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How Power Dynamics Influence the “North-South” Gap in
Transitional Justice

*Laurel E. Fletcher and Harvey
M. Weinstein*

“North-South” Dialogue: Bridging the Gap in Transitional Justice

Workshop Transcript

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CONTENTS

HOW POWER DYNAMICS INFLUENCE THE “NORTH-SOUTH” GAP IN TRANSITIONAL JUSTICE <i>Laurel E. Fletcher and Harvey M. Weinstein</i>	1
“NORTH-SOUTH” DIALOGUE: BRIDGING THE GAP IN TRANSITIONAL JUSTICE <i>Workshop Transcript</i>	29

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How Power Dynamics Influence the “North-South” Gap in Transitional Justice

Introductory Essay by Laurel E. Fletcher and Harvey M. Weinstein*

INTRODUCTION	2
I. WORKSHOP FORMAT	5
II. WHAT DID WE LEARN?	5
A. <i>Dynamics of Colonialism in Transitional Justice Interventions</i>	6
1. <i>Collective Memory and Legacies of Colonialism</i>	8
2. <i>Collective Amnesia and International Transitional Justice Interventions</i>	9
B. <i>Dynamics of the Legalization of Transitional Justice</i>	10
1. <i>The Legal Framework of Transitional Justice and the Politics It Promotes</i>	11
2. <i>The Politics of Social Justice as Transitional Justice</i>	14
C. <i>Dynamics of Research Extraction</i>	16
1. <i>North-Based Researchers, South-Based Sites</i>	17
2. <i>Extractive Pressures on North-Based Research</i>	19
3. <i>South-Based Researcher-Practitioner Dynamics</i>	21
D. <i>Funding Dynamics</i>	22
1. <i>Funding Top-Down Priorities</i>	22

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2. <i>Funding Interventions vs. Funding Structural Changes</i> .	23
3. <i>The Dilemma of South-Based Grantees</i>	24
4. <i>Funding Reparations</i>	25
III. WHAT'S NEXT?	26
CONCLUSION	28

INTRODUCTION

Transitional justice is an area of inquiry, a set of practices, a form of politics, a career, and/or a source of hope and disappointment, to name a few of its facets. Centered on the idea that in the aftermath of mass violence or periods of repression, societies need to undergo processes to address past harm to ensure a peaceful future, transitional justice unabashedly offers itself as a moral project, a ritual cleanse. A community of interested actors—advocates, funders, policy makers, practitioners, scholars, and victims—is invested in its success. Although how success is defined varies with how the actor interprets the events that trigger a transitional justice response. While stakeholders are essentially in agreement around fundamental questions of goals and tactics, the “community” is not static. Critiques of transitional justice abound within the community, generally focused on shortcomings in theory and practice.

An important part of the critique has been that transitional justice as now conceived is top-down, formulaic, overly focused on international criminal prosecutions, limited to civil and political rights, and, in the worst case, nothing but a shill for global capitalist expansion. In response, there have been calls for a transitional justice that is bottom-up; transformative; economic, social, and cultural rights-focused; and responsive to corporate complicity and to structural inequities. In turn, critics who think transitional justice continues to overpromise and overreach question this expansive agenda. Concerns are raised about a move away from an accountability-focused agenda toward interventions that are development-focused or even nation-building.

The extent to which advocates and victims have succeeded in making victims a central focus of transitional justice does not appear to have brought satisfaction to victims nor to their advocates. Disquiet remains. The gap between the ideal and the reality is brought into sharp relief when attitudes towards these processes are examined through a prism of the relationships between the so-called “Global North” and “Global South.” However, even then, there is a more fundamental set of issues at play; we suggest that there needs to be a forthright conversation about the internal power and social dynamics within the transitional justice community that shape the field. These include but go beyond the North-South gap. In particular, there is no internal dialogue about the ways in which geo-political and other power dynamics play out in this space. In response to this concern, we gathered together a diverse group to begin this discussion at a workshop in March 2017 at Berkeley Law titled, “North-South Dialogue: Bridging the Gap in Transitional Justice” (the “Workshop”).

Generally, only outside of the published literature and professional conferences do transitional justice stakeholders talk candidly and express misgivings about the ways in which they and other constituencies within the community conduct their activities. We are not referring to professional grouching or petty politics inherent in any field. The misgivings to which we refer have a wider dimension to them. Those who are working in or with communities in which transitional justice interventions are contemplated or implemented—the Global South—are frustrated at how they are treated by international researchers, funders, and policy makers from wealthy countries—the Global North. Our objective was to initiate a conversation about this North-South gap. We understand the terms “Global North” and “Global South” to be a convenient, if reductive, shorthand for the fact that the major funders, policy makers, and researchers working on transitional justice mostly are based in Australia, North America, and Western Europe, while the sites of transitional justice practice generally are found in Africa, Asia, and Latin America.¹

We aimed to narrow this divide by increasing communication among advocates, practitioners, scholars, and funders working in various regions. We wondered what ideas and exchanges might be generated by bringing “North” and “South” transitional justice practitioners and researchers together. Our conversation sought to peel back the cover on this dynamic and to have a candid conversation about what David Kennedy has called “the dark side” of human rights, which is equally applicable to transitional justice.² We hoped that the Workshop would serve not only to identify some “lessons learned” in transitional justice praxis to date, but might also help to enrich the way in which participants – both scholars and practitioners – theorize transitional justice as a concept and framework for action. Would such a dialogue lead to more innovative ways of thinking about what transitional justice can accomplish and/or lead to other forms of intervention?

We also hoped that the meeting might serve as a forum to explore how to create sustainable platforms for on-going dialogue among geographically diverse transitional justice scholars, advocates, and practitioners. The field has its own specialty journal, listserv, and formal and informal regional networks. However,

¹ Eastern European countries have initiated processes to respond to the widespread human rights violations committed by authorities during the Soviet era. National researchers have studied these efforts but because little of this work appears in English, unfortunately, it is often overlooked in mainstream, international discussions. Exceptions to this pattern include Roman David, *Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)*, 28 L. & SOC. INQUIRY 387 (2003); ENCYCLOPEDIA OF TRANSITIONAL JUSTICE (Lavinia Stan & Nadya Nedelsky eds., 2013); and Nanci Adler, *Reconciliation with – or Rehabilitation of – the Soviet Past?*, 5 MEMORY STUD. 327 (2012). Furthermore, we acknowledge that the concepts of Global “South” and “North” are an accurate geopolitical representation, but can also serve as a shorthand to refer to concentrations of inequitable distribution of power and material resources. Thus, there are pockets of the “South” (e.g., marginalized communities) found within the “North,” and similarly enclaves of the “North” (e.g., elites) within the “South” (e.g., rural communities).

² David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002).

there is no umbrella organization to facilitate the face-to-face dialogue and open exchange of ideas required to overcome the gap in knowledge between South and North. As the work of scholars writing in the Global South has been relatively less visible in international discussions of transitional justice, there has been little dialogue across language barriers either through meetings or scholarly exchange. Those with resources to travel and who publish regularly (especially in English) dominate the field.³ We had entertained the idea of the creation of an international association of transitional justice scholars and practitioners, and bringing together a smaller cross section of the community could be a way to test the concept.

Informed by these ideas as a foundation, the meeting was the culmination of months of planning by a core group of scholars and practitioners based in the Global North and South. We sought to bring together in a small international meeting, scholars who have studied transitional justice from a variety of disciplines, employed a variety of methodologies, and who might offer a rich academic contribution, as well as practitioners whose experiences in different countries, with different mechanisms, and whose engagement with different sectors could provide a comprehensive experiential basis from which to interrogate scholarly contributions. Our focus was on cultivation of a two-way dialogue.

The irony of two North-based academics initiating a conversation about the ways in which “our” engagement is problematic to colleagues in the South is not lost on us. It would have been better if the meeting could have taken place in the Global South; it would have been better if co-conveners were South-based. Access to resources—time, funding, networks—needed to pull off an international meeting is not equally distributed. As North-based academics, we have the privilege of salaried positions that allow us to devote the time to organizing the meeting. Practitioner-colleagues based in the South rely on grant funding and it was not fair or feasible to expect them to carry the administrative and financial responsibility for an initial meeting. We formed a committee with a balance of North- and South-based colleagues to provide input into the meeting structure and to guard against replicating the power dynamics in the field that we sought to disrupt. This was a modest beginning. Developing an organizational and financial structure that enables South-based leadership in future efforts remains unfinished business.

³ Laurel E. Fletcher & Harvey M. Weinstein, *Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals*, 7 J. HUM. RTS. PRAC. 177, 183 (2015) (finding that of a sample of 486 transitional justice articles published between the years 2003 to 2008, 89% were written in English, 5% in French, 4% in Spanish, and 2% in German). The lead journal in the field, the *International Journal of Transitional Justice*, is moving to increase publication opportunities for authors writing in Spanish. Spanish language-manuscripts that are accepted will be translated into English for publication. The editors are working with the Oxford University Press to enable publication in Spanish as well.

I. WORKSHOP FORMAT

Twenty-five participants attended this Workshop from all major regions of the globe and comprised of a mix of academics and practitioners. Pablo de Greiff, UN Special Rapporteur on the right to truth, justice, reparations and guarantees of non-recurrence delivered the keynote address. We organized our discussion around a series of panels, each exploring a particular dimension of transitional justice. Panelists were asked to act as “animateurs,” that is, to put forth some ideas about the question addressed from their own perspectives and experience, and to provoke discussion among all the participants. We made a deliberate decision not to have formal papers, as this format tends to narrow discussion and privileges academic voices over those of practitioners.

There were four panels organized around the following questions:

- Is there a North/South gap in understandings and beliefs about what transitional justice is and what it can do?
- In the evolution of transitional justice, what has been the contribution of various disciplines to the transitional justice framework?
- What has been the relationship among transitional justice research, policy advocacy, and practice?
- Based on 30 years of research and experience, what is it that we should be doing in response to mass violence?

II. WHAT DID WE LEARN?

The pages that follow contain an edited transcript of the day’s proceedings. Readers interested in how the conversation developed and how ideas introduced earlier in the day morphed or were reinterpreted by subsequent participants will be aided by the preservation of this archive. Here we offer our synthesis of the recurrent dynamics that emerged from the conversation, informed by our experience in the field: 1) colonialism and its legacies in the field of transitional justice; 2) the politics of transitional justice and how the field frames decisions about how transitional justice is implemented; 3) characteristics of the practitioner-academic relationship as mediated through the North-South prism such that most researchers are from the North and research subjects are in the South; and 4) the dynamics of North-based funding, through which the needs and priorities of victims and their advocates are mediated or distorted and which influence the kind of research that is carried out, as well as the transitional justice strategies that are employed.

Two underlying themes emerged as critical to our discussion: first, North-based attention to the legacies of colonialism and North-based transitional justice interventions are perceived as hypocritical by many in the Global South.

Workshop participants surfaced this feeling of hypocrisy, how it colors attitudes of communities in the Global South, leading to suspicion and rejection of transitional justice. A second theme emerged around questions of ownership: Who owns transitional justice and its implementation? Is transitional justice driven by the international community, domestic elites, local practitioners or some coalition formed from these and other constituencies? This theme reflects a lack of power or constrained agency felt by recipients of North-based transitional justice concepts and strategies.

These themes and dynamics illuminate some of the drivers of the North-South friction in transitional justice.⁴

A. *Dynamics of Colonialism in Transitional Justice Interventions*

A refrain that runs through the Workshop discussion centers on the maldistribution of power and particularly how the legacies of colonialism⁵—on former colonizers and the formerly colonized alike—affect transitional justice work. International transitional justice initiatives frequently play out against the legacy of colonialism as a political backdrop. States in the South targeted for transitional justice interventions by international actors may resist such efforts as being part of a neo-colonial project. Anthropologists have increasingly taken the perspective that colonialism is “a struggle that constantly renegotiates the balance of domination and resistance.”⁶ This latter perspective underlies the suspicions and resistance that fuel antipathy towards Western-based international institutions. For example, the Government of Kenya undermined the International Criminal Court’s (ICC) prosecutions of its President and Vice President based on such arguments and the African Union resisted collaboration with the ICC on the

⁴ We identified these dynamics based on our interpretation of the discussion and our experience as transitional justice researchers and practitioners and they necessarily reflect our perspective on the proceedings. We undoubtedly have blind spots as to the ways in which our experience as North-based academics affects our interpretive lens. While this analysis does not necessarily reflect a consensus among all participants, we circulated an earlier draft to Workshop participants and sought to address the feedback we received. All errors and omissions in the final version are our own.

⁵ Colonialism has been defined as “a practice of domination which involves the subjugation of one people to another and the political and economic control of a dependent territory (or parts of it).” Lea Ypi, *What’s Wrong with Colonialism*, 41 PHIL. & PUB. AFF. 158, 162 (2013) (internal citations omitted). See also, Margaret Kohn & Kavita Reddy, *Colonialism*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Fall ed. 2017), <https://plato.stanford.edu/archives/fall2017/entries/colonialism/>. Writers have described the effects of colonialism from various perspectives including from philosophy and post-colonial studies. FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Richard Philcox, trans., 2004); PAOLO FRIERE, *THE PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 30th Anniversary ed. 2001); MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* (1996) (sociopolitical analysis); AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999) (development). Adam Hochschild has etched the horrors of Belgium’s colonial grip on Congo in *KING LEOPOLD’S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* (1999).

⁶ Peter Pels, *The Anthropology of Colonialism: Culture, History, and the Emergence of Western Governmentality*, 26 ANN. REV. ANTHROPOLOGY 163 (1997).

same basis: the ICC focus on African countries reflects the ongoing imperialist attitudes of the international justice regime.⁷

The invocation of colonialism to shield political leaders from international intervention is not just a cynical manipulation of history. It is also a strategy to forge national unity within a population for which another legacy of colonial rule is that the consolidation of national identity remains an active project. As explained by one South-based participant:

In many African contexts, transitional justice is deeply embedded in two meta-discourses: anti-colonialism and nation building. These world views (or ideological frameworks) position transitional justice as a political process that ascribes to it a role in promoting national dignity in the *context of being a victim of historical injustices* and as a visionary goal of building a collective identity in a context of deep ethnic divisions and a shallow collective civic allegiance to a central State. (emphasis added)

Transitional justice activists—based in country as well as international allies—see the instrumental use by domestic elites of the charge of “neo-colonialism” as an excuse to avoid accountability and to confer impunity upon wrongdoers. These activists are alert to the political manipulation of the colonial legacy by authorities. Elites of a State that has inherited and adapted the authoritarian governance structures that were left by the colonizers may use the rubric of anti-colonialism as a cover for their own agenda, that is, to protect their own positions of power.⁸

But what do we make of the resistances to transitional justice that are found among affected communities in the Global South (as opposed to political elites) based on similar arguments? Superficially, the resistances to transitional justice based on rejection of neo-colonialism appear similar between the South-based political elites and the affected communities. Yet, colonialism’s legacy operates differently based on who controls the levers of power. Our discussion pointed to a more nuanced understanding of how South-based practitioners and scholars perceive North-based interventions as a manifestation of neo-colonialism. This view represents a critical component of the “gap” between the North and South. It also confirms what we uncovered in our academic research as well as in the informal field-based encounters and survey research that led to the Workshop itself.

More significantly for our Workshop, North- and South-based transitional justice researchers and practitioners discuss even less with each other the ways in which colonialism’s legacy emerges in our work, and how it generates or

⁷ President and Commander in Chief of the Defence Forces of the Republic of Kenya Uhuru Kenyatta, C.G.H., Speech by His Excellency at the Extraordinary Session of the Assembly of Heads of State and Government of the African Union, Addis Ababa, Ethiopia (Oct. 12, 2013), <https://www.nation.co.ke/news/-Uhuru-stinging-attack-at-the-West-and-ICC--Speech/1056-2029518-11b3ny0z/index.html>.

⁸ William C. Johnstone, *Legacies of Colonialism*, 5 SAIS REV. INT’L AFF. 4 (1961).

contributes to ambivalence or resistance of South-based academics and practitioners to external transitional justice actors and initiatives. Similarly, our discussion revealed ways in which North-based academics and practitioners may fail to challenge, and therefore unwittingly reinforce, this problematic dynamic. One participant laid out the problem succinctly: “[T]ransitional justice seems to depend on the ‘law of the strongest.’ And, nowadays, in the international arena, what we call the ‘North’ or the ‘West’ ... is the strongest.”

1. Collective Memory and Legacies of Colonialism

This linkage between transitional justice and a power differential seems to reflect two dimensions. The first is the reality that former colonial powers in the West (the Global North) continue to wield economic and international political power in the Global South. The second dimension has to do with collective memory and how it transmits and renews social memories of the violence and historic oppression perpetrated by former colonizers. The term “collective memory” was used first by sociologist, Maurice Halbwachs.⁹ As Coser notes, Halbwachs saw collective memory as a “socially constructed notion”¹⁰ in which “the past is stored and interpreted by social institutions.”¹¹ Whether it is termed “social memory” or “historical memory,” the critical point is that while all of us have our own memories of the past, there is a form of remembrance that lies outside of individuals and is contained within the structures of society. It is a group memory that endures.

The collective memory of the colonial enterprise surfaces in how transitional justice is perceived in countries in the South. When the international community supports criminal trials or truth commissions for a contemporary episode of mass violence, local voices may legitimately ask: “What about the victims of colonial crimes? When will the transitional justice process be applied to us/them? When will the truth of colonial crimes be revealed and justice for that violence be served?” For many, current approaches to transitional justice are less valid because the colonial past is ignored. Thus, during the Workshop one participant captured this sentiment as: “There is no gap between North and South in understandings and beliefs about transitional justice, but there is a double language and double standard built on the law of the strongest, and it is time transitional justice serves to benefit all of the victims, including the victims of the so-called North.”

It is important as well to differentiate the colonial era from the post-colonial. Just as a short-term view of “transition” in the idea of transitional justice makes little sense, so too is the idea of “post-colonialism” very limiting if focused solely on the initial period after independence is gained. Collective memory is powerful and the after effects of colonialism are far-reaching. In an early paper, William

⁹ MAURICE HALBWACHS, ON COLLECTIVE MEMORY (Lewis A. Coser ed. & trans., 1992).

¹⁰ *Id.* at 22.

¹¹ *Id.* at 24.

Johnstone¹² described three legacies of colonialism: *authoritarianism* that reflected the pre-colonial past, enhanced by the colonists and taken up by the independence leaders; *separatism* in that the borders of the newly-independent state were often devised in government offices far away with no conception of the many different groups that dwelled within and whose loyalties were to an ethnic or religious group, not to a central and unified state; and *educational systems* maintained by the colonial power limited the education opportunities for the indigenous inhabitants and relegated them to low-level positions.

A recent article by Bruce Gilley on the “beneficial” effects of colonization provoked a storm of rage and ultimately was withdrawn because of threats of violence.¹³ Scholars debunked the paper citing economic, political, and development arguments to refute the notion that colonialism was somehow a positive factor in states that had been colonized. What appears left out of these discussions are the psychological and social effects of colonization in “post-colonial” societies and their ongoing presence in the collective memory of the societies. The collective memory of colonization experiences—some factual, some mythic—shapes the attitudes and reactions of those living in post-colonized societies. As one participant from Asia expressed it: “Despite the *mea culpa* of international organizations, academics, and global activists, transitional justice interventions are still made mostly as foreign impositions on communities seen and treated as savages.”¹⁴

2. *Collective Amnesia and International Transitional Justice Interventions*

Compounding this phenomenon is the amnesia that colonizing States exhibit with respect to their own histories as colonizers, and their inability to confront the current traces of those pasts. The history of imperialism makes States that were the recipients of European and Asian ambitions for hegemony vulnerable to any hint of “cultural imperialism.” Anabelle Sreberny describes a “‘hypodermic’ needle model of international effects, ‘American’ values being injected into Third World hearts and minds.”¹⁵ South-based transitional justice actors are affronted when former colonizers find it hard to see that the transitional justice premise—that societies need to face their tainted pasts—applies to *them*. Of particular concern is the amnesia of “settler societies” such as Canada, Australia, New Zealand, and the United States, where ignorance or outright denial of past abuses has been the norm. It is not surprising that transitional justice strategies and

¹² Johnstone, *supra* note 8.

¹³ Bruce Gilley, *The Case for Colonialism*, THIRD WORLD Q. (2017), http://www.web.pdx.edu/~gilleyb/2_The%20case%20for%20colonialism_at2Oct2017.pdf.

¹⁴ Roland Paris, *International Peacebuilding and the ‘Mission Civilisatrice’*, 28 Rev. Int’l Stud. 637 (2002); Louise Mallinder, Siobhán Wills & Thomas Hansen, *Transitional Justice Inst.*, Ulster Univ., *Economic Liberalism, Democracy, and Transitional Justice: Workshop Report* (2018).

¹⁵ ANNABELLE SREBERNY, *THE GLOBAL AND THE LOCAL IN INTERNATIONAL COMMUNICATIONS, IN MASS MEDIA AND SOCIETY* (James Curran & Michael Grevitch eds., 1991).

approaches based on research and policy derived far from local experience and history will be viewed with skepticism and even resistance.

Several participants alluded to this phenomenon. For example, a colleague from Africa commented:

The European Union's policy on transitional justice is basically a policy of how the South should deal with its transitional justice. It says absolutely nothing about colonial legacies. It says nothing about what the European powers should do about their responsibility for hundreds of years of abuse.... There is a temptation for me, as a Southerner, to say the transitional justice policy of the African Union should be a list of demands for what the Europeans should do. They have refused to take responsibility for the mess that was left....

Transitional justice encourages such selective memory of the past by international interventionists. The "transition" is from the most recent episode of violence, and a narrow focus on immediate actors and direct victims appears to be responsive to the crisis at hand. Yet local actors see the continuities from the recent to the more distant past and view the North-based transitional justice policies through the freighted history of external intervention. As one participant put it succinctly: "There's, I think, a very clear sense of hypocrisy that is a North/South one. From an African perspective, that is a discourse that dominates or a deep sense of resentment and understanding of how this field is viewed."

Comments on the uses and abuses of power during the Workshop revealed the critical importance of the dependence-independence dilemma for many States in the South. The power of the United Nations and its institutions, the power of development aid, the World Bank and the IMF, and the dependence on the largesse of funders (public and private) awaken the collective memory with their threats of powerlessness and lack of agency. More critically, the push for "universality" is code for "Western values" and, therefore, subsumes local voices and traditions: while basic values of human rights and justice may be similar across cultures, the manner in which these are defined, interpreted, and practiced may vary widely. For many, transitional justice strategies as currently devised become imperialism in a new guise that undercuts the possibility of justice and social repair.

A few participants commented that the goals of security, justice, and non-recurrence are universal and are not defined by North or South. The question remains as to how these goals can be translated into mechanisms that reflect the aspirations of those who have been directly affected by human rights abuses and not are perceived as impositions from afar that mirror an imperialist past.

