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CIPS WORKING PAPER

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# **THE EFFECTS OF TRANSITIONAL JUSTICE MECHANISMS**

## **A SUMMARY OF EMPIRICAL RESEARCH FINDINGS AND IMPLICATIONS FOR ANALYSTS AND PRACTITIONERS**

**Oskar N.T. Thoms**

Independent Consultant  
oskar.thoms@mail.mcgill.ca

**James Ron**

Associate Professor, Norman Paterson School of International Affairs, Carleton University  
jron@connect.carleton.ca

**Roland Paris**

University Research Chair in International Security and Governance, University of Ottawa  
rparis@uottawa.ca

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## ABOUT THE AUTHORS

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**Oskar N.T. Thoms** is an independent research consultant based near Ottawa. He has previously consulted on research projects supported by the Canadian Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA).

**James Ron** is Associate Professor, Norman Paterson School of International Affairs, Carleton University. He has led research projects supported by DFAIT and CIDA, and has carried out commissioned work for Human Rights Watch, the International Committee of the Red Cross, and CARE-USA. He is a member of Human Rights Watch's Canada Council. For more information, please visit <http://www.carleton.ca/~jron>.

**Roland Paris** is University Research Chair in International Security and Governance, and Associate Professor in the Graduate School of Public and International Affairs, at the University of Ottawa. He is also the founding Director of the university's Centre for International Policy Studies. He has previously worked as a policy advisor within the Government of Canada including DFAIT. For more information, please visit <http://aix1.uottawa.ca/~rparis>.

## DIVISION OF TASKS

Timo Thoms conducted the literature review and wrote the first draft of this working paper. Roland Paris and James Ron conceived of the project, obtained the funding, wrote several sections, and edited the manuscript. Roland Paris was also responsible for finances and reporting. All three authors participated in revisions and approved this version.

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## EXECUTIVE SUMMARY

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The last two decades have witnessed a remarkable proliferation of “transitional justice” (TJ) processes in post-conflict and post-authoritarian societies. TJ mechanisms include trials and other judicial proceedings against individuals alleged to have committed gross violations of human rights; truth commissions designed to establish a factual historical record of past wrongdoing; reparations to victims of past abuses; and vetting of individuals to determine if their past activities or affiliations render them ineligible for public office, law enforcement or other key roles.

There is also a mounting debate over the desirability and effectiveness of TJ as a means of consolidating peace, promoting human rights and democracy, and healing the effects of past wrongs. TJ proponents, on the one hand, argue that some form of transitional justice is beneficial for a transitioning society’s emergence from war or authoritarianism. TJ sceptics, by contrast, argue that the pursuit of TJ can itself undermine prospects for peace or negotiated transitions from authoritarianism. These debates are now particularly contentious with regard to Afghanistan, Northern Uganda, and East Timor.

At the core of these debates lies a series of claims and counter-claims about the causal effects of transitional justice mechanisms. Does TJ strengthen or threaten peace in transitional societies? Does it lead to greater or less respect for human rights and the rule of law? Does it foster reconciliation or exacerbate divisions? We believe that it is essential for local and international policymakers to engage these questions with systematically collected and analyzed evidence.

### WHAT DO WE KNOW ABOUT THE EFFECTS OF TRANSITIONAL JUSTICE?

This report’s main purpose is to take stock of what is actually known about the effects of TJ mechanisms. Put differently, what is the field’s state of empirical knowledge? To answer this question, we surveyed the major studies produced to date, as well as several works that have yet to be published. Our principal conclusions are that:

1. **There is little evidence that TJ produces either beneficial or harmful effects.** Few rigorous cross-national analyses of TJ have been completed to date, and the best of these studies acknowledge the difficulty of reaching *any* strong conclusions about the effects of TJ across cases, due in part to the limitations of existing data.
  - In particular, there is insufficient evidence to support proponents’ claims that TJ contributes to reconciliation or psychological healing, fosters respect for human rights and the rule of law, or helps to establish conditions for a peaceful and democratically governed country. Nor is there strong evidence to support sceptics’ claims that TJ undermines progress towards these goals.
  - Given the intensity of the debate over TJ and its obvious policy significance, this conclusion may come as a surprise. It is in fact striking that so many commentators have expressed such strong positions on the basis of so little reliable evidence.

2. **Moving from “faith-based” to “fact-based” discussions of transitional justice will require more sustained, careful, and comparative analyses of the TJ record.** Until recently, the field was driven by principles rather than data, concerning itself chiefly with asserting the need for TJ and listing the purported strengths and weaknesses of different TJ mechanisms, rather than with gathering and analyzing detailed impact evidence.
  - At present, the TJ literature does not provide policymakers with the empirical foundations necessary for making informed decisions about when, where and how to promote transitional justice in countries emerging from war or authoritarianism.
  - With some important exceptions, much of the empirical TJ research to date has been analytically weak, relying largely on impressionistic descriptions of a small number of well-known cases, rather than systematically comparing impacts across a broad range of cases, including societies in which TJ has *not* been pursued.
  - Although most studies find that TJ has either moderately beneficial or no effects at all, these claims should be interpreted with great caution. Systematic research is nascent, and many of its early findings are questionable and contradictory.
3. **Further TJ research is likely to produce more reliable findings.** A new generation of recent (and yet-to-be published) studies on TJ impacts is laying a foundation for an emerging and more rigorous research program in the coming years.
  - TJ processes are complex and its researchers face many challenges (see below); still, a sustained and careful research effort should generate a better understanding of TJ effects in different circumstances. Without careful causal analysis, neither analysts nor policymakers will have much basis for making claims about the effectiveness of TJ in general, or in specific circumstances.
  - Foolproof TJ formulas will never be developed; nevertheless, the goal of reducing the uncertainties surrounding TJ policymaking is both realistic and achievable.

## IMPLICATIONS FOR ANALYSTS AND RESEARCHERS

Given the growing reliance on TJ mechanisms and the serious knowledge gaps identified in this report, there is a critical need for more and better data collection, and well as more careful and systematic analysis. Building a reliable TJ knowledge base will require, in the first instance, **clearer definitions of the key variables (causes, effects and controls) to be studied, and large-scale efforts to collect new data.**

No single research method is uniquely suited to analyzing these issues. On the contrary, we argue for **more interdisciplinary and “mixed methods” research.** *Comparative work* across dozens of countries will help to identify the countries and contexts most amenable to specific TJ tools. Careful *process tracing* within strategically chosen individual cases will help identify the multiple causal dynamics through which TJ helps or hinders peace, democracy, stability, and human rights. *Surveys and focus groups* will give us a better sense of how pro- and anti-TJ constituencies emerge in countries of interest. When combined, these and other strategies will boost our

knowledge of when and where specific TJ tools should be used, creating a more rigorous empirical base for policymaking.

Research should also proceed at **both the societal (macro) and individual (micro) levels**. In some cases, findings at both levels may be complementary. Reduced political unrest for a country overall, for example, may also be associated with greater individual trust in the new regime's ability to protect human rights. In other cases, however, findings may be at odds. For instance, amnesties may prevent spoiler backlashes, but they may also trigger distrust and anger among individual citizens and communities. Investigating convergent and divergent effects at all levels will give greater precision to findings on TJ effects.

Researchers interested in examining regional variations within or across countries might also use **quasi-experimental research designs**, focusing on comparing cases where TJ was, and was not, used. If these "treatment" and "control" groups are otherwise sufficiently similar, we may be able to draw stronger conclusions about TJ's unique impact.

To encourage the cumulative growth of knowledge on TJ impacts, we recommend **establishing an international review panel of social scientists and TJ experts to evaluate and write a regular report on the state of knowledge relating to transitional justice**. This publication should survey and disseminate key findings in the field, highlight important knowledge gaps and deficiencies, propose standardized measures for assessing TJ impact over time, and serve as a collective "peer review" mechanism. The members of this panel should include acknowledged TJ experts, but should also involve disinterested academics and practitioners from other fields. In general, TJ evaluation, like in other policy domains, can guard against "group think" by drawing on a diverse community of practitioners, independent scholars and advocates.

## IMPLICATIONS FOR POLICY PRACTITIONERS

Given these knowledge gaps, we lack empirical foundations for detailed policy advice on the types of TJ most likely to produce desired outcomes. Moreover, full consideration of TJ options involves moral evaluations beyond the scope of this report. We thus do not put forward a detailed TJ policy framework. The advice we do provide is cautionary, emphasizing the need for policy practitioners to **focus on evidence-based evaluations of TJ options**, and to be wary of claims that specific TJ mechanisms are "particularly effective," or "particularly well suited" to a given society. Although such claims are common, there is still little evidence to support them.

This is not to say that transitional justice should not be pursued for its own sake. Indeed, we share the TJ community's conviction that universal human rights should be respected and upheld everywhere, and at all times. The effects of TJ policies are still unclear and hard to predict, however, and we therefore counsel caution. Policies based more on faith than facts could do considerable damage, even when the intention is to do good.

These considerations lead to the following recommendations for TJ practitioners:

1. **Conduct rigorous planning before pursuing TJ processes.** Such planning should be based on extensive consultation with the affected population, its government, and outside experts. These should feed into a careful analysis of TJ options that includes efforts to

anticipate potential pitfalls (point 2 below), and to closely study other comparable cases (point 3 below).

2. **Beware the possible pitfalls.** Several studies identify potential pitfalls in TJ. Since researchers still do not know when or where such pitfalls are likely to occur, prudent policymakers should be aware of potential dangers, including that:
  - Indictments may prevent rebel leaders from ending the war through a peace deal, and authoritarian leaders may remain in power if they fear prosecution;
  - Leaders placed on trial may use the proceedings to promote nationalist sentiments at home, undermining reconciliation efforts;
  - Trials may produce backlashes from “spoilers” whose acquiescence to the transitional process is required to maintain peace;
  - Individual accountability may give implicated populations an opportunity to deny their own responsibility for crimes committed in their name;
  - Truth commissions may serve as a public relations “smoke screen” for regimes that continue abuses, or be used as a substitute for meaningful reform;
  - Attempts at establishing an accurate record of past abuses may generate resentment among some victims and perpetrators, rekindle animosities, foster new grievances, or re-traumatize victims;
  - High-profile prosecutions may create nationalist “martyrs,” boosting sentiments of collective victimization;
  - Quasi-judicial truth processes may ostracize individuals without due process;
  - Transitional efforts may become enmeshed in local power struggles and be misused to target political opponents; and
  - Purges may have a destabilizing effect, creating a large group of ostracized, alienated or unemployed people.
3. **Focus on comparable cases.** Identify countries or cases that share similar characteristics and in which similar methods have been practiced. No two countries are identical, but careful thinking and better data will encourage appropriate cross-case comparisons.
4. **When in doubt, consider TJ pilot projects and phased approaches.** A gradualist approach could reduce the dangers of unanticipated negative outcomes while also helping observers to evaluate and refine TJ strategies.
5. **Listen to the people.** The views of affected populations should play a major role in TJ choices. Although there is little rigorous research on public TJ attitudes in transitional countries, useful population surveys can be designed and supplemented by interviews and focus groups.

6. **Do no harm.** The record of peacebuilding over the past two decades counsels humility and caution. Outsiders have only limited capacity to understand or change societies, including those in transition, and even well-meaning policy interventions can produce perverse effects. When pursuing TJ, policymakers should embrace the medical dictum of “do no harm.” This dictum is not a license for inaction or a justification for ignoring universal human rights; rather, it serves as a warning against damaging interventions as well as a commitment to take positive action when possible.
7. **Evaluate TJ progress and outcomes, but avoid over-reliance on standard “program evaluation” tools.** TJ efforts should be continuously monitored to evaluate their effects according to a clear set of criteria. Since most traditional methods of program evaluation fail to incorporate controlled comparisons or other forms of comparative analysis, policymakers should also consult social scientific research.

Finally, policymakers in national governments and international organizations also have an interest in **promoting a serious, long-term, cumulative research agenda on the effects of TJ.** Building the knowledge base on TJ impacts is crucial to devising more and better evidence-based policies. In Appendix 3, we set out specific options for the Government of Canada to strengthen TJ evaluation and policy.



## 1. INTRODUCTION

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The last two decades have witnessed a remarkable proliferation of “transitional justice” (TJ) processes in post-conflict and post-authoritarian societies. The most prominent TJ mechanisms include war crimes trials and other **judicial proceedings** against individuals alleged to have committed gross violations of human rights; **truth commissions** designed to establish a factual historical record of past wrongdoing; **reparations** to victims of past abuses; and **vetting** individuals to determine if their past activities or affiliations make them ineligible for certain roles such as holding public office. These and other approaches to TJ have become central ingredients in the “menu” of reforms recommended by international organizations, donor agencies and outside experts for societies in transition from war or authoritarianism.

At first glance, the case for transitional justice seems incontrovertible. Principles of fundamental justice require holding individuals accountable for the worst transgressions of universal human rights, including genocide, war crimes and crimes against humanity. TJ proponents also assert that it offers other benefits, including promoting reconciliation and psychological healing, fostering respect for human rights and the rule of law; and helping establish conditions for a peaceful and democratically governed country. Sceptics challenge these claims, arguing that “digging up the past” and identifying perpetrators can trigger renewed conflict by sharpening societal divisions or provoking a backlash from the targets of TJ investigations. Some critics also argue that the prospect of TJ may reduce the chances of negotiating peace settlements in the first instance, particularly in cases where powerful actors capable of blocking such settlements fear punishment for past actions.

These debates are far from being resolved. Consider, for example, recent events in Northern Uganda and Afghanistan. In **Northern Uganda**, a devastating civil war between the Lord’s Resistance Army (LRA) and government forces has displaced 1.6 million persons<sup>1</sup> since the war began in 1986.<sup>2</sup> Here, acrimonious discussions over the role of international criminal prosecutions have become a lightning rod for the peace-versus-justice debate, as well as a litmus test for the newly established International Criminal Court (ICC).<sup>3</sup> For over two decades, Uganda’s LRA killed, raped, and mutilated civilians while forcibly recruiting child soldiers and sex slaves.<sup>4</sup> In late 2003, Ugandan President Yoweri Museveni called on the ICC to investigate the LRA and its leaders for war crimes in the hope that this would external support for the rebels. In 2005,

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<sup>1</sup> Pham et al (2005).

<sup>2</sup> See Allen (2005) for general discussion of the war in Northern Uganda.

<sup>3</sup> For the debate on Uganda, see Eric Stover & Marieke Wierda, “... which should prevail?” *International Herald Tribune*, October 14, 2005 (available at <http://www.iht.com/articles/2005/10/14/opinion/edstover.php>); Jack Snyder & Leslie Vinjamuri, “A midwife for peace,” *International Herald Tribune*, September 26, 2006 (available at <http://www.iht.com/articles/2006/09/26/opinion/edsnyder.php>); Chris McGreal, “African search for peace throws court into crisis: Uganda fears first crucial test for tribunal could prolong brutal 20-year civil war,” *The Guardian*, January 9, 2007 (available at <http://www.guardian.co.uk/world/2007/jan/09/uganda.topstories3>); John Prendergast, “What to do about Joseph Kony,” ENOUGH Strategy Paper #8, October 2007 (available at <http://www.enoughproject.org/node/51>); Grono & O’Brien (2008).

<sup>4</sup> HRW (1997; 2003a; 2003b; 2005); Allen (2005).

Museveni's plea bore fruit and the ICC issued criminal indictments against LRA leader Joseph Kony and four of his senior commanders.<sup>5</sup> At first glance, these indictments seemed to work; after stonewalling for years, Kony suddenly agreed in July 2006 to begin negotiations with the government. Yet, days after the initial negotiations, the government of Uganda reversed course, now pleading with the ICC to drop the charges – especially for Kony – claiming they blocked an emerging peace deal. Museveni promised Kony and others an amnesty, provoking the outrage of influential rights advocates worldwide. The debate over Kony continues, and Museveni has recently refused to turn Kony over to the ICC.<sup>6</sup> The Uganda episode points to a paradox: although the ICC indictments may have helped bring the LRA to the negotiating table, they may now present an obstacle to ending the conflict.<sup>7</sup>

In **Afghanistan**, by contrast, the transitional justice process has yet to be launched in earnest, but a debate over how to proceed without undermining the fragile stability of the post-Taliban Afghan government is underway, reflecting some of the same concerns and complexities that appeared in Northern Uganda. The Bonn Agreement of December 2001 established a transitional Afghan government following the US-led invasion, but “did not address the issue of transitional justice and no mechanism was established to deal with the abuses of the past.”<sup>8</sup> This omission was criticized by human rights organizations who argue that the agreement set the stage for “many known human rights abusers to be brought into the political fold” of the Afghan government.<sup>9</sup> This was indeed the case, in part because of the perceived practical need to secure a peace settlement and *modus vivendi* among major Afghan factions and commanders, some of whom could be considered candidates for war crimes investigations.<sup>10</sup> The unspoken strategy on the part of international participants in the Bonn talks and afterwards was apparently to consolidate a stable post-Taliban government first, and to deal with questions of TJ later.

In recent years, however, pressure has been mounting for some form of TJ in Afghanistan, with some observers arguing that inadequate efforts to deal with crimes of the past are threatening the state's legitimacy and democratic foundations.<sup>11</sup> Based largely on the recommendations of a January 2005 report by the Afghanistan Independent Human Rights Commission,<sup>12</sup> the Afghan

<sup>5</sup> The commanders are Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen. See the ICC website, at <http://www.icc-cpi.int/cases/UGD.html>. Raska Lukwiya's indictment was withdrawn after he was killed in 2006.

<sup>6</sup> Chris McGreal, “Museveni refuses to hand over rebel leaders to war crimes court,” *The Guardian*, March 13, 2008 (available at <http://www.guardian.co.uk/world/2008/mar/13/uganda.internationalcrime>).

<sup>7</sup> Grono & O'Brien (2008).

<sup>8</sup> Nadery (2007): 174.

<sup>9</sup> International Centre for Transitional Justice, “Afghanistan: Addressing the Past,” ICTJ Briefing Note (January 28, 2008), <http://www.ictj.org/static/Asia/Afghanistan/20080204AfghanistanBriefingNote.pdf>, p.4.

<sup>10</sup> Barnett Rubin, “Transitional Justice in Afghanistan,” Anthony Hyman Memorial Lecture, School of Oriental and African Studies, University of London (February 3, 2003), <http://www.soas.ac.uk/academics/centres/cccac/events/anthonyhyman/past/38149.pdf>, pp. 4-5.

<sup>11</sup> HRW (2007): 240; Nadery (2007). For an example of similar views expressed in Afghan media, see “Dark Days for Justice and the Continuation of Impunity for Human Rights Violators in Afghanistan,” *Hasht-e Sobh* newspaper, Kabul (December 9, 2007), translated from Dari by BBC Monitoring South Asia on December 11, 2007.

<sup>12</sup> AIHRC (2005).

government adopted an Action Plan for Peace, Reconciliation and Justice in December 2005.<sup>13</sup> This listed a range of activities to be carried out over three years, including the establishment of effective accountability mechanisms to bring to justice those responsible for grave human rights abuses. In practice, however, the Afghan government has done little to implement this plan, prompting the UN High Commissioner for Human Rights to express “disappointment at the lack of progress” and to call on both the Afghan government and the international community to recommit to its purposes.<sup>14</sup> But others favour a more gradual approach to TJ in Afghanistan, based on concerns that directly confronting powerful members of the Afghan government could undermine the country’s fragile stability. President Karzai himself takes this position, acknowledging that “we brought all sorts of people into the government because we had no other option” and that prosecuting war criminals will “take time.”<sup>15</sup>

Uganda and Afghanistan are both important focal points in the **larger debate over the benefits, liabilities, timing and techniques of transitional justice efforts**. For those who believe that TJ prosecutions, truth commissions and vetting tend to have harmful consequences – for example, by pushing former combatants and other “spoilers” back to violence – the most sensible strategy is first to consolidate peace, and only later to pursue justice, which appears to have been the post-Franco strategy in Spain. According to this view, granting amnesties for past abuses may be “an effective midwife for the birth of peace and democracy.”<sup>16</sup> Further, international criminal justice may undermine efforts to build peace and pursue democratization elsewhere by signalling dictators and other abusers that offers of immunity are unreliable. As one observer put it, ever “[s]ince [Liberian leader Charles] Taylor was put on trial, all African dictators are sitting tight,” and some believe that Zimbabwe’s Mugabe has spurned offers of peaceful “retirement” for this reason.<sup>17</sup>

TJ advocates, by contrast, maintain that criminal justice, truth commissions and other mechanisms strengthen, rather than weaken, peace and democracy. As former U.S. Secretary of State Madeleine Albright put it, TJ efforts in the Balkans were “essential to strengthen the rule of law, soften the bitterness of victims’ families, and remove an obstacle to cooperation among the parties,” establishing a “model for resolving ethnic differences by the force of law rather than the law of force.”<sup>18</sup> Although some advocates acknowledge that trials may cause backlash, they argue that short-term pain is necessary for long-term gain. As Richard Goldstone, former chief prosecutor for the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) puts it, “If you have a system of international justice you’ve got to follow through on it. If in some cases that’s going to make peace negotiations difficult, that may be the price that has to be paid. The international community must keep a firm line and say are we going to have a better world because

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<sup>13</sup> Text of the Action Plan is available at: [http://www.aihrc.org.af/tj\\_actionplan\\_19\\_dec\\_05.htm](http://www.aihrc.org.af/tj_actionplan_19_dec_05.htm)

<sup>14</sup> “Afghanistan: Revitalize transitional Justice System – UN Human Rights Commissioner,” IRIN Asia (November 21, 2007), <http://www.irinnews.org/Report.aspx?ReportId=75425>.

<sup>15</sup> “Afghan Leader Admits Failure on Human Rights,” translated full text of remarks made by Hamid Karzai on December 8, 2007 in Kabul, BBC Monitoring South Asia (December 12, 2007).

<sup>16</sup> Jack Snyder & Leslie Vinjamuri, “A midwife for peace,” *International Herald Tribune*, September 26, 2006 (available at <http://www.ihf.com/articles/2006/09/26/opinion/edsnyder.php>).

<sup>17</sup> Stephanie Nolen, “Taylor war crimes trial unhinged by false start,” *Globe and Mail*, June 26, 2007 (available at <http://www.ictj.org/en/news/coverage/article/1244.html>); See also Grono & O’Brien (2008).

<sup>18</sup> Bass (2000): 284.

of the international court or not.”<sup>19</sup> Similarly, Kofi Annan instructed the Security Council in 2004 that experience has “demonstrated clearly” that peace will only be achieved if local people believe that “redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice.”<sup>20</sup>

At the core of this debate are a series of **claims and counter-claims about the causal effects of transitional justice mechanisms**. Does TJ strengthen or threaten peace in transitional societies? Does it lead to greater respect for human rights and the rule of law? Does it foster reconciliation or exacerbate divisions? Answering these questions with evidence and careful analysis is essential to resolving the contentious debate over the actual effects of TJ mechanisms. It is also crucial information for policymakers in international organizations, donor governments, and in the transitional countries themselves, confronted with situations such as those in Northern Uganda and Afghanistan today.

## OBJECTIVES OF THIS REPORT

The main purpose of this report is to answer a simple question: **What do we know about the effects of specific TJ mechanisms on the societies that have undergone these processes?** A tremendous amount of material has been written on individual TJ cases, providing considerable information. But what are the *general* observations or lessons that can be drawn from these cases and applied to existing or future transitional societies?

Our goal is to contribute to an evidence-based approach urging policymakers to avail themselves of the best social scientific evidence before making crucial decisions. To this end, we surveyed many of the major social scientific studies produced to date, as well as several promising works that have yet to be published.

