term and unintended consequences of transitional justice. We argue that if a complementarity of means is to be effectively realized global policymakers need to embrace – rather than deny – the politics of holistic justice.

### **Policy Implications**

- Transitional justice mechanisms should recognize and address the tensions and competing policy choices represented by alternative mechanisms, inviting greater public debate about the appropriate configuration of the holistic justice agenda.
- Key norm entrepreneurs, such as the UN and ICTJ, should do more to engage with the long term and unintended consequences of failed transitional justice. Assuming a complementarity of means has fostered misplaced complacency about the need to develop effective strategies for achieving holistic justice.
- Understand that outreach to victims and affected communities plays a crucial role in communicating the terms of the relationship between different mechanisms of transitional justice, and, in turn, developing the social and political legitimacy of transitional justice mechanisms.
- Accept that a complementarity of means does not emerge organically; effective cooperation requires greater strategic coordination both in the short and long term. To this end, stakeholders should draw up and work within a ‘transitional charter’, which sets out the basic terms of cooperation and provides a forum for resolving operational disputes.

## The Complementarity of Means in Transitional Justice

According to the UN and the International Center for Transitional Justice, a holistic approach to transitional justice is one with ‘several measures that complement one another’. Holistic justice holds that ‘no mechanism is likely to be effective in isolation’, encouraging a plurality of approaches which combine retributive and restorative conceptions of justice (International Center for Transitional Justice 2008, p. 2; see also, the UN 2008, pp. 3-4, UNSG 2011, pp. 4 and 9). This emphasis on the complementarity of means has become prominent in empirical and normative transitional justice literature, which has increasingly argued that both retributive (criminal) and restorative (truth-seeking) measures serve different but equally valuable functions for transitional justice (Boraine 2006, De Greiff 2004, p. 17). Scholars have increasingly appealed to the holistic character of transitional justice to draw links to parallel practices and discourses of sustainable peace-building (see, for instance, Philpott 2012; Sriram 2004 and 2013; and Mani 2007); the International Criminal Court (Boraine 2006; Đukić 2007; Clark 2011); and to define a framework for evaluating the impact and legacy of transitional justice programmes (Robins 2012, p. 2; Thoms *et al* 2010).

How did we get to this point in which transitional justice supposedly *encourages* a complementarity of means, given that historically one of the core debates in transitional justice scholarship centred on the choice between clashing mechanisms of transitional justice? In South Africa, for example, the debate centred on the normative justifications for Truth and Reconciliation Commissions (hereon TRCs) versus trials (see, for example, Gutmann and Thompson, 2000; Minow, 2000). In many of these early contexts, the choice to establish a TRC was itself pragmatic – TRCs were set up as a ‘second best’ option where trials were forbidden in the terms of transition or where the new civilian regime feared conducting prosecutions would lead to political instability or a future coup (see, for example, Orentlicher, 1991). It may also be seen as one of the ‘paradoxes of fieldhood’ in which the success of transitional justice both in practice and as a policy language has led to a broadening out and reframing of the issues and agendas (Bell 2009; Balasco 2013). To some degree, the genesis of the holistic approach reflects the increasing acknowledgment of TRCs as important mechanisms of justice in their own right, rather than simply as second best alternatives to criminal justice (for example, Goldstone, 1996, Minow 2000, Kiss 2000, Rotberg 2000).

As the field has become increasingly institutionalized as part of a global policy agenda – through NGO advocacy, notably the International Center for Transitional Justice, and the incorporation of transitional justice into a ‘mainstream’ UN agenda – it has also gone through a period of conceptual stock-taking, where the perceived tensions between retributive and restorative justice were confronted and, for many, resolved (McAvoy 2007; Subotić 2012; on tensions between peace versus justice, see Kerr and Mobekk 2007; Sriram 2004). In this process, conceptions of justice were stretched out and redefined to encapsulate the other, to the extent that scholars and practitioners were able to conceptualize ‘transitional justice’ as *necessarily* encompassing both retributive and restorative dimensions (De Greiff 2012, pp.

17-18; Teitel 2003, pp. 83-84). This idea of a natural connection between the component parts of transitional justice was solidified by the empirically demonstrable desire among individuals and affected communities for both criminal accountability and truth-seeking and reconciliation (Lambourne 2009, 37-45).