B. Dynamics of the Legalization of Transitional Justice

Many transitional justice scholars and practitioners have become frustrated by how the field has been legalized. International acceptance of legal norms that mandate processes and outcomes—truth, justice, reparations—offers the pretense of legalism as an apolitical application of rules. But the invocation of transitional

justice, and the legal norms that provide its international foundation, too often mask deeply contested visions about what comes after the bloodshed. Conversation during the Workshop repeatedly returned to the political dimensions of transitional justice: how legal norms themselves are politicized or create particular types of politics; the ways in which locally-based transitional justice practitioners are caught in political struggles with national and international elites; and the questions of “what is” and “who owns” transitional justice. These dimensions are in a constant state of reappraisal, and as a result, transitional justice becomes politics by other means.

1. The Legal Framework of Transitional Justice and the Politics It Promotes

The oft-noted triumph of transitional justice is that it has succeeded, in the span of a single generation, in changing the background assumption that perpetrators will escape legal sanction for their crimes to an international expectation that societies will undertake affirmative efforts to hold wrongdoers to account. The so-called “justice cascade”¹⁶ is ascendant. Dictators can no longer be confident they will secure assurances of impunity as part of a quid pro quo to leave office; unconditional amnesties in peace agreements no longer pass international muster. These are striking changes which confirm that among international policymakers, the “peace versus justice debate” is over on the terms on which it was once waged.¹⁷ Among many legal and human rights advocates, the trope is that justice is the winner as are the victims. The clear-eyed international political realists who justified amnesties as necessary to achieve political stability have been defeated by the starry-eyed idealists who successfully won the argument that the international community cannot subscribe to norms that countenance impunity for mass violations. The slew of international criminal courts and tribunals, principles to combat impunity, standards for peace negotiations, and policy prescriptions are seen to have laid to rest the argument that impunity and amnesia for past bloodshed is the price societies must pay for peace. But this international consensus, often invoked by South-based victim advocates, can also be deployed to deflect or silence countervailing views among affected communities.

In other words, the terms of the peace versus justice debate have had an afterlife that many protagonists did not anticipate in the heat of the struggle. Equipped with law, the idealists won the fight. Supporters of transitional justice marshalled long-standing, but seldom enforced, international laws of armed conflict and human rights that required States to prosecute egregious violations.¹⁸

¹⁶ Kathryn Sikkink & Carrie Booth Walling, *The Impact of Human Rights Trials in Latin America*, 44 J. PEACE RES. 427 (2007).

¹⁷ See ASPEN INST., STATE CRIMES: PUNISHMENT OR PARDON: PAPERS AND REPORT OF THE CONFERENCE, NOVEMBER 4-6 1988 (1989); Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991).

¹⁸ Orentlicher, *supra* note 17; Theodor Meron, *The Case for War Crimes Trials in Yugoslavia*, 72

But the emphasis on legal approaches to addressing mass violence, and in particular the application of international criminal law, has led to the consolidation of transitional justice as a set of law-centered practices which mask the political debates that lurk beneath them.¹⁹ This “law of transitional justice” has led to policies and practices which can distort or obscure what local populations want.

International actors play a role in these politics. In many countries that initiate transitional justice processes, the ideas about what this undertaking should look like come from elsewhere. For example, one participant explained that in Bosnia, international criminal trials shaped what transitional justice was understood to be. Inside the country, people viewed prosecutions in The Hague as imposed from abroad. While trials succeeded in removing perpetrators from power (just as early transitional justice advocates claimed), international prosecutions did not succeed in softening inter-ethnic attitudes. Convictions of Bosnian Serb war criminals did not lead to greater acceptance or “rehumanization” of “ordinary” Bosnian Serbs by Bosniaks nor did guilty verdicts lead to the “rehumanization” of Bosniaks by Serbs. The purported payoff that trials would promote social reconciliation has not materialized and, in fact, has encouraged popular thinking that retribution is the only acceptable alternative to impunity. In this case, pursuit of criminal accountability created a politics of justice but not necessarily a politics that facilitated social cohesion.

Similarly, the importation or imposition of accountability as the “gold standard” transitional justice response sidelines other, particularly community-generated, ideas about what would best serve the establishment of peaceful relations between victims and former perpetrators.²⁰ Restorative justice practices such as *mato oput* in Uganda offer important insights to international conceptions of what constitutes transitional justice interventions. But a non-government organization (NGO) practitioner from Uganda explained that national and international criminal trials dominate national and international attention, leaving local communities and their preferences outside the mainstream political conversation. Activists from varied contexts—Cambodia, Tunisia, Sri Lanka, Uganda—spoke about their work with communities directly impacted by the violence. Members of local communities may not use or be familiar with the international vocabulary of transitional justice, but they do have ideas about what they need in order to recover. And they may not find locally-generated practices on a “prix fixe” menu of options, which always includes, but may not be limited to, criminal trials. Serious engagement with communities is vital. South-based

FOREIGN AFF. 122 (1993).

¹⁹ Kieran McEvoy, *Letting Go of Legalism: Developing a ‘Thicker’ Version of Transitional Justice*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 15, 18-21 (Kieran McEvoy & Lorna McGregor eds., 2008).

²⁰ For a trenchant examination of this phenomenon see Samuel Moyn, *Anti-Impunity as Deflection of Argument*, in ANTI-IMPUNITY AND THE HUMAN RIGHTS AGENDA 68 (Karen Engle, Zinaida Miller & D.M. Davis eds., 2016); Paul Gready & Simon Robins, *From Transitional to Transformative Justice: A New Agenda for Practice*, 8 INT’L. J. TRANSITIONAL JUST. 339, 357-60 (2014).

participants emphasized that local engagement is needed to ensure transitional justice interventions are *identified by* affected communities. Instead, what they see is a thin form of “consultation” with community members which too often consists of informing victims about what constitutes transitional justice—mechanisms that distant national and international authorities have devised based on Western conceptions of justice. The assumption is made that these mechanisms offer a universal response to the needs of all victims everywhere.

The problem of the dominance of criminal accountability is thus the result of a larger issue: the adoption of an international legal framework for transitional justice. Early transitional justice supporters advocated for the application of international law. Their aim was not simply to advance the international rule of law in the abstract, it was to effect change on the ground. The move to reject impunity and political transitions that advanced the interests of the negotiating parties at the expense of victims was instrumentalized through law. Advocates pressed a political agenda to promote victim-centered justice by insisting that governments comply with their international human rights obligations.

Victims and their allies could internationalize their demands by relying on arguments that governments had to implement the human rights to truth and to justice. This was effective as long as governments complied and as long as implementation of legal agreements reflected the priorities of victims. As discussed at the Workshop, however, compliance is continually contested, requires constant attention and energy of practitioners, and is nowhere fully realized. Transitional justice in practice becomes heavily politicized. Local practitioners often are frustrated with international lawyers who play a leading role in advocating for the establishment of legal institutions to implement transitional justice processes, but who are notoriously ill-equipped to ensure that legal institutions work to satisfy the needs of victims. The legal institutions established to realize these goals often are poorly-functioning and exist in theory but not in practice. Those working on the ground see up close the price that victims pay because of the gap between the promise of international law and what it is capable of delivering.

The isolation of practitioners from international lawyers is exacerbated by the ways in which the dominance of law forms a wedge between the priorities of communities and the available mechanisms to achieve them. Once advocates find themselves operating within the dominant international transitional justice legal paradigm, they are speaking the language of rights compliance rather than articulating expressly political demands about what victims need and want. Victims’ recovery might have nothing to do with criminal trials. Yet the discourse about victims’ rights in transition narrows attention to particular aspects of victims’ experiences: violations of civil and political rights resulting from particular episodes. The underlying causes of the violence, and the systemic dimensions of the social, economic, and political vulnerabilities that preceded and followed it, are avoided or dismissed because they are not embedded in formal legal instruments which are amenable to judicial enforcement.

Another political dimension that undermines victim empowerment is the gap between victims who are often poor and living in rural communities, and South-based practitioners who are seen to be members of the urban elite. A South-based practitioner traced this problem to the general trend toward professionalizing the practice of transitional justice (and human rights more broadly) in the Global South. Local communities directly targeted during the violence may not feel a shared experience with civil society advocates. Many such transitional justice actors are well-heeled professionals based in the capital cities of their countries who descend on remote, affected communities to inform victims of transitional justice policies that have been formulated without their input. The “local” policies may reflect the views of the elites who, in turn, may represent the power structures that disempower the communities which bore the brunt of the violence.

This dynamic is not universal in the “South.” As pointed out by one participant, in Latin America, victims tend to be more urban and demand legal justice, even as they raise doubts about the integrity of their national legal systems. Rural communities in Central and South America voice demands for legal remedies even though they may not have firm ideas about what such relief should look like, and despite the fact that legal results often do not live up to their expectations.

2. *The Politics of Social Justice as Transitional Justice*

Participants talked about the political obstacles to achieving justice for victims. Some of these are ideological. For example, one participant argued that the nesting of transitional justice within efforts to consolidate liberal democratic regimes means that the goals of transitional justice are to stabilize a particular political system of a country. Addressing root causes and creating “just” conditions in society is a far more radical project than national and international elites generally have in mind. But when the starting point for the discussion about justice is rights-based, the contest is one over which intervention is feasible and will satisfy the rights to truth, justice, and if lucky, the right to reparation. This is transitional justice politics.

What it is *not*, as pointed out by a Workshop participant, is a discussion about what is necessary to *respond to injustice in order to create social justice*. In other words, the aftermath of mass violence and repression offers the political opportunity to disrupt the status quo of the institutional and political arrangements that produced the violent rupture. However, old as well as new politically relevant actors frequently resist such efforts. More troubling, they too rely on transitional justice framing and vocabulary to advance their political agendas. However, transitional justice mechanisms do not currently address the challenges of the hollowing out of State institutions through corruption and State capture. Thus, through omission and commission transitional justice becomes weaponized in national power struggles.

Several examples emerged throughout the day’s discussion of ways in which governments and powerful interests undermined, discredited, and thwarted the

justice demands articulated by victims. In the decades since the parties signed the peace accords in Guatemala, political authorities have resisted implementing fully the recommendations of the truth commission, which include measures of reparation and structural reforms. Recently, State actors have taken to discrediting victims by using their calls to implement reparations as proof that the beneficiaries are acting out of economic self-interest rather than allegiance to justice values.

Another political tool authorities employ to thwart victims' demands is the discourse of counter-terrorism. For example, as one participant recounted, in Kenya in the aftermath of the election-related violence and the failed ICC prosecution of political leaders responsible for it, elites promoted national security and counter-terrorism as key national priorities. Making the country strong, including through development projects, thus became part of counter-terrorism strategy. This deflected attention from the victims of the political violence. More specifically, linking nation development to State security meant that questioning the effects of such development can be characterized as "unpatriotic." Civil society demands that the State attend to the negative impacts of development on poor communities are then conveniently delegitimized. Calls to address the social marginalization and the economic roots of the political unrest can be ignored. Thus, the momentum of local communities to link their victimization to the underlying causes of the violence is stalled by the political manipulation by elites who benefit from the economic status quo.

Sometimes, the challenges victims face are not discursive but straightforwardly political. Victims and their allies can have the law on their side, as they do in Sri Lanka, but as explained by one participant, if trials, truth commissions, and vetting processes threaten national political elites, the formal agreements authorities have signed to initiate transitional justice become hostage to domestic politics. Another example came from Cambodia, where the authorities resisted victims' demands for restorative justice measures as part of transitional justice processes because former Khmer Rouge cadre members are part of the government.

But to say that transitional justice is political does not mean it is always bad for victims and affected communities. NGOs working to advance victims' interests wield power too. Several participants offered first-hand accounts of victories they had secured by acting to influence political decisions. Some pointed to more recent instances in which conflict ended through a mediated settlement, giving victims the opportunity to shape the political reform agenda; Colombia is the most recent example.²¹ But even where victim representatives may not have a formal seat at the negotiations, civil society actors can and do lobby political stakeholders for support. They seek to opportunistically leverage international policy makers and international transitional justice networks. One example is how

²¹ Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera [Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace], Colom.-Fuerzas Armadas Revolucionarias de Colom. (FARC), Nov. 24, 2016, <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Documentos%20compartidos/24-11-2016NuevoAcuerdoFinal.pdf>.

civil society looked for ways to use the Human Rights Council hearing on Sri Lanka as an opportunity domestically to thaw the frozen state of the government's transitional justice policy.

At the same time, when transitional justice practitioners behave as political actors, shaping their practices and advocacy with the aim of influencing decision makers, they may find themselves confronting ethical questions about their professional role. Researchers in South Africa crafted their transitional justice policy advocacy to omit international framings and speak within a vocabulary of "local knowledge" practices. They succeeded in persuading authorities to take on board their recommendations. This may seem like a sensible strategic decision and not political activism. But, for example, what about a scenario where researchers or legal advocates have a victim-centered policy goal in mind and then conduct the research to justify it? They would then blur what for many is a sacrosanct divide between an "objective" researcher and "partisan" advocate. In this instance, researchers are entering the politics of transitional justice.

Law permeates the field of transitional justice, but so too does politics. Practitioners, researchers, and scholars operate on both sides of this dyad. Advocates for victims deploy law politically by grounding claims for justice as rights claims. Researchers and scholars advancing the claim that transitional justice must transform the social and political fields to rectify injustice are making a political claim about the status quo. To make these statements is not offering normative judgments about transitional justice stakeholders but, instead, making observations about the field and our understanding of the Workshop discussion. To acknowledge that law and politics are marbled into the terrain is not a condemnation of the field but opens up new lines of reflection about how to steer an ethical path through the thicket.

C. Dynamics of Research Extraction

Transitional justice is constituted both as an area of academic study and as a set of practices based on a core group of beliefs that have evolved over some 25 years. Researchers examine transitional justice interventions, the influences that shape the conditions under which these policies are developed, the institutions that implement laws and policies offered to address the legacy of mass violence, etc. NGO activists and other civil society actors form and advance pragmatic agendas, frequently justified by reference to the preferences of victims, about what interventions should look like and aim to accomplish. For the most part, the academic-practitioner relationship is based on shared professed values, an alliance of sorts. To identify as a transitional justice scholar or practitioner, is to declare to a core set of shared broad normative commitments: justice, community/society rebuilding, and the realization of human rights—each group working within its separate domain.

Transitional justice practitioners are *doing* transitional work aimed to meet the needs and goals of communities that have been directly harmed by mass violence. Researchers are *doing* studies and publishing findings because they want

to see transitional justice *work*. Many researchers consider themselves to be “activist-scholars”—including some in the Workshop who self-identified as such—and are comfortable “taking sides” in political struggles. They unapologetically orient their work to support the goals of victims and communities. Given the nature of the horrors visited upon individuals and communities by civil wars, State-sponsored violence, and social upheaval, a cooperative and mutually supportive relationship between researchers and practitioners is not only worthwhile but critical. The goals of each group are aligned and oriented to promote positive outcomes in transitional justice processes.

1. North-Based Researchers, South-Based Sites

At first blush, it might seem odd that there would be a friction between practitioners and researchers, united as we are by commitments to support the recovery of victims and create a more just social order. Yet, as one participant based in the Global South offered in his provocative remarks, transitional justice must confront the same paradox that afflicts humanitarian relief industries: “the suffering of some creates opportunities for others.” He developed the metaphor of the economic model of colonialism as a conceptual tool to illuminate how the North-South frictions seep into the relationship between North-based researchers and South-based practitioners: transitional justice “factories” run by “experts” are located in the Global North, while the “raw materials” for transitional justice—the violence, victims, their advocates—are found in the Global South.

There is objective truth in the metaphor. We know from our research that transitional justice scholarship is written primarily in English, dominated by the disciplines of law and political science, and written *about* transitional justice interventions that take place in Africa or Asia, or countries newly independent from the Soviet Union.²² The major conferences at which transitional justice scholars discuss their research take place in Europe or the United States and are dominated by academics working in those regions. The research is about people, events, and practices that take place “over there”—outside the advanced industrial countries and mostly in places in which the eruptions of violence cannot be entirely separated from the processes of colonization and decolonization that indelibly mark those regions. South-based research is limited by lack of funding and when it is carried out, it is ignored for the most part by academics in the developed States partially because of language, lack of access of South-based researchers to major publications, and perhaps, suspicions by scholars in the North about its rigor. The end result is that the majority of studies are extractive, leaving those whose lives are affected with little input into interpretation of findings or their application to policy.

Colleagues based in the South shared stories of encounters “across the divide” with researchers in the North. These reveal that even well-intentioned,

²² Fletcher & Weinstein, *supra* note 3, at 183-86.

ethically-conscious researchers and scholar-activists may be challenged to carry out their work in ways that South-based colleagues and research subjects experience as personally supportive and politically empowering. It is hard to get this stuff right. Foreign research teams take time and resources from locally-based organizations that facilitate their work. This time and work required of local groups may or may not be compensated. The larger the research scope, the more disruptive to local partners. Major undertakings are more likely to occur with well-funded research, but there are also lone researchers or graduate students conducting field work who request an interview here and access to contacts there. It all adds up. And it *is* extractive, in a strict, crude sense. Researchers need access to “the suffering of others” and local NGOs and practitioners are the guardians or gatekeepers of that pain. North-based researchers in their conduct, wittingly or not, also contribute to the feelings of South-based colleagues of being exploited, taken for granted and overlooked—the laborers in the fields.²³

For example, several heads nodded in agreement when one South-based colleague lamented at the number of foreign researchers with whom he had collaborated to facilitate their fieldwork, but who almost never returned to discuss their findings with local stakeholders. The “crops” of transitional justice research may grow in the South, but can only be “consumed” around conference rooms in the North. And there was shared laughter at the mention by a South-based practitioner of how galling it is to have former interns from the North return after receiving their degrees from prestigious institutions as transitional justice “experts.” Having earned their fieldwork credibility under the tutelage of a local group, these newly-credentialed, junior researchers traipse through their former office with all the arrogance and privilege of colonial descendants.

But there also were examples of better practices that go against the grain of the North-based-researcher-South-based-subject binary, even if they were not in the end wholly successful in influencing policy. For example, participatory action research offers the possibility of enlisting local actors in the data gathering and analysis, thereby simultaneously empowering participants and producing new knowledge. One current example came from a North-based researcher who is involved in research in Tunisia on the transitional justice processes there. He and his colleagues are training individuals who are working in that country’s truth commission to gather and analyze data on how the mechanism is working. Local knowledge will be strengthened and local actors will be able to access and harness their expertise to influence transitional justice public policy. At the time, another North-based researcher brought up a counter-example from Rwanda. There he and a team of North-based researchers implemented participatory action research methods with local educators to design a new history curriculum to teach about the historical antecedents to the genocide. The research process made the

²³ Kate Cronin-Furman & Milli Lake, *Ethics Abroad: Fieldwork in Fragile and Violent Contexts*, PS: POL. SCI. & POL. 1 (2018), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/1D3AA6FCCB5C50F502A99C4B317048F4/S1049096518000379a.pdf/ethics_abroad_fieldwork_in_fragile_and_violent_contexts.pdf.

Rwandan participants feel included and agents of curricular change, but in the end the government refused to adopt the curriculum. Research methods do not necessarily ensure they will in fact empower local actors.

Over time, there have been some positive developments to reduce this North-South power imbalance. For example, in Latin America there is a history of regional networking among transitional justice practitioners. Similarly, African civil society has organized a transitional justice network to amplify the role of African NGOs in post-conflict settings.²⁴ These initiatives hold promise to strengthen South-South regional ties and a research agenda driven by South-based priorities. Increased activity among South-based transitional justice organizations is a prerequisite to shifting the dynamic from North-based prescriptions of what it means to study transitional justice and towards a research agenda driven by South-based groups.

2. *Extractive Pressures on North-Based Research*

Researchers in the North acknowledged some of the ways in which they contribute to the extractive dynamic, voicing some of their choices as influenced by their intellectual interests and others as constrained by the institutional pressures under which they work. In the context of discussing the extractive research dynamic, a European academic raised the question of whether she and her colleagues have a moral obligation to research the colonial violence perpetrated by their own States rather than, or in addition to, more distantly-related transitional justice contexts. Thus, should Dutch transitional justice researchers be studying the war crimes committed by the Netherlands in the Dutch West Indies during the Second World War? Is there a need for North-based researchers to address the wrongdoing of “our” States before we amass evidence to demand that States in the South undertake transitional justice measures? Beyond raising the question of obligations to history that should influence the research agendas of individual academics, discussion focused more on the institutional and structural factors that contribute to the extractive dynamic.

Many universities in Europe have a requirement that research be made relevant to the larger public. However, rather than seizing this opportunity to engage and adapt their study findings to equip their research subjects and locally-based practitioners with materials to support South-based advocacy efforts, Workshop participants acknowledged that the common practice is for academics quickly to edit their “academic” work into a popular primer—“educational outreach”—and call it a day. They do not use this as an opportunity to pursue collaborations with local research partners to generate materials shaped by and in service of local research agendas.

It is hard to resist these practices. The economic and political playing fields in which these encounters occur are decidedly tilted. South-based practitioners

²⁴ ADVOCATING TRANSITIONAL JUSTICE IN AFRICA: THE ROLE OF CIVIL SOCIETY (Jasmina Brankovic & Hugo van der Merwe eds., 2018).

and researchers are rarely in a position to challenge their North-based partners. South-based NGOs and academic institutions generally do not have the human and material resources that match those of their North-based counterparts to carry out similar research and to publish it in English-language publications that reach the global transitional justice audience. South-based transitional justice agendas are mediated through North-based researchers to reach a global audience.

At the same time, there was acknowledgment that some of the extractive dynamic has nothing to do with individual intentions but is shaped by North-based systems of academic knowledge production. Most of the world's most prestigious universities are based in Western Europe and North America and the academic tenure standards and the disciplinary incentives promulgated in these elite institutions are hegemonic in the global academy.²⁵ Researchers based in institutions in the North must meet performance standards that shape their research agendas, how they conduct fieldwork, how they disseminate their findings, etc. For example, in disciplines like law, in which sole authorship is the norm, North-based academics would not normally seek out a collaborative research project in which South-based colleagues would be equal intellectual partners. In the social sciences, a single authored book is far more valuable in advancing a career. Other disciplines may have expectations regarding the frequency of publications that militate against pursuing collaborations with partners in the South where doing so feels risky because it might interfere with expeditious publication.

Compounding the problem of exclusion of South-based colleagues from participation in production and consumption of transitional justice literature are the economic barriers for South-based academics and practitioners to access the published scholarship. The highest ranked scholarly journals—in which North-based academics want to place their work to impress their colleagues and secure the professional imprimatur of excellence—are published by North-based institutions. Universities generally have institutional subscriptions, making access to journals free to individual professors and students. However, practitioners and researchers in the South must pay a fee to download articles. This effectively puts the “final product” of transitional justice production beyond the reach of those who tended the fields in which the raw materials were grown.