**Our primary conclusion is that existing empirical knowledge about the impacts of transitional justice is still limited. Systematic research is nascent, and many early findings are questionable or contradictory.** Most contributions to this literature are single-country case studies, providing little basis for conclusions about the general effects of TJ applicable to other existing (or future) transitional states. Although many studies argue that TJ processes have helped specific countries, others suggest that TJ mechanisms have been either ineffectual or, on occasion, dangerous. This flurry of “competing stories” does not provide policymakers with a sound empirical foundation for making informed decisions about when, where and how to promote transitional justice in countries emerging from war or authoritarianism.

**Most studies find that TJ has either a moderately beneficial impact on transitional societies or no measurable impact at all. Only a small minority find that TJ techniques are damaging to peace, human rights or democracy. Nevertheless, all findings should be interpreted with great caution,** since there are still only a few rigorous cross-national analyses of

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<sup>19</sup> Chris McGreal, “African search for peace throws court into crisis: Uganda fears first crucial test for tribunal could prolong brutal 20-year civil war,” *The Guardian*, January 9, 2007 (available at <http://www.guardian.co.uk/world/2007/jan/09/uganda.topstories3>).

<sup>20</sup> United Nations Security Council, “The rule of law and transitional justice in conflict and post-conflict societies,” Report of the Secretary-General, August 3, 2004, paragraph 2 (available at <http://www.un.org/Docs/sc/sgrep04.html>).

TJ. The best of these are forthright about the difficulty of reaching *any* strong conclusions about the systematic effects of TJ across cases, due in part to the limitations of existing data. (See text box, “The Need for Caution in Interpreting TJ Impacts.”)

These studies are pioneers in an emerging empirical research program on the impacts of transitional justice. Importantly, like the early contributions to other nascent research programs, they are helping to elucidate the analytical challenges that must be tackled in the future: Given the many and varied claims about the effects of TJ, what are the precise impacts that should be measured? How can the effects of TJ mechanisms be gauged separately from other influences simultaneously underway in a transitional society? How should we account for the possibility that societies opting for TJ mechanisms may share certain characteristics (such as the desire to adopt more stringent human rights practices or greater democracy) that predispose them to certain futures, regardless of the impact of TJ? How can effective comparisons be made between countries that undergo TJ processes and those that do not? How should future studies take into account the wide variety of TJ mechanisms themselves? And given that TJ is often said to have long-term effects, how might provisional conclusions be drawn from the many cases in which TJ mechanisms are ongoing or only recently completed?

With effort and time, we are confident that many of these questions can be answered and that the TJ research program will eventually produce a solid foundation of knowledge. Foolproof formulas for TJ will never be developed, but the goal of at least reducing the uncertainties surrounding TJ policy decisions is both realistic and achievable. For now, however, the empirical grounds to support strong claims about the effects of TJ are lacking. This is not to say that transitional justice should not be pursued for its own sake. On the contrary, the authors of this report share a strong conviction that universal human rights should be respected and upheld. What

### ***The Need for Caution in Interpreting TJ Impacts***

These are early days in empirical TJ research. Even the best comparative studies have serious limitations that cast doubts on the robustness of their findings. For example:

**Brahm (2006)** analyzes truth commissions in 78 countries from 1980 to 2003 and their subsequent impact on human rights protection and democratic practice in those countries. Truth commissions, he concludes, have had only marginal effects on respect for human rights and no discernible impact on democratic practice. Even these modest findings must be viewed as “preliminary,” he warns, due to data limitations and the difficulty of isolating the effects of truth commissions from other factors.

Another cross-national study completed for the World Bank by **Lie et al. (2007)** finds that countries that have undergone various types of TJ mechanisms (including trials, truth commissions and reparations) have tended to enjoy longer periods of post-conflict peace, as compared to similar countries that did not undergo TJ. They are unable to establish a clear causal relationship between the two, however, and warn that their “results are weak and therefore difficult to generalize.”

**Snyder and Vinjamuri (2003)** examine 32 cases of countries emerging from civil war between 1989 and 2003 to evaluate how different TJ strategies correlate with ensuing measures of democracy, human rights and rule of law. They conclude that war crimes trials do little to deter further violence or to encourage democratization, and that granting amnesties, instead, provides a more durable basis for peace settlements. The authors pointedly criticize the arguments of some TJ proponents for “lacking empirical foundations,” but their own analysis is also problematic, as we argue in Chapter 6. Their findings should be interpreted as more suggestive than definitive.

makes these rights universal is the fact that they apply to everyone, everywhere, and at all times. But this report focuses on a more specific question related to the evidentiary foundations of good international public policy: What grounds exist for claims that TJ has specific effects (positive or negative) on transitional societies? Using normal standards of social scientific review, we conclude that **there is still insufficient evidence to support strong claims that transitional justice mechanisms have had positive *or* negative effects on political violence, respect for human rights, the rule of law, democratization, or popular perceptions of regime legitimacy.**

Given the intensity of the debate over TJ and its obvious policy significance, this conclusion may come as a surprise. It is, indeed, striking that so many commentators have expressed such strong positions on the basis of so little reliable evidence. Moving from “faith-based” to “fact-based” discussions of transitional justice will require more sustained, careful, and cross-national analyses of the TJ record.

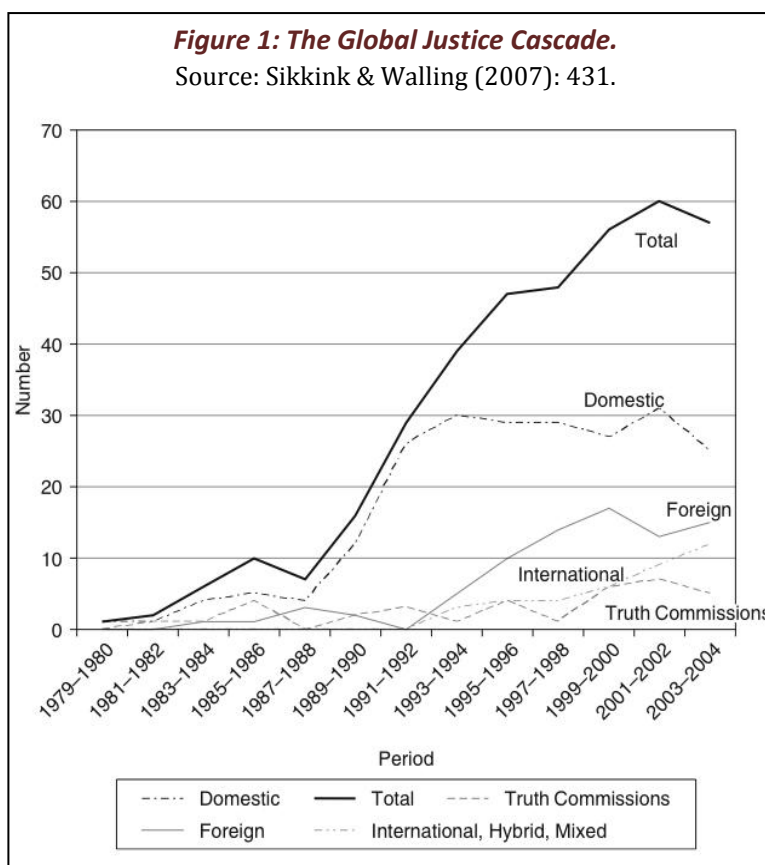
This report also seeks to identify the **implications** of recent research on TJ for analysts and policy professionals. For analysts, we offer specific recommendations for future research in this field. For policy practitioners, we present a series of observations derived from empirical studies of TJ which should be used to inform future decisions. Given the existing knowledge gaps, we do not develop a detailed policy framework for transitional justice. Instead, we highlight the need for more and better evidence-based policymaking, requiring considerably more research on the effects of specific TJ mechanisms.



## 2. GLOBAL SPREAD OF TJ MECHANISMS

Some form of TJ is now part of most peace processes, especially when supported by international donors.<sup>21</sup> As one scholar observes, TJ “has come to dominate debates on the intersection between democratization, human rights protections, and state reconstruction after conflict.”<sup>22</sup> Truth commissions are particularly popular after negotiated transitions, becoming “a staple in the post-conflict peacebuilding efforts.”<sup>23</sup> Scholars have described this as a “revolution in accountability”<sup>24</sup> or as a “justice cascade.”<sup>25</sup> Initially, the “cascade” term referred to the surge in international judicial efforts in Latin America, coupled with region-wide policy and institutional changes.<sup>26</sup> Today, the term is used to describe a global trend in accountability, including trials and truth commissions.

Cross-national data confirm that TJ efforts are proliferating. One recent study finds an “unprecedented spike in state efforts to address past human rights abuses both domestically and internationally since the mid-1980s”<sup>27</sup> (see Figure 1). This analysis reveals that truth commissions have been regionally concentrated in the Americas and Africa, where they are often combined with trials and/or amnesties. It also



<sup>21</sup> Bates et al (2007).

<sup>22</sup> McEvoy (2007): 412.

<sup>23</sup> Brahm (2007): 16.

<sup>24</sup> Sriram (2005).

<sup>25</sup> Lutz & Sikkink (2001); Sikkink & Walling (2006; 2007); Reiter et al (2007a; 2007b).

<sup>26</sup> Lutz & Sikkink (2001).

<sup>27</sup> Sikkink & Walling (2007): 430. In 84 new and transitional countries between 1979 and 2004, they find that 34 countries used truth commissions and 49 had at least one transitional human rights trial. Every country in the Americas using a truth commission also had trials. In Sikkink & Walling (2006), they present trials data dating back to the beginning of the century.

finds that truth commissions tend to come first, followed by trials.<sup>28</sup>

Another recent study confirms the justice cascade phenomenon, but offers some important caveats. First, it notes that the number of transitional countries has also grown over time, meaning that the *per country* “rate of accountability” actually peaked in the 1980s and has *decreased* ever since.<sup>29</sup> Second, impunity has persisted, largely because amnesties remain popular, particularly during the early stages of post-conflict or political transition. Thus, it seems, governments are not necessarily choosing *between* accountability and impunity, but are often sequencing their choices, starting first with amnesties. Third, this phenomenon of “delayed justice” helps explain the proliferation of accountability mechanisms, since some TJ policies are implemented long after transitions are complete.<sup>30</sup>

Finally, it appears that the justice cascade overall is still being driven by a handful of Latin American countries. That region has become the world leader in truth commissions and trials, with the highest rate of accountability through at least one of these two mechanisms.<sup>31</sup> As a result, much of the TJ data focuses on Latin American cases of post-authoritarian transition, rather than the post-conflict transitions common elsewhere. Nevertheless, there are a number of cross-national studies on the spread of post-conflict TJ, including one that finds that conflicts ending in negotiated settlements are more likely to result in truth commissions,<sup>32</sup> and two showing that conflicts ending in one-sided victories more commonly result in trials.<sup>33</sup>

## THE “TEMPLATIZATION” OF TRANSITIONAL JUSTICE

Although there is growing interest in traditional dispute resolution mechanisms, Northern donors and policymakers still tend to promote a standardized menu of TJ policies. As one scholar notes, “[a] distinguishable transitional justice template has emerged involving possible prosecutorial styles of justice [...], local mechanisms for truth recovery, and a programme for criminal justice reform in previously conflicted societies.”<sup>34</sup> Northern experts are increasingly

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<sup>28</sup> Sikkink & Walling (2007). In an analysis of 26 transitional countries, Sriram (2004) also finds that trials and truth commissions are often combined.

<sup>29</sup> Reiter et al (2007a). The “rate of accountability” refers to the number of truth commissions and trials relative to the number of potential cases (cumulative transitions to date). This measure is more appropriate for measuring the prevalence of TJ because of the dramatic increase in the total number of transitional countries.

<sup>30</sup> Considering 91 transitions between 1970 and 2003, Reiter et al (2007a) find that only 32% of accountability mechanisms were implemented during the first five years after transitions, while in 62% of cases countries did nothing and 9% adopted amnesties without other mechanisms.

<sup>31</sup> Reiter et al (2007a).

<sup>32</sup> Dancy & Poe (2006).

<sup>33</sup> Reiter et al (2007b). Considering 282 ended conflicts between 1946 and 2003, Binningsbø et al (2005) find 101 trials, 25 purges and very few truth commissions. Amnesties are also common; the 108 amnesties were mostly given to anti-government opposition or the losing party, supporting the notion that governments and victors use amnesties to “buy” peace. Governments are not usually given amnesties when conflicts are terminated by mutual agreement. See also Lie et al (2007).

<sup>34</sup> McEvoy (2007): 412.



viewing TJ as a single multifaceted process, and as one prominent scholar notes, “[p]racticitioners and scholars began to speak of a ‘package’ of measures, of an intertwined set of obligations arising in cases of massive or systematic violations, composed of truth, justice, reparation and guarantees of non-repetition.”<sup>35</sup>

International human rights groups and UN agencies are encouraging this templatization.<sup>36</sup> As a report by the UN Secretary General states, “Our experience confirms that a piecemeal approach to the rule of law and transitional justice will not bring satisfactory results in a war-torn or atrocity-scarred nation. [...] Where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriately conceived combination thereof.”<sup>37</sup> The UN’s High Commission for Human Rights recently published a series of *Rule of Law Tools for Post-Conflict States* that emphasize prosecutions, truth commissions and vetting, arguing that they are central elements of an integral TJ strategy.<sup>38</sup>

Yet many also warn against a standardized approach, emphasizing the contextual nature of transitions and legal obligations.<sup>39</sup> As one prominent scholar notes, we should “resist the tendency, so pronounced in the case of truth commissions, for politicians and negotiators to extrapolate a ‘formula’ that can be applied, with a few changes, to any and all situations.”<sup>40</sup> Instead, these observers argue, societies should adapt and develop their own TJ processes in a contextually appropriate manner.<sup>41</sup>

TJ templatization is problematic, since what is helpful in one context may be irrelevant or even harmful in another. Latin America is different than Africa, Central Asia, or Eastern Europe, and Chile and South Africa are worlds apart from Afghanistan. Although policymakers are often tempted to find a “winning formula” for broad application, there is still little empirical basis for reaching strong conclusions about the systematic effects of TJ mechanisms, either positive or negative, across cases.

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<sup>35</sup> Roht-Arriaza (2006): 8.

<sup>36</sup> Lutz (2006): 333.

<sup>37</sup> United Nations Security Council, “The rule of law and transitional justice in conflict and post-conflict societies,” Report of the Secretary-General, August 23, 2004, paragraph 23, available at <http://www.un.org/Docs/sc/sgrep04.html>.

<sup>38</sup> OHCHR (2006a-e).

<sup>39</sup> See, for instance, Méndez (2007): 196-197.

<sup>40</sup> Roht-Arriaza (2006): 12.

<sup>41</sup> Lutz (2006): 333-334.

### 3. KEY DEBATES

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The contemporary TJ agenda emerged from debates over how best to deal with repressive legacies in Latin America, but now concerns itself more generally with democratic and post-conflict transitions worldwide. TJ advocates reject impunity, and argue for the moral, legal and practical importance of “practices, mechanisms and concerns that arise following a period of conflict, civil strife, or repression, and that are aimed directly at confronting past violations of human rights and humanitarian law.”<sup>42</sup>

The legal basis for TJ rests on international treaties and declarations demanding respect for the right to knowledge, justice, reparations, and abusive non-recurrence.<sup>43</sup> These principles, in turn, have given rise to four distinct obligations: a) to disclose; b) to investigate, prosecute and punish; 3) to offer reparations; and d) to separate known perpetrators from law enforcement and other positions of authority.<sup>44</sup>

The TJ literature draws on two dominant ethical orientations.<sup>45</sup> The first is driven by an “ethic of conviction” based on notions of moral behaviour and legal obligations,<sup>46</sup> while the second is shaped by a more pragmatic, outcomes-oriented “ethic of responsibility.”<sup>47</sup> Although many TJ practitioners draw on both, legal scholars are prone to the ethic of conviction, believing that the pragmatists overstate TJ’s threat to democracy and stability.<sup>48</sup> The pragmatists are excessively cautious, they say, and policymakers should do everything they can to promote TJ within the limits of a particular transition.<sup>49</sup> In some cases, advocates suggest minimizing risks by sequencing TJ processes.<sup>50</sup>

#### PEACE VERSUS JUSTICE?

Advocates say TJ can help peacebuilding, and argue that trials in particular will deter future human rights violations and conflict.<sup>51</sup> Former ICTY prosecutor Richard Goldstone, for example,

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<sup>42</sup> Roht-Arriaza (2006): 2.

<sup>43</sup> UN Economic and Social Council, Commission On Human Rights, “Updated Set of principles for the protection and promotion of human rights through action to combat impunity,” E/CN.4/2005/102/Add.1, February 8, 2005 (available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=138](http://ap.ohchr.org/documents/dpage_e.aspx?m=138)).

<sup>44</sup> Méndez (1997a).

<sup>45</sup> Cohen (1995); Snyder & Vinjamuri (2003); Vinjamuri & Snyder (2004).

<sup>46</sup> For normative discussions and legal considerations regarding transitional accountability, see Malamud-Goti (1990); Roht-Arriaza (1995); Nino (1996); Méndez (1997a); Minow (1998); Crocker (1999); Osiel (2000); Teitel (2000); and several chapters in Kritz (1995) and Rotberg & Thompson (2000).

<sup>47</sup> For a discussion of the different orientations, see Snyder & Vinjamuri (2003); Vinjamuri & Snyder (2004). For a detailed overview of the literature, see also Barahona de Brito et al (2001).

<sup>48</sup> See Méndez (1997a): 258.

<sup>49</sup> Méndez (1997b): 11.

<sup>50</sup> See, for instance, Roht-Arriaza (2006).

<sup>51</sup> See, for instance, Malamud-Goti (1990); Akhavan (2001). For critical discussions of the deterrence argument, see Bass (2000): 190-191; Fletcher & Weinstein (2002): 591-592.

argues that with trials, “countries emerging from periods of serious human rights violations can hope for an enduring peace. Without it, the terrible rate of war crimes will not abate.”<sup>52</sup> Others say criminal accountability stigmatizes and marginalizes the elites who perpetuate conflict, and discourages victim vengeance.<sup>53</sup> Accountability, moreover, helps separate individual and collective guilt, blocking the cycle of resentment and violence.<sup>54</sup>

Many sceptics are ethical pragmatists; they doubt international criminal justice can do all this on both theoretical and empirical grounds. Most criticisms have focused on international criminal justice, but many arguments apply also to domestic prosecutions. Justice, they say, should follow rather than precede successful consolidation of peace and democracy.<sup>55</sup> Risky advice by international TJ advocates is irresponsible, especially when foreign experts are not themselves accountable to affected populations. The potential costs of TJ-related miscalculation are high, but they will be borne exclusively by local populations, not Northern experts.<sup>56</sup>

The main problem with prosecutions, critics say, is that they pay insufficient attention to political realities. Containing spoilers is the priority, and unless international actors are ready to commit major on-the-ground resources, including military forces, it is more useful to “offer potential spoilers a deal that leave them weak but secure.”<sup>57</sup> For trials to deter abuse, spoilers must be weak, and the domestic justice infrastructure must be well established. Yet since such conditions are rare in post-conflict situations, bargains and amnesties, rather than prosecutions, are the best ways to secure peace.<sup>58</sup>

Critics rightfully argue that there is still little systematic evidence that deterrence works at either the international or regional levels. Of course, it is always possible that atrocities and vigilantism might have been even worse in the absence of international prosecutions, but this kind of counterfactual claim is difficult to verify.<sup>59</sup> In any case, proponents of international criminal justice acknowledge that it is unrealistic to expect quick results in the midst of war, when criminal conduct has already become acceptable.<sup>60</sup>

TJ proponents implicitly believe that future perpetrators will rationally calculate their odds and will refrain from abuses if the threat of prosecution is high. Critics say this assumption is

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<sup>52</sup> Goldstone (1996): 501.

<sup>53</sup> Akhavan (2001).

<sup>54</sup> Méndez (1997b): 8; Kritz (1996): 128.

<sup>55</sup> Snyder & Vinjamuri (2003): 6.

<sup>56</sup> Goldsmith & Krasner (2003); Licklider (2008).

<sup>57</sup> Snyder & Vinjamuri (2003): 13.

<sup>58</sup> Snyder & Vinjamuri (2003: 12): “In an institutional desert, legalism is likely to be either counterproductive or simply irrelevant.” Critics of prosecutions also argue that amnesties, whether formal or de facto, are more effective in curbing abuses and contributing to peace if they have credible political backing and institutional enforcement. International and domestic legal efforts to override amnesties have eroded their credibility, however, and thus made them less palatable to potential spoilers. See Snyder & Vinjamuri (2003). For a sympathetic view on the erosion of amnesties, see Popkin & Bhuta (1999).

<sup>59</sup> Drumble (2007): chapter 6.

<sup>60</sup> Akhavan (2001).

problematic when perpetrators believe they are acting for their group's greater good, particularly when they believe that their group's survival is at stake.<sup>61</sup> In other cases, perpetrators seek to join violent groups for reasons of personal gain or survival, and are likely motivated more by immediate peer approval than by threat of international sanction.<sup>62</sup> Moreover, the TJ proponents' optimism about the potential for international deterrence does not take into account a broadly sceptical criminological literature.<sup>63</sup>

## TRUTH VERSUS JUSTICE?

Another central debate concerns the relative merits of trials versus other accountability mechanisms, primarily truth commissions.<sup>64</sup> This debate is often presented as truth versus justice,<sup>65</sup> although the dichotomy masks the way in which truth commissions are considered by some to provide a form of justice, and that trials can be seen as a form of truth-seeking. In any case, the value of truth-seeking through trials or truth commissions has been subject to intense debate.<sup>66</sup>

Proponents see truth commissions as useful alternatives to prosecutions, especially when a nation is deeply divided.<sup>67</sup> In this view, public and official exposure of truth is itself a form of justice. Truth commissions are useful because they make it difficult to deny gross violations of human rights, and signal official determination to avoid the re-occurrence of violations.<sup>68</sup> Proponents also believe that truth commissions are superior to trials in providing redress for victims and contributing to individual and social healing.<sup>69</sup>

Some consider truth commissions "second-best" options compared to trials, and advocate their use only when trials threaten destabilization.<sup>70</sup> Others are more cynical, viewing them as a "popular way for newly minted leaders to show their bona fides and curry favour with the international community."<sup>71</sup> According to trial advocates, truth commissions are not necessary when trials are available, and may even undermine justice unless they are used to build a case for future trials.<sup>72</sup> Worse, some argue, truth commissions may provide perpetrators with a smoke screen for continued abuses.<sup>73</sup>

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<sup>61</sup> Wippman (1999).

<sup>62</sup> Drumble (2007); also Malamud-Goti (1990).

<sup>63</sup> McEvoy (2007).

<sup>64</sup> Borer (2006).

<sup>65</sup> Most notably in Rotberg & Thompson (2000).

<sup>66</sup> Tepperman (2002); Mendeloff (2004); Brahm (2007).

<sup>67</sup> Minow (1998): 90. For a review of these arguments, see Brahm (2007).

<sup>68</sup> Goldstone (1996).

<sup>69</sup> Minow (1998).

<sup>70</sup> For discussions of these trends in the literature, see Roht-Arriaza (2006); Brahm (2007).

<sup>71</sup> Tepperman (2002): 128.

<sup>72</sup> Brody (2001); Tepperman (2002). For critical discussions, see Popkin & Roht-Arriaza (1995); Brahm (2007).