The result is the current widely held and firmly institutionalized belief that a ‘complementarity of means’ is naturally embedded in the various mechanisms, mindsets, and values adopted by those in charge of delivering holistic justice. (1) This belief also establishes a conceptual framework for managing the operational difficulties that accompany the ever-expanding mandate of transitional justice (Mani 2008; Bell 2009; Balasco 2013). Because it knits together a claim about the legitimacy, process and outcome of transitional justice, justice is constructed in functionalist terms, based on the ability of institutions to meet certain procedural criteria and contribute to certain widely valued outcomes. This functional legitimacy of holistic justice is tied to the existence of multiple, overlapping initiatives – including criminal prosecutions, truth-telling, reparations programmes, building rule of law, and institutional reform – able to meet the needs of a diverse set of local, national and international stakeholders. Bundled together, these mechanisms establish a process, which avoids the architects of a transitional justice strategy having to choose between the underlying values of, for example, truth and criminal accountability, and which, by the same token, prevents the differences between various stakeholders regarding the hierarchy of these values and mechanisms from derailing the process. Finally, that these mechanisms can be shown to have successfully worked together is a structural outcome around which a society emerging from conflict can build a just peace.

This promises a lot for the holistic justice agenda, both at the point of implementation and in post-hoc evaluation of the legacy or success of a transitional justice strategy. But does the concept of holistic justice really obviate the need to worry about the politics of transitional justice? Does it dismantle the binaries of peace *versus* justice; retributive *versus* restorative justice; truth *versus* accountability; and international *versus* local demands for justice? The influential approaches of the United Nations and the International Center for Transitional Justice suggests that the answer is an unambiguous ‘yes’. The UN’s position is that effective transitional justice programmes use ‘the full range of judicial and non-judicial processes and measures’ and foster an environment in which ‘various transitional justice mechanisms can positively complement each other in post-conflict and transitional environments’ (Guidance Note of the Secretary General, 2010, p. 6). The compelling picture that emerges in the approach adopted by the ‘gatekeepers’ of transitional justice (Subotić 2012, p. 108) is of a policy realm capable of mechanically delivering both the broad aims of justice and peace in the affected society, as well as coherence and coordination amongst the various policy actors involved in the broader tasks of rule of law and peace-building.

The purpose of this article is to critically evaluate these claims, focusing on the operational pitfalls surrounding the holistic justice agenda. This article builds on an analysis of how the complementarity of means functioned in Sierra Leone to illustrate how and why the holistic justice agenda being applied by global policymakers and institutions fails to engage the

‘transformative’ dimension of holistic justice, where success (and the evaluation of success) is linked to the broader possibility of social and political transformation (see especially Leebaw, 2008, p. 96-98; Lambourne 2009, p. 34, Lambourne 2010). (2) Insufficient engagement of the institutional politics required to deliver holistic justice skews the evaluation of transitional justice towards a technocratic, box-ticking exercise centered on the existence of an appropriate range of institutions rather than the broader conditions and concerns which define the potential of these institutions to deliver a holistic agenda. We argue that if holistic justice is to be more than a compelling but vague option for global policymakers to link the fragmented discourses and institutions engaged in post-conflict justice and peace-building, the architects of the holistic approach need to adopt a more explicitly political approach to the complementarity of means than traditionally envisioned. The next section turns to the case study of Sierra Leone, which functions both as a microcosm of the operational issues surrounding the concept of holistic justice and as the case which has, more than any other, helped define the current holistic justice agenda.

### **Resurrecting the Politics of Complementarity**

The eleven-year civil war in Sierra Leone killed over 50,000 people and displaced over 500,000 (Gberie 2005, 6). While the Revolutionary United Front (RUF) became well known for specific and personalized violence – amputations and its targeting of village elders and chiefs – all sides committed abuses of civilians, including sexual violence and slavery, looting and raiding of villages, and the recruitment and forced abduction of child soldiers. An estimated 5000-7000 children fought in the war, often recruited among vulnerable refugee populations displaced by the fighting (Zack-Williams 2001, 73). While some joined voluntarily, many were abducted, with ex-RUF child soldiers commonly reporting experiences of fighting on the frontlines after being drugged with mixtures of gunpowder and cocaine. Children were often ordered to commit brutalities as part of their initiation, sometimes against family members, arguably making them fear future retaliation from civilians and ensuring their loyalty to the armed forces (Zack-Williams 2001, 80). Tens of thousands of civilians had limbs amputated, devastating livelihoods in a primarily rural economy.