Another aspect to the problem is that in many cases transitional justice scholars may feel marginalized within the academy, and, therefore, they may be less likely to transgress professional norms that could push back against the extractive pressures. Transitional justice is not an established discipline or specialty “belonging” to any one area. The topic of post-conflict transitions can be approached from many directions; it is an area defined by events, not by a

²⁵ Prestigious universities in Australia, New Zealand, and Asia (e.g., Singapore and Hong Kong) also follow similar standards. Diana Hicks, *Performance-Based University Research Funding Systems*, 41 RES. POL'Y 251 (2012); Eric Archambault & Vincent Larivière, *History of the Journal Impact Factor: Contingencies and Consequences*, 79 SCIENTOMETRICS 1 (2009).

method of inquiry.²⁶ It has its own encyclopedia,²⁷ but it is an open question as to whether it has matured into a theoretically defined and academically distinct subject. The fragile academic identity of transitional justice marks those who research and write in the area. Those researchers based in the Global North have to justify the value of their work to their brethren in the academy. This may exacerbate the pressures on these researchers to shape their research to satisfy traditional criteria of academic respectability: publish in mainstream journals, follow norms of authorship, satisfy the criteria of prestigious research funders, etc.

Further, as participants pointed out, within what we call “the field” of transitional justice, the disciplinary research norms work against breaking down the domain between researcher and subject to form more horizontal relationships. Law and political science dominate the published literature. The conventions in both of these fields place the researcher in the role of fact gatherer and interpreter of the data, and relegate research *subjects* to a separate domain. One participant defended the conventions that every discipline uses to evaluate research. These, he suggested, are necessary to maintain rigor and excellence. Transitional justice thus is served by maintaining high (read traditional) standards of each discipline. It was suggested that other disciplines, like theatre studies, offer more promising alternatives as disciplines with which to study transitional justice. Looking for disciplines that accept, if not embrace, a blurred the line between “researcher” and “research subject” may be a place to start developing alternative models for research collaborations.

3. *South-Based Researcher-Practitioner Dynamics*

The tensions in the practitioner-academic relationship are not exclusive to North-South dynamics described here, although they graft onto it in particular ways. There was an exchange among South-based academics and South-based practitioners that pointed to the challenges of building a South-South alternative to the North-based-researcher-South-based-practitioner model of knowledge production. Academics in the South are not necessarily allies of local activists. The “activist-scholar” model is not a widely-accepted research profile in some regions of the Global South. A more common practice is for academics to adhere to the professional role of the “neutral,” “objective,” and “removed” observer to social phenomena. They do not see themselves as involved or engaged in the political struggles of local activists seeking to influence policy. These professional strictures mean that civil society actors do not think or look to the academics in their countries as allies. South-based academics may not be trusted precisely because they do not claim to have a stake in the practical outcomes that South-based practitioners are focused on achieving.

²⁶ Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’*, 3 INT’L J. TRANSITIONAL JUST. 5 (2009).

²⁷ ENCYCLOPEDIA OF TRANSITIONAL JUSTICE, *supra* note 1.

D. Funding Dynamics

Transitional justice grew in international prominence and influence because of international financing.²⁸ Despite the importance of donors to the work of NGOs responsible for organizing and advocating for victims, pressuring national and international authorities to act responsibly, and serving as critical intermediaries between transitional justice mechanisms and affected communities, there is little public dialogue about the role of funding. Interspersed among the comments on colonialism, power, and lack of meaningful input by victims into transitional justice interventions was an ongoing discussion regarding the influence of money on how transitional justice is perceived and practiced.

Funders can influence the practice of transitional justice in several ways: first, by funding certain mechanisms, such as truth commissions or trials, and not supporting others, such as indigenous justice practices and other local approaches, funders make transitional justice selectively visible. Funders may choose to support the work of specific NGOs that pursue goals consonant with international perspectives on “best practices” for transitional justice. By so doing, funders suppress locally-based innovations. Second, funders influence how research is carried out. Funders invest in studies that are short-term and focused on immediate and tangible deliverables. Lack of money for long-term and broad-based studies narrows the participation of South-based researchers to a limited genre. The constant search for funding also limits the ability of South-based researchers to devote time to write and contribute to the transitional justice literature. Finally, funding for reparations has significant impact in terms of who receives money and who does not, whether funders support community or individual reparations, and how monetary reparations interact with societal transformation.

1. Funding Top-Down Priorities

Much donor money has focused on financing transitional justice aims within a rule of law framework. This framework effectively negates other victim agendas but meets the needs of funders for tangible results. A participant from Latin America noted: “All the money goes to governance and rule of law.... [J]ustice is very far away from us. ... That is not the justice we want.” And another offered: “I think transitional justice has been treated largely as an extension or application of international human rights law, international humanitarian law, international refugee conventions, and the rest, with total disregard for local politics.” What this means, in essence, is that the large scale and costly interventions that are legally-based or national in scope (criminal prosecutions and truth commissions) may not be responsive to the needs of those on the ground. They may, however, reflect more the top-down views of bureaucrats and professionals in New York or Geneva in collusion with national elites. However, as a South-based participant noted, local practices can offer valuable lessons and insights to international

²⁸ Frances Pinter, *Funding Global Civil Society Organisations*, in *GLOBAL CIVIL SOCIETY* 195–217 (Helmut Anheier, Marlies Glasius & Mary Kaldor eds., 2001).

transitional justice policy and practice. Despite international policies and assumptions, “[t]here is no gold standard [for transitional justice].”

The focus of donors on “quick results” and “money well-invested” means that money is steered towards trials and truth commissions; these can produce measurable results in terms of trials held or number of consultations, etc. It is far more difficult to measure economic, social, and cultural interventions that may effect change in the long-term and even then, it may not easily be quantified. As one African participant said “It’s actually much cheaper to invest in prevention than it is in cure. [J]ust think ... of the mind-boggling ... budgets that international courts and tribunals are consuming every year.” The participants discussed the difference between short-term and long-term transitional justice, the latter focused on institutional reforms that might lead to non-recurrence. While this guarantee is part and parcel of the goals laid out by the international community for transitional justice, that is not where most of the funding goes.

2. *Funding Interventions vs. Funding Structural Changes*

This differential in funding transitional justice mechanisms versus investing in efforts to promote structural change raises the question of how and whether transitional justice should encompass the redistribution of resources or economic development which would prioritize long-term investment in change. However, such investment becomes caught up in the geopolitics of the global financial and economic systems. It also has to contend with the histories of Western financing and interventions intended to undermine post-colonial Socialist governments. Governments justify the current crackdown on civil society worldwide as a legitimate effort to protect State sovereignty from pernicious meddling by foreign interests.

Faced with government resistance to their demands that transitional justice measures go beyond symbolic interventions, activists in the South have few national allies upon whom they can call to promote social justice as the full response to past violence. A participant from Africa summed this up with these questions:

[W]hy is there violence in the Congo? Why is there violence in the Middle East? Without us looking beyond and seeking to address those particular issues that are more geopolitical, that are about the economic system, the global economic system, we will always be in this field, talking about transitional justice day in, day out, decade after decade.

Whether financing for interventions to address structural causes is seen as empowering victims or undermining the government depends on the political context. Too often, national elites have vested interests in maintaining the current mechanisms for distribution of resources and in merely changing who controls them. As one practitioner from the South put it: “Certain States want to engage with other States on the business of key interests, mostly around natural

resources.” Money then drives how States reorganize after mass violence or repression.

3. *The Dilemma of South-Based Grantees*

Clearly, civil society is critical in ensuring just outcomes in times of change. Yet, when one participant referenced a study that suggested only one percent of the funding flow for transitional justice goes to civil society work, a foundation participant was shocked: “I think, if that’s true, that’s truly scandalous We cannot really talk about power and agenda setting without talking about where the money goes and how those decisions are made.” This particular foundation had shifted eighty percent of its funding in this area to local initiatives. Of course, as we shall see, that has significant implications for research funding and even for this organization. The reality is that short-term successes are critical to continued funding even in the context of a multi-year award.

From the perspective of civil society, NGOs need money to survive and they must turn to donors for those funds. But donors do not always understand the practicalities of life in the field where organizational survival depends on chasing external sources of funding for programs that do not meet the criteria specified by Western-based donors. Practitioners either must change direction in order to secure funds or limp along as best as they can, often in defiance of national governments that are threatened by the openness and challenges raised by civil society. NGOs in the South are seen often as naive or incapable, and as needing to be held financially accountable in ways that their colleagues in the North are not.

Two problems were highlighted in our conversation: the first is that donors are committed to preconceived ideas. One North-based practitioner described his experience as an international expert flown into a country for a national conference to discuss which transitional justice mechanism the country would implement. This practitioner related that the donors had pre-determined that the country should establish a truth commission. He found himself in the position of presenting a “checklist:” “‘Here is a checklist. This is what a truth commission is supposed to look like.’ That’s a big problem.”

The second problem is that international donors fund in specific areas and demand “deliverables” and accountability for how their money is spent. As one participant explained: “It’s a little bit like the chicken and the egg” concerning how donors determine the relationship of transitional justice processes to the actual atrocities. “How do we get out of this vicious cycle and bring the benefits of transitional justice . . . more to the ground?”

For small NGOs in the Global South, spending an excessive amount of time completing forms and meeting donor demands for housekeeping functions becomes not only a distraction but seems far removed from the real work of making change on the ground in what are often intense conflicted environments. And yet, the NGOs are caught between survival, which depends on meeting the donor demands, and choosing their own paths, risking their demise.

How research is conducted, by whom and for whom is also affected by funding. The gap between research findings and policy decisions is often a manifestation of how ideology trumps evidence. While many North-based researchers are forced to comply with government expectations that their work will be policy-relevant, this is more often a matter of a presentation than real-life impact. One researcher from the South commented: “Research thus needs to challenge the framing of how costs and benefits are calculated.” State funding often comes with a request for policy-relevant studies. Thus, funding then becomes an arm of government expectations and new directions of study become limited. These distortions in funding are of great concern to South-based researchers who want their research to reflect the actual context, desires, and goals of those with whom they are working.

South-based researchers grapple with a lack of funding. South-based academic institutions usually do not fund fulltime researchers so researchers in the South are forced to work multiple jobs in order to support themselves. In addition, their expertise, valuable to the NGO community and frontline work, is all-encompassing. There is little time to develop and carry out the kinds of studies so valued in the North. Finally, these researchers are cut off from academic communications by the cost of obtaining books or journal access. One Latin American academic showed an advertisement from a US-based journal: “Speaking of power structures and gaps and limitations, I think this is exhibit A, and look at the prices here.” (Holds up a list of prices for journal articles). “These are real problems,” he said. “Sometimes I come across this fantastic article that could help, but to read it once costs \$60.00.” Travel to international conferences is a significant challenge as well. By way of illustration: none of the South-based participants could use their grant funds to finance their attendance at the Workshop, while all North-based participants had unrestricted funding, however challenging to obtain, which they could allocate to use for travel.

It is not a surprise, therefore, that the South-based practitioners spoke forcefully of the extractive nature of the current research dynamic—researchers from the North studying populations in the South. Money is indeed a driver of how transitional justice is studied, and who does the studying.

4. Funding Reparations

Finally, it is international donors and multilateral institutions that primarily fund reparation schemes. How these schemes are determined, by whom, and for whom often result in unforeseen consequences. Anger at those who receive money, debates about who is a victim, whether community reparations are of greater importance, the amount of money available—all of these become bound up with monetary recompense. Attitudes towards money frequently are over-determined but even more so when victimization is involved. One participant voiced her concerns: “The effectiveness of reparation policies requires victims to ‘feel repaired.’” Money is not always the answer; it often drives further discontent.

III. WHAT'S NEXT?

The Workshop dialogue was instructive. Transitional justice publications frequently have documented, analyzed, and theorized the gap between expectations for what the field can accomplish and its often-disappointing results. The Workshop conversation drew from this tradition but invited transgression of the unspoken norm that transitional justice scholars and practitioners are all “in it together,” united to promote progressive, victim-centered responses to mass violence. Framing the conversation around what divides us rather than what unites us enabled a sustained conversation, fragments of which many participants had accumulated over time, that pointed to a deeper critique of transitional justice. It confirmed and gave texture to the observation that the Global North and Global South differentially engage transitional justice—both in its conception and in its practice.

Many in the North may shrug off this observation as another example of how attitudes in the First and Third Worlds reflect differences borne of living in countries of vastly different levels of economic wealth. Further, in a subtle manifestation of underlying stereotyping, those who dismiss this gap may attribute the differences in attitudes toward transitional justice to less sophisticated understandings of human rights and the international approach to the field. Those who hold these views may reject South-based criticism as a tendency by those in the South to hold on to anger at the colonial past or a manifestation of Third World elite power holders protecting their own. Fueled by ignorance of local cultures and traditions, avid supporters of international approaches to transitional justice may dismiss South-based criticism as naïve and idealistic, even romanticized. The trope is that if South-based colleagues “understood” international transitional justice better, they would embrace it. However, ignoring this gap in attitudes and beliefs would be a mistake. Unless Global North protagonists take seriously their own biases and narrow visions and their histories of colonialism and abuse of power, there can be no response that can legitimately be called international. Disregarding this gap impoverishes the global community and undermines our capacity to understand how transitional justice operates in the world, in all its indeterminacy and messiness. To promote practices that advance transformation, we need to forthrightly engage the schism between North- and South-based perspectives on transitional justice.

The Workshop conversation pointed to several levels at which the North-South gap operates. The international approach to transitional justice is top-down and norm driven, even as it gives lip service to eschewing a “one-size-fits-all” approach. This leaves South-based practitioners often struggling against the tide (even with allies in the North) to insert victim-based perspectives that run counter to national and international policies. Or perhaps even worse, local advocates who initially supported international approaches find themselves unable to effect a change of direction when, over time, that approach manifests in hardening divisions between communities, as in Bosnia.

For the most part, transitional justice policy gets implemented in the Global South and victims and their advocates have limited power to influence the institutional design of mechanisms and to ensure their accountability to the communities that are supposed to benefit. Here, South-based transitional justice practitioners and often researchers engage in transitional justice politics, leveraging the resources of international and North-based allies in their efforts. These alliances generate formal and informal collaborations across the North-South divide. Such contacts also become sites where North-South dynamics play out. Research and funding practices may inadvertently unfold in ways that recall, if not re-instantiate, neocolonial relationships. Frustrations, misunderstandings, and micro-aggressions flare and erode what, in the abstract, should be mutually-beneficial partnerships. Can we treat transitional justice not as a sacred concept to defend, but as a conceptual tool, with flaws like any other, to support just transformation after mass violence? If so, how does this help us to move forward?

Given the conflictual dynamics surfaced in the Workshop—the lasting impacts of colonialism, the legalization of the transitional justice response, the negative consequences of research extraction and the differential and limiting effects of funding—any approaches to narrowing the North-South gap must consider ways to mitigate these effects. While all these cannot be addressed simultaneously, a coordinated approach at multiple levels (civil society, national and regional institutions, multilateral organizations, and funding agencies) could be mapped out. Of course, the ultimate objective is to change the norms around transitional justice—a challenge that will elicit resistance from many stakeholders. Norm change suggests a need for education, advocacy, policy strategies, and political mobilization, not a small endeavor. Yet, even though the idea sounds overwhelming, focused and graduated steps may prove significant.

Not surprisingly, we did not arrive at any definite prescriptions in the short time we had together. But some ideas for how to engage the North-South dynamics that pervade the field did emerge. Some of these centered on possible structures to support on-going dialogue among scholars and practitioners from the North and South. Such dialogues needed to be balanced, both with regard to scholars and practitioners as well as between those based in the Global North and Global South. They need to resist the two dominant ways that international convenings in the transitional justice area are organized: either as academic conferences or as donor-sponsored meetings. Funding a few South-based participants to participate in a North-based academic conference and calling it a “North-South” dialogue is tokenism at best and recapitulates neocolonial social formations at worst. Having North-based funders convene South-based grantees for an “outcome-orientated” meeting in which a few scholars offer input also falls short of the mark. While there is appeal to directing such efforts toward immediate, material result—e.g., providing input into international and/or national transitional justice policy or practices—this likely will leave to the side the structural issues like the on-going impacts of colonialism in the conceptualization and implementation of transitional justice.

New formations are needed. Could a North-South group of scholars and practitioners be created that could deepen dialogue among us? And could this be a site from which to generate a different kind of engagement with policy makers?. Perhaps one led from the South that draws from the local and international expertise grounded in the geographical diversity of struggles for a just response to mass violence could generate needed change. Such a formation might be mobilized to discipline the legalization of transitional justice or at least, assure that its contributions are clarified, contextualized, and do not displace locally-based mechanisms where appropriate. Given the difficulty in funding this Workshop, we have no illusions about the challenges to bring this idea to fruition. An interregional network of North- and South-based participants would require significant resources and while there could be a stepwise progression that builds on various projects, funding for at least a two- or three-year trial would be necessary.

CONCLUSION

Transitional justice is an evolving field that, while embraced at the highest levels of international policy, is interpreted and practiced at the local level. Its growth and maturation invite reflection and interrogation of the ways in which the field constitutes itself conceptually and practically. The gap between the Global North and Global South is a feature of the field that urgently calls for greater attention. The Workshop was an initial effort to foster dialogue on this topic. This essay is our attempt to synthesize and highlight the essential features of our wide-ranging discussion that are contained more fully in the edited transcript that follows. We are indebted to our colleagues for their candor, sensitivity, and thoughtful insights. Only through facing uncomfortable truths about our field with unflinching honesty can we improve it.

“North-South” Dialogue: Bridging the Gap in Transitional Justice

Workshop Transcript^{*}

KEYNOTE ADDRESS	29
INTRODUCTION	36
I. DISCUSSION #1	38
II. DISCUSSION #2	60
III. DISCUSSION #3	82
IV. DISCUSSION #4	105
V. CLOSING REMARKS	124
PARTICIPANT BIOGRAPHIES	128

KEYNOTE ADDRESS

PABLO DE GREIFF, U.N. SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH,
JUSTICE, REPARATION AND GUARANTEES OF NON-RECURRENCE

Despite the fact that I think there is a lot to celebrate in the field of transitional justice, I also think that there is a lot to be concerned about. The fact that the field has consolidated is, in itself, an accomplishment. No one could have taken this for granted even in 2004, when the secretary-general’s report on transitional justice and the rule of law was published.¹

That report expressed a notional, but still not programmatic, consensus about the complementary relationship between the different components of a comprehensive transitional justice policy. Even that was something that no one could have predicted given where the “field” (no such thing at the time) started from. In addition to the fact there is now a field, as revealed by the fact that there

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^{*} The following represents a transcript of the above-named workshop, which took place on March 17, 2017.

¹ U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, U.N. Doc. S/2004/616* (Aug. 23, 2004).

are master's and Ph.D. students doing work in transitional justice; there is the specialized *International Journal of Transitional Justice*,² for which by the way, all of us are hugely indebted to Harvey, Laurel, and Hugo, for years of tireless work as editors. The Journal has played a tremendous role in the consolidation of the field. It is not just an instrument for conveying information; it is both an instrument and a manifestation of the consolidating field; there are offices in foreign ministries that are designed to both streamline the work of transitional justice in foreign relations and to foment even more work on this. The Swiss foreign ministry has a specialized unit for this purpose. The Swedes the Norwegians, and the U.S. State Department (through the Office of Global Criminal Justice) are active supporters and participants in transitional justice. Since 2012, we even have a specialized encyclopedia, Cambridge's *Encyclopedia of Transitional Justice*,³ a good marker of a consolidating field. All of these things took place in a relatively short period of time. The term itself, as we all know, became formalized either in the very late '90s or the early part of this century. In twenty to thirty years, the field managed to accomplish all of this.

Aside from academic activity, the important thing of course are the activities on the ground. The achievements of the field can be characterized by two factors. First, the "normalization" of the field, by which I mean that it has become part of the presumptive basket of policies that countries that are going through transitions—transitions of very different kinds—are expected to consider.

Anyone who is familiar with how difficult it is to achieve normative change at the international level would acknowledge that this is a huge accomplishment. In the space of twenty years, the rules have changed such that there is a firm expectation that something will be done to redress mass violations. I do not think that we should minimize that.

When people ask me for successes, I always say that I do not think there is any country that designed and implemented the different basic elements of a comprehensive transitional justice policy equally right. Nonetheless, there are some successes that one can point to. For example, I think that Chile and Argentina are achieving some very important successes in the domain of criminal prosecutions. In the domain of truth-telling, there are plenty of examples that can be mentioned, at least in terms of the clarification of important factors underlying the violations. In terms of reparations, I think that there are also examples of experiences that can be said to have made an important difference in the lives of victims and others. Chile is one such example and, in a totally different context, so is Morocco.

But not everything can be celebration. The field faces some important challenges, and in the remainder of my talk I will concentrate mostly on these. I do so not because I am pessimistic or because I want to convey a message of excessive concern, but because I think that the future of the field hinges on confronting these issues. There is a sense in which some of the challenges that the

² INT'L J. OF TRANSITIONAL JUST., <https://academic.oup.com/ijtj> (last visited Feb. 16, 2018).

³ Encyclopedia of Transitional Justice (Lavinia Stan and Nadya Nedelsky eds, 2012).

field is facing stem precisely from its very quick success. Let me put it this way: The evolution of transitional justice, our understanding of transitional justice as a policy that includes criminal prosecutions, truth telling, reparations, and guarantees of their non-recurrence, the paradigm of transitional justice, took shape in the Latin American transitions in the late '80s and early '90s. It traveled rapidly to the Central and Eastern European transitions. From there to South Africa, and afterwards the model was diffused very broadly and even more rapidly.

Now, the problem with this rapid success is that, of course, the paradigm was functionally adequate to meet challenges that emerged from authoritarian transitions. These were transitions that took place in contexts with two salient features. Despite all the differences between the South American countries, the Central and Eastern European countries, and South Africa, there were certain characteristics that those countries shared. They were highly institutionalized both vertically and horizontally, and by that I mean, first, that the institutions of the State had the capacity to provide services in every corner of the national territory (which of course is not a claim about the fact that they did, but that they had the capacity to do so). Secondly, these were all countries that were highly institutionalized "vertically" in the sense that most of the important interactions between citizens and the institutions of the State already were regulated by means of law. Again, this is not to say that they were effectively regulated or even, most of them, fairly regulated. This is also a claim about capacity. This is to say, these were not countries with huge legal vacuums.

Now, once the paradigm became established, it was transferred with hardly any modification from the post-authoritarian transitions to the post-conflict transitions. But the latter is an entirely different world in terms of institutionalization, both horizontally and vertically. It is also an entirely different world in terms of the functional adequacy of these transitional justice measures relative to the type of violations that took place in the new context of their application.

Truth, prosecutions, reparations, and guarantees of non-recurrence were perfectly adequate responses to the type of violations that typically took in place in authoritarian regimes. These violations came about through the abusive exercise of State powers. Not surprisingly, there is a correlation between institutional capacity and the capacity to do harm. In the post-conflict settings, it is not just that the institutional situation is entirely different: the types of violations that are foremost in people's minds are not necessarily the violations that come about from the abusive exercise of state power. Rather, in the post-conflict context there are other violations that come about from something that looks much more like social disparities than through the authoritarian exercise of state power. Therefore, not surprisingly, I think the results that we get through the implementation of transitional justice measures in the post-conflict settings are much more ambiguous than the results that we achieved in the post-authoritarian settings.