<sup>73</sup> Snyder & Vinjamuri (2003): 20.

Critics of truth commissions fear they may be dangerous because a commission's attempts at establishing a true record of past abuses may generate resentment among victims and perpetrators alike. Establishing painful "truths" in divided societies could provoke further tensions, inflaming volatile situations and providing new grievances to be exploited by cynical elites.<sup>74</sup>

All of these claims rest on shaky empirical evidence, as is true for the broader TJ field. This is a paradox, given the popularity of truth commissions and of TJ more generally. It has been taken largely as a given, for example, that truth-telling fosters reconciliation.<sup>75</sup> We also lack clear evidence that truth telling produces psychological benefits for victims, or that healing at the individual level correlates with group-level reconciliation and other society-level outcomes.<sup>76</sup>

## TYPES OF TRANSITIONAL JUSTICE MECHANISMS

In what follows we summarize research findings on three of the most prominent TJ mechanisms – trials, truth commissions, and vetting.<sup>77</sup> Trials and truth commissions are at the centre of TJ policy debates, and have received the most attention and analysis in the literature. We include vetting in our review because it has emerged as a central aspect of institutional reform in the post-conflict TJ template. Other important mechanisms not considered here for reasons of space include reparations,<sup>78</sup> traditional and grass-roots conflict resolution,<sup>79</sup> memorialization and historical education,<sup>80</sup> and transitional legal and institutional reforms.<sup>81</sup> The advantages and disadvantages of all these have also been subject to debate.

### *Trials*

Trials have multiple goals, including truth, deterrence, punishment, reconciliation, and promotion of the rule of law.<sup>82</sup> Trial advocates believe criminal punishment serves the needs of victims, reinforces social norms, removes political threats to the new regime, and deters future abusers.<sup>83</sup> *Special deterrence* is achieved through the outright removal of perpetrators and implicated leaders, while *generalized deterrence* is gained through changes in the cost-benefit calculations of potential perpetrators, and tacitly instilling inhibitions against abuse. Advocates also believe that credible threats of punishment boost political stability and encourage constructive political behaviour.<sup>84</sup>

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<sup>74</sup> Snyder & Vinjamuri (2003): 20; Mendeloff (2004). See also Gloppen (2005); Brahm (2007).

<sup>75</sup> Mendeloff (2004); Borer (2006): 30-31.

<sup>76</sup> Mendeloff (2007). See also Hamber & Wilson (2002); Mendeloff (2004).

<sup>77</sup> For mechanisms, see Roht-Arriaza (1995); Cohen (1995); Kritz (1995; 1996); Minow (1998); Teitel (2000).

<sup>78</sup> Minow (1998); Teitel (2000); de Greiff (2006a).

<sup>79</sup> See several chapters in Roht-Arriaza & Mariezcurrena (2006).

<sup>80</sup> See several chapters in Stover & Weinstein (2004); Weinstein et al (2007).

<sup>81</sup> Teitel (2000); Mayer-Rieckh (2007a).

<sup>82</sup> Stromseth (2003).

<sup>83</sup> Kritz (1996, 2001); Akhavan (2001).

<sup>84</sup> Akhavan (2001): 12.

Advocates say trials respond to victims' needs and provide psychologically therapeutic effects, offering victims a sense of justice and catharsis as well as "a sense that their grievances have been addressed and can hopefully be put to rest, rather than smouldering in anticipation of the next round of conflict."<sup>85</sup> They also hope that trials will contribute to reconciliation by establishing individual accountability and cooling desires for vengeance.<sup>86</sup> The stigmatization of political and military leaders, moreover, differentiates between perpetrators and innocents, and alleviates collective guilt.

Finally, TJ advocates say trials promote the rule of law by obliging governments to conduct themselves according to publicly known and broadly applicable rules.<sup>87</sup> Trials signal support for the new democratic regime, publicly heralding the end of abuses and distinguishing between old and new orders. Trials are thus pedagogical symbols indicating the degree to which the rule of law has taken hold.<sup>88</sup> More pragmatically, some say, trials provide an opportunity and incentive to rebuild the judiciary.<sup>89</sup>

Trials can be pursued through a variety of institutions, including local courts, international tribunals, mixed international/local courts, or transnational approaches in which foreign courts apply universal jurisdiction.<sup>90</sup> Many experts prefer domestic accountability, but there are also good reasons for international and hybrid approaches. Post-conflict domestic court systems lack resources and capacity, while international tribunals can help by demonstrating new standards of criminal procedure. International tribunals, some say, will also send a stronger message that atrocities are no longer tolerated.<sup>91</sup> These and other claims regarding trials' salutary effects have been criticized on theoretical, logical, and empirical grounds, as discussed below.

### *Truth Commissions*

Truth commissions provide a form of historical justice by conducting official investigations into past abuses.<sup>92</sup> According to the most prominent truth commissions analyst: "(1) truth commissions focus on the *past*; (2) they investigate a pattern of abuses over a period of time, rather than a specific event; (3) a truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) these commissions are officially sanctioned, authorized, or empowered by the state (and sometimes also by the armed oppositions, as in a peace accord)."<sup>93</sup>

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<sup>85</sup> Kritz (1996): 128.

<sup>86</sup> Minow (1998).

<sup>87</sup> Minow (1998): 25; Kritz (2001).

<sup>88</sup> Malamud-Goti (1990); Minow (1998); Drumble (2007). See also Fletcher & Weinstein (2002).

<sup>89</sup> Kritz (2001).

<sup>90</sup> Stromseth (2003).

<sup>91</sup> Kritz (1996): 129.

<sup>92</sup> Teitel (2000).

<sup>93</sup> Hayner (2001): 14.

Although both truth commissions and trials seek to establish truth, commissions supply narrative, rather than forensic, accounts of the past.<sup>94</sup> Trial truths have special credibility due to stricter rules governing the admissibility of evidence, the defendant's ability to cross-examine and to offer his or her own version of events, and the need to overcome presumption of innocence.<sup>95</sup> The truth derived from trials, however, has only limited explanatory value. Unlike trials, commissions can investigate the broader contexts of abuses, including the institutional and structural factors that made them possible.<sup>96</sup> Truth commission findings can also support other TJ measures, generating the background for prosecutions,<sup>97</sup> establishing a basis for reparations,<sup>98</sup> and offering recommendations for institutional reform.<sup>99</sup>

Proponents of truth commissions argue that they provide a forum for victims (or their relatives) to tell their stories, and that this helps with individual psychological healing<sup>100</sup> and social reconciliation, "breaking the cycle of revenge and hatred between former enemies ... [and] encouraging reconciliation between opposing groups who may feel they have much to hate or fear in the other..."<sup>101</sup> Some also say that truth commissions advance democracy and promote the rule of law even though they do not explicitly subscribe to judicial procedures. They appraise the role of the judiciary in past abuses, encourage reform of judicial institutions, and contribute to broader efforts to establish accountability, build a human rights culture, and restore social trust.<sup>102</sup>

Yet scholars are often careful not to overstate truth commissions' potential achievements. As one notes, "expectations for truth commissions are almost always greater than what these bodies can ever reasonably hope to achieve,"<sup>103</sup> while another warns that "To create such high expectations [for truth commissions] is to invite disappointment."<sup>104</sup> Truth commissions, some say, can only create conditions for future reconciliation; they cannot bring about reconciliation itself.<sup>105</sup> Others are also cautious about the potential for truth commissions to advance democratization.<sup>106</sup>

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<sup>94</sup> Borer (2006).

<sup>95</sup> Méndez (1997b).

<sup>96</sup> Kritz (1996); Méndez (1997b); Hayner (2001). See also Brahm (2007). The trade-off for achieving a broader view is that those accused of crimes are not granted the same protections as in trials. Legal scholars often fault truth commissions for not following the requirements of due process. See Kritz (1996); Minow (1998).

<sup>97</sup> Kritz (1996); Minow (1998): 90; Hayner (2001).

<sup>98</sup> Kritz (1996).

<sup>99</sup> Hayner (2001): 154. See also Brahm (2007).

<sup>100</sup> See Minow (1998), who also notes that this is a hypothesis to investigate, rather than an actual finding.

<sup>101</sup> Hayner (2001): 154. See also Rigby (2001).

<sup>102</sup> Hayner (2001); de Greiff (2006c). For a review of such arguments, see Brahm (2007).

<sup>103</sup> Hayner (2001): 8.

<sup>104</sup> Minow (1998): 83. See also Popkin & Roht-Arriaza (1995): 115-116.

<sup>105</sup> Bhargava (2000).

<sup>106</sup> Popkin & Roht-Arriaza (1995): 115.



## Vetting

Non-criminal sanctions and disciplinary measures are often used in transitional justice processes, in part, due to the necessary selectivity of criminal justice. Vetting is a form of administrative justice.<sup>107</sup> Authorities may exclude former perpetrators from elected or appointed office, law enforcement and security institutions, as well as from positions of influence in the media or private sector. Unlike prosecutions and truth commissions, however, vetting and other non-criminal sanctions have received little scholarly attention.<sup>108</sup>

In theory, vetting assesses the past adherence of individuals to international human rights standards, and then determines their suitability for current and future employment based on that assessment. In post-conflict settings, vetting often focuses on security and judicial institutions, but it can, in theory, be used in a far broader manner, to include public office and civil service positions. Vetting is distinct from “lustration,” which excludes people from public office or administrative roles because of their past membership in – or affiliation with – a tarnished political group such as the Iraqi Baath Party.<sup>109</sup> At the extreme, lustration resembles a purge, risking the creation of “a large, ostracized, and unemployed element within society.”<sup>110</sup>

Vetting advocates believe the measure can advance the reforms necessary for democratization; prevent the re-occurrence of abuses by neutralizing abusive officials; and, like trials or truth commissions, signal the arrival of a new political and moral order. Vetting may also boost trust in public institutions, since citizens are unlikely to feel comfortable as long as abusive officials remain in positions of influence.<sup>111</sup>

## A Note on Integrality

For both normative and practical reasons, many argue that these and other TJ mechanisms should be deployed simultaneously as an integral package. Normatively, prosecutions, truth commissions, and vetting all satisfy distinct legal and moral duties, and they should therefore all be used “to the best of the government’s abilities.”<sup>112</sup> Practically, the success of one mechanism is likely to reinforce that of the others. In theory, information collected by truth commissions, for example, may further trials and vetting efforts, and truth commissions can help by recommending specific institutional reforms and reparations. By weeding out old guard officials, moreover, vetting may enable security agencies and justice bodies to pursue criminal investigations against past abusers.<sup>113</sup>

Advocates also believe that TJ mechanisms are conceptually reinforcing and that they may backfire when used in isolation. In some cases, victims may regard truth-telling without

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<sup>107</sup> Kritz (1996); Teitel (2000); de Greiff (2007).

<sup>108</sup> Kritz (1996); Duthie (2007).

<sup>109</sup> Duthie (2007); OHCHR (2006d).

<sup>110</sup> Kritz (1996):140.

<sup>111</sup> Duthie (2007); Mayer-Rieckh (2007a); de Greiff (2007); OHCHR (2006d).

<sup>112</sup> Méndez (1997a): 255.

<sup>113</sup> de Greiff (2007); OHCHR (2006d).



reparations as an empty or even insulting gesture, while others may see reparations without truth-telling or justice as “blood-money.”<sup>114</sup> Trials without truth-seeking may deteriorate into scapegoating, while truth-telling without prosecutions may be viewed as a whitewash. When the abuses in question are particularly severe, moreover, vetting without prosecutions may seem entirely insufficient. There will be a range of views within any given population, but some observers believe that victims and ordinary citizens may lose respect for the TJ agenda unless it deploys multiple mechanisms simultaneously in a comprehensive manner.<sup>115</sup>

### *Amnesties*

As illustrated by the Uganda example, amnesties are also at the heart of TJ policy debates. Blanket or partial amnesties are viable policy responses, but many TJ advocates view them as denials of justice that encourage further impunity. In recent years, a few TJ scholars have begun to view amnesties more charitably, especially when used in a circumscribed, conditional, and democratically supported manner.<sup>116</sup> These scholars recommend, however, that other measures be used simultaneously to address the rights of victims; to date, most amnesties have not done this, leading to their wide-spread condemnation by TJ advocates.

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The debate over the effects of TJ – and the relative merits or demerits of the specific mechanisms listed above – continues to intensify, and as the implementation of TJ processes becomes more widespread. But what have we learned, to date, about the *actual* effects of TJ? In the next section of this report, we summarize and evaluate the empirical evidence.

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<sup>114</sup> de Greiff (2006b).

<sup>115</sup> See de Greiff (not dated).

<sup>116</sup> Malinder (2007). For the increasing acceptability of amnesties, see also Roht-Arriaza (2006).

## 4. MEASURING IMPACTS: GENERAL ISSUES

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We examine the state of knowledge on TJ impacts in six individual areas:

- 1) Respect for the core human rights to life and the inviolability of the human person, otherwise known as “personal integrity rights”;
- 2) Political violence;
- 3) Rule of law;
- 4) Democratization;
- 5) Popular perceptions of regime legitimacy;
- 6) A political culture of human rights and diversity.

These impacts are conceptually inter-related in various ways. The rule of law, for example, protects human rights, and these are at the core of democracy. Democratic institutions, moreover, are rooted in respect for the rule of law.<sup>117</sup> Yet these and other inter-relationships do not mean that all six are perfectly or even strongly correlated.<sup>118</sup> Many countries score high on democracy and regime legitimacy, for example, but are nonetheless abusive of human rights, as is true in India, Colombia, Israel and Turkey.

In theory, TJ and peacebuilding are also related, with the notion of “reconciliation” providing the crucial link.<sup>119</sup> TJ advocates argue that both truth and justice are essential to reconciliation, and that this, in turn, strengthens peace.<sup>120</sup> Reconciliation, however, is rarely defined clearly.<sup>121</sup> Some speak of “thin” reconciliation defined as the absence of violence, while others speak of “thicker” versions, in which former antagonists share a vision of a joint future.<sup>122</sup> Others speak of “political reconciliation” as an intermediate outcome in which former antagonists resolve their differences non-violently even though they continue to vehemently disagree. This definition resembles that of democracy, making them almost “analytically indistinguishable.”<sup>123</sup>

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<sup>118</sup> See, for instance, Peerenboom (2005); Carothers (2006).

<sup>119</sup> Mendeloff (2004); Borer (2006). See also Pankhurst (1999).

<sup>120</sup> Huyse (2003a, b). See also Rigby (2001).

<sup>121</sup> Fletcher & Weinstein (2002); Borer (2006).

<sup>122</sup> Gloppen (2005): 20. See also Bloomfield (2003: 12): “Reconciliation is a process through which a society moves from a divided past to a shared future.”

<sup>123</sup> Gloppen (2005): 21.

## PROBLEMS IN THE TRANSITIONAL JUSTICE LITERATURE

Gathering strong evidence on TJ impacts for policy advice is difficult given the current state of research. First, most relevant scholarship has, until recently, focused on the *assumed* impacts of different accountability mechanisms, coupled with recommendations for their institutional design and implementation.<sup>124</sup> These efforts have promoted the “templatization” phenomenon described in Chapter 2, but offer little guidance on which methods work best, and under what conditions.<sup>125</sup>

Second, the field is still driven by principles rather than data, concerning itself chiefly with asserting the need for TJ and listing the purported strengths and weaknesses of different TJ mechanisms, rather than with gathering detailed impact evidence.<sup>126</sup> Much of the existing TJ literature, for example, simply *assumes* that trials, commissions and vetting offer tangible benefits, rather than treating these claims as testable propositions.<sup>127</sup> Scholars increasingly recognize this knowledge gap, and many are calling for more systematic empirical analyses.<sup>128</sup>

Third, the literature has largely avoided structured cross-case comparisons, preferring instead to focus on individual countries.<sup>129</sup> As a result, most of the TJ debate extrapolates inappropriately from a handful of well-documented cases,<sup>130</sup> including Argentina, Chile and South Africa. The TJ knowledge base, in other words, relies heavily on a biased sample.<sup>131</sup> Although there are a handful of cross-national TJ impact studies, many focus on Latin America. Such within-region comparisons help control for culture, political legacy and socio-economic development,<sup>132</sup> But their global applicability is limited. Latin America scores higher or differently than Africa, Asia and the Middle East on a number of important indicators, and its experiences may be irrelevant to the rest of the world.

Fourth, most of what we know about TJ comes from countries that experienced political transitions from authoritarianism to democracy. However, TJ is also pursued in post-conflict societies, and these are likely to have quite different experiences.<sup>133</sup> TJ efforts in Uganda, Sierra Leone, and Afghanistan, for instance, may have little in common with TJ in South Africa or Latin America.

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<sup>124</sup> Backer (2008).

<sup>125</sup> Mendeloff (2004); Brahm (2007).

<sup>126</sup> Mendeloff (2004); Borer (2006): 19.

<sup>127</sup> Vinjamuri & Snyder (2004): 359. See also Fletcher & Weinstein (2002); Mendeloff (2004); Gloppen (2005): 21-22; Backer (2008).

<sup>128</sup> See Fletcher & Weinstein (2002); Gloppen (2005): 4; Borer (2006): 28; Backer (2008); Licklider (2008).

<sup>129</sup> In a survey of nearly 60 comparative studies, Backer (2008) finds that the majority are qualitative case studies, and only a handful are large-N cross-national studies. The most popular subject is the design and implementation of transitional justice measures.

<sup>130</sup> Lutz (2006).

<sup>131</sup> Brahm (2007); Backer (2008).

<sup>132</sup> Backer (2008).

<sup>133</sup> Méndez (1997a); Reiter et al (2007b).

Finally, the TJ literature focuses frequently on short time frames and does not define impacts precisely. The typical truth commission analysis, for example, concludes by analyzing the final report's reception, defining success as the degree to which the commission fulfilled its assigned duties.<sup>134</sup> Unfortunately, this tells us little about whether "truth commissions are a mere blip historically or help put society on a new trajectory."<sup>135</sup>

Still, several new and important TJ data-gathering projects are now underway,<sup>136</sup> and in a few years, the global TJ knowledge base is likely to be far more robust and useful than today.

## DIFFICULTIES IN RESEARCHING AND ANALYZING TJ IMPACTS

Research on TJ impacts faces significant difficulties. Some TJ outcomes are inherently difficult to measure, such as reconciliation, justice, and healing.<sup>137</sup> It is also common for TJ studies to conflate analytically distinct outcomes,<sup>138</sup> such as peace and democracy; peace and reconciliation; prevention of war; prevention of human rights violations in war; etc. Better conceptual clarity is thus essential. And even when such concepts are clearly defined, relevant cross-national indicators may be lacking or of poor quality – an issue we revisit below.

It is also difficult to properly compare TJ efforts across countries, since they often vary greatly by mandate, structure, and implementation.<sup>139</sup> Thus, the mere presence of a TJ process may be insufficient for comparison. How, for example, should cross-national researchers measure varying levels of truth commission "quality"?<sup>140</sup> Although we discuss some efforts to address this below, the problem remains acute. TJ processes are never identical.<sup>141</sup>

Moreover, some TJ analysts conflate correlation with causation. Specific observed outcomes (such as improved human rights records) may have been caused by factors other than a TJ process.<sup>142</sup> For example, a specific political bargain or military standoff may have caused *both* the emergence of TJ *and* its supposed outcome. Such problems are not unique to TJ. In the aid and development literature, scholars have long debated whether correlations between aid and

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<sup>134</sup> Popkin & Roht-Arriaza (1995); Chapman & Ball (2001). See also Brahm (2007).

<sup>135</sup> Brahm (2007): 19.

<sup>136</sup> There are several large-scale transitional justice data collection efforts. See, for instance, the Transitional Justice Data Base Project (<http://www.polisci.wisc.edu/tjdb/home.htm>); Binningsbø et al (2005); Sikkink & Walling (2006, 2007); Kim & Sikkink (not dated); Brahm et al (2008). Individual scholars have also assembled impressive data collections, such as Hayner (2001) and Backer (2004). Some organizations have assembled comprehensive cross-national data on particular transitional justice, such as the Truth Commissions Digital Collection of the United States Institute of Peace (available at <http://www.usip.org/library/truth>).

<sup>137</sup> Brahm (2007).

<sup>138</sup> Mendeloff (2004): 362.

<sup>139</sup> Backer (2008). On variation in truth commissions, see Hayner (2001); Chapman & Ball (2001); Brahm (2007). On variation in vetting processes, see de Greiff (2007).

<sup>140</sup> Botha (1998); Brahm (2007).

<sup>141</sup> Backer (2008).

<sup>142</sup> Lutz (2006): 339; de Greiff (2006c): 182; Backer (2008).

economic performance are causally related or spurious. Any well-designed research project on TJ should therefore include systematic examination of competing explanations.<sup>143</sup>

The correlation/causation issue is further complicated by the problem of “endogeneity,” which raises the possibility that both TJ efforts and outcomes may have been produced by the way in which the overall political or post-conflict transition occurred. For example, consider a successful agreement to end civil war with provision for a robust truth commission. As one scholar notes, “A commission’s creation is a reflection of the preliminary moves to establish a more democratic system that respects human rights.”<sup>144</sup> If the agreement holds, respect for human rights, peace, and democracy may flourish, as will the truth commission itself. Yet all of these outcomes are “endogenous” to the transition. Although analysts will find that the truth commission is highly correlated with peace, human rights, and democracy, they should not, in this case, regard it as causal. In short, assessing the specific effects of truth commissions, trials or any other TJ mechanism is analytically challenging.

### PROBLEMS OF INFERENCE FOR POLICYMAKING

Assume, for the moment, that a solid body of cross-national evidence on TJ emerges in the next few years, and that it finds positive impacts. What would the relevance of these general findings be to individual cases? Global generalizations can and should guide global actions, as in general policy guidelines on the overall utility of TJ. Still, these global findings provide only limited guidance for policymakers working on particular countries,<sup>145</sup> since factors with positive impacts across dozens of countries may have little or no relevance to any single case. “On average” findings tell us much about broad tendencies, but they cannot, by definition, consider the specific factors shaping events in particular cases. Thus, while a TJ mechanism may have certain impacts at the global or regional level, these effects may be hard or even impossible to discern in a single country.

Policymakers should thus refrain from inferring policy lessons about individual cases from aggregate findings. General findings can only offer a point for dialogue and reflection with case-specific experts. Consider public health, where researchers have identified multiple risk factors for specific diseases.<sup>146</sup> Cigarette smoking increases the risk for lung cancer, meaning that within a given population, more smokers, on average, will have lung cancer than non-smokers. Yet many non-smokers will suffer from lung cancer for reasons unrelated to smoking, and many smokers will never have cancer. The “smoking effect” is true at the population level, but is not true for each and every individual. Were health authorities to ban smoking entirely, this would decrease overall rates of lung cancer, but it would not prevent all individuals from ever experiencing the disease. General findings cannot translate into individual laws, and for any given patient, different sets of causal relationships may be at work. As one medical study notes, even the best informed medical

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<sup>143</sup> Mendeloff (2004): 373.

<sup>144</sup> Brahm (2007): 28.

<sup>145</sup> George & Bennett (2004: chapter 12) argue that general models offer starting points for policy analysis, but should be complemented with specific scope conditions and contextual analysis.

<sup>146</sup> For risk factors in population health, see, Young (2005).

practitioner may be overwhelmed by the enormous complexity of factors involved in individual cases.<sup>147</sup> In this sense, individual diagnosis and patient care is an art, not a science.