The Sierra Leonean TRC was set up as part of the Lomé Peace Accord, signed on 7 July 1999, which called for a TRC in exchange for a general amnesty promised during the ceasefire. The TRC appointed four national and three international commissioners, including four men and three women, and employed a mixture of domestic and international staff to conduct research and take statements. Because of the scale and inhumanity of the conflict, the international community took a particularly keen interest (Hayner 2004, p. 3). Funding for the TRC came mainly from international sources through the United Nations Development Programme, including the US, UK, EU, Germany, Denmark, Norway and Sweden (Hayner 2004, 3). During the TRC’s statement-taking period from 4 December 2002 to 31 March 2003, the commission collected 7,706 statements from around the country (TRC, *Witness to Truth*, Volume 1, Chapter 5). The TRC presented its final report to the President of Sierra Leone on 5 October 2004 and to the United Nations Security Council on 27 October 2004.

Although the Lomé Accord had promised a general amnesty to the RUF, on 12 July 2000, then Sierra Leonean President Ahmad Tejan Kabbah wrote to the UN Security Council, requesting an *ad hoc* criminal tribunal to be set up in Sierra Leone. The Security Council passed Resolution 1315, stipulating that the Secretary General should negotiate an agreement with the Kabbah administration for an ‘independent special court’. The UN established the Special Court for Sierra Leone (SCSL) in January of 2002 after the Kabbah government and the Security Council agreed to the Secretary General’s proposal. The court itself was a hybrid tribunal, employing a mixture of international and domestic staff and was intentionally established at the site of the conflict in Sierra Leone in Sierra Leone’s capital, Freetown. (3) The SCSL has detained eleven individuals in total, two of whom have died. Eight have been sentenced and are serving their terms. On 30 May 2012, former Liberian President, Charles Taylor, was sentenced at the Hague, marking the first successful prosecution of an African head of state.

### **Separation as Strategy**

Early on, external and domestic observers expressed concern about the relationship between the SCSL and the TRC, and the impact each would have on the other. On the one hand, proponents of restorative justice feared that trials would pose a threat to peace and clash with traditional Sierra Leonean conflict resolution mechanisms (*Witness to Truth*, 2004, Volume 2, Chapter 1). The most straightforward challenge was how the Special Court would function in the face of the amnesty agreement set out by the Lomé Peace Accord. (4) The SCSL’s establishment prompted fears that the Special Court could subpoena the TRC and override its guarantees of confidentiality. On the other hand, proponents of criminal prosecution and members of the Special Court criticized the TRC as offering an inadequate approach, inconsistent with international legal norms and obligations (Schabas, 2004, p. 1083).

The abiding perception in this scholarship is that despite operational tensions between the two institutions, particularly over the SCSL’s decision not to allow the indicted to testify at the TRC, this was, by and large, a successful implementation of transitional justice (Schabas 2003, 2004, 2012; Horowitz 2006; Jalloh 2013). For this literature, significantly, it was the formal institutional separation, which allowed each body to serve complementary functions. This included the establishment of an objective historical record of the causes and actors responsible for the conflict and a more comprehensive recognition, redress and sense of justice and accountability for the victims (Schabas 2003, p. 1065). In what has become the central tenet of the holistic approach, Schabas argues that these complementary functions were best realized as each mechanism developed its own distinctive orientation. For example, while both bodies were nominally engaged in outreach, the TRC promoted catharsis and social empowerment and engaged victims and affected communities, whereas the Court’s outreach was instrumentally focused on its evidentiary requirements. While the SCSL focused on ‘those who bear the greatest responsibility’ for crimes committed within Sierra Leone, the TRC, in contrast, investigated abuses committed by individuals, groups, societies or states, abroad or within Sierra Leone. Although this was not explicit in its mandate, many

argue that the TRC, in contrast, put particular emphasis on sexual violence and youth, with the UN and SCSL officials repeatedly expressed the view the TRC was a better platform for dealing with child offenders, and Chief Prosecutor David Crane arguing that he was not interested in child soldiers (Crane 2008, p 15). (5)

Importantly, in Schabas' view, the TRC and SCSL worked best when kept separate because trying to integrate mechanisms with distinctive, competing restorative and retributive mandates in any more substantive way was, first, *unlikely* to succeed and, second, was *unnecessary* for the transitional justice project (2003, pp. 1063-1066). (6) This second claim was the result of thinking that the complementarity of means was a direct consequence of the common commitment among the stakeholders to building a stable and lasting peace. Explaining this link between a common commitment and the complementarity of means as parallel tracks to a common end, Schabas draws an analogy with building a house:

Although there is much common ground, this does not mean that the two institutions necessarily have much to share in terms of their methodologies and their resources. Perhaps the appropriate metaphor is that of building a house. The Truth and Reconciliation Commission is the plumber, and the Special Court is the electrician. The two trades work in different parts of the house, on different days, at different stages of the construction, and using different tools and materials. Nobody would want to live in a finished house that lacked either electricity or plumbing. *The best way to ensure that both succeed and that the house gets completed on schedule is that they be left alone* (2003, p. 1065, our italics).

The implication, in other words, is that transitional justice worked to deliver a positive legacy because different mechanisms were focused on their own mandates and operated along different 'tracks'. A complementarity of means – on this account – does not emerge through active interaction or planning but rather as an inbuilt and organic consequence of the existence of different 'tracks' or transitional justice processes involved. Schabas' account helps establish why holistic justice strategies have tended to take for granted the complementarity of means. If complementarity emerges as a function of the separation of different mechanisms, rather than as a result of active policy integration, there is no great onus on different global and local peace-building initiatives to actively pursue constructive forms of collaboration.

### **Constructing a Common Political Domain**

The idea that a complementarity of means emerged organically in the Sierra Leonean context is somewhat odd, given the admission by those involved that there were a series of attempts to pre-empt problems and harmonize the relationship between the Special Court and the TRC during the initial stages of the post-conflict process. As part of establishing this informal "transitional charter", international and domestic NGOs and civil society officials held a number of meetings, including with the International Center for Transitional Justice. Priscilla Hayner and Paul van Zyl, together with the US Institute of Peace and International Human

Rights Law Group, held an expert round table on how the Special Court and TRC would interact (Schabas 2003, p. 1048; Schabas 2012). The October 2000 UNSG report stated that: ‘Relationship and cooperation agreements would be required between the Special Court and the national TRC, including the use of the commission as an alternative to prosecution and the prosecution of juveniles in particular’ (Report of the Secretary General, 2000, p. 28 in Schabas 2003, p. 1048). The Office of the High Commissioner for Human Rights and the United Nations Mission for Sierra Leone (UNAMSIL) subsequently held a workshop which proposed a consultative process to ‘work out the relationship’ between the two bodies to institutionalize a set of guidelines detailing their respective roles (Eleventh Report of the Secretary General on the United Nations Mission in Sierra Leone, in Schabas 2003, p. 1048).

What’s more, although both bodies put special emphasis on public outreach as an important element of legitimizing their activities and consolidating a sphere of influence, the strategic decision to “do outreach” was not defined by the awareness of being part of a common political project. Instead, the particular outreach strategies adopted were a result of each body being forced to publically justify its existence and contribution vis-à-vis the other. These outreach activities were also part of confronting problems created as a result of the competing approaches adopted by the two bodies. For the TRC, in particular, generating participation through outreach required confronting the popular fear that testimony would lead to incrimination and prosecution by the SCSL. Popular confusion among Sierra Leoneans as to the differences between both bodies and legal spheres and demarcations of each magnified these fears (Friedman, forthcoming, Kelsall 2005, Shaw 2010). The TRC sought to tackle this challenge by taking a strong stance against individual guilt and in favour of confidentiality. While the TRC used public hearings, similar to the South African TRC, much of its work took place in confidence, behind closed doors. Particular groups, such as victims of sexual violence, testified in confidence unless they expressed the desire to speak publicly; children always spoke anonymously and confidentially and usually had a family member or where this was not possible, an adult mentor with them (Michael Charley, interview, 24 July 2009). The point here is that the fear among ex-combatants that testifying at the TRC would lead to prosecutions at the Special Court led the TRC to take a stronger stance on confidentiality as a mechanism of reassurance than they otherwise might have done. (7)

The reliance of both bodies on ex-combatant participation did not lead to an easy or cooperative relationship, but it did lead both bodies to emphasise to the public as part of their outreach efforts that the Special Court was only focusing on the big fish, those who ‘bore the greatest responsibility’. The TRC, in contrast, adopted a non-incrimination policy by emphasizing the importance of learning and moving forward over individualizing guilt – a discourse which directly targeted the criminal justice mandate of the SCSL. As TRC President, Bishop Joseph Humper justifies it in retrospect, the TRC was not established to blame or ‘scapegoat’. In his view, everyone was both a victim and guilty in one form or another in the Sierra Leonean civil war (Humper, interview, 28 July 2009). Although the TRC was established as a restorative body from the start, he also concedes that the commission de-emphasized individual guilt over time as a strategy to solicit popular participation in light of the court’s punitive approach (see also *Witness to Truth*, Volume 2).