This is true not just of the most recent cases. Note, for example, the great difficulties of doing transitional justice in Burundi. There has been a truth

commission⁴ that is also part of the transitional justice toolkit for export, supported by the Human Rights Council in its decision. Notice the great deal of difficulty that we find in doing effective transitional justice for the Democratic Republic of the Congo (DRC). Even when you look at some of the other cases, it is not so clear that transitional justice has been a perfect fit. In fact, in the trajectory that I described from the southern corner of Latin America to Central and Eastern Europe and then to South Africa, there are few who know the story who would have recognized the transitional justice process needed the experiences that came in between the first and the second stages I described. Mainly, these are the experiences of El Salvador and Guatemala, which were much more like a post-conflict situation than post-authoritarian choices, where it was already very difficult for transitional justice to do what it had done in Chile and in Argentina.

From my perspective, one way of framing the most important challenges that the field is facing is to think about and to take seriously that justice for victims must occur in context. It means to take seriously what it means to do transitional justice in a place which is very, very weakly institutionalized; in which the universe of victims is tremendously large; and in which the diversity of types of victimhood, and, correspondingly, the diversity of perpetrators is significantly larger than is usual when the violations took place in highly asymmetric authoritarian regimes.

I do not think that we have an answer for these challenges, because I think that most of the work that we are doing now is work in post-conflict settings. Unless we get it right, I think that we will have a great deal to worry about in ten or fifteen years. We have to keep in mind that this field is almost entirely dependent on international cooperation. International cooperation for various reasons, including in response to the demands of local constituencies, but also those of donor states. The waning influence of interfamilial philanthropy is a concern. International assistance is becoming more and more results-oriented. Unless the field can show results, it will start losing supporters. In a certain sense, no one should blame people for changing their minds about the results that transitional justice can produce. I think that this is a serious issue.

The second great challenge for us is a related concern, a part of which I mentioned just now. It is curious that transitional justice has much difficulty explaining what it seeks to accomplish. I think that this is due to the consolidation of the field. The variety of aims that are attributed both to the individual components of the policy and to the policy as a whole are incredibly broad. Again, because I take this to be a conversation between experts, I do not think that I need to illustrate it at length, but the number of claims that are made for the results that should come about from the implementation of transitional justice policies are absolutely astonishing.

Based on the claims made about transitional justice, you would think that human beings have finally found something like a universal policy tool,

⁴ REPUBLIC OF BURUNDI TRUTH AND RECONCILIATION COMMISSION, <https://cvrburundi.bi/en/> (last visited Feb. 16, 2018).

something that can be implemented in just about any circumstances and solve just about any sort of problem. Of course, we know that there is no such thing as a universal policy tool. We, in fact, know that transitional justice was not theoretically based on social science or intelligence from the field, but rather it was driven by the very, very pragmatic needs of a lot of people who worked on the first transitions, who had no guidance whatsoever from a paradigm. There were no documents, no international experts. They went into a field that was unknown. They were inventing the field in order to resolve a set of issues in very concrete circumstances. These issues can be summarized, not perfectly accurately, but in shorthand, as trying to provide some resolution without upsetting a democratic transition. I think that this is something that we have lost. We have lost a sense of the connection between a problem, the tools, and the outcomes that we expect from them.

I am fond of saying that perhaps the greatest challenge that transitional justice faces as a field is the almost total lack of functional analyses on the part of its own defenders. We keep defending the field and defending the wonderful results that we claim that it can produce, without too much analysis of whether the tools that we have at our disposal are functionally adequate to producing the results that we claim they produce. Again, until we get this right, I am afraid that we are at risk of losing credibility. There is a certain sense in which it is very serious to make promises that you cannot deliver. Furthermost, I think that because these are promises that are primarily made to victims. There is a peculiar form of cruelty in awakening expectations of people that have already suffered a lot, without any certainty whatsoever about whether we will be able to deliver on the promises that we make. A functional analysis is called for.

Now, I will make two additional remarks and stop there. The first one is the following: perhaps one way of understanding the challenges that we face is to disentangle the difference between a doctrine on the one hand, and a policy on the other. I am, of course, fully aware of the fact that the needs of transitional countries, particularly in the areas of governance and institutional structures, are very, very deep. They are deep in all orders. They are very deep in terms of how to make up for a huge scarcity of resources, huge deficits in governance, very, very severe poverty, and power differentials, and really a lot of helplessness in terms of where to go to in order to have rights redressed.

I have never, ever, even in my wildest dreams, thought that the agenda of transitions, in other words, an agenda that would satisfy all those various kinds of needs, could even be satisfied through the implementation of a criminal justice policy. If you are honest, you have to acknowledge that criminal justice policy has never, never been the sort of policy that leads to the investigation, prosecution, and punishment of every perpetrator of a human rights violation. Even through concurrent implementation of a transitional justice policy, again, being honest, we all have to acknowledge that, as important as it is, no experience has ever addressed the violations in proportion to the harm that victims suffered. These policies have never led to the disclosure of the fate of future perpetrators—only to the clarification of the involvement of the institutions of the state and human

rights violations. Nor, in any country, has the concurrent implementation of a reparations program ever been done in proportion to the harm that people suffered.

Of course, that even with the addition of a policy of institutional accountability beforehand, we would have to report that no country in the short run has been able to hold accountable each and every institution that enabled or allowed the violation of rights to take place. I think there is a sense in which, for me, it has always been a puzzle to think that anyone could support the implementation of those four measures. No matter if you conceive of the mandate as the absolute solution to all the problems that come about through complicated transitions, by taking the transitions that start from a very, very low baseline of institutional capacity, and a very, very high baseline of the needs on the ground, implementation is a formidable challenge.

Now there is a lot of discussion about what we are doing and what the field of transitional justice should be. The politics of those who are looking for an expansion of the agenda are mostly, parenthetically and as a personal remark, much *too focused* on socioeconomic distribution. I am totally in favor of socioeconomic distribution, and support very effective ways of cutting poverty in transitional countries. However, there is nothing in the transitional justice policies that we know of, that has actually been implemented, that can be called adequate instruments for the achievement of those ends. There are great development deficits that have to be made-up in transitional countries.

I do not think it is serious to argue that the implementation of transitional justice policy is a response to those deficits. We have development deficits that require focused and thoughtful programs to do serious development. I am totally in favor of coordination between different policy fields. I am totally opposed to policy centralization, either institutionally or conceptually, that suggests only one institution should be in charge of a totally comprehensive transitional policy. A transitional justice approach, a transitional policy encompassing all dimensions of development, all dimensions of security, all dimensions of justice, seems to me too clearly acknowledge these gaps. I have never seen an institution that would be capable of carrying out such a policy. If it means running this kind of comprehensive policy, now, after a few years of working in this field, my reservations are even higher than they were before. Policy coordination is absolutely indispensable. The expansion of the policy mandate for transitional justice, when the field is already finding it quite difficult to achieve its narrower ends, seems to be to be a very tricky and risky proposition.

My message is that we need, of course, to find ways of doing transitional justice policy better than we have done it up to this point. We need to find more effective ways of addressing the huge deficits from which each of these countries suffer. I am not sure that the recipe for this is simply to assume that transitional justice can do all that. I think that we ought to find the recipe, and that doing so is perhaps an exercise in imagination. We ought to find ways of loosening the grip that the classical paradigm of transitional justice has on us. Mostly, in my opinion, we ought to find better ways of connecting with other kinds of policy interventions that are much better equipped and functionally adequate to resolve some of the

problems that the societies face. Of course, like everything else, I would love to be able to contribute to their success in the future.

The last remark I wanted to make, because I do not want to simply end in terms of a challenge and on a down note, is that there is already a potential in the area of guarantees of non-recurrence, to interpret these in the key of prevention. The reason why I am optimistic about this is that I am convinced that we actually know a lot about prevention.

It is just that our knowledge is horrendously segregated, and therefore, if prevention does fit under the term guarantees of non-recurrence, you would never actually get to policies that are successful at preventing human rights abuses. Part of the task is how to recognize knowledge and assistance in a way that makes much more sense and how to do it much more comprehensively.

There are several different streams of prevention work. Most of them, however, concentrate on issues having to do with early warning. While early warning systems are very important, in my opinion, anything that is capable of triggering an early warning system comes too late. There is a lot of work that could be done by way of involving institutions that would be effective in the domain of prevention. Also, the second characteristic of most preventive rhetoric is that it concentrates so much on institutional reform that it leaves out altogether the very, very important contribution that civil society can make to preventive efforts.

I think that a better approach to prevention would be one that involves a broad framework that leaves room for interventions. Interventions not just at the level of institutional reform, but also that would acknowledge the importance of a strong civil society and interventions in the domains of culture and personal institutions. With this, I close. In this very, very difficult time, I often think what is the point of doing what we already have spent so much time trying to do. I must say that it has not always been easy.

I am convinced of the following. I think that if the previous American administration had been a bit more tough-minded about doing what it expected all the other administrations to do all over the world, to deliver on the past in a serious way, the resurrection of the argument about torture, for example, is something that would have been much, much more difficult this time around. Therefore, these things matter. The past, as we know, is not simply a waste. It leaves traces, and I think that we will do well in shaping our approaches with this in mind, because what we do is important not just for the past. It is important for the present and for the future. It matters a great deal.

Thanks a lot.

INTRODUCTION

FLETCHER:

I will start with a question, because a lot of the conversation this morning centered around power, and that is a theme that is woven through your own remarks and observations about the field and its challenges. One of the questions is, within our practice and approaches, what might be other interventions that we should be prioritizing to recalibrate power within countries? In particular, I think this is challenging in countries with weak state institutions, but how can we make the processes more responsive, more victim-centered? I wondered if you wanted to make some observations about that, considering not just political power, but also cultural power. How can we amplify the agency and power of victims, who themselves are often coming from context of historic and ongoing marginalization and social subordination?

DE GREIFF:

In talking about the field of transitional justice, we must accommodate to context very seriously, but I think that it should be clear that this is not just a problem for transitional justice. It is a problem for the human rights and legal reform fields and many areas, generally. Something that I think that we have to keep in mind the template for institutional reform: how will these processes take shape? In 2010, the World Bank invited me to advise the team that was in charge of the production of the 2011 World Development Report. The most interesting aspect of that experience was that the bank commissioned a lot of work, independent research, on questions of institutional dynamics. One of the most important results of that research was, for example, to use the banks of four or five different governments in the countries, in order to take a country from the level of Haiti, not to the level of Denmark, but to the level of Ghana.

In other words, a significant improvement from the baseline, but not an extraordinary one. Under such a strategy, the governance in the country improved in four or five different areas. If you took the average of the historical institutional progress, it would take between thirty to forty-five years in order to make that shift. If you took the three top performers historically, the three countries in the world that have done their best in terms of institutional changes, you would reduce that gap to around between seventeen and twenty-five years. These things take a long time. I do not think that the transitional justice field has taken these results on board with sufficient seriousness.

Now, I have two questions about institutions. When I look back at the history of our field, not so much in the literature but in the practice, I cannot understand where civil society is in these transitions. In current times, it is not going to succeed without huge contributions from civil society. I cannot understand the Chilean transition without the contributions of a network of

religious associations. I cannot understand the Polish transition without the work of Solidarity, a trade union, in which there was an important religious dimension. These are not simply questions about all transitions. The Tunisian transition, a very recent one, cannot be properly understood without the work of labor unions that started protesting and raising claims to justice long before the problems of transition were being solved.

There is a huge and very, very important role for civil society organizations (CSOs). Not just non-governmental organizations (NGOs), but civil society more broadly, that have historically played an absolutely crucial role in transitions. But, in my interpretation, the contributions of these groups tend to be obscured over time, because most transitions mobilizing the world of both trade unions and religious organizations decline after the transition. There is no successful transition, from my perspective, without a civil society that is empowered enough to raise claims that their governments would be perfectly happy to ignore. I know of no government that spontaneously says, "Wait. Let's do justice to victims." on its own. This is something that they are brought to only when they have to, and they have to only when civil society has a certain type of power, the sufficient power to do this.

In connection with these questions of power, the sort of social transformations that we are looking to achieve through the implementation of transitional justice measures are not simply a question of institutional change. Ultimately, they will also require changes at the level of culture and changes at the level of personal dispositions. You are being provided, right now, in the United States, with a wonderful example of the necessity of making, in a mutually supportive way, the transformation of institutions, of culture, and of individual dispositions.

Nothing in the United States has changed institutionally or in the culture since the election. It remains to be seen whether U.S. institutions will bow to a certain type of personal disposition. Without a supportive culture, our relationship to authority may change from the ways that we were familiar with. This is an illustration of a general phenomenon that we should be looking for in other experiences as well, and regarding which we should learn to exercise our imagination as well.

Now this is in respect to the institution of the paradigm of transitional justice but turning to interventions that can make effective contributions to the development of a culture. Someone asked me once what the greatest surprise was that I have experienced while doing this job. I said, "I taught philosophy, political philosophy for twenty years." I used to teach about the complex nature of the project of the Enlightenment. The greatest applause that I have received is when I explain every day that in fact it is so. The project of the Enlightenment is very incomplete. Even countries, and now we are not talking just about countries in the South, even countries in what claims to be the highly- developed world and have only begun to realize that the idea of rights.

I.
DISCUSSION #1

Question: Is there a North-South gap in understandings and beliefs about what transitional justice is and what it can do?

PARMENTIER:

Trying to prepare a bit for this first session, I was reminded of an experience which I had ten years ago at a conference in Brussels. We had a meeting on transitional justice at the Ministry of Foreign Affairs; a large gathering of about 150 people which was mostly geared to criminal justice. During the break, we had an interesting table conversation talking with researchers and others about which new areas of research we could venture into which would be interesting topics for PhD.s and articles and books.

All of a sudden, this practitioner from across the table, and I will not tell you the name, intervened and said: “What are you talking about? We have a toolkit.” At that time, United Nations had produced the various books, which you remember, of the Office of the High Commissioner for Human Rights (OHCHR): books on criminal justice, on truth commissions, on victim reparation programs.⁵ We were so flabbergasted, because basically what this lady was saying is that if there is a toolkit, what else is there to be researched? You just apply the toolkit, right? What are you guys talking about? This is the end of history, almost.

We did not know what to say, but it stayed with me for many years. This is one of the few occasions to share this kind of experience, which is very much at the heart of our discussion this morning. What is that toolkit? Where did it come from, and how is it applied? What are its limitations? Of course, also, the possibilities. Let us not be naive and blind for the possibilities, either.

In trying to set the scene a little bit for this first session, I would just like to mention that in light of the many critiques in the meantime of academic, practitioners’ and policy makers’ approaches as well about this toolkit approach, this seems to me as one of the aspects we would deal with.

⁵ See Off. of the High Comm’r for Hum. Rts. (OHCHR), Rule-of-Law Tools for Post-Conflict States: Prosecution Initiatives (2006), available at <http://www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf>; OHCHR, Rule-of-Law Tools for Post-Conflict States: Truth Commissions (2006), available at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>; OHCHR, Rule-of-Law Tools for Post-Conflict States: Reparations (2008). OHCHR published a number of additional toolkits in the transitional justice series, including: archives, mapping the justice sector, monitoring legal systems, vetting, maximizing the legacy of hybrid courts, amnesties, and national consultations on transitional justice. See *Publications and Resources, Policy and Methodological Materials*, Off. of the High Comm’r of Hum. Rts. (Feb. 7, 2018, 2:00 PM), <http://www.ohchr.org/EN/PublicationsResources/Pages/MethodologicalMaterials3.aspx>.

What we are going to focus on are a couple of issues, such as the general context and the way in which that may be of influence to understand the divide, or the gap even, between North and South or between other regions in the world.

The second element is more specific: geopolitics. They have always been there and most likely are going to stay with us, but what is their relevance? Colonialism and Western-based funding and donors are an important element as well. Thirdly: language. Do we have a language? Is there a language? What kind of language? Who determines the language? It is almost like a linguistic analysis which we may also be able to carry out in this morning's session.

DOLAN:

I want to thank you for allowing me to put some brief thoughts on the question: is there a North/South gap in understandings and beliefs about what transitional justice is and what it can do?

Let me begin by going back to two books that shape my own thinking and politics. One is called *The Benefits of Famine*, the other *Imposing Aid*.⁶ The key message I take from both is that, paradoxically, whether in the famine relief, humanitarian or—latterly—transitional justice “industries,” the suffering of some creates opportunities for others.

The North/South gap lies in how we engage in that paradox. For purposes of provoking, I would suggest that the major transitional justice factories are located in the Global North, while much of the raw materials—as in so many other areas—are produced in the Global South. Transitional justice industrialists (sorry, I mean self-designated “experts”) go to do “fieldwork” and harvest crops from seeds they imported and planted on a previous visit. Worse still, some of those seeds are genetically modified so that they only germinate when fertilized from the Global North. The “value-added” is expected only to happen in the Global North, which sees itself as enjoying a monopoly on “international expertise,” while the Global South fills in the void in its “local knowledge.”

North-based transitional justice operators (NBTJers) thus need to be hyper-aware of positionality, and who they see as the audience of their work (Academics? Policy makers? Funders? Politicians? Victims? Communities?). If any of us is to have the label “expert,” should not this be granted by users/consumers, not by ourselves? NBTJers need to really get their heads around the relationship between beautiful *concepts* and ugly *contexts*.⁷ I will never forget

⁶ David Keen, *The Benefits of Famine: A Political Economy of Famine & Relief in Southwestern Sudan 1983-9* (2008); B.E. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (1986).

⁷ In 2010, the Refugee Law Project (RLP) established the Institute for African Transitional Justice, an annual meeting of one week designed to look in depth at burning transitional justice questions. The inaugural Institute focused primarily on the interface between the concepts and contexts of transitional justice, particularly as they relate to the dynamic and complex situations confronting Africa. As I said then:

the day when, following the success of one of our lawyers in helping the government to reinstate the Amnesty Act (anathema for many NBTJers), one of our donors stormed into the office and accused us of “promoting impunity.” Unlike Stephen and myself, she was not around in 1999 when the Amnesty Bill was being pushed by civil society actors desperate to create a new dynamic in the northern Uganda conflict, a dynamic in which they could proactively engage in the pursuit of peace.

NBTJers thus need carefully to interrogate their ontologies—not just about what constitutes “justice,” but also about which stakeholders they should be concerned with. Specifically, should the State always be so central to the transitional justice field? Is not the State-centric nature of the more mainstream side of the transitional justice discourse also its biggest imposition on the Global South? I would suggest that it has enabled the co-optation of transitional justice as a space by States concerned with what non-State transitional justice might reveal. This co-optation, which often makes even more remote the prospects of citizens achieving a sense that justice has been done, is one in which State-focused transitional justice operators are often carelessly complicit.

Since the Refugee Law Project (RLP) got into transitional justice in the mid-2000s we have grappled with the question: can you do transitional justice where there is no transition? And, if you do, are you not just legitimating the status quo? Over the last decade, I think we have concluded that yes, you can (do transitional justice without a T) and, no, you are not necessarily rubber-stamping the status quo. For me, South-based transitional justice is less about State-controlled truth and reconciliation commissions (TRCs) and prosecutions, and more about opening up multiple physical, political, therapeutic, and theoretical spaces that would otherwise not exist, and in which consideration of past mass violations can get some oxygen rather than being repeatedly smothered.

In early 2017, we held our first Memory Dialogue, a village level one-day meeting in a place called Barlonyo, to see if a shared narrative would emerge about the massacre that took place in February 2004. We had trained “peace commissioners” selected by that community to oversee the process. While this cannot lead to punishment of perpetrators, it does feed into accountability, acknowledgement, and healing at a local level.

We also continued with our Traveling Testimonies Exhibit, a collection of materials about different aspects of Uganda’s history that are rarely discussed

There is a sequence in the eyes of international experts when dealing with post-conflict recovery in Africa. They tend to forget about what is going on in that particular place at that particular time. It is increasingly becoming clear that most organizations claiming expertise in the field of transitional justice policies and practices, widely believe that experts exist only outside Africa, and yet there are many people of international expertise residing in Africa... . The RLP experience indicates that external so-called experts are ignorant of the local contexts, yet they come to direct the local people on what to do. It is with this consideration in mind that the Institute finally settled on its name: it could have been Institute for Transitional Justice in Africa or Transitional Justice Institute in Africa—yet it opted for Institute for African Transitional Justice.

in public. By taking this to places that are barely connected to the rest of the country, such as the remote Karamoja region, we help to change the received narrative.

Our Compendium of Conflicts,⁸ which captures community understandings of conflict histories in their own areas, is a game-changer insofar as it generates a national discussion about Uganda's history, rather than simply consolidating the received narrative (i.e. that Uganda is and has been at peace with the exception of those areas ravaged by the Acholi bad-man, Joseph Kony).

Through slow and careful work with survivors, we have put documentaries into the public domain that are influencing perceptions of conflict-related sexual violence against men globally. Again, not transitional justice as understood by many NBTJers, but definitely transitional justice in the eyes of the men and communities who feature in those works.

Some of the above examples have been done single-handedly by RLP, while others are the fruits of extensive international collaborations. South-based transitional justice operators are rarely in a position—economically or politically—to pursue oppositional North-South binaries. In a recently published article about the new slogan (“engaged excellence”) of one of our North-based partners, we asked readers to challenge the entire notion of “engaged excellence;” rather, we argued, North-based institutions and practitioners should be striving for “excellent engagement.” The essence of excellent engagement by North-based practitioners is to:

- learn and share but not impose (remember *Imposing Aid*)⁹ perspectives, practices, skills and other resources;
- recognize and respond to an uneven global playing field in which institutions often benefit more from human suffering than the victims who are the supposed beneficiaries of their interventions (remember *The Benefits of Famine*);¹⁰ and
- let go of the need to control the process and any belief in an automatic entitlement to determine universal standards and parameters.

In conclusion, as these brief remarks suggest, the answer to the question put to me (“Is there a North/South gap in understandings and beliefs about what transitional justice is and what it can do?”) is that yes, there often is, but it does not have to be that way. To avoid reproducing some of the dynamics that have been documented in the field of humanitarianism is fundamentally a question not

⁸ Refugee L. Project and School of Law Makerere University, Compendium of Conflicts in Uganda: Findings of the National Reconciliation and Transitional Justice Audit (2014), available at https://www.refugeelawproject.org/files/others/Compendium_of_Conflicts_final.pdf (last visited Feb. 16, 2018).

⁹ HARRELL-BOND, *supra* note 6.

¹⁰ KEEN, *supra* note 6.

just of self-awareness and dialogues of this nature, but also a willingness of individuals to critically interrogate the centrality of apparent givens such as the role of the State in transitional justice. All of us involved in the transitional justice field, whether as academics or practitioners or both, are either widening or closing the North/South gap. Which it is to be comes down to individual choices, all of which demand intellectual rigor, and none of which are without implications for the individual concerned.

HACHED:

What is “North” and what is “South”? Is Serbia South, and what about Ukraine or Russia? I would not say there is a gap between North and South in understandings and beliefs about transitional justice. I could say, however, that transitional justice seems to depend on the “law of the strongest.” And, nowadays, in the international arena, what we call the “North” or the “West” is (or is perceived as) the strongest.