In foreign policymaking terms, this means individual case studies and large-N comparative results may lead to different, and perhaps contradictory, findings. Although case studies may show that TJ has stellar impacts in South Africa or Argentina, cross-national statistics may show that TJ has little or no impact, on average, across all relevant countries. Individual case and cross-national studies are distinct research traditions, and they have different strengths and weaknesses.<sup>148</sup> They are best used in conjunction by policy practitioners aware of the dangers of inferring about individual countries from global averages, or of inferring about global conditions from selected countries. Cross-national findings are important, but nothing can replace the “art” of considered, country-specific debate and judgment.

One of the key goals of cross-national research should be to establish “scope conditions” for effective policy.<sup>149</sup> Under what conditions is TJ likely to have positive impacts, and when is it likely to have little or even harmful results? Causal arguments about TJ should be carefully delimited by region, time, transition type, level of democracy, institutional capacity, and other characteristics. As Sikkink & Walling conclude, “[t]he choices are not between truth and justice, between trials and democracy, or between idealists and pragmatists. Instead it is much more interesting to examine under what conditions trials can contribute to improving human rights and enhancing the rule of law systems, or what sequencing or judicious combination of transitional justice mechanisms can help build democracy and resolve conflicts.”<sup>150</sup> This requires targeted studies; unless specifically designed to do so through sampling or the use of interaction effects, large-N cross-national studies do not automatically advance scope conditions.

Some scholars have already begun this important task, finding that TJ has different impacts across different contexts. These are crucial first steps, but more is required. Yet even when we have a better grasp of TJ scope conditions, we still will not have ironclad guidelines for individual countries. Detailed country knowledge will always be necessary.

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<sup>147</sup> Sharpe & Faden (1998).

<sup>148</sup> Brady & Collier (2004); George & Bennett (2004); Mahoney & Goertz (2006).

<sup>149</sup> On scope conditions, see George & Bennett (2004: chapter 12) and chapters in Brady & Collier (2004).

<sup>150</sup> Sikkink & Walling (2007): 443.

## 5. EVIDENCE FROM EMPIRICAL STUDIES

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In this chapter, we summarize and evaluate the existing state of empirical knowledge on the impacts of TJ mechanisms. We survey major studies produced to date, along with several that have yet to be published. These studies are pioneers in an emerging scholarly research program on the impacts of transitional justice.

Most of the TJ literature is composed of single-country case studies. Below, we survey the findings of some of these studies. As noted in the previous chapter, however, individual country cases do not provide a sound basis for reaching conclusions about the systematic effects of TJ across cases. Instead, individual country studies should be used as “critical cases” to test theories, or as opportunities to generate theories that can later be tested on broader populations through careful comparisons or statistical research. For comparative research involving a relatively small or medium-sized sample (“small-N” and “medium-N”), both qualitative and quantitative methods are useful – indeed, they often complement each other. Although large-sample (or “large-N”) research is common in other social scientific domains, it has only just begun within the TJ arena. Only a handful of such studies are available, and most are still unpublished. Given the paucity of large-N comparative studies, this study reviews all of the available English-language research.

We present the evidence in the order of increasing numbers of cases examined. We thus begin with individual case studies, and then follow with comparative studies of increasing “N”. (Technical details of all reviewed studies are also summarized in Appendix 1.) For each type of research, we summarize what the studies found with regard to trials, truth commissions, and vetting (or lustration), and then discuss problems of measurement and analysis.

As we shall see, **most studies find that TJ makes either moderately positive or no contribution at all. Only a few studies find harmful effects. However, our primary conclusion is that existing empirical knowledge about the impacts of transitional justice is still very limited, and does not support strong claims about the positive or negative effects of TJ across cases.** Research on this subject is still nascent, and many of its early findings are questionable and contradictory. Further, we note that scholars in other fields have long identified problems of “publication bias,” in which positive evaluations of well meaning interventions are more likely to be published than studies finding null or negative results.<sup>151</sup> Finally, it is important to point out that some of the research summarized below is still unpublished, meaning that its theory, data and methods have yet to go through rigorous peer review.

### EVIDENCE FROM INDIVIDUAL CASE STUDIES

#### *Trials*

According to the widely cited qualitative analysis of the ICTY by **Akhavan (2001)**, international justice efforts in the former Yugoslavia were useful for peacebuilding.<sup>152</sup> The Serbian

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<sup>151</sup> Easterbrooke et al (1991).

<sup>152</sup> Akhavan (2001) also analyses the impact of ICTR in a separate case study with moderately positive but weak results. We do not include this analysis here as it relies on a counterfactual that is hard to evaluate.



public was indifferent to the indictment of leading nationalists, and even the most nationalist Serbian parties distanced themselves from indicted leaders such as Radovan Karadzic. This, Akhavan argues, demonstrates the ICTY's successful marginalization of ultra-nationalism, and its ability to encourage the emergence of moderate leaders. The indictments also had a moderating effect on ethnic politics in Croatia, and set useful cooperation benchmarks for Serbian and Croatian integration into Europe.

The strength of the study lies in its process-tracing of tribunal impacts through an analysis of political reactions to major ICTY actions. Its weakness is that the evidence is anecdotal. And while it acknowledges the role of elite desires for European integration, the study does not sufficiently consider other factors or explanations. When coupled with the article's lack of controlled comparisons, these weaknesses detract from the strength of Akhavan's causal arguments.

Although **Meernik's (2005)** assessment of the ICTY's impact in post-war Bosnia is more methodologically careful, it finds less ground for TJ optimism. His within-case statistical analysis of monthly time-series data from January 1996 to July 2003 tests the effects of international arrests and verdicts regarding high-ranking individuals from each ethnic group on levels of inter-ethnic conflict and cooperation, measured by events reported in the local press. After controlling for other variables, Meernik finds little impact on societal peace at one and six month intervals following relevant judicial actions. Instead, prior levels of conflict and cooperation, and the actions of the EU, were statistically significant and had stronger effects, as were, to some extent, those of NATO and the US.

This study is a fine example of rigorous statistical analysis of a single case. Its shortcomings, as the author himself acknowledges, include problems of measurement and establishing causality. The news-based indicator of conflict and cooperation focuses largely on actions of prominent people. As a result of this and the press' bias towards conflictual events, the indicator may undercount peaceful and routine interactions between ordinary people. Still, the study is commendable, and more like it will improve individual case research in the field.

### *Truth Commissions*

The most sophisticated case study of truth commission impact is **Gibson's (2001)** survey of South African attitudes towards the country's post-apartheid Truth and Reconciliation Commission (TRC), the rule of law, and racial reconciliation.<sup>153</sup> In general, Gibson finds that South Africans were suspicious of the rule of law, although their sentiments resembled many European countries.<sup>154</sup> Racial identity was a significant factor in shaping individual attitudes, and Black suspicion of the law drove the national average. Moreover, Blacks were the least individually reconciled, but still 44% of the South African population was at least somewhat reconciled.

Yet Gibson finds some grounds for optimism, including statistically significant relationships between individual acceptances of the TRC's truth, respect for the rule of law and reconciliation. Majorities of all races accepted the TRC's version of events, and after controlling for other factors,

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<sup>153</sup> For the full study, see Gibson (2004a). Parts of the analysis can be found in Gibson (2004b; 2004c; 2005). The cross-sectional survey of 3727 individuals was nationally representative, and over-sampled minorities for statistically meaningful results.

<sup>154</sup> Gibson (2004c).



Gibson's regression analysis finds that those individuals who accepted the TRC's version were also more likely to support the rule of law. Support for the rule of law, in turn, was also associated with conciliatory racial attitudes and support for a weaker form of majoritarianism. In a separate analysis of reconciliation (measured by support for interracial reconciliation, rule of law, political tolerance and institutional legitimacy), Gibson also finds that acceptance of the TRC's version of events was associated with reconciliation at the individual level.

The TRC, Gibson concludes, may have had a positive influence through its exposure of abuses by all sides, but he acknowledges that his cross-sectional data cannot conclusively support causal claims, since the study does not trace changes over time. Also, since most attitudes co-vary together, they may all be caused by an underlying but unobserved factor.<sup>155</sup> Importantly, however, Gibson shows that there is no evidence of negative TRC impacts.<sup>156</sup>

### *Vetting and Lustration*

There is very little research specifically on vetting. The only systematic series of case studies is **Mayer-Rieckh & de Greiff's (2007)** edited collection on the challenges of vetting design and implementation, but it offers only tentative statements on impacts. Within that volume, **Mayer-Rieckh's (2007b)** qualitative study of vetting in post-Dayton Bosnia found mixed results and unclear impacts on the performance of the police and judiciary.

Local law enforcement personnel were screened by the UN amid strong resistance and local legal challenges. Although the screening does appear to have helped in areas where refugees sought to return, overall improvements in police performance remain unclear. According to surveys, public confidence in the Bosnian police rose slightly during the vetting period, especially among minority returnees. Judicial reform efforts in Bosnia were blocked until 2002-04, when judges and prosecutors were finally vetted by the UN. The judicial system's ethnic composition has since improved, and so has public confidence in the judiciary. Yet it is too early, according to Mayer-Rieckh, to know definitely whether there have been substantial improvements in the administration of justice. Overall, the Bosnian vetting processes were contentious, with local nationalist parties aggressively intervening to influence outcomes.

While **Mayer-Rieckh's (2007b)** study is commendable for its detailed analysis of the vetting processes and challenges (including international and domestic politics), its main focus is not on impacts. Beyond some basic before-and-after comparisons of public confidence in the police and judiciary, it only provides limited data and discussion of effects.

In the same edited volume, **Zamora's (2007)** qualitative study of reform processes and challenges in post-war El Salvador found improvements in military culture and human rights. This, he argues, is partly attributable to the military vetting that began after a commission established by the peace accords dismissed most of the country's senior military leaders. Although the commission was influential, its success stemmed also from international pressure following the UN-sponsored truth commission. Pressure by the FMLN also mattered, as the former rebel group used much of its remaining leverage to force the issue. The Salvadoran military is now subordinate to civilian

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<sup>155</sup> In a later article, Gibson (2006) discusses the problem of endogeneity, noting that the TRC may have reflected, rather than caused, societal reconciliation.

<sup>156</sup> See also Appendix 2 below.

authority, Zamora says, and is rarely subject to human rights complaints. Zamora argues that vetting, coupled with other comprehensive institutional reforms, helped consolidate the peace process.<sup>157</sup>

Unfortunately, however, the impact of vetting on other Salvadoran institutions has been less impressive. Despite some reforms, the new police force recruited many of the dismissed military personnel, and has been plagued since the peace accords by criminality and poor discipline. In 2000, a new commission purged 817 police officers without due process, but by 2003 nearly a third of the police force personnel was subject to some kind of complaint. Similarly, there has been no legitimate vetting process or comprehensive reform of the judiciary, which remains corrupt and politicized.

Again, like Mayer-Rieckh (2007b), **Zamora's (2007)** study provides a detailed analysis of reform processes and challenges, and commendably investigates other contributing factors. It provides limited data and discussion of impacts, although it finds tentatively positive results for the military. Both of these studies provide a wealth of information on individual reform processes, and comparative studies could build on these and others.

One of the clearest examples of mishandled lustration seems to be Iraq. According to **David's (2006)** broad classification study of lustration systems, poorly designed policies by the American-led Coalition Provisional Authority in 2003 contributed to conflict by creating a pool of excluded, marginalized and unemployed Baathists. In addition, the purge led to a shortage of suitable administrative and security professionals. Although David's work highlights the need for caution in lustration or wide-scale vetting, we should be careful in accepting it at face value. The analysis only asserts a bivariate association on the basis of one case, and does not carefully trace the causal links between lustration and conflict. It also does not consider other factors, provides limited data, and offers little discussion in support of clear causal arguments.

## EVIDENCE FROM "SMALL-N" AND "MEDIUM-N" COMPARATIVE STUDIES

There is no agreed precise cut-off point between small and large-N analysis. In this section, we consider comparative studies covering less than twenty countries. In the next section we consider large-N comparative studies.

One important collection of qualitative studies, edited by **Barahona de Brito et al (2001)**, examines the determinants of TJ policy choices, focusing on trials, truth commissions, and purges in 19 transitional societies in Europe, Latin America, and South Africa. It then analyses their impacts on democratization while taking other factors into account, including transitional conditions and institutional reform. The study considers impacts on the rule of law insofar as they contribute to democratization.

The editors' comparative analysis finds no clear link between backward-looking truth and justice efforts and the functioning of democracy. In Spain, Hungary and Uruguay, for example, democracy developed well without TJ, while in other cases, such as Portugal, El Salvador, and Guatemala, TJ made little or no contribution. In still other instances, including Argentina, South Africa, and the Czech Republic, TJ seems to have contributed to democracy, though the links are

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<sup>157</sup> For a more detailed analysis of these developments in El Salvador, see Popkin (2000).

complex. Forward-looking institutional reforms, by contrast – wresting control of the police, military and judiciary from authoritarian forces and establishing their accountability to democratic institutions – were more consistently linked to democratization, although the study finds no indication that reform cannot proceed without purges.<sup>158</sup>

The study found that backward-looking TJ policies made positive contributions when they initiated dynamics for wider reforms, but this depended on starting conditions, institutional and political legacies, and the style of TJ implementation. When TJ was carried out in a democratic and fair manner, it had positive impacts on public support for the new regime.<sup>159</sup> In some cases, however, including Portugal and parts of Eastern Europe, TJ policies were abused by those seeking revenge or power.<sup>160</sup> TJ, in other words, was more likely *and* more successful in countries already on the road to democracy. Correlations between democracy and successful TJ outcomes were “endogenous,” meaning that on its own, TJ was not likely to help where it is needed most. As we shall see below, there is statistical evidence to support this important finding.

This collection is laudable because it comprehensively studies multiple cases, and compares countries that experienced TJ with some that did not. One drawback is its failure to distinguish between the impacts of individual TJ mechanisms.

Another recent collection of case studies by **Call (2007)** employs a similar methodology, combining eight country studies on security and justice reforms with a cross-case comparative assessment.<sup>161</sup> The volume’s focus is on reforms rather than TJ *per se*, but it does explore TJ’s impact on the legitimacy and efficacy of justice systems. In many ways, the volume is a contribution to the null finding side of the equation, finding no clear link between “justice for past abuses and the quality and accessibility of justice in the future.”<sup>162</sup> Instead, it argues that deficiencies in post-conflict justice systems were caused by factors unrelated to TJ policies, including institutional choices, political decisions, and style of war termination. Still, contributors to the volume do find some grounds for TJ relevance, arguing that in Rwanda, Timor Leste, and Bosnia, popular perceptions of current justice systems were negatively affected by the way past abuses were dealt with.<sup>163</sup>

This study’s strength is its detailed comparative analysis of larger reform agendas, of which TJ is just one part. This approach highlights the value of considering TJ in the context of wider peacebuilding policies, but also means that its analysis of TJ impacts is limited, and that the research design is not geared toward uncovering TJ causal impacts. For instance, the lack of control cases without TJ makes it difficult to draw stronger causal conclusions.

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<sup>158</sup> Barahona de Brito et al (2001): 30 & 312.

<sup>159</sup> Barahona de Brito et al (2001): 313.

<sup>160</sup> Barahona de Brito et al (2001): 34

<sup>161</sup> The case studies are El Salvador, Guatemala, Haiti, South Africa, Rwanda, Timor Leste, Kosovo and Bosnia & Herzegovina.

<sup>162</sup> Call (2007): 398.

<sup>163</sup> Call (2007): 399.

## *Trials*

**Stromseth et al's (2006)** qualitative study examines the impact of international tribunals and mixed or hybrid trials on the rule of law and capacity of domestic justice systems in the former Yugoslavia, Rwanda, Timor Leste, and Sierra Leone, and found that their effects were mixed, complex, and unclear.<sup>164</sup> Although international trials did help marginalize the perpetrators who undermined public respect for the rule of law, they were less successful in local judicial capacity building and demonstrating the importance of legal accountability to domestic audiences. Both ICTY and ICTR did a poor job of boosting local support for accountability and justice. Kosovo's mixed international/local trials, moreover, garnered little local legitimacy.

The study provides much insight into the challenges of international involvement in TJ, but given the heterogeneous sample and lack of controlled comparison, its causal claims must remain tentative. In particular, the study may have left out important causal factors. One recent published study is **Sikkink & Walling's (2007)** analysis of the impact of human rights trials on democratic stability, human rights and conflict in 17 Latin American countries during 1979-2004. They find that trials have no harmful effects, and offer preliminary evidence for their salutary impact. Yet while their data on human rights trials is innovative and their homogeneous sample advances scope conditions, their methods are rudimentary, composed as they are of simple bivariate associations that do not control for other factors. Thus, it is hard to know whether the effects they find are actually linked to trials. The authors readily acknowledge this limitation, and the lead author is involved in more methodologically sophisticated efforts such as the Kim & Sikkink paper discussed below.

**Sikkink & Walling** find that trials have not undermined democracy or provoked coups in Latin America; the region has had more trials than any other, but it has also experienced the most completed democratic transitions. Latin America has witnessed only three successful coups since its first human rights trial in 1978; none of these was trial-provoked. In fact, the authors say, arguments for trials' destabilizing impact were based exclusively on early evidence from Argentina. Since then, however, the country has had more TJ trials than any other in the world, while also enjoying the longest democratic period in its history.

**Sikkink & Walling** also discern no evidence that trials extended or exacerbated conflict in Latin America. Although most of the 17 countries in their study experienced one or more conflicts, the TJ trials tended to follow, rather than precede, conflicts. In some cases, moreover, the trials continued long after the conflict's end, lending little support to the notion that they provoked conflict.

Finally, the authors found little evidence that trials created more human rights violations. Drawing on the Political Terror Scale's (PTS) (which we discuss below), they measure levels of abuse in countries at five years before and ten years after the start of TJ trials. In only three of 14 cases did human rights conditions worsen. Instead, trials are correlated with equal or better human rights conditions. The authors acknowledge that much of the improvement is likely due to democratization, not trials, and that their rudimentary research technique makes it hard to assess the trials' independent effects.

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<sup>164</sup> Stromseth et al (2006): chapter 7.

### *Truth Commissions*

**Long & Brecke (2003)**'s comparative study of 11 civil wars in 10 countries that experienced "reconciliation events" is optimistic, finding that extensive truth-telling was the critical starting point for successful peace settlements; the three settlements that did not include truth-telling did not last.<sup>165</sup> The strength of the study results from carefully tracing the effects of reconciliation events in multiple cases. Yet the study's research design makes it hard to know whether truth-telling was a cause of peace, or was incidental; an underlying factor may have caused both lasting peace and the reconciliation event.<sup>166</sup> It does not include control cases, but only civil wars followed by reconciliation events, and this makes causal claims difficult. Moreover, the heterogeneous sample does not contribute to establishing scope conditions.

More optimistic but regionally limited findings appear in an unpublished paper by **Kenney & Spears (2005)**, who use statistical analysis to assess the effect of truth commissions on democratization in 16 post-authoritarian Latin American countries, 1979-2003.<sup>167</sup> Given the homogeneous regional sample, their controls are limited to GDP per capita and the Human Development Index. The authors find that past truth commissions have a statistically significant and positive effect on the subsequent level of democracy, and that ongoing truth commissions have an additional positive effect for one of the democracy measures used.

The study presents a sophisticated statistical assessment. The regional sample further reinforces the notion that Latin America has specific qualities that encourage successful TJ, thus contributing to scope conditions. As the authors note, however, the research design entails some causal ambiguity. It leaves unclear whether truth commissions are causally related to democracy; both could be caused by an underlying factor. Also, the study assesses subsequent level of democracy, but not democratic survival, as it does not take into account later authoritarian reversions.

### *Vetting and Lustration*

As noted above, there is little systematic research on vetting. Research on lustration, a cousin of vetting, has found some positive impacts in Eastern Europe. **David's (2003)** qualitative comparison of Poland and the former Czechoslovakia, for example, finds that post-Cold War lustration contributed to human rights conditions and democratization. In Poland and the Czech Republic, members of old state socialist networks have not committed serious violations since lustration laws were enacted, but abuses did re-occur in Slovakia when its lustration policy ended. In addition, comparison of the initial round of unregulated purges in Poland and Czechoslovakia with later and more regulated lustrations suggests that the latter contributed to democratization by preventing old guard networks from undermining the new political system. Lustration also reduced political tensions in the Czech Republic, contributing to stability during its transition.

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<sup>165</sup> Successful reconciliation, the authors found, was a protracted and complex process, including truth-telling, identity redefinition, and "partial justice short of revenge." Long & Brecke (2003): 65.

<sup>166</sup> Synder & Vinjamuri (2003) criticize this study for this reason.

<sup>167</sup> The authors include cases only from the time they first begin democratic transitions. They use three different measures of democracy: Polity, Freedom House's Political Rights Index, and the UNDP Electoral Democracy Index. The authors dismiss their findings based on Freedom House, arguing that truth commissions are endogenous to this measure.

While this detailed analysis of these lustration processes suggests that lustration had positive effects, establishing causality in these cases is difficult, as the research design does not include similar control cases without lustration. It is also unclear whether another, underlying factor could have led to the improvements in human rights and democratic stability.

## EVIDENCE FROM “LARGE-N” COMPARATIVE STUDIES

### *Trials*

An unpublished study by **Kim & Sikkink** uses global data on 93 transitional countries between 1980 and 2004 to offer a more grounded and upbeat assessment of the impact of trials on subsequent human rights conditions or repression.<sup>168</sup> The sophisticated statistical analysis controls for established standard statistical determinants of repression and finds that transitional countries with human rights trials were less repressive of human rights than those without trials, both over the short and long-term. Trials even made a difference in civil war situations, which are generally associated with more abuses. Finally, countries with more religiously similar neighbours conducting trials were also less repressive, suggesting the presence of a cross-border deterrence effect. To assess whether trials have effects that are separate from other TJ measures, the study controls for truth commissions, but finds no conclusive results.

The Kim & Sikkink study is the first serious statistical assessment to draw on a global and rigorously assembled trial dataset, and its findings are encouraging to trial advocates. Still, caution is warranted for the concerns about unpublished studies outlined above, and policymakers should not rush to judgement on the basis of one solid study. Still, the study is both unique and useful, and more work of this quality will substantially advance the TJ research agenda.

### *Truth Commissions*

A PhD dissertation by **Botha (1998)** uses statistical analysis to assess the effect of truth commissions on regime legitimacy in all 56 nascent democracies in Eastern Europe, Africa, and Latin America between 1984 and 1995, and the findings are generally positive. Whereas most other research measures regime legitimacy through individual attitudes, Botha uses collective protests as a proxy, arguing that more protests indicated lower legitimacy. Her statistical analysis controls for level of repression and the presence of free and fair national elections, and all her indicators rely on news-based event counts. She finds that truth commission presence was associated with lower levels of protests, and that this link endured over time. As the first large-N statistical assessment of truth commissions, this study has led the field to new methodological ground. Given the limited controls and a sample that is likely not homogeneous, however, the study does not support a strong causal claim.

To assess whether quality of truth commissions mattered, **Botha (1998)** also divides them into “weak” and “strong” commissions based on their resources, credibility, and publicity, and compares means of protests and repression before and after implementation. Weak truth commissions had no association with protests, and levels of state repression increased after their

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<sup>168</sup> They include all countries undergoing transitions to democracy, peace or new statehood between 1974 and 2004, but perform their statistical analysis on the years 1980-2004. Stable authoritarian or fully democratic regimes are not included. Kim & Sikkink (not dated).



completion. Strong truth commissions, by contrast, were associated with sustained decreases in both repression and protest. Better truth commissions, in other words, were associated with better outcomes. The statistical assessment of variation in implementation is a welcome innovation. Still, it remains hard to know whether strong truth commissions were actually having positive impacts, or whether they were being caused (along with lower rates of protest and repression) by an underlying factor such as the quality of political bargains between contending factions.