## Indirect Effects and Unintended Consequences

The political interaction – or integration as part of a common political domain – between the TRC and the SCSL had a relatively direct impact on both the outreach strategies adopted and on the treatment of ex-combatants, undermining the idea that institutional separation was the key to their success. But there were also important *indirect* effects of the institutional divide for the degree to which victims and affected communities view the legacy of both institutions both in their own lives and in Sierra Leone.

While it can be argued that the TRC successfully aired the depravity of crimes committed, it also made it possible for many perpetrators to escape having to confront their guilt for the physical act in any meaningful way. As detailed by anthropologist Rosalind Shaw, the post-TRC period witnessed a certain narrative and discourse of agency during the war, in which ex-combatants who wanted to establish themselves into civilian life needed to identify as victims (Shaw 2010, pp. 124-125). Truth telling in these circumstances became, to a degree, a process of reconstructing innocence and victimization, in the catalogue of counterfactual assertions that ‘I couldn’t have done these things if I’d been sober, if I’d been sane’, or ‘I did these things but others did much worse’. If a strong point of TRCs (and indeed the stated intention of this TRC in its mandate) is the capacity to paint a more accurate picture of the social processes underlying conflicts, the extent to which participants did acknowledge personal responsibility becomes an important issue in critical empirical evaluations of the TRC. According to Tim Kelsall, who sat in on a week of TRC hearings in Tonkolil, Northern Sierra Leone, perpetrators in the hearings he attended apologized to the community for wrongs committed, but none admitted individual responsibility, and only one seemed ‘genuinely contrite’ (2005, p. 372). Kelsall criticizes the hearings as generally focused on perpetrators and their reintegration into their communities, pointing out that victims were frequently missing from the hearings (2005, p. 389). Testimonies of perpetrators in Sierra Leone often focused on explanation of their actions, rather than admission of guilt and contrition. In a study, conducted by the Sierra Leone NGO Pride with support from the International Center for Transitional Justice, ex-combatants stated the following reasons for their participation in the TRC: ‘I hope to be free from people when I say the truth’, ‘The TRC will give us a chance to explain why we fought’, ‘the truth will help families and victims forgive us’, and ‘it will let our families accept us in good faith’. According to the report, seventy-two percent of ex-RUF maintained they had been forcibly recruited and many claim to have been drugged and forced to commit acts of violence against people they knew (Pride in collaboration with the International Center for Transitional Justice, 2002, pp. 8-12).

At one level, the parallel existence of the SCSL provided an avenue for addressing the perception that perpetrators were escaping having to confront their personal responsibility. Its presence meant that the TRC could accept these excuses, in the knowledge that a number of high-level perpetrators would be subject to a serious interrogation of individual responsibility. The emphasis on collective responsibility at the TRC is to some extent a pragmatic response to a war-weary society where many ex-combatants began fighting as

youth and an emphasis among sizable portions of civil society on the importance of development and moving forward over punitive justice. What is more worrying, however, is that victims in the two-track model fell between the gaps created by a lack of integration. Given the emphasis by both the Court and the TRC that the Court was the primary body for establishing criminal accountability, as the TRC's work advanced, disappointment was particularly acute among victims, who looked to the commission for assistance in pursuing other forms of justice, notably compensation, and representing their needs. This is particularly tragic in the case of amputees, many of whom live isolated in disability camps and are still waiting for reparations (on victims' perceptions of the TRC in Sierra Leone and the lack of reparatory justice, see Millar 2011, pp. 524-529). In a context of severe socio-economic underdevelopment and poverty, victims frequently contrasted the UN Demobilization and Reintegration processes, which paid each combatant \$ 150 USD to give up their weapons, to the lack of reparations for victims (Friedman forthcoming; Lambourne 2009, p. 43). (8) As put by Alhaji Jusu Jaka, Chair of the Sierra Leone Amputees and War Wounded Association: 'They spent millions to reintegrate the ex-combatants in the DDR process. If they could just spend a small fraction of this on the victims, it would make such a difference. It is not fair. We have a permanent disability; it is for life. Our children are our breadwinners. We are like children. Looking at me, people say, "that man is finished." Sometimes it is hard to get food here.' (Jaka, personal interview, 7 August 2009; similar findings emerged strongly in the authors' research in Grafton War Wounded and Disability Camp, July and August 2009). These grievances affect the long-term legacy and impact of transitional justice because they have the potential to stunt the physical and mental well-being of victims and affected communities (Pham *et al*, p. 105).