To illustrate this law of the strongest applied to transitional justice, I may of course talk about Iraq or Afghanistan, Abu Ghraib, CIA forced renditions, extra-judiciary execution in Yemen... But, I will look further in the past and talk about colonial crimes and, more specifically, French colonial crimes.

Many colonial crimes were perpetrated during the late ‘40s, the ‘50s, and the early ‘60s, after the Nuremberg trials. In Tunisia, the years 1951 and 1952 were the theatre of important human rights violations. On the 17th of October 1951, General Garbay was appointed in Tunisia. Four years before, he had actively participated in the Madagascar massacres.¹¹

Why are such crimes never taken into account when experts and researchers talk about transitional justice? Until now, French society seems unready to face its past. But, is a society ever ready for transitional justice?

Transitional justice is linked to the concept of power. It is imposed by the balance of power and depends on the bargaining power of each concerned party.

This perception of transitional justice feeds conspiracy theories about what is happening nowadays in the Arab world and in Tunisia. Some people do not understand why we should go through a process they perceive as distorted. The people who are against the process instrumentalize this perception. They ask

¹¹ General Garbay, in concert with General Pellet, commanded French forces tasked with putting down the Malagasy uprising of 1947-1949, resulting in an estimated 60,000 deaths and widespread human rights abuses. SIMON INNES-ROBBINS, *DIRTY WARS: A CENTURY OF COUNTERINSURGENCY* 119-20 (2016). See also Françoise Raison-Jourde, *Le soulèvement de 1947: bref état des lieux*, in *MADAGASCAR 1947: TRAGÉDIE OUBLIÉE* 15-24 (Colloque Association français d’amitié et de solidarité avec les peuples d’Afrique, 1997) (discussing the Malagasy uprising and setting the number of deaths at 89,000); FED. RES. DIV., LIBR. OF CONG., *INDIAN OCEAN: FIVE ISLAND COUNTRIES* 15 (ed. Helen Chapin Metz, 1994) (discussing the Malagasy revolt and estimating casualties of 11,000 to 80,000).

why the transitional justice process is so supported by European countries. What is their agenda? Is the purpose not to weaken our country?

Nevertheless, and although representing a double-standard, the transitional justice process was seen by victims, civil society, and a majority of people in Tunisia as a necessary step, even if they did not call it “transitional justice” at the very beginning. Notably, according to a 2016 poll, 67.3% of Tunisians are in favor of the public hearings of the previous regime’s victims, which represents a fundamental aspect of the transitional justice process.¹²

In early 2011, just after the start of the Tunisian Revolution, rare were the people who knew about transitional justice, the expression itself, its definition or its mechanisms. “Transitional justice” was a slogan accompanied by sets of tools, brought by international non-governmental organizations (NGOs) and the United Nations, thought and created elsewhere. Where exactly? Are international NGOs and the United Nations part of the “North”? Whatever they are, this cannot conceal that Tunisia actually needed a transformation process whether we call it “transitional justice” or something else.

Before Tunisians discovered and adopted the specific language of transitional justice and its related tool kits, they had their own reflections about the need for truth, justice, reparation, and institutional reforms. During the first two years of the democratic transition, a sort of mix occurred between what Tunisians needed and expected from the Revolution and what international NGOs and the United Nations brought with them. The latter echoed the former in order to respond to the need for recognition and justice expressed by the victims. In this regard, the first public hearings organized by the Tunisian Truth and Dignity Commission¹³ had a great influence on public opinion, which came to realize the importance of transitional justice. It was a sort of switch point.

But what about the other victims, the ones of the so-called “North”? What about the victims of colonial crimes? When will the transitional justice process be applied there? When will truth be revealed and justice be served? Today, in France, the law is written in order to escape such responsibility.

There is no gap between North and South in understandings and beliefs about transitional justice, but there is a double language and double standard built on the law of the strongest, and it is time transitional justice benefits all the victims, including the victims of the so-called North.

¹² *The Public Hearings of the Truth and Dignity Commission*, SIGMA CONSEIL, <http://www.sigma.tn/upload/1482230192.pdf> (last visited Mar. 3, 2018) (presenting the results of a 2016 Sigma Conseil poll in which 67.3% of respondents agreed with the statement that the hearings of Tunisia’s Truth and Dignity Commission represented “a positive move toward transitional justice,” with 29.5% slightly agreeing and 37.8% strongly agreeing with the prompt) (translated from Arabic).

¹³ L’INSTANCE VÉRITÉ ET DIGNITÉ (TRUTH AND DIGNITY COMMISSION), www.ivd.tn/fr (last visited Feb. 28, 2018).

MACK:

Thank you. I want to reflect that twenty-seven years ago, I was here in Berkeley when my sister was killed. Before that, I had not had any human rights background. After returning to my country, to Guatemala, I became a private prosecutor to seek justice for my sister. Now, twenty-seven years later, I am here, talking about transitional justice, and what has been my experience.

There are contributions of transitional justice in the sense that, at least for me, I did not have any human rights background, so transitional justice provided me concepts to clarify what I should pursue. It helped me.

My first contact, of course, was with the Inter-American system. With justice, the problem is that you focus too much on the legal. All the time I fought with my lawyers in Guatemala, because I was saying: "Hey listen, this is the truth." They said: "Yeah, but you know what, according to the law, this goes thus and so." It is a language that sometimes you do not understand, or it is not what you want, because the legal truth is not the complete truth. What, for victims, sometimes is important, for lawyers is not important.

So, the legal truth is not the complete truth. Sometimes, it is not what victims want. Because, sometimes, we want the law to confirm what really happened. But, if we do not have the evidence, then we are told: "You don't have this, you don't have that, you don't have this other thing." Then, what you do have is disappointment in for the legal truth, or legal justice.

At the end, when you finish the legal process, you have an emptiness. After how many years, struggling with the system, and at the end, yes, maybe we had a conviction. But after that, what if things have not changed? These ... principles of truth, justice, and reparations are no guarantee of non-repetition.

Then we start talking about transitional justice. We have the truth commission.¹⁴ What happened with the conclusions? There is no link. We still have the concentration of power, discrimination, and the lack of opportunities for indigenous people. There is no way to achieve the commission's recommendations. The political parties do not work. Twenty years after the Peace Accords, we are still in the same situation. I agree with what Farah was saying. This is the law of the strongest. The strongest are the ones who produce truth. That is what we are fighting in Guatemala. Who owns the truth?

Okay, yes, we had the United Nations truth commission, but the Guatemalan government has not accepted its findings. The educational system did not transform, because those responsible do not want to accept that they committed genocide, or that the cases that appeared in the truth commission report

¹⁴ Officially named the Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico), Guatemala's truth commission operated from 1997-1999 and, upon the completion of its work, issued a final report detailing its findings and recommendations to the Guatemalan government. See *Truth Commission: Guatemala*, UNITED STATES INSTITUTE OF PEACE (Feb. 1, 1997), <https://www.usip.org/publications/1997/02/truth-commission-guatemala> (providing an overview of the Commission's work and links to its charter and final report).

are true. What happened with the truth commission report? Nothing. It did not have any impact, except for the victims.

After reading the truth commission report, it made such a personal impact that I still get sentimental talking about it. Because it was as if, for the first time, somebody was speaking the truth. But the report did not have any systemic impact, just on the individual victims. For the perpetrators, that does not mean anything. To them, we are just a number. We are just a file.

With reparations, they will always delegitimize us, the victims, by saying that we are just looking for money, because this is the focus of economic reparations. This then becomes one of the arguments for collective reparations, for example. Or, in the case of guarantees of non-repetition, victims seek the institution of reforms, but then there are problems with donors, or with the politics or the policies.

When you have such a transition in which there is no transition, you have programs for democracy and governability and, on the other side, you have transitional justice. These are two tracks that never come together, because the programs for justice and the institution of reforms, these are technical interventions. And, we, the advocates for human rights? We become victims of the system. We are told: “Yeah, yeah, yeah, we’re working on that, don’t worry.”

But these two types of interventions never talk to each other. All the money goes to governance and rule of law initiatives. When this happens, it is like what happens with the victims in Guatemala; we say justice is very far away from us. This focus on governance and rule of law is not the justice we want. There is no remediation or renunciation by the government. What I mean to say is that everything should focus on the victims, on the dignity of the human being.

Instead of taking steps to strengthen victims’ sense of dignity, what those in power do is victimize us again, and criminalize us. In the Guatemalan case, and I think all over the world, we are criminalized with hate speech. We are labeled terrorists. We are accused of being people who leap at money ... through the cases. But that is not the truth. Now we are being prosecuted, because we are still the criminals.

The other aspect of transitional justice in Guatemala is the victims’ call for a national legal solution. The regional and international instruments are fine as instruments to pressure to the government, but that is it. We victims want something that can impact our domestic context. That is why we began talking about an international truth commission,¹⁵ as our instrument of transitional justice. Because we knew that under the rule of the strongest, you always have the

¹⁵ Such a commission, the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala), was ultimately formed in Guatemala to respond to obstacles such as “widespread common and organized crime,” “a lack of political will,” and a “legacy of ineffective justice sector institutions” which hampered the implementation of the Peace Accords. *Background*, INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA, <http://www.cicig.org/index.php?page=background> (last visited Feb. 5, 2018). For further details on the commission and its work, *see* INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA, <http://www.cicig.org/index.php?page=home> (last visited Feb. 5, 2018).

perpetrators in power. They become corrupt. They are human rights violators, and they also are corrupt people. They transform into criminal networks used for corruption. That is why they will always use the human rights argument. The underlying issue is impunity and corruption, and it does not matter who is in power. Left, or right, or whatever. The problem is also economic.

In Guatemala, according to the indicators of human development, we are worse now than during the conflict. When we had the peace negotiations, the agreement reached changed our economic model, and the situation started becoming worse. I think that is happening in Colombia now, and I think that it has happened in many other countries. The powerful make such changes because you do not make peace if doing so does not make you money. That is why perpetrators stay in power. That is why we or the victims will always be victims. There is no way to transition, because of the operation of the law of the strongest.

Now that we have had this international commission against impunity, we are in the same position again. We want a body that can be close to us to make the changes, the institutional changes, and we believe that impunity of the past is impunity of the present. Our calls for this mechanism are the reason why we have been criminalized again. While some of the military are in jail, due to corruption against human right defenders, social leaders are being killed. We are experiencing a new wave of human rights violations. Transitional justice, in the end, does provide some clarity.

Then, what of healing and transitional justice. I understand healing is important, but it is not easy. I feel that it is important on a personal level, but at the end of the day it is inseparable from the struggle for human rights. You do not want to lose control, so that you can prevent those in power from saying that you are crazy. In the country and in our environment, the conditions for feeling do not exist. This is another reason why we cannot have reconciliation: the famous "political reconciliation" that emerges from this concept of transitional justice also becomes an instrument to attack you personally. We know, we are conscious of the fact that we need healing, personal healing, but because we are forced to live in the past, we do not have the conditions to engage in real healing.

PARMENTIER:

Thank you so much, Helen, for this talk also based on your very personal history. I think of you as one of our champions of human rights and transitional justice in the world. You highlight a very important element, namely transitional justice in a country where there has been some political transition, of course, but maybe very little systemic change, if any. This seems to be one of the issues that we need to tackle.

OEUNG.¹⁶

In the twentieth century, there have been many violent conflicts in the Southeast Asian region. Among the worst events of mass violence in this region were the crimes committed during the Khmer Rouge regime which held power from April 17, 1975 until January 6, 1979 and is responsible for an estimated death toll of between 1.5 and 2 million. Through an agreement made in 2003 between the Cambodian government and the United Nations, the Extraordinary Chambers in the Courts of Cambodia (ECCC or Khmer Rouge tribunal) was established to try the senior leaders and those most responsible for serious crimes and human rights violations committed during the Khmer Rouge period. The tribunal offers an opportunity to debate the efficacy of transitional justice mechanisms in this country. The concept of transitional justice in Cambodia was not widely known before the court commenced its legal proceedings. More activities and discussions on this topic have been introduced and somewhat influenced by local and international NGOs, scholars, and researchers since the inception of the court.

It is difficult to translate the concept of transitional justice into the local context and language, as it has to adapt to the local values, culture, and ownership with particular consideration of other countries' experiences. Through a massive amount of outreach work conducted by the tribunal and numerous NGOs in the country since 2006, more and more people have increased their understanding of and actively engaged in the transitional justice process. For many people, the judicial process underway at the ECCC is a significant transitional justice tool that is expected to provide them justice, although this term can have different meanings.

Unique in the history of hybrid courts or special courts that deal with mass atrocities such as those of crimes against humanity, war crimes, and genocide, the ECCC provides an opportunity for victims of these crimes to participate actively in its criminal proceedings as civil parties (*parties civiles*). The participation of victims is provided in the tribunal's Internal Rules and facilitated by the Victims Support and Lead Co-Lawyers Sections of the court. The role of these sections is to support the prosecution and request collective and moral reparations in the case of conviction of the accused before the tribunal. More than 8,000 victims filed complaints to the ECCC, which is an indication of their desire for justice and for recognition of their suffering. This victim-centered approach is perceived as adding value to the criminal prosecution, but also it is acknowledged that it could potentially delay the proceedings if not properly managed and planned.

There are many different expectations and hopes placed on this hybrid tribunal, especially from the victims, including attendance and participation at trial, justice, acknowledgment and support, truth, forgiveness, reparation, and reconciliation. Each has different constraints and limitations. As the process

¹⁶ The views expressed by Mr. Oeung at this event are his alone and do not reflect those of his current employer, the Swedish Embassy of Phnom Penh.

moves forward at the court, some of these expectations have been realized, while others need more time and their outcomes remain to be seen. The limitation of criminal trials such as the ECCC is that they try only a handful of top individuals. To date, only three individuals, Kaing Guek Eav alias Duch, Nuon Chea, and Khieu Samphan have been convicted by the ECCC to life imprisonment, while three out of four others are under investigation. Many surveys have found that over 90% of Cambodian people support the Khmer Rouge trial as the last hope for justice, even though some see it just a partial justice because lower-level perpetrators will not be brought to trial.¹⁷

Some studies suggest that the retributive approach of the ECCC should be combined with the restorative approach through the establishment of a truth and reconciliation commission.¹⁸ However, this approach has never been initiated due to a lack of genuine political will and commitment from the Cambodian government. The government has indicated that it views such a commission as a threat to the country's peace and stability given that some of those in power in the government today are former Khmer Rouge cadre.

The Cambodian experience shows that the NGOs have played a crucial complementary role in supporting the transitional justice process through activities including outreach, community dialogue, victim participation support (including psycho-social support), genocide education, and promoting healing and memorialization. Their tremendous efforts have resulted in the implementation of a number of non-judicial projects benefiting many victims, not only the participating civil parties, for instance: learning centers about the Khmer Rouge history, memorials, testimonial therapy and self-help groups, mobile exhibitions on forced transfer and forced marriage, and education on genocide prevention.

In conclusion, the geographic location of the ECCC in the country where crimes were committed creates a better opportunity for discussing transitional justice among the many victims even though their expectations have not been fully addressed. The challenge of this process is how to best maintain the momentum, as it requires persistent outreach activities by the tribunal just as the NGOs are experiencing decreasing funding as donor priorities shift. From the Cambodian experience, it is also important to look at four core pillars of post-conflict society—justice, reconciliation, peace and development—as they are interconnected and, therefore, require a balanced consideration of priorities.

¹⁷ See e.g. Phuong Pham et al, *So We Will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia* (2009) (indicating that 86.9% of population-based survey respondents “believe the ECCC should be involved in responding to what happened during the Khmer Rouge regime (KR).”)

¹⁸ See e.g. Jaya Ramji, *Reclaiming Cambodian History: The Case for a Truth Commission*, 24 Fletcher F. World Aff. 137 (2000).

PARMENTIER:

Thank you very much, Jeudy, for this interesting information. I think you also highlight that, next to judicial procedures, there can be lots of accompanying measures. Maybe through the lens of judicial procedures, you can mobilize people and get them to think about the broader issues of society. As you said, reconciliation peace, and development are very broad paradigms, but the connection between them and the justice paradigm is a very important issue.

SÁNCHEZ:

As you said, thank you very much for your presentations. As I said, I think there are some different understandings and, sometimes, we fight about the meaning of different concepts. I can name four of them. First, I think we have different meanings and understandings of conflict. We saw it here. Why do not all sorts of violence matter equally? Why do we get always stuck with some forms of violence, but not others? For example, colonialism and colonial violence, or violence in other countries, and not the ones that you usually expect.

Second, I think about justice. What does justice mean? Does justice mean the same thing for Northern development agencies, or communities? Third, I think about history and how violent times occur. I think sometimes we perceive in the field that some North-based organizations just understand history in the very short-term, perceiving that the narrative of violence is what happened just right before someone got killed and not over the longer arc of time. Finally, expectations. We have different expectations of what we want get out of transitional justice. I think we need to work on that.

FONSEKA:

Picking up on what Camilo [Sánchez] was saying about expectations, and what different communities would perceive as transitional justice, what is justice, what is truth? In Sri Lanka, there are also tensions within the society. We talk about North/South, but there are also tensions within the South, within the different communities. These tensions are leading to further divisions and conflict. I think that also is something what we need to recognize and discuss.

It is easy to go back to North/South problems, but within the South or within the North, there are these growing issues. How does one address it? I think also looking at some of the literature already out there, and some of the authors in the book *Localizing Transitional Justice* that Harvey, Laurel, Naomi have written,¹⁹ is to look at how do you bring in localized notions of transitional justice? Or, what is meant by truth? What is meant by justice?

¹⁹ *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Rosalind Shaw et al. eds., 2010).

Also, we are trying to grapple with various ways of addressing these tensions through the formal and informal. Maybe it is not going through the court structures, but is there another way of doing it? The tensions, the conflicts are across the board. It is not just what has been “out there” in the popular debates or the narratives, but also what is “in here” that also needs to be looked at, and how the “in there” leads to further tensions and conflicts. Thank you.

BICKFORD:

What I want to talk about is my time at the Ford Foundation. Over the past five years we have had a program to invest about \$50 million, which was quite a bit of money, on exactly the kinds of dynamics we are talking about here. It is something I have been thinking about a lot over the past five years.

Essentially, our goal in that program, which is now wrapping up ... was to think about the North/South dynamics in the overall human rights movement. Transitional justice is arguably a part of that movement as well, but to think about those dynamics in terms of exactly the language that Chris [Dolan] was using of “raw material” in the South, and the global factors in the North.

There were two basic ideas driving the program. One was to invest in a very unusual breed of NGO: an NGO that is headquarter in the “Global South,” but is an international NGO. Of course, there are two models of that: both the Kenya Human Rights Commission (KHRC) and Dejusticia. It is an unusual breed, because the way that the movement has developed, for some good reasons, but the way it has developed is that, if you are based in London and New York, you are allowed to be international and work on all sorts of other countries out there. If you are based in Colombia or Kenya, you are supposed to be national and just working on your own national context. Our idea was that there is no reason for that kind of dynamic. We really wanted to invest in that kind of idea.

Two parts of that: One is around agenda-setting power, and I think we are talking about that here. I think that is a big topic in this room—the idea of agenda-setting power, right? The raw material is in the South. It is all over the world. The question is who is setting the agenda? Who is setting the agenda of the donors? Who is setting the agenda of the United Nations? Who is setting the agenda of international academic institutions? How are those agendas getting set, and who is sitting at those agenda-setting tables? That, in a way, I think, is a key question.

The second part has to do with the notion of deep-rooted national knowledge and the role of domestic, local, whatever you want to call it, knowledge. Deep-rooted knowledge and the role of that in setting the international agenda and engaging with that knowledge.

This brings us to the idea of implementation. How you realize rights? How you implement rights? How is that actually done in a policy-making framework? This is very different than norm-setting, right? You have a whole tradition of norm setting, and then there is the real question of how you actually make those norms real, and how this local knowledge is part of that international discussion.

A key aspect of what we were trying to do with this \$50 million was about how you get that deep-rooted national knowledge into the international discussion. That meant that we were supporting, first, these deep-rooted national organizations, like Dejusticia and others, to engage in the international, and it also meant we were supporting networks, because networks are a key part of this idea.

I think those are some of the main ideas that interest me: agenda-setting power, deep-rooted national knowledge, the epistemological discussion of the international—how we come to know what we know on the international level and how we make those decisions—and then the idea of networks.

The final thing I want to say is that actually, in all the subfields of human rights, I think transitional justice is better on these questions than most of the human rights movement. In fact, there is a great interview with Pepe Zalaquett in that United States Institute of Peace (USIP) video from ten years ago, where he says transitional justice is a South-South movement. It starts with the CONADEP, and the trials, and then it moves to Chile, and then it moved to South Africa, and it moves around the South. There is a way in which it is not just raw material, but also dynamic exchange and engagement among southern players.

Then transitional justice goes North and it gets captured by the factories of the North. Nonetheless, it does have this deep-rootedness in a South-South discussion that continues to this day. I have not been in Tunisia, but my guess is that I know a number of people who were engaged in the Tunisia discussion who were from Peru, or from Timor, or from wherever, and that conversation is a South-South discussion. In many ways, I think there is probably a lot of room for improvement, but at the same time, I think, compared to some of the other subfields of human rights, transitional justice is not as bad-off in this particular regard.

SONGA:

I just wanted to raise some issues based on what I heard in the very good presentations earlier on. I think one of the things we have to deal with or confront within the North/South gap is also looking at the contemporary recharacterization of what previously we have called transitional justice issues. These are essentially being characterized in line with the interests of the national elite and, sometimes, business interests.

This is particularly true within the prism of the legacies of colonialism, as we heard earlier. For example, viewing historical marginalization, which was previously a subject of transitional justice or debated as such, is now being viewed from the prism of extremism as “confronting terrorism.” That has effects in terms of how different issues are characterized. States are now partnering with others States on the business of confronting terror and viewing what previously would have been a debate within certain national contexts as historical marginalization, now is discussed as confronting extremism.

Such an approach has altered the dynamics in terms of the support programs that deal with those issues and the characteristics that they take.

Historical injustices are now, first, transformed into debates around land conservation and national resource extraction. The communities concerned are framed as the subject of corporate social responsibility, rather than dealing with the actual issues of deprivation of land from certain communities.

You also have the situation of robust debates on marginalization and inequality arguably subdued into debates on “national cohesion,” where questions of inequality and marginalization are now viewed as retrogressive to what is a broader nationalism project.

These changed dynamics have an effect on the different actors involved in these conversations. That is why, for example, I identify with some of the things that Chris [Dolan] had said. As CSOs approaching things from a certain angle, your donors will impose a certain perspective on you. Like I will say for the Kenyan example, the buzz words are now “countering violent extremism.”

Funders want you to reorient all the conversations you have been having into: “How does this translate, in this country, into violent extremism?” You talk about underlying issues that drive conflict, especially, again, in an electoral campaign environment. For example, we are going into elections this year. They talk about: “How do you ensure you maintain peace?” We have a message of “one Kenya,” rather than: “What are some of these electoral issues, which if not resolved adequately, would drive conflict eventually?”