### *Transitional Justice*

Some studies examine the impacts of more than one TJ mechanism. A recent, unpublished study by **Payne et al (2008)** analyses TJ on an ordered scale ranging from doing nothing (de facto amnesties) to formal amnesties to truth commissions to trials, based on minimalist, moderate and maximalist conceptions of TJ. The authors' statistical analysis of the impact of TJ during the first 5 years of transitions in 91 countries between 1970 and 2004 on subsequent levels of democracy, rule of law, and human rights conditions finds some positive effects but is unable to draw strong conclusions. The regression analyses include GDP per capita, UN region, levels of democracy before and during the first transition year, and a linear time indicator as controls, and these analyses are supplemented by simple descriptive statistics.

Using the Polity IV indicator to measure democracy 10 years after transitions began, the analysis finds a statistically significant, positive effect on democracy. The descriptive statistics show that average polity scores improved regardless of transitional policy, but that TJ is associated with larger and more sustainable improvements in democracy after 5 and 10 years (compared to before and during transitions). The bivariate effect is strongest for trials, although formal amnesties are also successful at shoring up democracy over the longer term.

The study also finds a statistically significant, positive effect on the rule of law, measured by the 2004 indicator from the World Bank's Governance dataset. Descriptive statistics, however, show that only trials are associated with higher rule of law scores; all other policy choices are negatively associated with rule of law. The cross-sectional nature of the rule of law data prevents analysis of changes over time. Finally, the study finds no statistical effect of TJ on human rights conditions after 10 years, measured by the CIRI physical integrity index. Descriptive statistics show that de facto and formal amnesties are associated with deteriorating human rights conditions over the longer term, and, compared to trials and truth commissions, with higher homicide rates, suggesting that amnesties encourage a culture of impunity.

**Payne et al's (2008)** study is a welcome statistical assessment based on an important, new and comprehensive TJ dataset. Like all studies, however, it has methodological shortcomings, particularly with respect to generating policy-relevant evidence. To begin with, the ordered TJ indicator masks the effects of individual TJ mechanisms and does not advance our understanding of how particular combinations of mechanisms may interact when they are combined. Also, the regression analyses control for two important variables, but they include few other factors despite the existence of other established statistical determinants of democracy and human rights conditions. Importantly, while the analyses control for the level of democracy prior to and during the transition, the human rights analysis does not take into account prior human rights conditions.

Finally, the research design does not advance scope conditions. The authors are currently extending the study to address some of these issues.<sup>169</sup>

Most of the above-cited studies generally deal with transitions from authoritarianism, but TJ is also widely promoted in transitions from civil war. The cross-national evidence on this sub-set of cases, however, is more limited.

**Snyder & Vinjamuri's (2003)** comparative analysis of 32 post-conflict countries between 1989 and 2003 finds little ground for optimism about the effects of trials and truth commissions, arguing that properly designed and enforced amnesties did a better job of ending civil wars, and encouraging human rights, democracy and the rule of law.<sup>170</sup> Specifically, they find that trials only contribute to ending abuses if spoilers are weak and the justice infrastructure is reasonably well established. Truth commissions may be irrelevant or harmful unless employed in countries well on the road to democracy. Moreover, the authors argue, truth commissions often provide political cover for amnesties, thus masking the real facilitators of peace.

Drawing on their analysis, **Snyder & Vinjamuri (2003)** pointedly criticize the arguments of some TJ proponents for “lacking empirical foundations,” but their own analysis also suffers from some drawbacks. Some of their case reviews are cursory and do not convincingly trace impacts from TJ mechanisms. They also do not examine the effects of amnesties as critically as TJ effects, or consider the role of variation in the implementation of TJ mechanisms. Finally, the separation of accountability for past abuses from legal-institutional development may be problematic. These caveats aside, this study is an important sceptical voice in the empirical TJ debate, and its arguments should be further investigated. By paying attention to the strength of spoilers and democratic forces, and the level of institutional development, the authors also provide important insight into the potential scope conditions for TJ success.

This scepticism about TJ in post-conflict situations is reinforced by **Lie et al (2007)**, who use sophisticated statistical analysis to assess the impact of trials, purges, reparations, truth commissions and amnesties on peace duration in 200 post-conflict cases between 1946 and 2003.<sup>171</sup> They control for type of conflict termination, characteristics of the conflict, GDP per capita, and type of post-conflict regime. The study finds that hard-nosed political and military factors matter most to peace duration, since one-sided victories were the strongest predictor of peace duration. None of the TJ mechanisms they tested, by contrast, were statistically significant, although most of them work in the hypothesized direction (i.e. prolonging peace). Yet when the authors removed victories from the statistical equation, trials suddenly achieved significance. The optimistic TJ advocates, in other words, may be mistakenly attributing peace to TJ when the real contributing factor was political and military.

Yet not all of **Lie et al's (2007)** news is bad for TJ. When they restrict their analysis to a subset of 87 democracies, they find that reparations and truth commissions are positively associated with peace duration, and these results are not sensitive to how conflict was terminated.

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<sup>169</sup> Personal email communication with Tricia Olsen, April 24, 2008.

<sup>170</sup> Impacts measured with Freedom House and Polity IV indicators.

<sup>171</sup> They define a conflict as “ended” after two years without violence. The risk of peace failure is high, since the dataset includes 93 violent recurrences.



Importantly, amnesties in democracies are associated with an increase in the risk of peace failure. This suggests that in the amnesty-versus-justice debate, political regime type matters enormously, and that authoritarian regimes are more tolerant of amnesties than democracies. Both TJ advocates and sceptics may be right, in other words, but their arguments apply to different scope conditions. Overall, the study suggests that non-retributive TJ promotes peace when it occurs in countries already well on the road to democracy.

The **Lie et al (2007)** study thus significantly advances our understanding of post-conflict TJ impacts, but like all studies, it also suffers from some drawbacks. First, it has yet to be published in a peer-reviewed journal. Second, it does not consider variation in the implementation of particular TJ mechanisms; as noted above, this could account for the lack of effects, and more research is needed on this count. Its sample selection criteria are also unclear, as the data used in its analysis includes considerably fewer post-conflict cases than appeared in the original dataset; could the exclusion of other cases bias the results? Finally, the authors themselves warn that their results are weak and difficult to generalize.

### *Vetting and Purges*

The **Lie et al (2007)** study is the only cross-national analysis we know of that examines the effects of purges, although we are unsure whether its data fits the human rights-centric definition of vetting provided above.<sup>172</sup> In any case, it found no statistically significant effects.

## EVIDENCE FROM MIXED METHODS STUDIES

The final study we review mixes methods to combine the advantages of large-N statistical analysis with the detailed process-tracing of small-N comparative research. Mixed methods studies are at the forefront of methodological innovation. In a recent PhD dissertation **Brahm (2005; 2006)** examines the effects of truth commission on human rights protection and democratization, with less optimistic results than other studies of truth commissions.

The statistical analysis examines the impact of truth commissions in 78 countries that have attempted a democratic transition during 1980-2003.<sup>173</sup> Unfortunately, Brahm finds that truth commissions had no statistically significant effects on either the subsequent level of democracy or respect for human rights. His democracy variable relies on the Freedom House Political Rights indicator, and his controls include urbanization, history of British colonial rule, population size, conflict, economic standing, and Islamic culture. His human rights variable relies on the CIRI Physical Integrity Index (which we discuss below), and he controls for a range of established statistical determinants of repression.

The large-N portion of the study employs a sophisticated statistical assessment, but its findings are not definite. The analysis does not consider variation in the implementation of truth commissions; it is conceivable that including such variation could uncover effects of only certain types of truth commissions. The research design also does not contribute information on scope conditions; perhaps truth commissions only have effects under certain societal conditions. These

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<sup>172</sup> See the dataset description in Binningsbø et al (2005).

<sup>173</sup> Brahm (2005; 2006) notes that analysis of a global sample produces similar results.

caveats do not invalidate the findings of this particular study, but they illustrate the importance of varied research designs across a research program on TJ impacts.

**Brahm (2005, 2006)** also uses detailed case studies of El Salvador, Chile, South Africa and Uganda, and some comparisons to neighbouring control cases to further investigate the impact of truth commissions on democratization and human rights conditions, and his findings are ambivalent. By tracing the effects from recommendations in truth commissions' final reports to their implementation records, he finds that truth commissions can help by discrediting unaccountable institutions such as the military, but that they otherwise have little positive or negative impact on democratization. While truth commissions vary in their ability to support institutional reforms, it is the latter that are crucial in protecting human rights. In El Salvador, for example, the UN-sponsored truth commission's recommendations were largely ignored, and the individuals named in the report faced few repercussions. Yet the state is now more respectful of human rights, Brahm says, due largely to police and military reforms. Truth commissions, Brahm argues, can contribute by discrediting unaccountable institutions and helping to set the reform agenda and channel international pressure.

Yet as Brahm also notes, El Salvador has experienced a massive post-conflict crime wave that has produced broad public support for draconian "law and order" measures. This, he warns, suggests that there is little underlying progress in popular support for human rights, broadly conceived;<sup>174</sup> similar conditions obtain in South Africa. Popular attitudes towards human rights, including the rights of suspected criminals, are not well correlated with reductions in politically inspired abuses. A general culture of human rights, in other words, is extremely hard to inculcate.

**Brahm's (2005; 2006)** study is a fine example of using mixed methods to investigate TJ impacts. Yet its findings must be viewed as "preliminary," he warns, because of data limitations and the difficulty of isolating the effects of truth commissions from other factors. More studies like this would greatly advance the field.

## EVALUATING THE RESEARCH RECORD

### *"Generalizability" and Research Design*

Individual case studies help us understand contexts and build theories, but to provide broad guidance, they must be tested on other cases to determine their scope and generalizability. One way of doing this is systematic comparisons of individual cases. The **Barahona de Brito et al (2001)** and **Call (2007)** volumes are important steps in this direction, since the editors of both collections supplement individual country studies with comparative analysis. Interestingly, neither collection discovered robust, cross-case TJ effects, underlining our concerns with the generalizability of TJ efforts. The broader point, however, is this: Until recently, most TJ case studies have not been embedded in well-designed comparative studies, limiting their policymaking utility. Proper research design – including careful attention to case selection, standardized measurements, and inter-study comparability – is very much needed.<sup>175</sup>

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<sup>174</sup> For a more detailed discussion of reform efforts and transitional justice polices in El Salvador, see Popkin (2000).

<sup>175</sup> For problems of research design in qualitative human rights research, see Hafner-Burton & Ron (2007).

As a result of evidentiary “cherry picking,” the terms of the TJ debate have until now been set by a handful of well-documented cases in the Americas, Eastern Europe, and South Africa. Policy practitioners should avoid viewing these cases as models for elsewhere, since TJ may have worked reasonably well in these cases for quite specific reasons. Region-wide effects, moreover, may be crucial in both Eastern Europe and Latin America, both of which have recently benefited from declining rates of political violence, reasonably successful democratization, and positive international engagement. When these and other variables are not present, TJ outcomes may be different.

Another key problem in the existing case study literature is its tendency to concentrate on cases that have already experienced TJ. Well-designed comparisons, by contrast, should look also at “control” cases that experienced no TJ at all. These kinds of controlled comparisons can help determine whether observed trends are in fact due to TJ or to other factors. To be most effective, controlled comparisons should match cases based on other relevant variables - such as peace and democratization - so as to better gauge TJ’s unique effects. Although these comparisons cannot control for everything, they help to reduce the risk of drawing false conclusions.

### *Data Issues*

The large-N cross-national studies reviewed above are exciting because they appear to provide broad and globally applicable lessons for policy makers. But, like all types of studies, cross-national studies face particular difficulties. One problem is that these studies tend to suffer from serious data problems.

As a general rule, it is difficult to represent complex social phenomena through quantitative indicators. Concepts such as reconciliation, culture or state legitimacy are notoriously hard to capture numerically, and even the most careful dataset will be open to criticism. Scholars refer to this issue as “measurement validity,” and it is common to all quantitative social science research.

Consider, for example, the two major indicators of respect for core human rights: the Political Terror Score (PTS) and the CIRI Physical Integrity Index. Although both are widely used because they offer comparable country-level data over many years, they also come with important disadvantages.<sup>176</sup> The notion of measuring complex social phenomena such as “respect for human rights” with a numerical scale is, for many, a formalistic abstraction that defies common sense.

But even those who believe in the utility of such scales recognize their limitations. For starters, both the PTS and CIRI indices suffer from missing data for some years and countries. Second, they are coded from annual reports by Amnesty International and the US State Department, both of which may have their own particular biases. Third, both datasets use limited scales of five and nine points, respectively, meaning that the gaps *between* scores may conceal more than they reveal. As a result, countries with real differences are often mistakenly lumped together. Finally, the limited scales and coding biases mean that most countries show little change over time, making abuse appear “stickier” than they may in fact be. In many cases, changes may occur in increments

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<sup>176</sup> The Freedom House ratings have also been subject to criticisms. See, for instance, Foweraker & Krznaric (2000); also Munck & Verkuilen (2002).

too small to register, and in other cases, data coders (or Amnesty and the State Department) may be reluctant to “reward” countries with slightly better assessments.<sup>177</sup>

There are problems with other datasets used in TJ research. For example, some studies use press-based events data, but these are problematic. One systematic study of state violence in Guatemala, for instance, found that press accounts of repression varied dramatically by source, and that newspaper coverage was inversely related to repression. Thus, more information on abuses was available when actual rates of abuse declined.<sup>178</sup> Another study found that the volume of press human rights country reporting was influenced by a host of factors other than actual abuse, and that rich countries received more attention than poor.<sup>179</sup> News-based accounts, in other words, may be only partially accurate.

Finally, when any given dataset is closely scrutinized by careful critics, shortcomings are soon to appear. For example, one researcher carefully went over Sikkink & Walling’s (2007) new dataset and source material, finding a range of problems whose severity is hard to assess. For example, some cases may have been included in the data even though they do not appear to fit the study’s stated definition of TJ. There were also simple coding errors and inconsistencies.<sup>180</sup> No data collection effort is perfect, and the new Sikkink & Walling country trial-year data are both innovative and promising. Still, findings derived from one dataset should always be tested – and then repeatedly retested – on other data collections before serving as the evidentiary basis for policy.

## CONCLUSION: FAITH VERSUS FACT

Our review of the available single-case and cross-national evidence suggests there is, as yet, insufficient empirical evidence in this nascent field to support any strong claims about the general tendency of TJ mechanisms to have positive *or* negative effects on transitional countries. While most studies have concluded that TJ has either a moderately beneficial impact on transitional societies or no measurable impact at all, these observations should be interpreted with great caution. Carefully gathered evidence about TJ impacts is still limited.

In other words, we still don’t know what works “on average” across time and space. The few studies that do exist suggest that the impacts of TJ partly depend on which mechanism is used and how it is implemented, where it is used, and under what transitional circumstances. For trials, there is some evidence of positive impacts, and more limited evidence of harm and irrelevance. Yet, as noted above, this dearth of negative or null findings may stem, in part, from a publication bias that discriminates against bad news. Similarly, truth commission impacts range from the positive to irrelevant, and there is some indication that they may work best in countries that are already reasonably democratic. Finally, there is little cross-national evidence on vetting.

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<sup>177</sup> Hafner-Burton & Ron (2007).

<sup>178</sup> Davenport & Ball (2002); Ball (2005). Davenport & Ball (2002) also finds that human rights organizations are better at reporting certain types of abuses than others.

<sup>179</sup> Ramos et al (2007).

<sup>180</sup> This research is documented in a recent M.A. thesis. Its findings should be treated as tentative until this paper has undergone peer review. See Blank (2007).

Given the paucity and contradictory nature of these findings, more research is urgently needed. Building a foundation of useful and reliable knowledge on the effects of TJ mechanisms requires more systematic comparative research on TJ impacts over time. Existing studies raise many questions and analytical challenges to be addressed by new research, as we outline below. Most importantly, we need good tests of the scope conditions for TJ success. Although there are grounds to suspect that TJ is best suited to states with relatively strong institutions and a minimum level of democracy, this hypothesis, along with many others, must be tested, and retested again, based on a variety of data.

Policymakers should be sceptical of claims about the general effects of TJ mechanisms – either positive or negative. That said, the studies we have reviewed point to a number of pitfalls that could potentially arise in a TJ process, and these are listed in Chapter 7.

Furthermore, although the empirical grounds to support strong claims about the effects of TJ are still lacking, this does not mean that transitional justice should not be pursued for other reasons. **We must distinguish carefully between moral and legal rationales, which are often undeniable, and poorly tested assumptions about salutary (or harmful) effects. This report is concerned with the latter, namely the evidentiary foundations for claims that TJ has specific effects on transitional societies.** We argue that the TJ field must move from “faith-based” to “fact-based” discussions of transitional justice impacts, and this requires sustained, careful, comparative analyses of the TJ record.

## 6. FILLING THE KNOWLEDGE GAP

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Given the growing reliance on transitional justice mechanisms and the serious knowledge gaps identified in this report, there is a critical need for data collection and systematic analysis of the empirical effects of different TJ mechanisms. This will require, in the first instance, clearer definitions of key variables (causes, effects and controls) to be studied, and it might require large-scale efforts to collect data on these variables where such data are not available.

For each of the various mechanisms of TJ (e.g., trials, truth commissions, vetting/lustration, reparations, memorialization, etc.), the principal outstanding research questions are still quite basic:

- Do TJ mechanisms strengthen (or undermine) peace in transitional societies?
- Do they lead to improvements in the areas of human rights, the rule of law and/or democratic practices in transitional societies?
- Do they contribute to individual healing?
- Do they foster reconciliation (or exacerbate divisions) at the societal level?
- Do they deter human rights abuses and violence, both in the country in question and in other countries?

To answer these questions, however, key conceptual and methodological questions will need to be resolved, including:

1. What are the precise (measurable) outcomes or impacts of TJ to be evaluated?
2. What are the appropriate indicators of these outcomes or impacts (e.g., measures of “peace,” “reconciliation,” “healing,” etc.)?
3. Can the effects of TJ mechanisms be assessed separately from other influences simultaneously underway, and if so, how should this be done?
4. How can effective comparisons be made between countries that undergo TJ processes and those that do not?
5. How should studies take into account the wide variety among TJ mechanisms themselves?
6. Given that TJ is often said to have long-term effects, how might provisional conclusions be drawn from the many cases in which TJ mechanisms are ongoing or recently completed?
7. How should we account for the possibility that societies that opt for TJ may share certain characteristics (such as the desire to adopt more stringent human rights

practices or greater democracy) in common – characteristics that predispose them to certain futures, regardless of TJ impact?

Although these questions are all challenging – not least because of the complexity of transitional justice itself – it would be a mistake to believe that the TJ knowledge base cannot be significantly expanded and improved. With time and effort, many of the questions listed above can be answered with a reasonable degree of confidence. Information emerging from such research would also make a direct and important contribution to future policy decisions about whether, when and how to pursue specific TJ mechanisms in particular contexts.

## THE VALUE OF “MIXED METHODS” RESEARCH

No single research method is uniquely well suited to analyzing these issues. On the contrary, our view is that a great deal more interdisciplinary and “mixed methods” research is needed. Comparative work across dozens of countries will help to identify the countries and contexts that are most amenable to specific TJ tools. Careful process tracing within strategically chosen individual cases will help identify the multiple causal dynamics through which TJ helps or hinders peace, democracy, stability, and human rights. Surveys and focus groups will give us a better sense of how pro- and anti-TJ constituencies emerge in countries of interest. When combined, these research strategies will dramatically boost our knowledge of when and where specific TJ tools should be used. Each of these methods is considered below.

### *Cross-National Comparisons*

One of the best ways to establish scope conditions at the country level for TJ success, irrelevance, or failure is the study of TJ efforts across multiple countries. These comparative studies could either consist of statistical treatments of multiple countries over time, like the Brahm (2006), Kim & Sikkink (not dated) or Lie et al (2007) studies discussed above, or non-statistical “controlled comparisons” of up to a dozen carefully chosen case studies.<sup>181</sup> Although few of the studies reviewed above use rigorous controlled comparisons, the Call (2007) and Barahona de Brito et al (2001) volumes come reasonably close.

Such studies would advance the TJ agenda by examining the impact of major variables such as level of international intervention, type of transition (democratic or post-conflict), state strength, judicial or other institutional capacity, world region, level of economic development, population size, and others. This, in turn, can help determine whether TJ is really only appropriate to countries with certain levels of international engagement, democracy, economic development, or state capacity.

One key drawback of multi-country studies, however, is the lack of high quality cross-national data. For example, there are only two leading measures of human rights behaviour at the country level – the PTS and CIRI indexes – and both suffer from important limitations. The same is true for democracy, where the Polity and Freedom House indicators are the only comprehensive time-series data available. There are few broadly accepted international indicators for state legitimacy or state capacity over time, moreover. As a result, there will likely be a need to create new, innovative measurements relevant to the TJ agenda.

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<sup>181</sup> Backer (2008).



### *Country-Level Studies*

There is a continuing need for careful analysis of individual cases based on deep country knowledge. Well-informed case studies make it possible to trace causal pathways, including interim steps, and this helps researchers to confirm, disconfirm or refine the causal claims they use when interpreting cross-national findings. Case studies will also help generate new hypotheses about the influence of local conditions on cross-national patterns.

Regardless of findings at the cross-national level, there will always be significant within-country variation due to ethnicity, level of economic development, and historical experience. One way of testing the impacts of these factors is rigorous within-country studies; Meernik's (2005) **careful** analysis of the ICTY's effect in Bosnia is an excellent example of this type of research. As was true for cross-national work, country-level studies can be quantitative, qualitative, or both.

### *Opinion Polls, Focus Groups and Interviews*

Good country-level policymaking requires extensive consultation with interest groups, populations and social sectors. These can draw on a range of accepted research methods, including qualitative interviews with samples of various kinds; ethnographies among perpetrators, victims, or ordinary citizens; focus groups; and population-based surveys.

Such consultations are also ethically vital. TJ interventions, like any other policy "treatments," should not be foisted on populations without informed consent. After all, it is the populations, not the donors, who will suffer if things go awry, and the views of vulnerable groups should receive special consideration, as they are likely to suffer most if TJ prompts renewed instability. As the TJ effort moves forward, moreover, both the general population and specific social sectors should be regularly consulted to determine whether they still support the TJ campaign in its current form. The need for consultation and informed consent is particularly urgent given the role of powerful foreign actors in promoting TJ; in many poor or post-conflict areas, locals are unable to forcefully reject outside advice and policy interventions.

Importantly, the surveys, focus groups, evaluations, and consultations must be carried out by evaluators who are independent of the TJ implementers, and who have no particular organizational stake in specific TJ policy choices. Although it is common practice in development circles to train program staffers to self-evaluate, this can also create conflicts of interest. To minimize these risks, TJ donors should, when feasible, fund arms-length evaluation by credible, independent experts.

Population-based surveys represent a promising avenue for future research on post-conflict TJ. To date, a few such surveys have been conducted in Afghanistan, Rwanda, Northern Uganda, the former Yugoslavia and South Africa. This modest body of research has established the feasibility of conducting survey-based research in post-conflict settings. However, for population surveys to be useful, they must be properly designed and, when possible, carried out over time to examine trends. (In Appendix 2, we summarize the main findings of some TJ-related surveys, examine their strengths and weaknesses, and discuss the applicability of this method to understanding the impacts of TJ mechanisms. In Appendix 3, we consider the possibility of implementing a rigorous national survey on TJ in Afghanistan.)