Were the gains of transitional justice really a result of the hard separation between different mechanisms of transitional justice? To the extent that Sierra Leone does represent a functioning example of holistic justice and the complementarity of means, there is convincing evidence to suggest that this emerged as a result of the hard fought institutional politics of transitional justice, rather than as a result of an apolitical, technocratic institutional separation. That Sierra Leone's two tracks of transitional justice were able, eventually, to complement each other on clearly defined issues was a product of the ongoing – if vague, informal, and often fractious – political interaction between transitional justice practitioners. This is particularly clear in the management of tensions over outreach and confidentiality. Moreover, there was an indirect process of integration as each body was compelled to justify and explain its specific contribution to peace-building in Sierra Leone during the outreach process.

As far as the holistic approach to transitional justice is concerned, Sierra Leone highlights the importance of integration – messy, politicized, and *ad hoc* as it may have been. These are not issues that could have been resolved through strengthening the separation between the various transitional justice mechanisms. Instead, they highlight some of the problems which take root when a complementarity of means is assumed rather than actively pursued, and the need to have a fully integrated transitional justice strategy from the beginning, where the impact of various initiatives – whether aimed at restorative, retributive or, indeed, reparative

justice – can all be considered, weighed up, and fought over. Only then can the positive benefits of a complementarity of means be effectively implemented.

### **Recalibrating the Holistic Justice agenda**

What, then, can this revised history of how the complementarity of means functioned in Sierra Leone tell us about the holistic justice agenda in global policymaking? Its proponents argue that the TRC and the SCSL were able to deliver on their individual mandates in a way that contributed overall to the broader project of transitional justice. Restorative and retributive mechanisms had different roles to play, and by and large, they found a way to pursue their work without interfering in the other's mandate.

What our analysis suggests, however, is that institutional progress and social impact here was a result of key actors learning over time how to better integrate competing restorative and retributive aims and mechanisms, particularly as problems arose during their outreach activities. (9) It was in those moments when transitional justice actors confronted the tensions between competing mechanisms and strategic mindsets openly and honestly that they began to learn how to manage these tensions and trade-offs and present a 'holistic' front to domestic and international stakeholders. Establishing a transitional charter, which aimed at a 'genuine partnership rather than lip service', was one aspect of this which has not been widely replicated by global policymakers, perhaps on the assumption that this was incidental to the holistic outcome of the Sierra Leone process. At the same time, the failures – and missed opportunities – in Sierra Leone can be attributed to the lack of depth or structure in integrating the two main bodies, and a reliance on this *ad hoc* process to deliver consistent results. The complementary relationship between the TRC and the SCSL became toxic in those moments when each body failed to confront their separate but overlapping jurisdictions, such as on the issues of fair trial standards and confidentiality.

Global policymakers have not often been forced to rue missed opportunities or failures in their transitional justice programming. Thoms, for example, notes a 'prevailing ambiguity surrounding transitional justice impacts' (Thoms, Ron, and Paris 2010, p. 332; see also Robins 2012, p. 3; and Pham, Vinck and Weinstein 2010, p. 100). The danger of this ambiguity, and of the parallel perception that impact evaluation may not be suitable for this field, is deepened by the continued complacency surrounding the complementarity of means. For example, a 2013 UN Secretary-General Report on measuring the effectiveness of rule of law programmes (including transitional justice) argues that 'a focus on measuring the impact of the support provided by the United Nations system for the rule of law must not mean losing sight of the observation on the interrelationship between the rule of law and the three pillars of the United Nations (peace and security, development, and human rights) . . . The approach to measurement adopted by the United Nations must reflect this holistic approach'. And yet, as we have sought to illustrate, taking the complementarity of means for granted seems to leave the possible negative consequences of adopting a holistic approach immune from criticism or evaluation.