I think these are some of the dynamics involved in what we are characterizing as a gap between the North and South. The reality is that it has been driven by, I think, some form of convenient relationships between the three structures I described earlier. Some of it is money. First of all, there are national interests. Certain States want to engage with other States on the business of key interests, mostly around natural resources. Sometimes it is even less sinister. National business interests are enshrined as national interest, when, in reality, it is a certain cabal of elites within the South, mostly political elites within the South, dealing with businesses outside that are only interested in certain forms of extraction. I think these are some of the dynamics that we have to unravel when we talk about the North and South divide.

HODZIC:

I am Refik and, although it says I am from the International Center for Transitional Justice, I am, in fact, from Bosnia. I will be, throughout these two days, wearing that particular hat that informs my experience. Here, I want to speak from my professional experience, which is entirely about communications and communicating different ideas. I must say that I think that I have never come across a field that suffers from language issues as much as the field of transitional justice does, including the term transitional justice, which I resent hugely, because it makes my life of a communicator incredibly difficult.

I also think it has to do with the problem we are discussing, because definitions are simply spoken about and perceived differently. Just let us start from North and South in this context. Where do we count the experience of

Eastern Europe? Where do we count the experience of Bosnia? Where do we count the experience of Canada or Ukraine in this divide in which we are talking about Southern resources and Northern factories? Although I fully understand what Chris [Dolan] meant by that, because I must say that my gold mine was plundered by many an academic and practitioner from the Western world.

I think that we first, of course, have to understand what we are talking about in order to understand whether there is a problem. It would pay to maybe go back to when Louie [Bickford] mentioned Pepe Zalaquett; one of his papers is my Bible. It talks about what we are actually talking about, never mentioning the term transitional justice. It talks about human right policies in the aftermath of massive human rights violations, with very simple, clear goals. That is: to repair victims as much as we can, and to do everything we can to never have this happen again. All these things that we are talking about fall under this very simple understanding of dealing with mass atrocities in situations where normal justice systems simply cannot handle it.

Then, we have developed, and developed, and developed. I think that, again, coming back to my narrow professional lens, it has to do with audiences. With policymakers in the international realm, they prefer to talk about a certain set of terms and ideas when it comes to transitional justice. Victims, of course, will always talk about it in terms of their needs, from the perspective of what harm they need to repair. Local politicians and decision-makers—as Andrew [Songa] gave a brilliant example—will simply speak from the basis of their priorities at the time, and those will change, my God will they change.

How has the discussion of transitional justice changed just by the standards of Trump, for instance? Chris knows. Then, I think on top of all that, comes context. Context: cultural, political, and driven by dynamics. Then what Louie was talking about, the genders. I think that language issues are one of the key issues we must address for us to really be able to contribute to this at all... to understand whether there is a gap in understanding, what that gap is, what are we talking about in terms of what can be done, and so on.

KAHALE:

I work with a Syrian NGO called Dawlaty. I am from Syria, based in Beirut. First, I want to refer to the issue that Helen [Mack] mentioned about attacks against and criminalization of victims over and over again through supposedly transitional justice processes or post-conflict interventions. That is something that we are not: post-conflict in Syria. You see, by the attacks on women in particular, that there is a need in the international community for women to be the peacemakers and to push for reconciliation. Every time women talk about accountability or so on, we are attacked as not wanting peace.

All you said gives me a view also, as we go forward, how this could proceed. I always feel uneasy in the spaces because we are not post-conflict in Syria. Working on transitional justice has been a bit problematic. To hear that, actually, transition is not really clear for many cases, I think that has been one of

the struggles for us: what does transition mean? I think it is really interesting to look at that and to hear experiences about what you do when either the regime has not changed, or where there is a change at the top, but is no will to have institutional change. I look forward to hearing more about what that means for transitional justice.

MIHR:

I am based in Berlin, Germany. I bring in the voice of the Global North here. After hearing so much about the Global South in general, I agree with the general notions, but I just want to challenge, a little bit, the raw material and the manufacture elements in particular. Being based in Germany, we are still grappling with our second dictatorship. We have lots of “raw materials” in Europe. When I talk to my colleagues in Eastern Europe, and Poland, and the Czech Republic, they do not even have time to look at the Global South, because, as I say, we are so busy with our own “raw materials,” still, from the communist regimes.

I am very glad Refik [Hodzic] highlighted, again, that also we have Yugoslavia in the Global North, and I think they are not through with the transitional justice process, either. In terms of raw material and manufacture, I must say—and I just want to throw this in—if you come from an entirely, let us say, English-speaking environment, particularly North American, the world looks like this. Most of the literature, most of the research done in English focuses on, let us say, sub-Saharan Africa or Latin America, where there is less of a language barrier.

When you look particularly in Eastern Europe, where every country has its own institutions, they are often not externally donor driven, so they have their own funding, their own money. The Polish leagues do not publish in English. They do not need to. There is tons of material and publications in Polish. The same in Czech Republic, the same in Russian, by the way. Often these people do not live in Russia.

This is one thing about publications and research. We often underestimate what is done in that part of the world, because they are not external donor-driven. They do not have to send a report to American or English-speaking donors. Sometimes they have to send reports to the European Union. Then we are aware of it.

Another thing that I would like to throw in from the Global North is about the dialog. I think this dialog already has been going on for at least twenty or thirty years. It is not proportional, but the dialog has been going on. When I think about the transitional justice process in Spain, it was certainly influenced by the Latin American transitional justice processes. Even when I think about the not-so-successful transitional justice process in Russia, when the soldier’s mothers

started protesting.²⁰ They said: “Look, we got our inspiration from Argentina.” They started in the 1990s.

When I think about the transitional justice process, yes, it has not been very successful. In Turkey, very much inspired by Latin America, they picked their ideas from around the world. They traveled around the world, picked their ideas, mostly from the Global South, because they had a lot more in common with them than, for instance, Germany, which was often seen as a blueprint. Again, it is the same for Germany. Two dictatorships. There is everything you want in transitional justice. There is a lot of research and publications, but entirely in German. There is very little exchange in comparison to other countries.

I just want to throw these thoughts in to say that we are not reinventing the wheel, but I absolutely agree with what has been said earlier. I think there is a lot of homework to be done in the Global North about their own past. Yes, I definitely agree with that.

PEMBERTON:

I am a professor of victimology at Tilburg University in the Netherlands. I am a social scientist. I just wanted to pick up two points that were made by Chris [Dolan], initially, and I think by Louis [Bickford] afterwards. Chris said that this is not a problem that is restricted to transitional justice, and I think I can wholeheartedly agree with that. I think that Louis said that he is interested in the epistemological questions, and I happen to think that maybe parts of the problem are not the problem. It is an epistemological question. Social science, as we do it in the North, looks for universal, abstract, transcendental laws of social situations, to the detriment of thinking about meaning, about morality, about context, about intersection with practice.

I think that is quite a lot of what is at the heart of the thing that we find difficult here, difficult to understand, difficult to engage when we—in our factories in the North—look to particular contexts in the South, to do that.

I think there is also an answer. I think that answer was provided by Aristotle 2,500 years ago when he defined the three intellectual virtues: episteme, techne, and phronesis. Episteme, otherwise known as epistemology, is about universal knowledge, but phronesis is about the understanding of value judgements and particular social and political context. I think that is what we should look to when we try to solve these situations.

²⁰ See also COMMITTEE OF SOLDIERS’ MOTHERS OF RUSSIA, http://soldiers-mothers-rus.ru/index_en.html (last visited Feb. 6, 2018); *The Committee for Soldiers’ Mothers of Russia (CSMR)*, THE RIGHT LIVELIHOOD AWARD, <http://www.rightlivelihoodaward.org/laureates/the-committee-of-soldiers-mothers-of-russia-csmr/> (last visited Feb. 6, 2018) (providing a general overview of the organization and its history, goals, and accomplishments). See generally Kora Andrieu, *An Unfinished Business: Transitional Justice and Democratization in Post-Soviet Russia*, 5 INT’L J. OF TRANSITIONAL JUST. 198 (2011) (discussing the trajectory and outcomes of transitional justice initiatives in Russia since the fall of the Soviet Union).

LETSCHERT:

I am also from the Netherlands, from the low countries, as we call it. I used to be an academic, and then I became an administrator, which I confess right away here. I was very much inspired by what Farah [Hached] said, because I think what we tend to do in the Global North and the West is to forget our own history, our own violent history. I can speak from a country that is really struggling with facing up to its history, in particular, after the Second World War in the Dutch Indies, where the government has, for many years, failed to investigate the alleged war crimes that actually were confirmed by the United Nations. For many reasons, it has failed to open up and to look into that particular history.

What I would like to bring to the table here, is the question about the responsibility of the academic community itself. The term “science diplomacy” came to my mind. As an academic myself, I am doing research in Lebanon, and Rwanda, and many countries all over the world, but I am not doing research in the Netherlands and Dutch Indies. I am doing research in all these countries in the Global South, and I am also not really working very hard to convince my own government to face-up to its history.

This term “science diplomacy” and taking responsibility as an academic, I think should be something that we discuss here, and maybe tomorrow in some of the conclusions, we can set an agenda. You talk about agenda setting, but I am confessing that I am failing there myself. You brought that to the table, and I thank you very much for that.

ALTHOLZ:

I work with Laurel [Fletcher] at UC Berkeley Law’s International Human Rights Law Clinic. Like a lawyer, I am going to take the victim’s word here. I am a human rights practitioner, I am a human rights attorney. I do not identify myself as a transitional justice practitioner, and the field has always, to a certain extent, mystified me. Because, what does transitional justice really mean?

I have always thought it really interesting that the history that the field tells about itself always starts in World War II and not the colonial period. What I wanted to comment on today was my perspective as a human rights attorney doing human rights work in the United States and how difficult it has been to get the field to recognize some of the issues we face in the Global North as transitional justice concerns. Perhaps, playing off the metaphor that Chris [Dolan] described, the United States is founded on slavery and the genocide of indigenous people: this is a place where there is much “raw material.” This is an interesting time in the United States, independent of our current administration, where there has been some progress on issues of restorative justice for mass incarcerations, state violence, indigenous rights, terrorism and Guantanamo Bay, and using the human rights framework, truth, justice, reparations, guarantees of non-repetition to think about those issues.

Also, the war on drugs. When I have tried to approach donors and some of the founders of the transitional justice field and talk to them about these issues as human rights issues, as transitional justice issues, whatever that may mean, I have gotten almost no purchase or traction. I just wanted to make that contribution. This is a joy to be here. I recognize so many of the names around this table, and you have so influenced my work, and I am glad to be part of this conversation. Thank you.

HACHED:

I just want to point to something Jeudy [Oeung] said about peace and development, because the first pillar in transitional justice is this guarantee of non-recurrence or non-repetition we say it in French. We always think about institutional reforms and memory. I mean museums and things like that. But, we never think about development or economic development as such a guarantee. The question arose for me when, in South Africa, just some weeks ago, there was violence against foreigners from neighboring countries. We say transitional justice is for the people to find reconciliation, to be better with themselves, and not have this violence again.

I was wondering, what use is the process of transitional justice if we are going to have repetition of violence, but next time against another enemy or create other victims. Maybe in South Africa or other countries the reason the violence is repeated was because they did not achieve development, or social redistribution of resources. This is maybe the key problem. Is redistribution of resources or development a part of transitional justice or not? This is my question. I just put it in the arena.

WEINSTEIN:

This is, I think, a really great start. I was trying to think about some of the issues that Refik raised about vocabulary, how we use words, which has been one of the things I have written about for twenty years. A great concern, also, is agenda-setting. I have a chapter in your book on who sets the agenda. It really boils down, to me, to what Farah [Hached] said at the beginning, which is we are talking about the law of the strongest. It is what Helen [Mack] was referring to. The question, then, for me is how do we return agency to people who have been marginalized, who have suffered and who have lost? That is true whether it is in Canada, whether it is in Germany, whether it is in Bosnia, whether it is in Cambodia, wherever. How do we do that?

That raises the question about what methods, what mechanisms have we developed over the last twenty-five or thirty years to return agency? Have we selected methods that are effective in doing that? Why have we chosen the methods that we have? Should transitional justice, the way it is currently constituted, be the way we should be doing it, or should we be thinking in a much more imaginative way? Because we do have a gap.

The gap, for me, is not North, South, East, West. It is power and powerlessness. Then the question is what do you do about the powerlessness? It is not changing. It is happening in the United States at the moment. It is something that, I think, underlies all of this.

VAN DER MERWE:

I am with the Center for the Study of Violence and Reconciliation based in Cape Town, South Africa. Coming back to the North/South that I do think we need to keep firmly in focus, the European Union brought out a policy on transitional justice, and now the African Union also has been working on a policy for transitional justice. The European Union's policy on transitional justice is basically a policy of how the South should deal with their transitional justice. It says absolutely nothing about colonial legacies. It says nothing about what the European powers should do about their responsibility for hundreds of years of abuse.

There is a temptation for me, as a Southerner, to say that the transitional justice policy of the African Union should be a list of demands for what the Europeans should do. They have refused to take responsibility for the mess that we were left with.

I think that sense of hypocrisy around defining what are the justices that we are addressing? Who is taking responsibility? If we look at just a limited timeframe, since the colonialists left, how have we tried to reconstruct a messed-up legacy? There is, I think, a very clear sense of hypocrisy that is a North/South one. From an African perspective, that is a discourse that dominates or a deep sense of resentment and understanding of how this field is viewed.

BICKFORD:

I wanted to use the word "power" also. Just a thing about Global South, Global North. It is a totally imprecise term. I think we should just understand and agree that we are talking about—it is a proxy for something else. There is plenty of Global South in the Global North, there is plenty of Global North in the Global South, if we look at geography. This is not about geography. This is a metaphor about power. We are talking about New York City, which has plenty of Global South in it, but New York City also has plenty of Global North in it.

Just to clarify: I do not think we should get too hung up on the geographical concept of North/South. We are talking about power. We are talking about marginalization. Those kinds of things. Anyway, that was my one minute.

MIHR:

From my side, just to add to what Hugo [Van der Merwe] said, I have a point of clarification, not of justification. The clarification is the transitional justice policy of the European Union (EU) is located in the EU external action

service and the EU foreign policy. That is why. It is not an EU target, it is a target for those outside the EU. By the way, most European countries have transitional justice polices located in their foreign policies, or in their development agencies like most Global Northern institutions.

We can criticize that, but yes, that is what I am saying. Not justifying, just clarifying. The European Union transitional justice policy was never targeted toward EU countries. I remember, because I was part of the team, of the consultancy team in Brussels at that time. I mean we were thinking the classes are full, but at least it is in the external action policy. Hopefully, the next step will be an internally targeted policy. These are different instruments in the European Union, very difficult to crack the nut, but thanks for highlighting it.

YANAY:

Uri Yanay from Jerusalem. We talk here about justice. We talk about law. We missed one word, which is voice. I trust that many of us, when we talk about restorative and transitional justice, we want people to have the word. Unless I have the word, especially if they are talking to the ones who harmed them, I am not sure that they will feel justice. I am not sure that courts or lawyers can take over.

You need the people to talk to the ones who made them suffer and talk to them plainly. I think that, in many countries, the authorities would encourage it. In others, they would not encourage it. There is some interesting cases here, among us, that we can perhaps discuss later. Thank you.

HONDORA:

I am Tawanda from Humanity United. I have heard people talk of agency, or the need for agency. I have heard of victims. For the most part, those who were called perpetrators were the local political establishment. Very rarely do we try and interrogate who is behind those particular individuals. Who owns them? Can we talk about restorative justice or transitional justice or whatever we mean by that without looking at the global, financial or economic system? How do we have resources in the so-called South? I know that this system has been used in the sense of resources and in the sense of the human rights violations that it produces.

At the same time, usually it is business. For example in Congo, we can talk of inter-ethnic or communal violence, but why is there violence in the Congo? Why is there violence in the Middle East? Without us looking beyond and seeking to address those particular issues that are more geopolitical, that are about the economic system, the global economic system, we will always be in this field, talking about transitional justice day in, day out, decade after decade.

PARMENTIER:

I wanted to subdivide the key question in saying: is there a gap? Second, along which lines has the gap been constructed? Third, is that a problem?

Much of what I wanted to say in response to this, which I have heard, has already been said. I am only going to use one word. I think the word is power. That is what came up in the discussion so far. The power to define. The power to use resources. The power to impose agendas. This is not, indeed, a North/South divide or an East/West divide. As someone said, there is a lot of South in the North, and a lot of North in the South as well.

If this is the problem, then the next question is, of course, how to overcome that problem, and there, we have listed questions of agency, voice, and some other topics. The final reflection is: is transitional justice, at the end of the day, something other than human rights? I think we need to try to understand what the main difference really is, or is it just human rights in specific contexts of mass atrocities, a massive scale of human rights violations. What is the connection between the human rights and the development and peace agendas? That is another issue.

I am not sure where Aristotle fits into all of this. In fact, Antony [Pemberton] has been the perfect advocate for the Greek philosophers, beginning and end, alpha and omega, or of the final destination. Let us keep it at that. I would like to suggest our time is up, but I would really like to thank all of you for a magical morning session, with lots of interesting ideas, and lots of food for thought. I am sure we can thrive on this for the next two days. Thanks.

II.

DISCUSSION #2

Question: In the evolution of transitional justice, what has been the contribution of various disciplines to the transitional justice framework?

ROBINS:

The discussion question is, in the evolution of transitional justice, what has been the contribution of various disciplines to the transitional justice framework? The notes on the discussion talk about how law, legal scholars, and human rights, have been seen to dominate both the disciplinary approach and the normative approach we bring to transitional justice, perhaps alongside political science, to a lesser extent. They note that disciplines of anthropology, sociology, psychology, and history, whilst apparently having much to offer, are given much less attention. We already had a brief epistemological intervention from Antony [Pemberton] earlier. I hope we can get into that a little bit more.

Is the influence of law and political science appropriate, or should our current approaches be changed to incorporate other disciplinary understandings? I think this would also feed into broader discussions we will have tomorrow about

normative frameworks that we bring when we talk about transitional justice. I will invite Jo-Marie [Burt] to kick-off as our first *animateur*.

BURT:

I was asked to discuss the contributions of political science to the field of transitional justice.

First, I think it is important to recognize that there are two broad streams of political science literature on transitional justice, which mirrors a broader division within political science between quantitative and qualitative research. Quantitative studies, which develop or draw on large-N data sets and reach for very high levels of generality, tend to be more visible, precisely because they seek to make broad claims about causality that, presumably, have important policy implications. The previous panel expressed criticism of this qualitative push in transitional justice research. I do think that this literature is valuable, as data sets and large-N studies can be useful in establishing trends and identifying shifts in political practice. I think immediately of the book by political scientist Kathryn Sikkink, *The Justice Cascade*,²¹ which documents the existence of a worldwide trend toward criminal prosecutions of grave human rights violations, or the work by Leigh Payne and her collaborators, who developed a database of transitional justice mechanisms worldwide over the past forty years.²² These studies have documented the vast cross-regional experience of transitional justice, thus helping to validate the very field of inquiry we are discussing here today.

But this literature has limitations. Critics have, rightly I think, questioned the causal relationships inferred from the data, for example, positing that specific transitional justice mechanisms, or combinations thereof, contribute to presumably desired outcomes, such as respect for physical integrity rights and democratic consolidation. This is a problem large-N studies often face: correlation does not prove causality. Nor do they clearly outline the causal mechanisms that underlie the causal relationships they claim to have uncovered. We need to better define causal mechanisms, both for theory building, and for developing clearer lessons for policymaking.

Qualitative research, which is the second stream of political science research on transitional justice I want to discuss, is more likely to focus at the micro, or meso level, and lead us to this type of contextual, grounded analysis that can help us better identify the causal mechanisms at work. Such research may

²¹ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (2011).

²² See Transitional Justice Database Project, <http://www.tjdbproject.com/#> (last visited Feb. 6, 2018). See also Transitional Justice Bibliography, <https://sites.google.com/site/transitionaljusticedatabase/> (last visited Feb. 6, 2018) (providing further explanation of the Transitional Justice Database Project, as well as detailing sources on transitional justice); Leigh A. Payne, Tricia D. Olsen, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (2010) (analyzing and discussing the findings culled from the Transitional Justice Database Project).

focus on single case studies, comparative case studies within a country, diachronic analyses that seek to understand variation over time, or comparative analysis of transitional justice in two or more countries. Within a qualitative research framework, researchers may adopt a variety of methods, including ethnographic research or process tracing, allowing the researcher to engage in the kind of granular research that is needed to understand the context and the politics behind the creation, implementation, and outcomes of transitional justice. We cannot develop generalizable conclusions based on a single case study, but we can develop context-rich hypotheses that can then be compared or tested elsewhere. A “thick,” context-based approach is more suited to help us identify causal mechanisms.

I think of the book, *Radical Evil on Trial*,²³ by Argentine lawyer and political philosopher Carlos Santiago Nino, which analyzes the path-breaking trials of the members of the military juntas that governed Argentina during the 1976-1983 dictatorship. Drawing on a series of case studies, Nino seeks to understand why, in the context of transition from authoritarian rule, some countries prosecuted alleged perpetrators while others did not. He identifies three types of transition: transition by conquest, transition by negotiation, and transition by collapse. In the first and third, Nino argues, trials are more likely to occur. In the second, trials are much less likely, because the previous regime coalition members retain significant quotas of power and constrain the opportunity to prosecute perpetrators. In the first, the legitimacy of trials may be questioned because they resemble “victor’s justice.” In cases of collapse of the authoritarian regime, it is more viable to hold trials precisely because these power holders have been delegitimized. The causal mechanism Nino identifies here holds, at least during the immediate transition period, providing a useful framework for understanding power dynamics and political outcomes in transitional societies. The work of Cath Collins,²⁴ which looks at changing conditions well past the moment of transition, raises a new set of questions about how conditions evolve in post-transition periods to favor criminal prosecutions brought primarily by victims and CSOs rather than the state.

This kind of contextual analysis and process tracing is a very useful way to think about researching the politics and process of enacting transitional justice, and the enormous amount of variability that exists, both between and among countries, and within countries over time. This is clearly the case with Latin America, where you have some countries that are pioneers in transitional justice, such as Argentina. Yet there have also been dramatic shifts in transitional justice policy over time, and other countries, such as El Salvador or Brazil, where there has been precious little forward movement in transitional justice. In some countries that have implemented some important transitional justice policies, there has also been a tremendous amount of pushback. In places such as Peru,

²³ Carlos Santiago Nino, *Radical Evil on Trial* (1996).

²⁴ See e.g. Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (2010).

Uruguay, and Guatemala, we see conservative sectors seeking to discredit the narratives developed by truth commissions, military officers lobbying to prevent trials from moving forward, and government bureaucracies dragging their feet on the implementation of reparations or the search for the disappeared. At this granular level, I think it is imperative to have more in-depth studies that help us understand the politics of transitional justice.

This is particularly the case in deeply divided societies such as Peru and Guatemala, two of the countries where I have conducted extensive field research on human rights prosecutions. In both countries, the old military guard, which still has enormous quotas of power, perceives criminal trials to be an assault on the military institution and, perhaps just as importantly, to the historical narrative they and their allies constructed of military victory. The politics of trials—who supports them, who challenges them, what trials mean to victims, how they are viewed by the broader society—raise a different set of questions that is not easily answered by large-N, macro level studies.