### *Quasi-Experimental Research Designs and TJ Pilot Projects*

In the medical field, randomized controlled trials are considered one of the best ways of establishing causality.<sup>182</sup> In experiments, “treatment” and “control” groups are chosen for their similarities, and differentiated chiefly by their exposure to the intervention in question.<sup>183</sup> When the research is properly designed, variations in outcomes between the two groups can be traced to the treatment, thereby establishing causality.

In the world of development aid, these kinds of studies are common; aid workers may introduce a specific technique for boosting health in one village, and then compare outcomes with a second “control” village that did not experience the same intervention.<sup>184</sup> Such studies often pose tricky ethical and practical challenges,<sup>185</sup> but quasi-experiments of various kinds are often easier to implement.<sup>186</sup> Researchers interested in regional variation within an individual country or across two similar countries, for example, can search for cases where TJ was and was not used. If the “treatment” and “control” groups are otherwise sufficiently similar, we can draw tentative conclusions about TJ’s unique impact. In many ways, this resembles the “controlled case comparison” method above, and much depends on the appropriate matching of treatment and control cases. If policymakers decide to gradually enact TJ in a given region or country or use pilot projects, this may provide experiment-like conditions. Quasi-experiments can also be built into surveys by investigating respondents’ perceptions of alternative TJ scenarios.<sup>187</sup> (In Appendix 3, we discuss the possibility of creating TJ pilot projects in Afghanistan.)

### *Research at Both the Macro and Micro Levels*

Evaluations should include research at both the societal (macro) and individual (micro) levels. In some cases, these findings may be complementary; reduced political unrest for the country overall, for example, may well be associated with greater individual trust in the new regime’s ability to protect human rights. In other cases, however, the findings may be at odds. Amnesties may prevent spoiler backlashes, but they may also trigger distrust and anger among individual citizens and communities.<sup>188</sup> This potential for contradictory findings suggests that the costs and benefits of different policies should be publicly debated, especially by the populations mostly likely to be affected by TJ efforts.

In other analyses, the “macro” can be defined at the regional or global level, while the “micro” is measured at the country level. While some TJ processes may improve global and regional norms and accountability, they may also create distinct harms or be irrelevant in specific countries. Some countries may never benefit from TJ, even though the world, on average, may be better off.

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<sup>182</sup> Banerjee (2007).

<sup>183</sup> Pham & Vinck (2007).

<sup>184</sup> Pandey et al (2007).

<sup>185</sup> Gerring (2001): chapter 9.

<sup>186</sup> Backer (2008).

<sup>187</sup> van der Merwe (2008).

<sup>188</sup> Backer (2008).

## AN INDEPENDENT PEER-REVIEW MECHANISM FOR TJ RESEARCH?

To encourage the cumulative growth of knowledge on TJ impacts, consideration should be given to establishing an international review panel of social scientists to regularly evaluate and report on the state of TJ knowledge– not unlike the role that the Intergovernmental Panel on Climate Change (IPCC) performs for scientific research on climate change. The IPCC’s principal task is not to conduct research itself, but to “assess on a comprehensive, objective, open and transparent basis the latest scientific, technical and socio-economic literature produced worldwide relevant to the understanding of the risk of human-induced climate change, its observed and projected impacts and options for adaptation and mitigation.” A smaller-scale International Panel on Transitional Justice could perform a similar function for research on TJ – taking note of and disseminating key findings, highlighting important gaps or deficiencies in the state of knowledge, propose standardized measures for assessing TJ impact over time, and serving as a collective “peer review” mechanism. The members of this panel should include acknowledged TJ experts as well as disinterested academics and practitioners from other fields. It is vital that this assessment group maintain an arms-length relationship with both donors and TJ advocacy organizations.

Such evaluations could also form the core of an annual report on transitional justice, along the lines of the Human Security publication run by Andrew Mack at Simon Fraser University (formerly at the University of British Columbia’s Liu Centre). This report would review developments in the TJ field, critically discuss ongoing data gathering and analysis, and act as a mechanism for disseminating good practices of TJ research, implementation and evaluation.

## 7. IMPLICATIONS FOR POLICY PRACTITIONERS

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Given the knowledge gaps this report has detailed, we lack the empirical foundations to provide detailed advice to policy practitioners on the types of TJ mechanisms that are most likely to produce desired outcomes in different circumstances. As noted earlier, however, this situation will likely improve in the coming years as the nascent TJ impact research program matures. Our review of major studies in this field does, however, yield several implications for policy practitioners, and these can help provide policymakers with an analytical framework for assessing the utility of specific TJ tools.

Full consideration of any TJ option necessarily involves moral evaluations about holding perpetrators of large-scale human rights violations accountable for their actions. While the authors of this report strongly believe in upholding universal human rights, this report has focused on a narrower set of questions relating to the empirical effects of TJ mechanisms. Because the policy implications listed below are derived from our survey of the empirical literature, they do not address the moral dimensions of pursuing (or not pursuing) transitional justice in different circumstances.

### 1. CONDUCT RIGOROUS PLANNING

Given the lack of “hard knowledge” regarding the impacts of TJ across cases, careful evaluation of the possible impacts of a contemplated TJ process is difficult but crucial. Among other things, such planning should include extensive consultation with the government and people of a country that may undergo TJ (including by means of populations surveys, described below), recognizing that there may be dramatically opposing views between population segments and between the population at large and the government. Planning should also involve representatives of different units within donor governments or international organizations and other partner institutions, experts with knowledge of other cases and familiarity with the existing scholarship, and experts who have deep knowledge of the country in question. Most importantly, such planning should anticipate problems that could arise during a TJ effort – including through scenario planning exercises – in order to identify knowledge gaps and design TJ processes that are most likely to avoid anticipated problems.

### 2. BEWARE THE POSSIBLE PITFALLS

As noted in Chapter 5, most studies of TJ impacts have found either moderately beneficial or no effects on the country undergoing TJ, while only a few studies have found negative effects. However, many of these studies identify possible pitfalls, which should be included in any planning process. . They include the danger that:

- Indictments may prevent rebel leaders from ending the war through a peace deal, and authoritarian leaders may not give up power if they fear prosecution;
- Leaders placed on trial may use the proceedings to promote nationalist sentiments at home, undermining reconciliation efforts;
- Trials may produce backlashes from “spoilers” whose acquiescence to the transitional process is required to maintain peace;

- Individual accountability may give implicated populations an opportunity to deny their own responsibility for crimes committed in their name;
- Truth commissions may serve as a public relations “smoke screen” for regimes that continue abuses, or be used as a substitute for meaningful reform efforts;
- Attempts at establishing an accurate record of past abuses may generate resentment among some victims and perpetrators, rekindle animosities, foster new grievances, exacerbate tensions, or re-traumatize victims;
- High-profile prosecutions may create nationalist “martyrs,” feeding sentiments of collective victimization;
- Quasi-judicial truth processes may ostracize individuals without due process;
- Transitional efforts may feed into political power struggles and be misused to target political opponents; and
- Purges may have a destabilizing effect, creating a large group of ostracized, alienated or unemployed people.

It is important to underline, however, that researchers have still not determined when and where such pitfalls are likely to occur. Each of these pitfalls should be treated as hypotheses requiring further investigation.

### 3. FOCUS ON “COMPARABLE CASES”

In evaluating and anticipating the possible effects of different TJ options, policy practitioners should identify other countries or cases that share similar characteristics and in which similar methods have been practiced. No two countries are alike, so the process of comparison should include efforts to identify key differences across cases, and consideration of how these key differences might alter the results in the country in question. The datasets in newer TJ cross-national studies begin to provide a basis for devising such comparisons.

### 4. WHEN IN DOUBT, CONSIDER TJ PILOT PROJECTS AND PHASED APPROACHES

In some areas of development policy, pilot projects are an accepted and useful way of evaluating the benefits and pitfalls of interventions before scaling up. Given the uncertainties about the possible effects of TJ, policy practitioners should, in some instances consider implementing TJ pilot projects as an interim measure. Ideally, such projects should be designed to facilitate evaluation. For example, researchers could track developments in two similar municipalities, only one of which experienced a police vetting initiative. Results could be compared and contrasted, giving policymakers crucial insight into the potential impact of vetting. With sufficient preparation, such pilots could be expanded to compare localities in similar countries. Based on the results of these efforts, the scope of the pilots could be expanded to encompass more zones and populations.

## 5. LISTEN TO THE PEOPLE

All transitional countries face the challenge of establishing and consolidating the perceived legitimacy of new governing arrangements in the eyes of their own people. By “legitimacy,” we mean the belief among citizens that their government has the right to pass and enforce laws. The sources of legitimacy are, of course, complex and culturally specific, but without it, no new governing arrangement is likely to endure.

There is no systematic evidence to suggest that TJ techniques strengthen perceptions of governmental legitimacy in countries that undergo TJ processes. However, if there is reliable evidence that a population perceives TJ to be crucial – and that it views the absence of TJ as evidence of their own government’s *illegitimacy* – this should be given considerable weight in evaluating TJ options for that country. Conversely, if there is little demand for TJ within a population, or if the people clearly indicate that they have other priorities, there needs to be a clear and compelling rationale for outsiders to treat TJ as a priority matter.

## 6. DO NO HARM

The record of peacebuilding over the past two decades counsels humility and caution, and the principle of unanticipated and potential negative impact is well recognized in multiple disciplines, even for the most well-meaning of interventions.<sup>189</sup> Outsiders have only limited capacity to understand or change societies, including those in transition. The medical dictum to “do no harm” seems equally relevant to the “treatment” of such fragile states. This observation should not be taken as license for inaction in the face of need, or a justification for ignoring universal human rights, but rather, a reminder of the harm that can be caused by well-intentioned yet ill-considered interventions and policy initiatives. Indeed, in medicine, “do no harm” is both an injunction to avoid bad interventions and an obligation to take positive action to help people when it is possible to do so.<sup>190</sup>

Indeed, the record of policymaking in transitional states based on poor or incomplete research is cautionary. In the economic realm, for example, post-communist “shock therapy” may be the most compelling recent example of policymaking gone awry. When state socialist regimes collapsed across the former Soviet bloc, a host of policy experts flooded in with proposals of dramatic and sudden changes to property laws, financial institutions, credit mechanisms, state subsidies, and other public expenditures. An integral “all or nothing” approach was necessary, experts said, lest the transition be derailed by the Communist old guard. Yet the result was often disastrous; productivity collapsed, safety nets evaporated, and public property was corruptly and abruptly sold off.<sup>191</sup> Today, it is widely recognized that shock therapy worked only under specific conditions, and that its broad, across-the-board application was ill advised.

In particular, policy practitioners should consider how TJ mechanisms may interact in unpredictable ways with other dimensions of peace negotiations, peacebuilding operations, or post-authoritarian transitions. One recent trend in the literature on post-conflict peacebuilding is

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<sup>189</sup> Dishion et al (1999); Merton (1936); McCord (2003); Portes (2000); Rule (2005); Sharpe & Faden (1998);

<sup>190</sup> Sharpe (1997).

<sup>191</sup> Easterly (2006).



to focus on disentangling the contradictions and tensions that arise between different goals of a peacebuilding enterprise.<sup>192</sup> These are often under-appreciated at the outset of a mission. If TJ is anything like the other major components of peacebuilding – and there is no reason to believe that it is not – we should expect that efforts to promote transitional justice will interact in complex ways with other aspects of peacebuilding.

## 7. EVALUATE PROGRESS AND OUTCOMES OF TJ EFFORTS (BUT DO NOT RELY ONLY ON STANDARD “PROGRAM EVALUATION” TOOLS)

TJ efforts should be continuously monitored to evaluate their effects according to a clear set of criteria developed at the outset of a TJ program and updated as necessary. There are several “peace and conflict impact assessment” tools available, along with many other “program evaluation” methods adapted from the development field.<sup>193</sup> While these methodologies offer useful frameworks for defining the goals of an intervention and prompting a discussion of effects, they often neglect the centrality of controlled comparison in causal analysis. Put differently, they typically attempt to assess the effects of specific programs or interventions based on evaluations of conditions before and after the intervention – a technique that is poorly suited to isolating the specific relationship (if any) between the intervention and the outcome. Controlled comparison and other forms of comparative analysis, by contrast, consider two or more similar situations, only one of which has been subject to the intervention, in order to “control” for other factors as best as possible. The trend toward quantitative measures in impact assessments does not compensate for this basic methodological problem – it only creates a patina of precision. For these reasons, when existing program evaluation tools are applied to the consideration of TJ outcomes, they should be adapted or supplemented with well-designed comparative analysis.

Furthermore, impact evaluations are best done over time, since it is hard to evaluate cause and effect without comparing attitudes and behaviours over longer periods. This means that evaluators must collect “baseline” data at the beginning of a TJ process, and then periodically gather new data at specified intervals.<sup>194</sup> Researchers can do this either by building upon previous studies and using the same research design and measures, or by building their own over-time (longitudinal) studies. Ideally, different evaluation teams will do their own independent analyses of the same TJ efforts, so that donors and others can compare independently gathered results.

## THE IMPORTANCE OF STRENGTHENING THE TJ KNOWLEDGE BASE

Until the TJ knowledge base is expanded, policymakers who are ultimately responsible for making decisions on whether, when, where and how to promote specific transitional justice mechanisms will continue to lack vital information.<sup>195</sup> Under what circumstances are different types of TJ tools most likely to succeed – or fail? Obtaining that information will require a great deal of work by researchers over the coming years. Foolproof formulas will never be developed, but the goal of reducing uncertainties surrounding TJ policy decisions is both realistic and achievable.

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<sup>192</sup> Paris & Sisk (2007).

<sup>193</sup> Bush (1998); Hoffman (2004); DAC (2007); CSVN & IDRC (2007); Friedrich Ebert Stiftung (not dated).

<sup>194</sup> See the chapters by Kritz, Chapman, van der Merwe, and Theissen, in van der Merwe et al (2008).

<sup>195</sup> For another call for more policy-relevant empirical research on peace versus justice, see Licklider (2008).



In short, policymakers in national governments and international organizations have a clear interest in promoting a serious, long-term, cumulative research agenda on the effects of TJ. In Appendix 3, we set out a number of ways in which the Government of Canada (perhaps in conjunction with other governments and public agencies) could promote these goals. Options include commissioning new research and evaluation studies, developing and applying techniques for population surveys in transitional countries, and supporting the creation of an arm's-length panel of experts to regularly review and report upon developments (and gaps) in the emerging international research program on the effects of transitional justice.

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## APPENDICES

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## APPENDIX 1

### EMPIRICAL STUDIES

Studies & effects found Strengths & Weaknesses	TJ Mech. [Measures]	Impacts [Measures]	Meth. Technique	Cases [time period]	Controlled Factors	Findings
<b>Individual Cases</b>						
<p><b>Gibson (2004a, b, c; 2005): no harmful effect, some positive</b></p> <p>- sophisticated survey research (+)</p> <p>- one-time cross-sectional survey design cannot conclusively support causal arguments (-)</p> <p>- attitudes to TRC, rule of law, and reconciliation could be caused by underlying factor (-)</p>	<p>truth commission [acceptance of truth as promulgated by TRC; awareness of TRC activities; confidence in TRC]</p>	<p>1. human rights culture / popular acceptance of rule of law [acceptance of legal universalism]</p> <p>2. reconciliation [support for interracial reconciliation ; rule of law; political tolerance; institutional legitimacy]</p>	<p>representative cross-sectional national survey of 3727 respondents, oversampling minorities, regression of survey results for rule of law analysis</p>	<p>South Africa [2001]</p>	<p><i>rule of law:</i></p> <ol style="list-style-type: none"> <li>1. race</li> <li>2. experiences under apartheid</li> <li>3. perceptions of contemporary crime</li> <li>4. acceptance of racial reconciliation</li> <li>5. support for majoritarianism</li> <li>6. support for individualism</li> <li>7. political affiliation</li> <li>8. media consumption</li> <li>9. interest in politics</li> <li>10. socio-economic differences</li> </ol>	<p>majorities of all races accept the TRCs truth;</p> <p><i>rule of law:</i></p> <p>acceptance of the rule of law is not high, with strong differences between racial groups; those who accept the TRC's truth are more likely to support the rule of law; support for rule of law also associated with conciliatory racial attitudes and support for weak majoritarianism;</p> <p><i>reconciliation:</i></p> <p>Blacks are least reconciled, Whites the most, but 44% of population is at least somewhat reconciled; those who are most accepting of TRC's truth are more reconciled;</p> <p><i>overall:</i></p> <p>concludes that TRC had positive influence through exposure of abuses, at least no evidence of TRC undermining reconciliation</p>

<p><b>Meernik (2005): no effect</b></p> <ul style="list-style-type: none"> <li>- sophisticated within-case statistical analysis (+)</li> <li>- news-based measure may be biased toward high-profile and conflictual interactions (-)</li> <li>- considering dependent and independent variables at the same time points makes causal argument difficult (-)</li> </ul>	<p>ICTY [dummies for arrests and verdicts re. 3 high-ranking individuals from each ethnic group]</p>	<p>societal peace [monthly news-based event counts of conflict and cooperation between Serbs, Bosniaks and Croats]</p>	<p>within-case statistical regression analysis of time-series data (Prais procedure for auto-correlation)</p>	<p>Bosnia [post-war: Jan 1996 - July 2003]</p>	<ol style="list-style-type: none"> <li>1. lagged dependent variable actions toward the ethnic groups by</li> <li>2. Serb government</li> <li>3. Croat government</li> <li>4. European Union</li> <li>5. NATO/USA</li> </ol>	<p>ICTY’s judicial actions do not have a statistically significant effect on societal peace within one month or six months; prior levels of conflict and cooperation and the actions the EU and NATO/USA are more important</p>
<p><b>David (2006): harmful effect</b></p> <ul style="list-style-type: none"> <li>- no attempt to trace effects of lustration to conflict within case (-)</li> <li>- no consideration of other factors (-)</li> <li>- very limited data and discussion on impacts (-)</li> </ul>	<p>lustration [qualitative]</p>	<p>conflict, reconciliation  [impacts not main focus]</p>	<p>classification of lustration systems and application to Iraq</p>	<p>Iraq  [2003]</p>	<p>none</p>	<p>poorly designed lustration, creating a pool of excluded, marginalized and unemployed Baathists, contributed to continued conflict; also led to shortage of personnel</p>
<p><b>Mayer-Rieckh (2007b): unclear</b></p> <ul style="list-style-type: none"> <li>- detailed analysis of vetting processes (+)</li> <li>- limited data and discussion on impacts (-)</li> </ul>	<p>vetting of 1. police 2. judiciary</p>	<p>performance of police and judiciary [qualitative]  [impacts not main focus]</p>	<p>qualitative case study of reform processes and challenges, some comparison of before and after public confidence</p>	<p>Bosnia [post-Dayton Accords, 1995-2005]</p>	<p>contextual factors including international pressure and political interference in vetting processes</p>	<ol style="list-style-type: none"> <li>1. some improvements of police performance in minority return areas, with slight increases in public confidence, but unclear whether overall improvements</li> <li>2. judicial reform attempts were initially blocked and judiciary continued to serve conflict era agendas; eventual reappointment process was contentious but followed by increase in public confidence; unclear whether the process led to improvements in the administration of justice</li> </ol>

<p><b>Zamora (2007): some positive effects, unclear</b></p> <ul style="list-style-type: none"> <li>- detailed analysis of reform processes (+)</li> <li>- investigates other factors contributing to impacts (+)</li> <li>- limited data and discussion on impacts (-)</li> </ul>	<ol style="list-style-type: none"> <li>1. vetting of senior military command</li> <li>2. reform and purge of police</li> <li>3. attempts at judiciary reform [qualitative]</li> </ol>	<p>performance of military, police and judiciary [qualitative]</p> <p>[impacts not main focus]</p>	<p>qualitative case study of reform processes and challenges</p>	<p>El Salvador [post-peace accords, 1992-2005]</p>	<p>contextual factors including international pressure, balance of power, and other reforms</p>	<ol style="list-style-type: none"> <li>1. vetting contributed to improvements in military culture, human rights situation and moving peace process forward but other reforms were important too; demilitarized society and military now subordinate to civilian authority</li> <li>2. despite reform, police has been plagued by criminality and complaints</li> <li>3. reform of judiciary did not get off the ground and judiciary remained corrupt and politicized</li> </ol>
<p><b>Multiple Cases – small N</b></p>						
<p><b>Akhavan (2001): positive effect</b></p> <ul style="list-style-type: none"> <li>- traces ICTY’s effects by analyzing reactions to major judicial actions (+)</li> <li>- insufficiently considers other factors (-)</li> <li>- counterfactual arguments re. ICTR impacts cannot be evaluated (-)</li> <li>- anecdotal evidence (-)</li> </ul>	<ol style="list-style-type: none"> <li>1. ICTY</li> <li>2. ICTR [qualitative]</li> </ol>	<p>Peacebuilding [qualitative]</p>	<p>individual qualitative case studies</p>	<p>Serbia, Croatia, Rwanda [inception of tribunals until 2000]</p>	<p>contextual factors, such as desires for European integration</p>	<ol style="list-style-type: none"> <li>1. ICTY marginalized ultra-nationalism and encouraged emergence of moderate leaders in Serbia and Croatia; regional factors played a role</li> <li>2. ICTR has modestly contributed to discrediting and incapacitating remnants of former genocidaires, and prosecutions have restrained revenge killings</li> </ol>

<p><b>David (2003): positive effects</b></p> <ul style="list-style-type: none"> <li>- careful, detailed analysis of lustration processes (+)</li> <li>- no controlled comparison to cases without lustration (-)</li> <li>- unclear whether underlying factors caused both lustration and improvements in human rights and democratic stability (-)</li> </ul>	<p>variation in lustration [qualitative]</p>	<p>1. human rights 2. democratic stability [qualitative] [impacts not main focus]</p>	<p>comparative qualitative case study, including comparison of initial unregulated purges with later regulated lustration</p>	<p>Poland, former Czechoslovakia (Czech Republic &amp; Slovakia), chosen for similar communist legacies but different transitional processes [1989-2001]</p>	<p>contextual factors, such as differences in transitional processes and implementation of lustration</p>	<p>1. since lustration, no serious human rights violations by members of old state elite, but abuses re-occurred in Slovakia after lustration was halted 2. contributed to democratization by preventing former political and security networks from undermining the new political system in Poland and Czech Republic; also helped reduce political tensions in Czech Republic, but unclear in Poland where lustration was associated with political scandals</p>
<p><b>Stromseth et al (2006): mixed, complex and unclear effects</b></p> <ul style="list-style-type: none"> <li>- detailed comparative analysis (+)</li> <li>- not a homogenous sample (-)</li> <li>- no controlled comparison to cases without trials (-)</li> </ul>	<p>International tribunals, mixed and hybrid trials</p>	<p>rule of law and capacity of domestic justice system</p>	<p>comparative qualitative case study</p>	<p>Bosnia, Kosovo, Rwanda, Timor Leste, Sierra Leone [post-Cold War]</p>	<p>contextual, including international involvement</p>	<p>have helped marginalize key perpetrators who undermined public respect for the rule of law; have garnered little local popular legitimacy; have had little impact on domestic judicial capacities and in demonstrating the importance of accountability to critical audiences</p>
<p><b>Call (2007): unclear</b></p> <ul style="list-style-type: none"> <li>- detailed comparative analysis of reforms (+)</li> <li>- considers TJ as part of larger reform agendas (+)</li> <li>- limited analysis of TJ impacts (-)</li> <li>- no control cases without TJ (-)</li> </ul>	<p>Security &amp; justice reforms [TJ not main focus]</p>	<p>legitimacy and efficacy of justice systems</p>	<p>individual qualitative case studies and comparative chapter</p>	<p>8 post-conflict societies (El Salvador, Guatemala, Haiti, South Africa, Rwanda, Timor Leste, Kosovo, Bosnia) [post-Cold War]</p>	<p>contextual, including international involvement and type of war termination</p>	<p>no clear link between justice for past abuses and future quality and accessibility of justice system; deficiencies of post-conflict justice systems seem to be caused by factors unrelated to TJ policies, such as institutional choices, political decisions and how war was terminated; in some cases, however, perceptions of post-conflict justice systems have been negatively affected by the way past abuses were dealt with</p>