These questions are slowly being asked in the context of established or ‘mature’ holistic transitional justice programmes where the reliance on institutional separation has allowed social and political divisions to fester (see Richmond 2009, Mac Ginty 2010 and 2010, Autesserre 2014, and Millar 2014). Drawing on Anna L. Tsing (2005), Rosalind Shaw and Gearoid Millar use the concept of ‘frictions’ to describe interactions in the perception of local populations between the various ‘universals’ represented in multiple parallel transitional justice and peace-building projects which are transferred to local contexts (Shaw 2007, p. 186; Millar 2014, p. 141; and Millar 2011, p. 517). At the intersection of critical peace-building and transitional justice, scholars have questioned the emphasis on finite formal objectives, such as truth-seeking and prosecutions, over longer-term social economic justice and psychosocial needs and community healing. Roger Mac Ginty (2010) calls for a victim-centered and grassroots sustainable approach to transitional justice, rooted in an ‘everyday’ praxis of care and empathetic relations. In this scholarship, internationalized transitional justice is often faulted for its insufficient engagement with the needs and priorities of local stakeholders, and lack of ownership, as in Sierra Leone, where communities frequently lumped together parallel international transitional justice and humanitarian post-conflict recovery efforts, including the SCSL, the TRC, and the Disarmament, Demobilization, and Reintegration programmes (Shaw 2010, p. 121).

Similar findings have emerged in other contexts. As a recent Amnesty International (2013) report puts it, the ‘patchwork and piecemeal’ nature of the transitional justice architecture in Northern Ireland has also helped to undermine the confidence and trust of victims and affected communities in the ability of these institutions to deliver truth, justice and reconciliation. Social transformation is unlikely to emerge through a technocratic, closed conversation. Instead, the ability of the various institutional tracks to work together productively depends, at least in part, on being able to communicate to victims and affected communities *how* different mechanisms are mutually reinforcing. But the effect of assuming a complementarity of means has instead led global policymakers to be satisfied with asserting that different mechanisms of transitional justice *are* mutually reinforcing processes as a way to avoid triggering legitimate and important political debates over the compromises made in order to achieve peace without the rigorous critical interrogation of their compatibility and functions.

## **Conclusions**

Not all global policy actors are blind to the dilemmas involved with realising holistic justice (see, for example, UNDP 2012), but the dominant technocratic narrative encourages an assumption that conceptual differences can all be resolved ‘downstream’, at the point of implementation, without acknowledging the need to cede anything of importance. We have used the Sierra Leone experience to argue that the assumption of a complementarity of means is a barrier to realising the transformational potential benefits of a holistic justice agenda, particularly when it comes to doing outreach. We suggest that hiding away the messy, contentious politics of holistic justice puts the house that transitional justice built on shaky foundations.

It is, perhaps, unsurprising that policymakers remain wary about inviting open political debate about the appropriate transitional justice strategy in societies emerging from periods of protracted conflict for fear of exacerbating underlying political divisions over the relative weight to give to truth, criminal justice and reconciliation. But operating under the pretence that a coherent transitional justice agenda can emerge because of a natural complementarity of means is both empirically false and strategically short-sighted. We have argued that realising the complementarity of means demands that policymakers work to foster an honest engagement with the trade-offs and tensions which structure the politics of holistic justice. This, in our view, requires treating holistic justice as a valuable political end, rather than as a generic portmanteau concept capable of automatically generating policy coherence. One practical way to realise this is to establish an oversight mechanism, such as a transitional charter, which has the capacity to orchestrate and manage the tensions between the various transitional justice mechanisms. Also important is a transparent and participatory consultation process that engages key stakeholders.

Transitional justice processes are by nature set up in contentious and challenging contexts. In sites of deep polarization, with little trust and severely damaged infrastructure, agents establishing and implementing transitional justice are unlikely to find agreement or be able to satisfy all affected parties. However, holistic justice will only emerge if the architects of any transitional justice strategy are consciously engaged with the trade-offs and disagreements involved in choosing between different pathways. Transitional justice will always be an imperfect, messy process involving hard decisions about which goals and whose priorities to focus on. This makes understanding and engaging with the pitfalls and politics of holistic justice crucial, because it is in the political wrangling over how best to implement a holistic justice agenda that the different tracks of transitional justice are able to solidify their claim to social and institutional legitimacy. If the lofty rhetoric of holistic justice is to be realised in practice, understanding and embracing the politics involved must be the first step.