In this sense, I want to suggest that we might consider treating transitional justice mechanisms not as independent variables, as the quantitative literature does, but rather as a dependent variable. In addition to the kinds of variations just mentioned, the mechanisms of transitional justice may look similar on paper, but in practice they often vary greatly both in terms of scope and implementation. This variation is worth study to help us better understand the context in which transitional justice is adopted, how it is implemented, who opposes it, and what coalitions are able to mobilize to support it. That leads us to ask a different set of questions. How, why, and in what context, are truth commissions adopted, and how is their work received by different sectors of society? How, why, and in what context, are trials against powerful individuals carried out – or not? How are they perceived by society? Are they opposed by powerful sectors and how does this affect the conduct of prosecutors and judges? Are there causal mechanisms that we can identify across case studies that can help us better understand transitional justice and, ultimately, devise more effective policies that benefit victims and the broader society?

This requires, obviously, different levels of analysis of transitional justice mechanisms, whether we are talking about truth commissions, trials, reparations, or any other mechanism. It requires a micro-level, or a meso-level, of analysis, depending on the question being asked. It requires walking through the thick grass to study the political dynamics of transitional justice, the array of political forces aligned in support of—or against—transitional justice, and how and why this changes over time. Such an approach urges us to consider the politics of transitional justice, the power dynamics that shape transitional justice, and the shifts in transitional justice processes over time.

In the end, the methodology we adopt should be based on the types of questions we seek to answer. This leads us to the question of positionality that Chris [Dolan] and Antony [Pemberton] raised earlier. I think of myself as a scholar-activist, which I think is the case for many of us working in the field of transitional justice. Personally, I am primarily interested in understanding

transitional justice not from the perspective of State and nation builders, but from the perspective of survivors and victims. I am interested in understanding how important sectors of societies mobilize in support of transitional justice, and why and how others mobilize to undermine or stop transitional justice. I am interested in the politics of transitional justice. This means I am interested in how power dynamics shape transitional justice policies, mechanisms, and implementation. Politics is about power: who gets what, when and how. It is also about who shapes and defines the agenda.

The last thing I want to say in the one moment I have left is that I disagree with the comment—which I think Harvey [Weinstein] raised at the beginning of the symposium—that there is too much focus on trials in the transitional justice literature. As someone who works on Latin America, which is leading the way in domestic prosecutions, I think that there is not too much discussion about trials. There is too little. Currently there are over 3,000 individuals currently being prosecuted or investigated for grave human rights abuses in Argentina, Chile, Uruguay, Peru, and Guatemala. These processes are, in fact, under-studied and poorly understood.

In my research on criminal prosecutions in Peru and Guatemala, I have been able to document how indigenous populations, who were the most affected by the violence during those countries' internal armed conflicts, have persisted in seeking justice in domestic courts not only in a retributive sense, but also in an effort to stake their claim as legitimate citizens of their nations, and to demand historic reparations, including land rights, that may go some way to addressing the socio-economic inequities that motivated the conflicts in the first place.

The active participation of survivors of violence and families of the victims in transitional justice mechanisms has created a space for their voices to be heard, for them to exercise their rights as citizens, and for them to create new pathways toward realizing their demands for greater socio-economic equality. Each of these human rights trials is a universe unto itself, with different power dynamics, processes, and outcomes. We need more research on the dynamics of these trials. The tendency has been to focus on the high-profile trials of former heads of state or senior military officials, which are absolutely essential, but we may learn more about the broader dynamic of these processes. Contextual, ethnographic studies and micro-level analysis can, I think, help us develop better tools to capture the complex reality of the politics, process, and power dynamics of transitional justice.

HODZIC:

Transitional justice processes in Bosnia and Herzegovina and other countries of the former Yugoslavia have been decisively and definitively shaped by criminal justice concepts which were to varying degrees imposed on the stakeholders and societies at large by two key developments. First, the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the first international war crimes court since Nuremberg and Tokyo

tribunals. And, second, the lawsuit filed by Bosnia and Herzegovina against Yugoslavia (later Serbia and Montenegro and ultimately only Serbia) at the International Court of Justice (ICJ) alleging breaches of the Genocide Convention. It is relevant to note that both developments occurred in 1993, the year in which the war in Bosnia raged on, with its worst atrocity—genocide in Srebrenica—yet to come in 1995. The same year in which Croatia conducted a blitz operation against the rebellious Serbs, expelling more than 250,000 of them, while Milosevic’s campaign of ethnic cleansing in Kosovo would only come six years later. The fact that these two mechanisms emerged while conflict was raging would have a determinative impact on the views of transitional justice in the region and resulting policies

The establishment of the ICTY came amidst reports of atrocities committed by the Serb forces against mainly Muslim Bosnian population as Milosevic pursued the creation of greater Serbia. It was widely seen as a fig leaf behind which the international community hid its utter unwillingness to militarily intervene to protect civilians. However, as the Dayton Peace Agreement ended the wars in Bosnia and Croatia in late 1995, with the mandate that was given to it by the Security Council and the force of the highest executive organ behind it, the lawyers and judges of the ICTY created what was to be the most powerful presence in the political and judicial landscape of the countries of the former Yugoslavia

With the power to prosecute those most responsible for mass atrocities came the expectations from various stakeholders, first and foremost the victims, but also human rights activists and others. At the same time, it would face tremendous obstacles from regimes led by those who would eventually end up in its indictments. It would take twenty-four years for this ad hoc court to bring to trial 121 persons, some of them the most senior political and military leaders of the conflict.

Parallel to that, the ICJ lawsuit Bosnia brought against Serbia for genocide unfolded with all the slowness of a judicial mastodon clearly uncomfortable to be dealing with the crime of genocide. Ultimately, the judgment issued in February 2007 would mirror ICTY jurisprudence and find that genocide was committed only in Srebrenica and that Serbia cannot be responsible for committing or aiding the crimes but was found responsible for not doing enough to prevent it.

We gained mightily from these criminal justice efforts: there are mountains of gathered evidence and countless facts about crimes have been established beyond a reasonable doubt. A number of perpetrators have been removed from our midst, some of them at the highest level of authority like Slobodan Milosevic or Radovan Karadzic. The judiciary in Bosnia and Herzegovina is in relatively good shape to continue to pursue the perpetrators of these crimes for as long as they and their victims are alive. There is a fairly broad societal understanding that impunity cannot be tolerated even for the crimes committed in times of war.

At the same time, in these twenty years of criminal justice efforts, the new normal forged during the conflict, in which the other—in this case members of

other ethnic groups — was dehumanized to the level of an enemy or a problem that needs to be removed, has not been significantly affected.

There has been much baseless expectation and careless manipulation among Bosniaks over what these trials could bring about: from catharsis in the Serb nation, to the ultimate historical record of the conflict, to the abolition of *Republika Srpska*. None of these were grounded in solid precedents, nor did they ever have any realistic roadmap that clearly charted the causal relationship between the trials and the desired outcome.

Fueled by opportunistic opinion makers from the media, academia and religious and political leaders, these expectations often hinged on some big power suddenly waking up to the vast scope of injustice and suffering confirmed in ICTY or ICJ judgments and somehow acting to reverse the results of Karadzic's genocidal effort. Years have been wasted in the recycling of such myths, significantly contributed to by the overblown expectations surrounding the ICJ lawsuit, which in addition to the "definitive truth" about Serbia's involvement in the conflict and crimes, was also supposed to produce billions of dollars in reparations. These expectations were always heavily reliant on the myth of absolute victimhood as the backbone of Bosniak identity, which in turn paralyzed any meaningful conversation on reconciliation and anesthetized notions of acknowledgement and forgiveness. As one of the leaders of a victims' group from Srebrenica put it: "I did not quarrel with anyone [with whom I] need to reconcile and there can be no reconciliation with perpetrators, only punishment."

At the same time, the Serbs have been sold the same story by their leaders, but from a different perspective: that somehow the ICTY's judgments were designed to criminalize every Serb who has fought in the war, and that they would be used to somehow undermine the constitutional legitimacy of *Republika Srpska* and further weaken Serbia. Of course, every leader always positioned himself as the only person capable of "defending" the Serb people and saving Serbs from humiliation and the RS from abolition.

The consequences of this bipolar dynamic have been devastating. The paralysis of positive social processes to which this dynamic has contributed has allowed the political elites on both sides to plunder, unchecked by the constantly re-traumatized populace. The younger generation, which is always the most important agent of social change, has either been forced into thinking about leaving or has largely been infested with most virulent forms of nationalism and hatred, often growing up in the "ethnically pure" communities forged by the conflict. Civil society has largely atrophied, burdened by donors' agendas and a lack of legitimacy among the people, and thus bereft of mechanisms to pressure decision makers into action, factors which have contributed to efforts like RECOM regional truth commission faltering.²⁵ Militant extremism is on the rise

²⁵ COALITION FOR RECOM, <http://recom.link/> (last visited Feb. 8, 2018) (describing RECOM as "a regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia from January 1, 1991 until December 31, 2001").

in all ethnic groups, actively fanned by hate speech in the media and on social media networks.

This dynamic largely obliterated any political will on the part of the leading parties in all groups to pursue a genuine transitional justice process. This is best reflected in the fact that draft laws about a truth commission (2006) and a comprehensive transitional justice strategy document (2008) were effectively killed in the parliament after being drafted by interested civil society groups, usually at the urging of the United Nations or international interlocutors like USIP. Whatever political will existed would be eroded by objections from victims' groups invested in the previously described narratives. Reparations programs were designed exclusively along ethnic lines, always prioritizing war veterans and invalids from their own group, while victims of atrocities were mainly given handouts through associations closely affiliated with those in power or dealt with through other legislation. The only relative success story of this kind was the state-level Law on Missing Persons, which established a body charged with the search for the forcibly disappeared.

Beyond such indirect influence, the ICTY also directly intervened as in the case of the initiative to establish a truth and reconciliation commission in 2001. The initiative was abandoned after the ICTY President told the convening forum that the ICTY had primacy over any investigative work that would address war crimes or crimes against humanity and that the commission must not in any way infringe upon the court's mandate or jurisdiction, or even be similar to that of the ICTY. This message brought tremendous pressure from victims' groups and politicians on the conveners to drop the initiative, which they duly did.

Lastly, the impact of the ICTY on the policies of the international community, which had (and continues to have, especially through the EU accession process) a crucial influence on the political dynamics in Bosnia was significant. Its influence manifested through the fact that the court's political and financial capital was invested in two directions: through the EU's "policy of conditionality," which established as a key condition for EU accession of Balkan countries their cooperation with the ICTY. This effectively separated the obligations of these States to address the past abuses from the rule of law framework—central to the accession process—and reduced their obligations to the question of whether they have arrested ICTY fugitives or not and whether they supported the establishment of local capacities to prosecute war crimes, most notably through what is known as the Bosnian war crimes chamber. The latter concern was primarily motivated by the ICTY's need to transfer a number of cases in order to meet the deadlines of its completion strategy. The issue of a genuine transitional justice process, often itself reduced to the notion of reconciliation, was left to civil society, which has done a great deal of good work, but largely isolated from the main political discourse, disconnected from the key constituencies invested in the issues, and ultimately driven to near irrelevance.

This year we will see the ICTY definitively close its door and we have just seen a last-ditch attempt to apply for a revision of the 2007 ICJ judgment fail. The era of criminal justice in Bosnia and Herzegovina is now officially over, but

its legacy on the ability of the society to reckon with the consequences of atrocities committed during the war will linger for years to come. It has given us plenty, but it remains to be seen if we will be able to recover that which it has taken.

LIRA:

For psychologists and psychiatrists (and other medical doctors), professional concern regarding human rights violations under dictatorships, civil wars, and, then, the transition to democracy developed as a result of massive and systematic violations of human rights. Truth, justice, reparations, and memory connected the individual experiences to political processes, in efforts to overcome the political, social, psychological, and moral consequences of political violence. Different countries, different conflicts, and different roads to face the past provided mental health professionals with diverse and variegated challenges.

I have worked in the Chilean dictatorship as clinical psychologist for victims under the umbrella of Churches (Catholic and Christian Churches) beginning in 1977. In 1975, in Chile, a psychologist observed that the victims who consulted him experienced a situation of disintegration characterized by distress, disorganization, and confusion, and a great difficulty to feel as though they were living. It seemed to him that the victims' mental state was related to a breakdown of the keys to the knowledge of oneself, of others, of situations. Sometimes victims were tortured, imprisoned, and then exonerated, before being exiled for several years with their families. Some of them returned to the country alone or with family members. Other victims may also be the relatives of executed or disappeared persons. Most of them had suffered one loss after another: loss of rights, loss of a job, loss of physical integrity, loss of peace and stability of the family, and the loss of the capacity to determine one's life course. In conditions of extreme political repression, traumatic situations tend to include attachment disorders, mistrust, and fear in social relations.

Professional observations revealed that detention, torture, persecution, loss of loved ones by execution or disappearance, exile, among other situations, triggered complex somatic and psychological processes caused by trauma, loss, and extreme suffering. Living conditions under conflict affected families and particularly children. Although the source of the disturbance was socio-political, its impact and consequences depended on the personal and social resources of each person, his/her support networks, health conditions, age, and the capacity to understand what happened and make decisions to protect the lives of family members and that of his/her own.

In the transition from dictatorships and political conflicts to democratic regimes, commissions were created to establish the "truth"—what really happened, the existence of systematic torture denied by the authoritarian regimes—and to recognize the victims. Truth commissions (in Latin America and elsewhere) have relied on testimonies of victims and on the verification of facts and circumstances related to human rights violations, that is, establishing the

legally required conditions for recognition of the victims, according to the mandate of each commission.

Reparation policies apply to officially recognized victims. In the case of Chile, public reparation measures of various sorts were established by law. Reparation measures were adopted for the relatives of the missing and executed persons, people who were dismissed from their jobs for political motives, peasants who participated in land reform and were expelled from the land for political reasons, and Chilean exiles returning to the country. Political prisoners and torture victims were added to this list in 2004. Reparations usually consist of money compensation (lifetime pensions, or one-time indemnities), educational benefits for family members, health services and other benefits.

The measures usually failed to consider differences in the type and consequences of victimization. Traumas and losses, which are objectively and subjectively different for each person, are not considered. This contrasts with the reparation measures ordered by the courts and especially by the Inter-American Court of Human Rights. Judicially-ordered reparations including symbolic measures, social, psychosocial, and medical actions, and indemnities, among others, more frequently considered the circumstances of victims and their family members.

Attention to the victims of trauma, losses, and suffering has been a principal objective of the reparation and rehabilitation programs in Chile, through the Programa de reparación y atención integral de Salud or PRAIS, and Colombia, through the Programa de atención psicosocial y salud integral a víctimas or PAPSIVI.²⁶ Health reparation policies have included medical and psychological services for victims and family members.

Public and political recognition of violations of human rights and recognition of victims is very important as part of the reparation process. Likewise, it is important for government authorities to recognize the pain and suffering caused by rights violations and to express public regret, even asking for forgiveness, from the victims. In turn, judicial investigation of the crimes and punishment of the victimizers, eventually demonstrating, at least symbolically, that nobody is above the law, is an indispensable dimension for the subjective well-being of the victims.

The effectiveness of reparation policies requires victims to “feel repaired.” The actions taken in accord with reparation policies cannot, by themselves, overcome the pain and loss occasioned by irreparable harm that people often experience in the solitude of suffering. The recognition of the injustice experienced, of the traumas and losses of the victims, can give rise to

²⁶ PRAIS, MINISTERIO DE SALUD, GOBIERNO DE CHILE, <http://prais.redsalud.gob.cl/> (last visited Feb. 6, 2018); Programa de atención psicosocial y salud integral a víctimas – PAPSIVI, MINISTERIO DE SALUD, GOBIERNO DE COLOMBIA, https://www.minsalud.gov.co/proteccionsocial/Paginas/Victimas_PAPSIVI.aspx (last visited Feb. 6, 2018).

forms of emotional and moral elaboration that allow them to partially overcome the victimization and to reintegrate into social and political life as citizens.

MOUDDEN:

When I received the invitation to attend this workshop, I realized that my life trajectory personifies the issues put forward by Laurel [Fletcher] and Harvey [Weinstein] in their introductory note concerning the gap between North and South, and practitioners and academics in the field of transitional justice. Morocco, where I come from, is categorized as South, and Michigan, where I completed my doctorate degree, exemplifies the North. My profession has always been a university professor of Political Science at Mohamed V University in Rabat, but I was a member of the Moroccan Equity and Reconciliation Commission during the years 2004-2005 and have been grappling ever since with the questions posed for this workshop.

My first reaction to the topics of our panel is to reiterate the common observation that the South produces the experiments in the practice of transitional justice, and that the North is, to a large extent, the source of the academic work on the subject. This view however, should be nuanced by the fact that academics originating from the South teach and publish in the North, and that practitioners from North participate in the southern practices of transitional justice as consultants, advisors, trainers, experts, and other capacities. But, overall, the gap remains a reality. The question of why are the Southerners not producing more academic work is legitimate, but equally legitimate is the question why the Northerners are not resorting more to the practice of this form of justice.

I will not address the latter question because it is not the main focus of our workshop. But, I want to share with you my main idea on the relationship between practice and academic work. I think that our assumption of the interconnection between the two domains is exaggerated, and that while there are mutual influences and shared topics of interest, transitional justice as a practice and as an academic exercise retain their respective autonomies from one another. The goals, the dynamics, methods, strategies, stakes, and tensions of each domain are distinct. We should, therefore, expect that the answer to how to improve the academic work on transitional justice, as we are asked to address in this panel, is distinct from improving its practice. I do recognize, however, that autonomy here, like elsewhere, is, of course, relative and we should continue to look for the appropriate approaches to thinking about these interconnections.

The emergence and development of transitional justice as an academic discipline must be contextualized in order to grapple with the topic of our panel. As a paradigm, transitional justice is inseparable from the transition paradigm that was very influential in the discipline of political science in U.S. universities since the early eighties. It was conceived and articulated first by political scientists specializing in Latin America. In its heydays, the transition paradigm was constructed on a linear notion of a peaceful transition from authoritarianism to

democracy based of rational choices embraced by reformists strategically positioned in the state apparatus and moderate leaders of the opposition. Transitional justice was conceived to help in this peaceful democratization process. Like other paradigms, when transitional justice travelled, from Latin America to Eastern Europe, South Africa, and other territories, it was reshaped by new geographies and historical and political contexts.

But the promise of democratization did not reproduce the trajectory conceived by the original transition paradigm, and with the accumulation of a wider variety of experiments in regime change and regime re-production, the transition paradigm, which failed to capture the unexpected itineraries of politics, is now marginal. Competing for the attention of political scientists currently is the paradigm of hybridity, where a regime can represent a type that is neither democratic nor authoritarian, and unlike the transition paradigm, is transiting nowhere, but remains hybrid for an undermined duration. If we accept hybridity as an empirical observation, the idea of transitional justice without the promise of democracy, needs to be considered. In other words, we have to be skeptical of the original expectation that transitional justice is a temporary track and that ends with full democratization, at which point it is replaced by “normal” liberal justice. If democratization does not happen, or is not expected to happen anytime soon, then transitional justice should not be considered transitional, but permanent, addressing specific conditions in non-democracies, the most relevant of which are post-authoritarianism, post-conflict, and settler-colonial justice.

The issue that remains undertheorized in the literature of transitional justice concerns whether the justice sought in these situations is fundamentally different from “normal” liberal justice. By emphasizing the temporary condition of transitional justice, as “transitional,” it was marginalized from the theoretical and philosophical conversation on the notion of “justice.” If it is only transitional, if it remains in unresolved conflict with the liberal principles of justice, then it is not normal justice. This argument explains, in my view, the absence of the notion of transitional justice from the philosophical literature on justice.

I suggest, in order to remedy this marginalization, to revisit the philosophical arguments on justice, and to seek to find the place of transitional justice in the center of the debate, not at its margin. A helpful entry to this subject is the discussion proposed by Amartya Sen in his book *The Idea of Justice*,²⁷ where he proposes to define justice not on the basis of what it promises to achieve ideally, but on its ability to correct the existing injustices in practice. I believe that this avenue should help eventually in repositioning transitional justice as a “normal” justice, not merely as a transition.

Philosophy can provide the academics of the South with a louder voice than social science. The latter are too costly and over-structured as academic disciplines for underfunded and unstructured university professors from the South to take part in as equal partners in the global conversation on transitional justice, or on other academic topics for that matter. Other sources worth considering for

²⁷ AMARTYA SEN, *THE IDEA OF JUSTICE* (2009).

balancing the North-South conversation on transitional justice are fiction and cinema.

Finally, I consider that the North-South dialogue traditionally has been characterized by an inherent assumption of a fundamental distinction between the conditions of justice in the South versus the North. Injustice is largely located in the South, which necessitates transitional justice. In the North, liberal justice is considered adequate enough to address the region's injustices. But this assumption, which at times is expressed with arrogance and a sense of moral superiority, neglects the injustices of the North that are dismissed from the start by the liberal judiciary systems. War crimes for instance, not only of the distant past, but those waged currently by the liberal North, remain unaddressed and, therefore, unpunished. Recognition by academics and practitioners from both North and South of the reality of impunity as a universal condition, not only as phenomenon restricted in the South, should help in bridging the mental gap between geographies with shared human dilemmas and tragedies.

PECCERELLI:

Twenty years following the Peace Accords, Guatemala is still in the thick of the transitional justice processes of clarifying and pronouncing the painful truths of the conflict and advancing accountability processes. Evident links between current government officials and crimes committed during the conflict illustrate that there is still a long process to undergo to disassemble the power gained during the conflict and challenge the impunity (and in some cases immunity) that lingers. Holistic approaches to transitional justice mechanisms, including searching for the disappeared, that place truth at the front are valuable acts of resistance to the enduring impunity and persistent revictimization of victims and their relatives that occurs as long as there are efforts to reach the truth, accountability, and redress. In Guatemala, we have seen that forensic investigations are integral to and complement transitional justice processes, as scientific inquiry supports the justice system in its path to challenge impunity, promote accountability, encourage democracy, bolster rule of law, and uphold human rights, while also accompanying and acknowledging the rights of victims' families to truth, justice, and reparations through locally owned transitional justice processes.

The Forensic Anthropology Foundation of Guatemala (FAFG)²⁸ accompanies the survivors and the families of the victims of Guatemala's internal armed conflict at their request and with their trust to uphold truth, memory, and justice. Forensic investigations are an important mechanism to clarify history, identify victims, and provide evidence to support accountability and reparation initiatives. FAFG employs forensic anthropology, archaeology, genetics, and victim investigation techniques to recover, analyze, identify, and return

²⁸ FUNDACIÓN DE ANTROPOLOGÍA DE GUATEMALA, <https://www.fafg.org/> (last visited Feb. 8, 2018).

individuals to their families so they may be buried with dignity and according to cultural traditions. FAFG provides families with the highest possible level of professionalism and scientific certainty in the identification of their loved one. The forensic evidence bolsters legal prosecutions in domestic judicial processes. Especially in cases of the disappeared, the family members know no relief for every day that the whereabouts and situation of their loved one is unknown—the crime is permanent and perpetual.