<b>Multiple Cases – medium N</b>						
<p><b>Long &amp; Brecke (2003): positive effect</b></p> <ul style="list-style-type: none"> <li>- process-traces effects of reconciliation events in multiple individual cases (+)</li> <li>- not a homogenous sample (-)</li> <li>- research design does not include control cases; only including civil wars with reconciliation events makes causal argument difficult (-)</li> <li>- unclear whether truth-telling is cause of peace, or incidental to it; other factors may have caused both truth-telling and peace (-)</li> </ul>	<p>truth-telling as reconciliation events [qualitative]</p>	<p>peace settlement / reconciliation [qualitative]</p>	<p>comparative case study</p>	<p>11 civil wars in 10 countries that had reconciliation events [1957 until time of writing]</p>	<p>contextual</p>	<p>public truth-telling is the critical starting point for lasting peace settlements and reconciliation which also involve identity redefinition and partial justice; the settlements that did not include truth-telling did not last</p>
<p><b>Kenney &amp; Spears (2005, unpublished paper): positive effects</b></p> <ul style="list-style-type: none"> <li>- sophisticated statistical assessment (+)</li> <li>- homogenous regional sample helps advance scope conditions (+)</li> <li>- unclear whether TCs are causally related to democracy; both may be due to underlying cause (-)</li> <li>- unclear whether TCs associated with democratic survival; does not consider subsequent authoritarian reversions (-)</li> </ul>	<p>truth commissions [dummies for ongoing TC; for past TC; for past release of report]</p>	<p>democracy [Polity IV; UNDP Electoral Democracy Index; Freedom House Political Rights (findings interpreted with caution due to endogeneity)]</p>	<p>panel regression, with country dummies for country fixed-effects and linear indicators of time since TC and since transition (OLS &amp; Prais-Winsten) (Granger causality test for endogeneity of democracy measures)</p>	<p>16 countries in Latin America, starting with the first year of transitions [1979-2003]</p>	<p>1. GDP per capita 2. Human Development Index</p>	<p>statistically significant positive effect of past TCs on level of democracy in almost all models; for some Polity IV models, an ongoing TC has an additional positive effect</p>



<p><b>Sikkink &amp; Walling (2007): no harmful effect, some positive</b></p> <ul style="list-style-type: none"> <li>- homogenous regional sample helps advance scope conditions (+)</li> <li>- no attempt to support causal claim through including controls (-)</li> <li>- unclear whether improvements due to other factors such as improvements in democracy (-)</li> </ul>	<p>human rights trials [country trial years from new dataset]</p> <p>(trials and TCs for human rights analysis)</p>	<ol style="list-style-type: none"> <li>1. democratic stability &amp; military coups [qualitative]</li> <li>2. human rights [PTS, 5 yrs before &amp; 10 yrs after]</li> <li>3. conflict [Uppsala]</li> <li>4. rule of law [qualitative]</li> </ol>	<p>simple bivariate associations with some before-and-after comparisons (does not employ statistical tests)</p>	<p>17 countries in Latin America [1979-2004]</p>	<p>no controls</p>	<ol style="list-style-type: none"> <li>1. trials have not undermined democracy</li> <li>2. on average, countries with trials improved human rights record; countries with both trials and TCs had more improvements</li> <li>3. in most countries, trials followed rather than preceded conflicts</li> <li>4. building rule of law has coincided with trials</li> </ol>
<p><b>Barahona de Brito et al (2001): mixed effects, unclear</b></p> <ul style="list-style-type: none"> <li>- comprehensive qualitative study of many cases; detailed case narratives and process-tracing combined with comparative assessment (+)</li> <li>- contributes to establishing scope conditions (+)</li> <li>- considers underlying and intervening factors (+)</li> <li>- some case studies include comparisons to control cases without TJ (+)</li> <li>- does not distinguish between TJ mechanisms in comparative analysis (-)</li> </ul>	<p>Trials, truth commissions, and purges [qualitative]</p>	<p>Democratization including rule of law [qualitative]</p> <p>[impacts not only focus]</p>	<p>individual qualitative case studies (some at sub-regional level) and comparative chapter</p>	<p>19 transitional countries in Europe and Latin America, also includes South Africa</p>	<p>Contextual factors, including transitional conditions, and forward-looking institutional reforms of judiciary, police and armed forces</p>	<p>no clear link between backward-looking truth and justice polices and the functioning of democracy; forward-looking institutional reforms more important for democratization, but purges do not seem crucial for reforms; backward-looking policies contribute insofar as they initiate a dynamic for wider reform; contribution of TJ depends on starting conditions, institutional and political legacies, and how TJ policies are implemented; if carried out democratically and with regard to due process, TJ has had a positive impact on popular perceptions of regime legitimacy; TJ policies can also be abused for revenge and accumulation of power</p>

Multiple Cases – large N						
<p><b>Snyder &amp; Vinjamuri (2003): harmful effects or irrelevant</b></p> <ul style="list-style-type: none"> <li>- important large-N qualitative comparative study (+)</li> <li>- research design contributes to advancing scope conditions (+)</li> <li>- some individual case reviews too limited to trace impacts (-)</li> <li>- does not consider variation in TJ implementation (-)</li> <li>- does not examine effects of amnesties as critically as TCs (-)</li> <li>- separation of transitional accountability from legal-institutional development may be problematic (-)</li> </ul>	<ol style="list-style-type: none"> <li>1. trials</li> <li>2. truth commissions</li> <li>3. amnesties</li> </ol>	<ol style="list-style-type: none"> <li>1. peace [drawn from various conflict databases]</li> <li>2. human rights / rule of law [Freedom House Civil Liberties]</li> <li>3. democracy [Polity IV, Freedom House Political Rights]</li> </ol>	<p>large-N comparative case study, using simple bivariate associations (no statistical tests) and briefly reviewing 22 cases</p>	<p>32 civil wars [post-Cold war: 1989-2003]</p>	<ol style="list-style-type: none"> <li>1. presence of reformist coalition</li> <li>2. strength of spoilers</li> <li>3. legal-institutional development</li> </ol>	<p>few successful settlements (incl. improved human rights and democracy) used trials or TCs</p> <ol style="list-style-type: none"> <li>1. trials contribute to ending abuses only if spoilers are weak and justice infrastructure is reasonably well-established</li> <li>2. capacity of TCs to promote reconciliation is limited, and they can be harmful (by exacerbating tensions or providing smoke-screens) or irrelevant, unless well on the road to democracy; supposed positive effects of TCs actually due to amnesties;</li> <li>3. amnesties are the real facilitators of peace if properly designed and enforced</li> </ol>
<p><b>Botha (1998, unpublished dissertation): positive effect</b></p> <ul style="list-style-type: none"> <li>- considers variation in implementation (+)</li> <li>- few controls in regression but the sample is unlikely to be homogenous (-)</li> <li>- leaves unclear whether decrease in repression and protests due to strong TCs or whether all variables are caused by another factor (-)</li> </ul>	<ol style="list-style-type: none"> <li>1. truth commissions [dummies for occurrence and whether had TC before]</li> <li>2. TC quality [based on resources, thoroughness, credibility, publicity]</li> </ol>	<p>regime legitimacy, proxied by protests [news-based event counts]</p>	<ol style="list-style-type: none"> <li>1. regression, with country and year dummies for fixed-effects</li> <li>2. statistical comparison of means of protests and repression before and after strong and weak TCs</li> </ol>	<p>all 56 nascent democracies in Eastern Europe, Latin America, and Africa [1984-1995]</p>	<p><i>regression:</i></p> <ol style="list-style-type: none"> <li>1. repression</li> <li>2. free and fair national elections</li> </ol> <p><i>comparison of means:</i></p> <p>none</p>	<p><i>regression:</i></p> <p>TCs are associated with less protests, both during and after TCs</p> <p><i>comparison of means:</i></p> <p>weak TCs have no effect on protest, and repression increased after TCs; strong TCs are associated with statistically significant decreases in protest and repression</p>

<p><b>Payne et al (2008, unpublished paper): some positive effects, but no strong conclusions</b></p> <ul style="list-style-type: none"> <li>- statistical assessment using important new dataset (+)</li> <li>- ordered TJ indicator masks effects of individual mechanisms or combinations (-)</li> <li>- few controls despite established statistical determinants of democracy and human rights conditions; also, human rights analysis does not control for prior human rights conditions (-)</li> <li>- no over-time data in rule of law analysis (-)</li> <li>- research design does not contribute information on scope conditions (-)</li> </ul>	<p>ordered scale of TJ in first 5 years:</p> <ol style="list-style-type: none"> <li>1. nothing (de facto amnesties)</li> <li>2. amnesties</li> <li>3. truth commissions</li> <li>4. trials</li> </ol>	<ol style="list-style-type: none"> <li>1. democracy [Polity IV]</li> <li>2. Rule of Law [from World Bank Governance dataset]</li> <li>3. Human Rights [CIRI Physical Integrity Index]</li> <li>4. homicide rate 2000-2004 [UN]</li> </ol>	<ol style="list-style-type: none"> <li>1. OLS regression with robust standard errors [democracy and human rights after 10 years; rule of law in 2004]</li> <li>2. descriptive statistics (bivariate associations without statistical tests) [for democracy and human rights after 5 and 10 years]</li> </ol>	<p>91 countries that have experienced transitions to democracy [1970-2004]</p>	<ol style="list-style-type: none"> <li>1. GDP per capita</li> <li>2. UN region</li> <li>3. Polity before transition</li> <li>4. Polity during transition year</li> </ol> <p><i>democracy &amp; human rights analysis:</i></p> <ol style="list-style-type: none"> <li>5. years since 1970</li> </ol> <p><i>rule of law analysis:</i></p> <ol style="list-style-type: none"> <li>5. years since transition</li> </ol>	<ol style="list-style-type: none"> <li>1. statistically significant positive effect on democracy; descriptive statistics: polity averages improved regardless of TJ, but TJ is associated with larger and more sustainable improvements (compared to before and during transition), strongest for trials, but formal amnesties are also successful at shoring up democracy over longer term;</li> <li>2. statistically significant positive effect on subsequent rule of law, but descriptive statistics show that only trials are associated with improvement, all others are negatively associated;</li> <li>3. no statistically significant effect on human rights but descriptive statistics show that amnesties (formal and de facto) are associated with deteriorating human rights conditions over 10 years, and, compared to TCs and trials, with higher homicide rates, suggesting a culture of impunity</li> </ol>
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<p><b>Kim &amp; Sikkink (not dated, unpublished paper): positive effect</b></p> <ul style="list-style-type: none"> <li>- sophisticated statistical assessment (+)</li> <li>- investigates interaction with civil war (+)</li> <li>- sample does not contribute information on scope conditions (-)</li> </ul>	<p>human rights trials [cumulative country trial years &amp; dummy if trials at any time after transition]</p>	<p>human rights [CIRI Physical Integrity Rights Index]</p>	<ol style="list-style-type: none"> <li>1. OLS regression with PCSE, with regional dummies and linear time variable</li> <li>2. fixed-effects models</li> <li>3. 2SLS regression, to control for endogeneity</li> </ol>	<p>93 countries that have experienced democratic transitions, transitions from civil war, or by state creation since 1974, but does not include stable authoritarian or fully democratic countries [1980-2004]</p>	<ol style="list-style-type: none"> <li>1. lagged dependent</li> <li>2. democracy</li> <li>3. int'l war</li> <li>4. civil war</li> <li>5. GDP per capita</li> <li>6. GDP growth</li> <li>7. British common law tradition</li> <li>8. pop. size</li> <li>9. pop. growth</li> <li>10. TC experience</li> </ol>	<p>trials have a strong, statistically significant positive impact on subsequent respect for human rights, with both short and long-term effects; interaction term provides no evidence that trials exacerbate human rights abuses in civil war situations, trials make a positive difference even in civil wars situations; trials in religiously similar neighbours also decrease repression</p>
<p><b>Lie et al (2007, unpublished paper): no harmful effects, some positive</b></p> <ul style="list-style-type: none"> <li>- sophisticated statistical assessment (+)</li> <li>- investigates important underlying factor (+)</li> <li>- advances scope conditions (+)</li> <li>- does not consider variation in TJ implementation (-)</li> <li>- sample selection criteria unclear [does not use full initial dataset; appears to be due to data availability] (-)</li> </ul>	<ol style="list-style-type: none"> <li>1. trials</li> <li>2. purges</li> <li>3. reparations</li> <li>4. truth commissions</li> <li>5. amnesties</li> <li>6. exiles [dummies coded from new cross-national dataset]</li> </ol>	<p>Post-conflict peace duration [coded from Uppsala, if a conflict period is followed by at least two years without violence]</p>	<p>event history or survival analysis (Cox proportional hazards model)</p>	<p><i>full sample:</i> 200 post-conflict periods with 93 peace failures in 86 countries <i>democracy sample:</i> 87 post-conflict periods with 16 peace failures in 52 countries [1946-2003]</p>	<ol style="list-style-type: none"> <li>1. military victory</li> <li>2. negotiated settlement</li> <li>3. territorial conflict</li> <li>4. conflict duration</li> <li>5. battle deaths</li> <li>6. GDP per capita</li> <li>7. post-conflict political regime</li> </ol>	<p><i>full sample:</i> victory has strongest and most consistent peace prolonging effect; only trials have a significant statistical effect when victory is not controlled for <i>democracy sample:</i> reparations have statistically significant peace-prolonging effect; no peace periods with TCs relapse into conflict; amnesty has a peace-shortening effect; results not sensitive to conflict termination type</p>

<b>Mixed Methods</b>						
<p><b>Brahm (2005/2006, unpublished paper/dissertation) : no harmful effect, some positive</b></p> <ul style="list-style-type: none"> <li>- process-traces effects from recommendations in final reports to implementation record (+)</li> <li>- some comparison to other control cases (+)</li> <li>- part of mixed methods study (+)</li> </ul>	<p>truth commissions [final reports]</p>	<p>1. human rights 2. democratization</p>	<p>qualitative case studies with some comparison to neighbouring cases</p>	<p>El Salvador (with some comparison to Nicaragua), Chile (comparison to Brazil), South Africa, also Uganda (comparison to Ethiopia)</p>	<p>institutional reform, balance of power, contextual factors</p>	<p>1. some contribution to protection of human rights, violations are no longer systematic; institutional reform crucial for protecting human rights, as in El Salvador, TCs can help set agenda and discredit unaccountable institutions such as the military; TCs have little effect on popular support for human rights; 2. little impact on democratization, but no destabilizing effect in democratization</p>
<p><b>Brahm (2005/2006, unpublished paper/dissertation): no effect</b></p> <ul style="list-style-type: none"> <li>- sophisticated statistical assessment (+)</li> <li>- does not consider variation in TJ implementation (-)</li> <li>- research design does not contribute information on scope conditions (-)</li> </ul>	<p>truth commissions [dummy variable for every year after report released]</p>	<p>1. human rights [CIRI Physical Integrity Rights Index] 2. democracy [Freedom House Political Rights Score]</p>	<p>1. OLS regression, with robust standard errors and country dummies for country fixed-effects 2. 2SLS regression to control for endogeneity, with regional dummies</p>	<p>78 countries that have attempted a democratic transitions [1980-2003] [notes that analysis of a global sample produces similar results]</p>	<p><i>only in Stage 1 of 2SLS:</i> 1. negotiated transition dummy <i>both analyses:</i> 2. lagged dependent 3. GDP per capita 4. pop. size 5. int'l war <i>human rights:</i> 7. democracy <i>democracy:</i> 7. urbanization 8. former British colony 9. Islamic majority</p>	<p><i>human rights analysis:</i> TCs have no statistically significant effect on human rights <i>2SLS Stage 1:</i> negotiated transition has no effect <i>2SLS Stage 2:</i> TCs have no effect [and coefficient does not have hypothesized direction]  <i>democracy analysis:</i> TCs have no statistically significant effect on future level of democracy <i>2SLS Stage 1:</i> negotiated transition has no effect <i>2SLS Stage 2:</i> none of the variables have effects</p>

## APPENDIX 2

### POPULATION-BASED SURVEYS

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Surveys have long been a staple of social science, and are useful because they can estimate individual attitudes and experiences in specific times and places. In sufficiently large samples, they can provide more specific information on sub-groups within a broader population. Surveys are thus a powerful tool, but their true potential has still to be explored in analyses of TJ, conflict, and human rights.<sup>196</sup>

The field of survey-based TJ studies is still in its infancy, but initial results are intriguing. The most important potential contribution is surveys' ability to help policymakers establish what the public considers to be the most pressing TJ issues and most appropriate TJ mechanisms. When properly designed, moreover, surveys could help evaluate the existence and extent of pro and anti-TJ constituencies, as well as assess the impact of TJ by tracking attitudes toward ongoing or past TJ initiatives, human rights, and former adversaries. Such information is especially useful when gathered at regular intervals over time.<sup>197</sup>

Half a dozen surveys conducted between 2000 and 2007 in Afghanistan, Rwanda, northern Uganda, the former Yugoslavia, and South Africa, constitute the extant literature (see Table 1). This modest body of research has established the feasibility of conducting survey-based research in conflict and post-conflict settings, even in the absence of a basic research infrastructure such as current censuses, pre-trained interviewers, and a population familiar with survey research.

These studies demonstrate widespread support for TJ, although in at least one important case, respondents favoured amnesty over prosecutions. They have also helped map the extent of human rights abuses; name parties responsible for abuse; defined local interpretations of "justice"; specified desirable TJ mechanisms; and identified the authorities that local populations want to guide the TJ effort. We discussed Gibson's South African survey above (see Chapter 5); here, we discuss TJ-relevant surveys in Uganda, Rwanda, the former Yugoslavia, and Eastern Europe.<sup>198</sup>

**Northern Uganda:** The debate over criminal prosecutions versus amnesty for LRA leader Joseph Kony and his followers is central to global TJ discussions. Although the Ugandan government initially supported ICC indictments, it has since supported amnesties to the dismay of international rights groups. Researchers surveyed the local population's views in 2005 and 2007, with interesting results.

The 2005 survey of 2585 people found that both peace and justice were important to the population; 76% said those responsible for abuses should be held accountable through a

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<sup>196</sup> Thoms & Ron (2007).

<sup>197</sup> Theissen (2008).

<sup>198</sup> For the survey conducted in Afghanistan, see Table 2 and Appendix 3.



variety of measures, including punishment and reconciliation. But 65% also supported amnesty, although the majority wanted acknowledgement of past abuses from perpetrators.<sup>199</sup>

Two years later, a follow-up survey by the same research team of 2875 (different) respondents found that only 3% considered justice a top priority. Health, peace, livelihood and education were all ranked as more important. A majority (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% warned that trials could endanger peace.<sup>200</sup> Although the local population is strongly in favour of accountability, few are willing to allow it to threaten peace.

Interestingly, the 2007 survey found limited support for traditional TJ mechanisms. More respondents supported ICC indictments (29%), national trials (28%) and amnesty (20%) than traditional reconciliation ceremonies (3%), though 49% believe that the latter could be useful in dealing with LRA combatants. A large majority (90%) were supportive of a national truth commission.

**Rwanda:** In 2002, researchers questioned 2091 people in four communes selected because they allegedly represented diverse experiences with the genocide and the International Criminal Tribunal for Rwanda (ICTR). In contrast to Northern Ugandans, Rwandan respondents supported local *gacaca* processes (90.8%) and national trials (67.8%) over the ICTR (42.1%). Although the study predated the start of *gacaca* proceedings, respondents believed that national trials and *gacaca* would make a positive contribution to reconciliation.<sup>201</sup>

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 coexistence, and those who experienced multiple traumatic events during the genocide were more likely to favour the ICTR over local justice and reconciliation.

**Former Yugoslavia:** In contrast, support for international prosecutions in the former Yugoslavia is limited to Bosniaks, the ethnic group most supported by international forces during the war. The team repeatedly surveyed 1624 Bosniaks, Serbs and Croats in three cities in two waves during 2000-02, using a five-point scale to measure acceptance of indictments by the International Criminal Tribunal for the Former Yugoslavia (ICTY) (1=no acceptance, 5=full acceptance).<sup>202</sup> Bosniaks were most likely to support the ICTY, while Serbs and Croats in Bosnia were most likely to be opposed. Both Serbs and Croats were more likely to believe that the ICTY was biased against them.

The three communities also differed in their ability to acknowledge war crimes by members of their own communities. Again, Serbs and Croats from Bosnia were less likely to

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<sup>199</sup> Pham et al (2005).

<sup>200</sup> Vinck et al (2007).

<sup>201</sup> Pham et al (2004); see also Longman et al (2004) for more results of the survey.

<sup>202</sup> Biro et al (2004). The first wave was conducted in 2000/2001, the second in 2002. In Vukovar and Prijedor, surveyors used a panel study, interviewing the same respondents.

admit abuses than their counterparts in Croatia. Serbian and Croat suspicions of TJ, along with the general impact of ethnicity on TJ attitudes, undermine the notion that the ICTY has helped promote reconciliation.

In Kosovo, attitudes to judicial proceedings are also driven by ethnic identity. The UNDP used a survey in 2007 to assess public perceptions of TJ, finding large ethnic differences among 1250 respondents.<sup>203</sup> Perceptions of judicial fairness vary by the location of trials. A majority of Kosovar Albanians (64%) expressed faith in the ICTY, and a third were supportive of local trials in Kosovo. Very few, by contrast, trusted trials held in Belgrade. Only 30% of Kosovar Serbs expressed faith in the ICTY, however, and only 9% in Kosovar trials. Support for trials in Serbia, by contrast, were much higher (47%). The two groups also have different perceptions of which groups or actors are responsible for war crimes and missing persons. Again, these findings suggest that TJ in the former Yugoslavia may not be producing the hoped for benefits.

**Eastern Europe:** Finally, a 2004 set of nationally representative studies in Poland, Hungary and the Czech Republic found that the demand for lustration remained high 15 years after the fall of communism. There was little link, however, between respondents' personal experiences and their appetite for lustration. Other factors mattered far more, including perceptions of threat from former Communists, voting preferences, and sensitivity to errors in the lustration process.<sup>204</sup>

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These surveys are only a beginning, and much more needs be done. Opinion polls should always be taken with a grain of salt, and should always be combined with other methods of analysis. Still, they provide a wealth of context-specific knowledge that will prove invaluable to TJ experts and policymakers. Most importantly, they indicate that popular views on TJ vary by context, and that we cannot assume that TJ will have uniform effects across countries and transitions.