## Notes

- 1) We distinguish the holistic approach as understood by the global transitional justice policy bodies and practitioners, notably the UN and the International Center for Transitional Justice, from holistic justice as advocated by scholars working at the intersection of transitional justice and peace-building, notably Wendy Lambourne and Rama Mani.
- 2) Although mainly thematic and reflective, the article also draws on four months of field research carried out between 2009-2010 on transitional justice and post-conflict peace-building and reconciliation in rural and urban areas in Sierra Leone. The research involved a total of 45 semi-structured interviews and an additional 8 focus groups with officials and civil society involved in Sierra Leone's transitional justice process, as well as direct stakeholders, including victims, ex-combatants, and inhabitants, teachers, academics and community leaders. The research was divided

between Freetown and war-affected areas, notably Kailahun district and Grafton. The objective of the research was to gain understanding of the objectives and methods of transitional justice from officials directly involved in transitional justice, and an in depth understanding of how stakeholders (victims, ex-combatants, and war-affected communities) saw and evaluated international and local transitional justice and peace-building. The field research focused on local perceptions of the SCSL, the TRC, and the community reconciliation project, Fambul Tok.

- 3) In contrast to the earlier ad hoc tribunals in Rwanda or the former Yugoslavia, which were established off site in Arusha, Tanzania, and the Hague, respectively. One exception is the high profile trial of Liberian President, Charles Taylor. Taylor was tried in the Hague due to concern that the trial would cause instability although Special Court legal officials are still responsible for running the trial.
- 4) Article 9 of the Lomé Peace Accord granted ‘absolute and free pardon’ to General Foday Sankoh, as well as ‘absolute and free pardon and reprieve to all combatants and collaborators in respect to anything done by them in pursuit of their objectives up to the time of the signing of the present agreement’ (Conciliation Resources, 2000). The Lomé Accord also promised that the ‘Government of Sierra Leone shall accord every facility to the RUF to transform itself into a political party and enter the mainstream of the democratic process’, stating that within thirty days of the agreement, ‘the necessary legal steps shall be taken by the Government of Sierra Leone to enable the RUF to register as a political party’ (Conciliation Resources, 2000).
- 5) While the minimum age of offenders at the SCSL was fifteen years (as opposed to ICC’s minimum age of eighteen years), UN and SCSL officials repeatedly publicly expressed the view that prosecuting child offenders was not in the Special Court’s jurisdiction and that the TRC was better served to deal with youth perpetrators. See, for example, SCSL, Prosecutor, David Crane’s interview with the UN Office for the Coordination of Humanitarian Affairs, IRIN (25 September 2012), available at: <http://www.irinnews.org/InDepthMain.aspx?InDepthId=31&ReportId=70568>.
- 6) Although during their operation, he initially called for cooperation between the Special Court and the TRC, especially in terms of information sharing, in retrospect, Schabas attributes the success of the two mechanisms to their demarcation of roles and their willingness to *not* interfere with each other’s work. Fear that testimony will lead to self-incrimination and can be used as evidence at the SCSL continues to this day. The Sierra Leonean community reconciliation project, Fambul Tok, still encounters the fear of prosecution as a barrier to generating ex-combatant participation at community reconciliation ceremonies.
- 7) Fear that testimony will lead to self-incrimination and can be used as evidence at the SCSL continues to this day. The Sierra Leonean community reconciliation project, Fambul Tok, still encounters the fear of prosecution as a barrier to generating ex-combatant participation at community reconciliation ceremonies.
- 8) Donors spent a total of US \$ 80 million for Disarmament, Demobilization and Reintegration (DDR) in Sierra Leone. Ex-combatants received the equivalent of \$150 USD for handing in a weapon. However DDR statistics show that while around

72,490 combatants were disarmed fewer than half that number of weapons was collected. For more information, see Sesay and Suma (2009).

- 9) Although a common criticism of the Sierra Leonean TRC is that its proceedings were too rushed and that it did not deeply engage with individuals in the countryside. For an expanded discussion on this topic, see the Sierra Leone Working Group on Truth and Reconciliation. 'Searching for Truth and Justice in Sierra Leone: An Initial Study of the Performance and Impact of the Truth and Reconciliation Commission'. February 2006. Available at: [www.fambultok.org/TRCStudy-FinalVersion.pdf](http://www.fambultok.org/TRCStudy-FinalVersion.pdf).

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