The existing surveys do suffer from some important limitation. For starters, none is able to conclusively show that TJ mechanisms produced their intended effects. For example, whether truth and reconciliation commissions increase officially sanctioned consensus regarding the interpretation of past events ("truth") and amicable relations between historical conflict groups ("reconciliation") remains an open question. As Gibson remarks, many white South Africans used to believe that ending apartheid would lead to communism, but the South African Truth and Reconciliation Commission did not have to teach whites that they were wrong in this regard; "history was sufficient."<sup>205</sup> Is "history" (which may be disaggregated into a variety of specific social processes such as ethnic residential integration, upward social mobility of formerly disadvantaged groups, the creation of a common school curriculum across ethnic groups, and so on) a sufficient condition for achieving truth and reconciliation? Do TJ mechanisms contribute anything to the establishment of truth and

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<sup>203</sup> UNDP (2007).

<sup>204</sup> Nalepa (2007).

<sup>205</sup> Gibson (2004b): 145.

reconciliation above and beyond the contributions of history? On such questions, existing surveys are mute.<sup>206</sup>

Second, the existing survey scholarship suffers from a lack of over-time data. Few of the studies asked the same questions of the same people, or even of the same general populations, over months and years. Yet it is precisely this kind of data that will facilitate causal arguments. Respondents' attitudes towards TJ after implementation, for example, may be shaped by their pre-TJ views, rather than the TJ process itself.<sup>207</sup> Surveyors can ask respondents to try and remember past attitudes, but current opinions invariably influence perceptions of past attitudes.

By definition, over-time data cannot generate instant policy-relevant findings, but it is crucial to establishing trends and, therefore, causality. This kind of data can be gathered in at least two ways. **Cross-sectional surveys at different points in time** compare responses by *different* people from the same general population over months, years or decades. With this method, however, changes can only be examined at the group level. **Panel studies**, by contrast, collect data from the *same* individuals over time, giving us a more precise measure of attitudinal shifts.<sup>208</sup> Yet panel surveys are tough at the best of times, since they require long-term funding and respondent retention. In many cases, for example, previously sampled individuals relocate, die, or refuse to participate in later study waves. These difficulties are exacerbated in the developing world, where it is often hard to repeatedly locate the same respondents. To compensate, panel surveys can start with larger initial samples than needed for statistical precision.

To ensure that surveys are useful, they must be carefully designed. As noted above, different regions, social sectors or groups are likely to have quite different views on TJ, and aggregate national surveys will miss this information if they are not designed to capture differences through stratification and over-sampling.

Surveys, moreover, measure *perceptions* of institutional performance, rather than performance itself. Perceptions, however, are not always accurate.<sup>209</sup> Some respondents, moreover, are likely to give the answers that they think interviewers or powerful local figures want to hear, rather than their own opinions.

To avoid simplistic or mistaken conclusions, surveys should always be supplemented with other research methods, including interviews and focus groups with key stakeholders and special interest groups. Otherwise, TJ advocates may mistake broad public support for TJ with feasibility. If warlords, political leaders or key soldiers are virulently opposed to TJ, it may not matter if the broader public is in favour; some groups have more leverage than others, and well organized, funded or armed groups can derail peace deals and TJ efforts despite favourable public opinion.

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<sup>206</sup> Our thanks to Robert Brym for drawing these points to our attention.

<sup>207</sup> Backer (2008).

<sup>208</sup> Theissen (2008).

<sup>209</sup> Theissen (2008); Gibson (2008).

Finally, surveys provide snapshots in time, making it difficult to draw broad conclusions about dynamic events.<sup>210</sup> Panel studies will help, but their data is still limited to several points in time. Attitudes may change quickly, and support or discomfort with TJ at specific points in time may not provide conclusive evidence of success or failure.

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<sup>210</sup> Gibson (2008); Theissen (2008).

TABLE 1: SUMMARY OF TRANSITIONAL JUSTICE SURVEYS

Country	Source	Year	Methodology	n	Main foci and survey findings
South Africa	Gibson 2004a; 2004b; 2005	2000-2001	Cross-sectional national survey	3,727	<ul style="list-style-type: none"> <li>▪ Describes South African human rights culture; analyzes the degree to which acceptance of official truth contributes to this culture.</li> <li>▪ Most South Africans accept the official version of the truth as propagated by the truth and reconciliation process, and think that the truth and reconciliation process has been effective; acceptance of human rights culture is associated with acceptance of official truth, low ethnic prejudice, and weak support for majoritarianism (although, even with controls, black Africans and Coloureds are less likely to accept rule of law than whites); although the author asserts that the truth and reconciliation process had the desired effects, he recognizes he can't make a convincing causal argument because of the limitations of his cross-sectional research design (Gibson 2004b: 141, 142)</li> </ul>
Afghanistan	AIHRC 2005	2004	Cross-sectional national survey; regional focus groups	4,151 for survey; 2,000+ for 20 focus groups	<ul style="list-style-type: none"> <li>▪ Proposes a national strategy for TJ and addressing past abuses based on a national consultation.</li> <li>▪ 69% of Afghans have been the victims of conflict related crimes, and 94% of Afghans regard justice as very important or important, "justice" most often meaning punishment by courts (49%) and much less frequently means reconciliation (20%), compensation (15%) or publication of the truth (9%); 88% of Afghans believe that without accountability, people will seek revenge; the groups best able to administer justice are the national government (31%), the international community (31%), intellectuals and social groups (21%), and local elders (7%); overwhelmingly (80%), Afghans believe trials should be held in Afghanistan immediately (45%) or within 2 years (26%); the most trusted court (50%) would include both Afghan and international judges; 90% believe that human rights abusers should be removed from their posts; the great majority of respondents want to see justice achieved within the ambit of Islamic law.</li> </ul>

Kosovo	UNDP 2007	2007	Cross-sectional national survey	1,250	<ul style="list-style-type: none"> <li>▪ Focuses on public opinion regarding human rights standards, violations, and accountability. Also discusses ethnic bias in the assessment of war crimes and missing persons; challenges faced by judges and prosecutors; forms of reparation.</li> <li>▪ 92% of Kosovo-Albanians (KAs) and 47% of Kosovo-Serbs (KSs) believe their human rights have been violated since 1989; almost unanimous inter-ethnic support for resolving problem of missing persons, achieving reconciliation between ethnic communities, and material reparations for war crimes victims; substantially less support for rehabilitation and socialization (~38%) and formal recognition of victims' status (~28%); 84% of KAs and 37% of KSs deny that members of their ethnic group committed war crimes; KA perceptions of main parties responsible for missing persons: 36% Serbian gov't, 34% UNMIK, 26% Kosovo gov't; KS perceptions of main parties responsible for missing persons: Kosovo gov't (32%), UNMIK (28%), Serbian gov't (13%), KFOR (11%); % of KAs who believe that trials are conducted according to international standards varies by location of trial: 64% have faith in the International Criminal Tribunal for the Former Yugoslavia, 34% have faith in trials conducted in Kosovo, and 3% have faith in trials conducted in Belgrade; for KSs, the corresponding percentages are 30%, 9%, and 47%.</li> </ul>
Northern Uganda	Vinck et al. 2007	2007	Cross-sectional regional survey	2,875	<ul style="list-style-type: none"> <li>▪ Describes attitudes towards peace and justice.</li> <li>▪ Exposure to violence was widespread, with 21% reporting abductions and 85% reporting property damage or loss of income; yet only 3% of respondents mentioned justice as a top priority, with health (45%), peace (44%) and food (43%) topping the priority list; compensation was 7 times more frequently proposed than apologies, justice or reconciliation; respondents favoured the ICC (29%), the Ugandan court system (28%) and the amnesty commission (20%) as the most appropriate TJ mechanisms, while only 3% favoured gacaca (although 49% said that gacaca would be useful in dealing with the LRA); 80% favoured peace with amnesty over peace with trials, perhaps fearing the disruptive consequences of the latter; the overwhelming majority (in the 90% range) wanted to establish a truth commission, talk openly about their experiences, and establish an authoritative, historical records of events; 70% expressed willingness to live in the same community as former LRA combatants, but results varied by region and combatant rank (high ranks were less accepted).</li> </ul>



Northern Uganda	Pham et al. 2005	2005	Cross-sectional regional survey	2,585	<ul style="list-style-type: none"> <li>▪ Measures exposure to violence due to war and human rights abuses since 1987, attitudes towards various TJ mechanisms, and views on the relationship between peace and justice.</li> <li>▪ 40% reported abduction, 45% reported the killing of a family member, and 23% reported being mutilated; 76% of respondents said that those responsible for abuses should be held accountable; although 65% supported amnesty, 29% said that amnesty is unacceptable by itself; traditional and formal TJ mechanisms were poorly understood; many respondents saw peace and justice as not mutually exclusive; most respondents favoured punishment (66%), while a minority favoured forgiveness, reconciliation and reintegration (22%).</li> </ul>
Rwanda	Pham et al. 2004	2002	Cross-section regional survey	2,091	<ul style="list-style-type: none"> <li>▪ Assesses level of trauma exposure, prevalence of PTSD, predictors of PTSD, and the association between predictors and attitudes towards justice and reconciliation.</li> <li>▪ 94% of respondents reported exposure to at least 1 traumatic event and 25% were diagnosed with PTSD; women, older people, respondents in Rwanda before 1994, Tutsi, and respondents who felt distant from other ethnic groups were most likely to have PTSD; 64% said they supported the idea of achieving social justice; 91% of respondents supported local trials (gacaca), 68% supported Rwandan national trials, and 42% supported trials by the International Criminal Tribunal for Rwanda; people with PTSD were less likely to support gacaca and national trials, and more likely to support ICTR trials; surprisingly, higher levels of education were associated with less support for all three types of trial.</li> </ul>

## APPENDIX 3

### WHAT CAN CANADA DO?

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This Appendix presents options for the Government of Canada to strengthen TJ evaluation and policy:

- A. in Afghanistan, and
- B. at the global level.

#### A. OPTIONS FOR STRENGTHENING TJ EVALUATION AND POLICY IN AFGHANISTAN

The dilemmas surrounding TJ policymaking are particularly pressing today in Afghanistan, where concerns over stability, human rights, accountability and democratization are all being pushed to the top of Canada's policy agenda.

In December 2001, Afghanistan's civil war was partially ended by the Bonn Agreement between selected Afghan leaders.<sup>211</sup> That agreement provided the foundation for the election of a new Afghan government and the commitment of a large international security force (now numbering over 43,000 under NATO command, including approximately 2,500 Canadians). The debate over what Canada and its NATO allies should do to encourage Afghan TJ is ongoing. Some argue that until Afghanistan makes a serious effort to vet and prosecute former human rights abusers, state agencies will enjoy little trust from the Afghani public. Without legitimacy, these critics warn, it will be hard to defeat the Taliban and build a successful state. Others are more cautious, arguing that any efforts to vet or prosecute former warlords will lead to renewed tensions and violence, undermining the gains achieved through the Bonn Agreement.

In 2004, the newly established Afghanistan Independent Human Rights Commission carried out a national consultation on the topic, and discovered that Afghans perceived a link between the absence of accountability and insecurity. Many also viewed criminal justice and vetting as prerequisites for peace, urging the government to prosecute and exclude past offenders from public office.<sup>212</sup> The Commission's consultation was wide ranging and broadly based, surveying more than 4,000 individuals in 32 provinces, and making use of some 200 focus groups with about 2,000 participants. While this survey offered a useful starting point for future TJ-related research in Afghanistan, the final report acknowledged that its methods were less than scientific and its sample is probably not fully representative. (See text box, "Why Commission a New Afghan Survey on Transitional Justice?")

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<sup>211</sup> The UN-sponsored Bonn Agreement established an interim power-sharing agreement between major military factions and prominent political groups.

<sup>212</sup> For discussion of Afghanistan's transitional justice needs, see Rubin (2003); Gossman (2006); Nadery (2007); International Center for Transitional Justice Briefing Note, Afghanistan: Addressing the Past," January 25, 2008 (available at <http://www.ictj.org/en/where/region3/507.html>).

In late 2005, the Afghan government responded to the Commission's report by adopting a National Action Plan for Peace, Reconciliation, and Justice that included substantial TJ provisions, including commemoration of popular suffering, human rights vetting of officeholders, truth-seeking and documentation, reconciliation and national unity, and the establishment of a justice and accountability mechanism.<sup>213</sup>

Implementation pressures are mounting, and Human Rights Watch, for one, has urged President Karzai to immediately implement the Action Plan's provisions for vetting, reform and accountability.<sup>214</sup> There has been little progress to date, however, and in March 2007, the Afghan parliament appeared to reverse course, passing an amnesty for all individuals involved in previous conflicts. Not surprisingly, some of the main proponents of amnesty are among the political and paramilitary leaders who signed the 2001 Bonn Agreement.<sup>215</sup>

What could Canada do to investigate the utility of TJ efforts in Afghanistan?

### *A1. Commission a rigorously implemented national survey*

To gain a scientifically-based assessment of the nation's views on TJ and to assess the extent of pro-and anti-TJ constituencies, DFAIT should commission a rigorous survey of Afghan views. This study should include a broadly representative poll of at least 2,000 individuals, as well as multiple sub-surveys of key social and political groups, including the civil service, the military, former combatants, Islamic leaders, municipal officials, political party members, Islamic clergy, and other local leaders. This study will build on the 2004 Afghan consultation, adding precision, rigor, and new information.

The study should be designed so that it can be repeated at regular intervals. As noted above, the best way to test for causal impacts is to conduct repeat surveys among the same populations and, whenever possible, among the same respondents.

To avoid placing surveyors and respondents at risk, the survey should be carried out in relatively combat-free provinces of Afghanistan.

Survey questions will ask respondents about their views on the need for TJ; desirable TJ mechanisms; and views on possible TJ-related scenarios. For example, what do respondents think about possible tradeoffs between justice and stability? How do respondents rank potentially conflicting outcomes such as peace and accountability?

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<sup>213</sup> Nadery (2007); International Center for Transitional Justice Briefing Note, Afghanistan: Addressing the Past," January 25, 2008 (available at <http://www.ictj.org/en/where/region3/507.html>).

<sup>214</sup> Human Rights Watch Press Release, "Afghanistan: Justice for War Criminals Essential to Peace: Karzai Must Hold Officials Accountable for Past Crimes," December 12, 2006 (available at <http://hrw.org/english/docs/2006/12/11/afghan14826.htm>).

<sup>215</sup> International Center for Transitional Justice Briefing Note, Afghanistan: Addressing the Past," January 25, 2008 (available at <http://www.ictj.org/en/where/region3/507.html>). A few select trials have taken place but without due process.

A properly designed survey will tell us much about the relative appetite for specific TJ measures in different regions of the country, among different ethnicities, organized groups, men, and women. Most importantly, it will identify the extent and location of TJ supporters and opponents, allowing policymakers to pragmatically craft sensible policies that maximize accountability while minimizing backlash.

We estimate that this project would require 12 months of work. A team of external project leaders (including both survey and Afghanistan experts) would work with a recognized survey organization in Afghanistan to conduct the study and interpret the data.

### ***Why Commission a New Afghan Survey on Transitional Justice?***

In 2004, the Afghanistan Independent Human Rights Commission (AIHRC) carried out a national consultation on TJ. This was an important and useful exercise, and it established the existence of broad public interest in human rights and accountability. Why, then, do we recommend an additional survey?

**Scientific rigor:** The authors of the 2004 report acknowledge that their work was “not meant to be a scientific study,” and a close reading of their methods confirms this assessment. The selection of respondents was neither random nor accurately adjusted for regional population size, making it hard to know the surveys’ margin of error and whether it accurately reflects the population’s sentiments. The report included no tests to assess the reliability and validity of the survey instrument, making it impossible to know whether its measurements were either consistent or accurate.

**Causality:** The survey reports which proportions of the sample held specific opinions, but it cannot tell us *why* this is so. Without additional questions and statistical techniques, we lack crucial causal information. For example, although a particular ethnic group may be strongly in favour of TJ, we need to know whether this is because they suffered more abuse in the past; were recruited less heavily into the new military; have less access to development aid; have less access to money from the drug trade; or suffer from other forms of perceived government discrimination. Without introducing statistical controls, we can only speculate.

**Attention to key TJ constituencies:** The 2004 survey did not attempt to assess the existence, size, or location of pro- and anti-TJ constituencies. A new study could do this by over-sampling specific populations such as civil service members, the military, ex-combatants, or Islamic clerics.

**Scenarios:** The 2004 study made no attempt to ask respondents about different scenarios and tradeoffs. For example, how would different groups respond to questions about the potential trade-off between stability and justice?

**Timeliness:** The 2004 consultation is by now out of date; opinions may have changed in important ways.

**Over-time capacity:** The survey was not constructed to permit repeat polls, including, potentially, with the same respondents. Yet it is precisely this kind of over-time analysis that is best suited to assessing TJ impacts.

### *A2. Commission a focused review of the scholarly and policy literature to determine the likelihood of TJ success in Afghanistan*

While the national survey of TJ attitudes is being conducted, DFAIT should commission a desk-based study of the extent to which Afghanistan is, in fact, a good candidate for TJ implementation. Although the impact literature is still limited, is there anything in the existing theories and empirical studies that provide some indication of the prospects for TJ success in countries like Afghanistan? This study would analyze the scope conditions for TJ success, using these findings to estimate whether Afghanistan is a “least likely,” “moderately likely,” or “most likely” candidate.

For example, what do existing impact studies tell us about TJ prospects in post-conflict countries with low per capita GDP, weak state structure, and heavy dependence on the export of contraband? If the prospects are not promising, does the evidence suggest that substantial international encouragement and investment can help overcome existing structural difficulties? Would a strong Canadian or NATO effort surmount barriers such as a weak judiciary, an ongoing insurgency, and excessive reliance on the export of narcotics? Such a review might also yield important information about what sort of TJ mechanisms might be most appropriate.

This study should recruit a small team of leading social scientists, TJ practitioners, and Afghan experts, coupled with several “fast talk” consultations and an experts workshop in Ottawa. Six months would be enough time to produce a 15,000 word report.

Coupled with the nationally representative survey discussed above, this study would give Canadian policymakers a clearer picture of the desirability and feasibility of promoting TJ in Afghanistan.

Armed with the survey and the desk-based study, Canadian, NATO and Afghan policymakers would possess state-of-the-art information and analysis of the feasibility, desirability, and potential risks of TJ in Afghanistan. The knowledge gap would have been substantially reduced, and Canadian policymakers would have investigated its TJ options for Afghanistan in a rigorous, evidence-based, and ethically responsible manner.

### *A3. Support the creation of TJ pilot projects*

If the commissioned studies do in fact suggest that TJ in Afghanistan is both feasible and desirable, DFAIT could seek Afghan and international support for the design and implementation of at least two TJ pilot projects. Drawing on the information gleaned from the national survey, these two projects (e.g., one involving vetting, the other prosecutions) could be launched in two different locales.

Ideally, these two geographic zones would be in safe parts of the country and would exhibit similar contextual factors, such as community size and ethnic composition. Researchers would track population attitudes before, during, and after the TJ pilot efforts with surveys, while also studying institutional behaviour and the attitudes of pro- and anti-TJ constituents.

By using over-time research methods and controlling for contextual factors, researchers would be able to analyze the success, failure, or irrelevance of specific TJ tools, and would then be in a position to make broader recommendations for the country as a whole. By first supporting a small number of regional pilot projects, Canada would have proceeded with a potentially risky intervention in a cautious and responsible manner.

Depending on budget and political interest, the scope of these pilots could be expanded to encompass more zones and populations, thus enabling researchers to learn more about the factors associated with the success and failure of different TJ mechanisms.

## B. OPTIONS FOR STRENGTHENING GLOBAL TJ POLICY AND EVALUATION CAPACITIES

Given the knowledge gaps identified in this report, there is much that DFAIT can do to strengthen the international donor community's research and policy capacity. By playing a lead role in mobilizing interest and support, DFAIT would identify Canada as a world leader in promoting policy-oriented, practical research on human rights and accountability.

### *B1. Commission new research and evaluation*

Given the paucity of TJ impact research, there is a pressing need for more and better-quality evaluation. To further this goal, DFAIT should partner with like-minded donors in Canada and abroad to commission new policy-relevant research. To get the process started, DFAIT or a like-minded Canadian agency could convene a medium-sized meeting of international donors, TJ experts, impartial social scientists, and development evaluators.

What kind of research should be commissioned? As we argue above, an urgent need exists for more interdisciplinary, impartial, and "mixed method" research. This report has discussed the strengths and weaknesses of individual case studies, population surveys, structured comparisons of six to 12 individual countries, and large-scale, multi-country statistical efforts. A Canadian-led consortium of donors could commission research from a few independent and multi-disciplinary teams that would bring all of these methods to bear simultaneously.

Careful process tracing within strategically chosen individual cases will help identify the multiple causal dynamics through which TJ helps or hinders peace, democracy, stability, and human rights. Comparative work across dozens of countries will help to identify the countries and contexts that are most amenable to specific TJ tools. Surveys and focus groups will give us a better sense of how pro- and anti-TJ constituencies emerge in countries of interest. When combined, these research strategies will dramatically boost our knowledge of when and where specific TJ tools should be used.

To examine whether TJ is having real and useful impacts on the ground, it would be helpful to commission "over time" research. Researchers should track public opinion, institutional behaviour and other indicators across months and years, since a snapshot of a

single moment in time cannot accurately track political or social change. This means that the best results would be obtained through multi-year funding, although researchers would begin discovering useful information within a single year.

To ensure that the research is both rigorous and objective, the donor consortium should commission work from medium-sized teams that include TJ practitioners as well as program evaluators and social scientists with no specific TJ-related commitments or background.

A relatively small sum of money would help catalyze funding from a variety of like-minded governmental and private donors in Canada, the US, and Europe.

### *B2. Create an independent monitoring and peer-review mechanism*

To promote rigor and impartiality, DFAIT could fund a small body of independent experts to track and assess TJ research and policy. Donors, researchers and advocacy groups are increasingly interested in assessing TJ results, and multiple studies of varying quality are likely to emerge in the coming years. It is vital that an arm's length mechanism be created to assess the quality of this work and to promote good research and evaluation practices.

One option is to create a global panel of experts on transitional justice, modeled on the International Panel on Climate Change (IPCC). The IPCC's principal task is not to conduct research itself, but to "assess on a comprehensive, objective, open and transparent basis the latest scientific, technical and socio-economic literature produced worldwide relevant to the understanding of the risk of human-induced climate change, its observed and projected impacts and options for adaptation and mitigation."<sup>216</sup> A smaller-scale International Panel on Transitional Justice could perform a similar function for research on TJ – taking note of and disseminating key findings, highlighting important gaps or deficiencies in the state of knowledge, propose standardized measures for assessing TJ impact over time, and serving as a collective "peer review" mechanism. The members of this panel should include acknowledged TJ experts as well as disinterested academics and practitioners from other fields. It is vital that this assessment group maintain an arms-length relationship with DFAIT, other donors, and TJ advocacy groups.

Such evaluations could also form the core of an annual report on transitional justice, along the lines of the Human Security publication run by Andrew Mack at Simon Fraser University<sup>217</sup> (formerly at UBC's Liu Centre). This report would review developments in the TJ field, critically discuss ongoing data gathering and analysis, and act as a mechanism for disseminating good practices of TJ research, implementation and evaluation.

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<sup>216</sup> <http://www.ipcc.ch/about/index.htm>.

<sup>217</sup> <http://www.hsrgroup.org/>.



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**CIPS**

Centre for  
**INTERNATIONAL  
POLICY STUDIES**

55 Laurier Avenue East  
Room 3170  
Ottawa, Ontario  
Canada, K1N 6N5

E-mail: [cepi-cips@uottawa.ca](mailto:cepi-cips@uottawa.ca)  
Website: [www.cepi-cips.uottawa.ca](http://www.cepi-cips.uottawa.ca)