FAFG's unique and extensively developed methodology is now sought after internationally, as other post-conflict countries with disappeared victims begin to evaluate the possible options to search for and identify their loved ones. Now, it is widely known that FAFG has solidified through years of trial and error, evaluation, and success, the most holistic and integrated methodology to identify and dignify the deceased and disappeared. The experience and expertise that FAFG brings to its work in Guatemala is an empirical example of transitional justice initiatives that are propelled by local level advocates, informed by local context, and responsive to culturally and socially specific needs.

As we have witnessed and experienced in post-conflict Guatemala, the inclusion of forensic investigations in transitional justice frameworks strengthens the pursuit of accountability and justice, as well as broadens the means of truth-telling through scientific and rigorous truth-seeking methods. The long process of searching for the disappeared parallels the lengthy transitional justice process, both of which require sustainable and reliable support for their duration in order to properly accompany the survivors, victims, their families, and society, as they reconcile the conflicted past and build a foundation for a more democratic and peaceful future.

ROBINS:

Thank you Fredy [Peccerelli] and thank you all the *animateurs*. Very briefly, I think it is interesting that we had a couple of people talking about how important the law is, when I think there are many of us who think transitional justice is too legalistic. Maybe that is the discussion we can have. There was discussion about psychological support and transitional justice has always talked about a narrative of healing and, now, about victim-centered approaches. Yet, often these aspects are not central to current discussions; the psychological is largely marginal to the principal discourse.

We had a discussion about the technical discipline, the forensic. That even though it is technical, it can be victim-driven; it can be highly reparative; and, going back to the idea of power and agency, it can be empowering for victims. I think that is very interesting. Abdelhay [Moudden] talked about culture and art. The idea that they can be drivers, communicators of social change. I think that is very interesting. History was not mentioned, and that is something that is mentioned. Sociology is somehow implicit, I think, through what we are saying, but also what was not discussed explicitly. Who would like to kick off?

PEMBERTON:

Yeah, I would just like to pick up a point that Abdelhay [Moudden] made. In fact, we run a project that is based on Amartya Sen's distinction between *niti* and *nyaya*, two Sanskrit conceptions of justice. *Nyaya* focuses on the reality of injustice, and *niti*, like you say is the Rawlsian, idealized version of justice. That also brings me to another philosopher, Judith Shklar, who wrote a fantastic book in 1990 called *The Faces of Injustice*.²⁹ I still think that is something that is also very relevant today. She says that we tend to think of justice and injustice as polar opposites, as two endpoints of one dimension. She calls upon us to think about injustice as an independent phenomenon.

Justice, sometimes can do something about injustice. Justice, like the law, can do something about it, but quite often, justice introduces other values, which equal well-oiled social functioning, that function to the detriment of the ability of justice to combat injustice. I think that is a problem for concepts of justice that I have wrote about myself—for restorative justice, because restoring situations might not fit very well with doing justice. Maybe that is at the heart of the problem with transitional justice as well.

Restorative justice already centers on the endgame of doing justice in a particular way. Otherwise, we are still transitioning towards that. I think that the work we still need to do in this area could be very well-inspired by Judith Shklar's thoughts in 1990.

ROBINS:

Thank you, Antony [Pemberton]. Shklar, of course, also wrote a book called *Legalism*³⁰ about the distancing of law from the social environment from which injustice emerges.

ROHT-ARRIAZA:

I do not know if I find myself in the position of defending law and lawyers, but I suppose I will. I am usually on the other end, saying: "Oh, don't do that." Look, from a different perspective, I think the problem is not law and lawyers; the problem is there are lots of different trends within lawyering. The trends that are most useful are the ones that have been least used. When I think about what lawyers do, it is evidence. They can help figure out how do you know what you know, and how much of it you have to know. But, then they build institutions. I think it has been the institution-building tendencies of lawyers that have given rise to a lot of the critique.

We build beautiful courts and then they do not work. We are like: "Oh my god, what happened?" I think there is another trend within law that is actually

²⁹ Judith N. Shklar, *The Faces of Injustice* (1990).

³⁰ Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (1986).

useful, and that is cause lawyering. I mean there is a huge literature out there on how lawyers do and should interact with communities: they do and should represent, but not take over. Do and should work with community dynamics. We teach this to our students in courses on public interest law, but somehow, they do not come in when we are talking about these kinds of issues.

I just wanted to make a plug for “it’s not all law and it’s not all lawyers.”

Lawyers focus too much on institution building, because lawyers know how to do institution building. We are just not very good at figuring out what to do with it once we have built it.

MIHR:

I just wanted to share a brief observation from the first and second discussions and, since we have to summarize this somehow this afternoon, I will do an interim observation. What I find very, very intriguing and interesting in this discussion is the idea about power. Because what I have learned in the first session is that, in terms of transitional justice, the power is often with the strongest. It usually remains state-centered. Actually, in the second discussion there was the claim that we should transfer some of this power—not all. Probably not all, because we need the institutions. But transfer some of this power to the victims or the people in need, who actually suffered from the crimes and the injustice. As we discuss it all, transitional justice is about power sharing.

Why am I saying this? It is because this session is about the evolution of transitional justice, and maybe that is one reference point, and I would like to hear a little bit more about it. If I am not completely mistaken, we are moving in this direction. You brought in the hybrid models, which are not only discussed in Northern Africa, but also, I have heard of a lot in Latin America. This hybrid idea, twenty years ago, was not even on the table. Maybe that is part of the evolution: sharing power, moving power, whatever. Sharing or moving power from one part to the other, from the state to the victim, or from state to the citizen.

FLETCHER:

I had a couple of things I wanted to say to pick-up on the prior discussion as well as this one. One of them, it seems to me that we are talking about one of the paradoxes of human rights work, which is that the State is both the actor—the criminal that we are trying to restrain—and that the State is also the care giver or the keeper of welfare that we want to extend or protect.

When we are talking about law and we are talking about power, we are talking about the abuse of power and the deployment of power, and who has the opportunity to shape the ways and set the agenda, if you will, for how the State deploys its power. It seems to me, to bring it back a little bit to this conversation, when we talk about the State as the criminal, the criminal actor, law has a lot to say in terms of how to restrain State power. That plants us firmly in international criminal law and this desire for trials. However, when we talk about the State as

the care giver or the provider of welfare, we want the State to do things like reparations. We want the State to do things like respond to victims. We want the State to have the forensic capacity to identify the remains, to return the remains to the family, right? Those are all things that we think of as being the failings of the State when they fail to provide, and NGOs often step into that space. They also have more trust with victims. Our end goal is to get the State to respond to these needs.

Part of the problem, as Fredy [Peccerelli] pointed out, is that, of course, you have the same actors. You have holdovers. That is what gets us frozen in these intermediate points in transitions where we yet do not have an idealized new democratic State that is going to stop being a criminal and start fulfilling its caregiving role.

I think I just wanted to add that observation to provide some texture about the ways in which we are talking about transitional justice concepts and the tools that we want to use to engage in these fundamentally different projects.

Finally, Jo-Marie [Burt] talks about being an activist scholar, and I recognize many of us in the room share that characterization. I also recognize Abdelhay's [Mouidden] caution that scholarship is different than practice, and scholarship should not always be a justification for policy.

I want State actors to listen to the Jo-Maries, when what activist scholars are advocating is grounded in the victims' experience. I do not want activist scholarship to be used in other contexts where it is going to be misused. A part of that is just the nature of knowledge production. Once we put it out there, we cannot control how it is going to be used.

I hope we can invite conversation about ways in which we can better deploy scholarship. It cannot be that scholarship has nothing to say for policy. I do not think that was what your intent was, but I think we need to think about how we connect those things up.

TENOVE:

Thank you very much. Chris Tenove from University of Toronto. I want to pick-up on what Abdelhay [Mouidden] was saying about this idea of the transition of regimes and the question of whether we are at hybrid regimes and other sorts of things. One area at which I have been looking more recently is some of these transitional justice challenges. Parts of autocratic regimes are able to transnationalize themselves and affect disparate populations in terms of what they can say elsewhere. They can target civil society within their borders and beyond. It gets to this question of who has the power.

I think I am bringing up this, in part, around what new, or what disciplines maybe need greater voice in transitional justice. I think really being able to pay attention to the ways in which communication changes and State regime changes are now making it the nation or the political community that is being transformed.

It has become much more diffuse and hard to get at and broken up into different bubbles than it was before.

I think that things like truth commissions and other mechanisms are really going to face much greater difficulty in this hope of bringing along large publics than they have in the past. I think that is one area that a lot more work could be done in. I am also interested in how this goes to the practitioner, academic, and some of the discussion we had in the first discussion about being a lot clearer about the kinds of resources that come with partnerships. Maybe along North/South lines, but also academic, non-academic, international organizations, and local organizations. Because, I think, in different contexts, there is a real range of resources that could be alternately of assistance and extractive.

I am still looking for a good way of conceiving of those research exchanges and really being able to identify when you are there and able to help, coming from different areas and deciding who you are helping. Hopefully, we can continue to talk about that as well. Thank you.

SÁNCHEZ:

I think a question emerges from the idea that there is an evolution, but can we even consider that there is an evolution? When the peace processes started, I was sharing a panel with a political scientist, a professor who had been working for negotiated peace in the country for many years. I was so excited because we were finally trying to make peace with the FARC in Colombia. I asked him, “Professor, do you think we’re going to finally make it?” He said, “Maybe if you lawyers allow us to do it. Let us do it.”

Because, for him, the idea of interdisciplinarity was a bad idea. We are all departing from the idea of evolution, but for some it is involution. I think, for me, interdisciplinarity is great. I think it is evolution. Nothing better than a bunch of smart people looking at a problem from different angles and perspectives and trying to contribute to solutions. That is great.

On interdisciplinarity, there are at least two points to be considered. First, psychologists and lawyers and political scientists and sociologists have made a lot of contributions to the scholarship and literature. Then, when it gets real, when a country has to make decisions about what to do, the transitional justice realm is always asking for institutional change and rapid change. Law becomes so important that many of the other disciplines get left behind, because you need something that can prove that you changed, that there has been movement: “Let us make a law. Let’s make a new institution.” I think there is something here, in this phenomenon, to be examined.

Second, as many and more people get involved in the process, we raise expectations of communities. For example, I have seen communities in my country, villages that have been studied by every profession in the book. They have had scholars from psychology, from law, and so forth. In the end, all of these scholars come and they promise a lot. The communities expect that they will follow through.

OEUNG:

I would like to contribute an idea from a practical point of view, again. Here, we talk about evolution. I would like to add culture is also important. Given the local context, we talk about victims and we have different types of victims. For example, religion plays a role. In Cambodia, we are 90 percent Buddhist. NGOs have used this approach to engage both the victim and the former perpetrators. We have seen some success and some failures, but it is still an ongoing process.

Given the absence of a formal truth and reconciliation commission, NGOs that gather evidence of past crimes, document these crimes for study by future generations. I think the NGO role should be something included in what we talk about with transitional justice in order to have different perspective, but also to engage a different dimension of it. Especially, I would like to stress here, in our context, NGOs have played a big role, especially human rights NGOs that support victims.

HACHED:

I wanted just to react to the hybrid state idea. I have a problem with this notion, a big problem. Any State is a hybrid State, in the end, if you want to be honest. If we look at any State, the role of the media, of propaganda. In the United States, there is the problem of racial injustice. People who are in prison are, in general, poor people. They cannot have a good lawyer, et cetera. Any state is a hybrid state.

If we start to use this concept of the hybrid state, then we dilute the responsibilities, because everybody is in the same bag, I would say. Maybe we should have criteria. For me, we are a democracy, or we are not a democracy. Sure, we can be a democracy with some failures, and we can be not a democracy, but have some instruments, interesting instruments that empower people. But we should have a line, in my opinion.

DESTROOPER:

Thank you, I just wanted to follow-up on a point Refik [Hodzic] touched upon, which is the idea that transitional justice processes shape people's understandings of justice. I think this is really important if we are thinking about interdisciplinarity, because as Naomi [Roht-Arriaza] also pointed out, it is not just the sort of law in itself that is bad or problematic, but it is certain understandings and how we interact with certain understandings.

I am thinking about the fact that, in the first session, a couple of people pointed out that criminal justice processes in particular did not necessarily have to be only the backward-looking mechanisms that we often think they are. True legacy projects like in the case of ECCC using court documents for awareness-

raising victim participation. There is a lot that can be done that is forward-looking as well.

However, and I am doing some work on the ECCC now, I always think about one sentence which is in an Open Society Foundation report on the ECCC, which suggests that in true victim participation, participants become ambassadors of the transitional justice process when they return to their communities. I think this is quite interesting, because there has been very little thinking about what the causal mechanism would be that causes this empowerment or this ambassadorship. What kinds of concepts of justice or human rights we are presenting people with that they then take back to their communities?

I am doing a project right now where I am tracing what the priorities of ECCC have been, and as we all know, criminal justice tends to focus on only violations of civil and political rights. This is also the case for the ECCC. Even if there have been massive economic and social rights violations under the Khmer Rouge, and what I see is that, if you look at the 50 most important transitional justice and human rights NGOs in the country, they are almost a carbon copy of this discourse. Also, their only focus is on civil and political rights violations, and with the exception of land rights, there is hardly any mention of any economic, social, and cultural rights violations.

I think this is particularly problematic, because it lets States, duty-bearers, off the hook if they violate these economic social and cultural rights going forward. In that sense, I think there is really a need to work together more with other disciplines to look at what the effect of exposure to certain discourses is within the context of the transitional justice process, and how this can affect the viability of the process in the long run.

I would totally agree with Jo-Marie [Burt] that there is not too much focus on criminal justice, but just that it has been a very legal focus on criminal justice, and that we really need to broaden this. Thank you.

HONDORA:

The question is what contribution other disciplines have made to the transitional justice framework. I think there is broad agreement that it is mostly the issues of criminal trials. I think that is a given. There is a question, though, which is: why is that the case? If historians were brought to the table, if sociologists and anthropologists were brought to the table, what would that look like? Would those with the power and the agency permit that?

The reason for me, I think, is simple. The moment you go beyond the immediate—catching and trying an individual who has lost power (and that is why you are able to get hold of them)—and start to look at the root causes of conflict, you are now threatening the very foundations of what the world, in its current framework, is built upon. Colonialism is one of them; rule by the minority is another; the global economic infrastructure is another.

Whether or not we would be able, as justice practitioners and not just lawyers, to challenge that, is tough. In my view, this is why, under the current framework, you need justice. Grab hold of them, truth commission, domestic criminal trials, as well as the international criminal trials, and that is the end of it.

OOLA:

I just want to emphasize a very important challenge that Fredy [Peccerelli] mentioned. I also want us to clarify where the problem is. In particular, the demand to fit what we are doing into the transitional justice framework. At the Refugee Law Project, as Chris [Dolan] said, for a very long time, we were doing a lot of the things that were in the 2004 U.N. report.³¹ In 2004, when the U.N. Secretary-General came out with a report, which defined transitional justice very broadly,³² we could see ourselves in it and start to appreciate that a lot of the things we were doing were actually contributing towards—whether it was research, advocacy or documentation—transitional justice goals.

The question that I want to put to Fredy [Peccerelli] is whether he saw the challenge of fitting their work, which is a very important branch of work on forensic science, within the transitional justice framework and linking it directly to a specific transitional justice mechanism, which was prosecution in the case you mentioned. Thank you.

SONGA:

Thank you. Just a brief contribution around the conversation on the dominance of law within transitional justice. I think also we need to consider that the dominance of law is a reflection of the fact that we are reorienting discussions around transitional justice less on the aspirations and ambitions for what we want, as on the outcomes of the processes put in place. We tend to have instruments and policy frameworks on transitional justice framed in a manner that anticipates non-compliance and non-cooperation, particularly from States. Therefore, you have a situation in which the language of the texts, these instruments, tends to be oriented in terms of what can ultimately be justiciable.

Recently, we had a conversation and we pushed through a general comment at the African Commission on Human and People's Rights about redress for victims of torture and other ill treatment. One of the most difficult parts of that conversation was how to put the language of healing within that general comment.

The main thrust behind that conversation was: "How do we ensure compliance with subjective emotional healing?" If a State is non-compliant, what do we do to make the State compliant? How can we argue this as a legal issue? I

³¹ U.N. Secretary-General, *supra* note 1.

³² *Id.* at ¶ 8 (defining transitional justice as "compris[ing] the full range of processes and mechanism associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.").

think that is also the back end of the question. How we have become more about anticipating non-compliance and non-cooperation with these objectives, and less about defining, in particular, what the aspirations and ambitions are.

MOUDDEN:

There is a question that is related to power, which is: who has the power to assess the performance of what we are practicing, or the rigor of what we are producing? I think that it is very important, again, for me to disassociate the two. Those who have the power to assess the performance of an experiment in transitional justice, or to be the people who are there—the people who are the victims and the people who are within the policy that is concerned by this injustice.

I mean, primarily, when it comes to performance at the intellectual level, I think that you do have standardized rigor. This actually eliminates so many works, because the standards for rigor are being set by the academic journals, by the publishing houses. For example, I am here now, but I was supposed to attend the book signing of two colleagues of mine in Morocco who are involved in transitional justice and who wrote wonderful memoirs. But, their memoirs were not accepted in any publishing house, because most of the photographs that they contained did not have the authorization of the people who appeared in them.

The point is that I describe two different standards and the performance of transitional justice is highly contextualized. The people who are participating on the ground do understand their contexts. When we judge performance from the outside, we somehow tend to forget the context.

I had a discussion with a colleague of mine from UCLA, who is not here, right? She was highly critical of the Moroccan Equity and Reconciliation Commission,³³ justified because, as she said: “You did not prosecute the perpetrators.” Somehow, I got very upset. Her objection proceeded as though I had not done enough thinking to understand the context of what we were doing. Then I reacted angrily, telling her: “Why don’t you prosecute Bush for the crimes he committed in Iraq?” All of the sudden, she starts telling me: “You know in order to do that, there is this context of . . .”

I say this is the point. Understanding the context is important, because, of course, practitioners do make mistakes. Of course, they can be coopted. This cooptation exists, but we need to make this effort of understanding the context.

³³ See EQUITY AND RECONCILIATION COMM’N, FINAL REPORT: VOLUMES 1-5 (2009), <http://www.cndh.org.ma/an/rubriques/documentation/publications/report-equity-and-reconciliation-commission-ier>.

ROBINS:

The discipline that you bring to bear affects the agenda that emerges from transitional justice and affects how you understand justice, or how you can let victims and others define what justice is.

III.

DISCUSSION #3

Question: What has been the relationship among transitional justice research, policy advocacy, and practice?

PEMBERTON:

It is my pleasure to moderate the third session. We are going to be talking about gaps between academia and practice, which, hopefully, might lead to some transdisciplinary bridges being built, because transdisciplinarity recognizes that knowledge is also produced in many areas other than in academia. I have a very strong sense that that, in particular, this applies to the field of transitional justice. I will ask the first speaker of this session, the first *animateur*, Salma Kahale, to take the floor.

KAHALE:

I work with a small Syrian organization called Dawlaty³⁴ founded in 2012 within the context of the Syrian revolution. Dawlaty means “my State.” We wanted to create the space, tools, and opportunities to envision our State. Our aim is that all civil society actors, in particular young people, can become active participants in achieving a democratic transition. We work in three areas which we believe are necessary for a democratic transition: civic education, transitional justice, and community organizing.

We see transitional justice as a necessary element of democratic transition, as it can be an opportunity for redefining the social contract. We see transitional justice as transformational justice, using the conflict as a transition towards setting the foundations for a new inclusionary, participatory society. Thus, within this view of transitional justice, we have focused on how we can build capacity and prepare for the participation of civil society, and of young people in particular, in transitional justice processes.

The way in which we have thought about this “preparation process” has shifted as our assumptions regarding transition have changed. While we have always envisioned a democratic transition to be something long-term, we (as well as many Syrian and non-Syrian actors) initially envisioned a situation in which a post-Assad, transitional government would lead to a post-revolution Syria. With

³⁴ DAWLATY, <https://dawlaty.org/en/> (last visited Feb. 24, 2018).

this assumption of a clear transition, many Syrian organizations with international support set out to prepare for such a transition. This was mainly done through capacity building, documentation, research, and planning.

As the conflict drew on and transition became less attainable, preparing for transitional justice became increasingly problematic and sometimes counter-productive. Ignorance of transitional justice concepts turned into fatigue and cynicism as violence increased and any talk of justice or reconciliation sounded more and more idealistic and out of reach. Documentation efforts became more difficult, as people saw less likelihood for justice and no immediate response to their increasing humanitarian needs. While documentation and consultations increased in opposition-held areas, government-held areas remained a “black-hole.” Plans and discourses built on this lopsided view of transition were at risk of creating further divisions rather than enabling reconciliation and healing. But, then again, developing or reviewing transition plans when transition appeared so distant became indulgent and wasteful exercises, as the need to address the effects of violence became so overwhelming.

Syrian human rights, justice, and democracy activists have all been rethinking our work and what would be most helpful for us to do at this moment in time. Our rethinking is based on new assumptions about what a post-conflict Syria looks like. What can we do when post-conflict will not mean transition, that, rather than a transitional government, we may have a “national-unity” government still headed by the current regime. We suspect that post-conflict will not mean end of violence as we shift to a war on terror framework. In this context, we are looking at what is the potential for truth and justice in the short term and what we need to do to achieve these outcomes in the long term.

At Dawlaty, and many other organizations are also considering this, we have sought to review our transitional justice approach with a view to engaging and supporting marginalized communities and those who have experienced human rights violations. We are looking at strategies and programming that may be relevant to these groups during the conflict, but which would also build capacity and documentation for a future, distant transition. Within that framework, strategies we have identified as aiding in the preparation for transitional justice during the conflict include amplifying marginalized voices, supporting the articulation of needs, and creating platforms for victims. For example, we are collecting and archiving stories of female relatives of detainees and supporting them in making their demands heard nationally and internationally. We are working with young people to document the oral histories of youth, and supporting them to define the issues they want to explore and how they would like to communicate about them. We believe this victim-centered approach may prove more empowering and more useful as an entry point for engaging Syrians.

PEMBERTON:

Thank you very much, Salma [Kahale], for introducing, I think, a topic that has not been discussed yet today. How can we think about transitional justice prior to transition? I think that is a very, very important subject.

ROHT-ARRIAZA:

Many of the academics here think of ourselves as activist-academics: we want to do policy-relevant research that has a clear anti-impunity objective, and that will be useful. Many of us work with civil society groups, and frame our research questions in ways we hope will be useful to them. And yet, there still is a disconnect between researchers and subjects, and between Northern and Southern researchers. There is much research going on, but it does not cross disciplinary barriers, North-South, and academic-practitioner.

Most academic researchers are from Northern universities, and most of their research is in Africa, Asia, and Latin America. In some cases, researchers have deep knowledge and contacts in the places they study, honed by years of connection, but in other cases the researcher is there for a one- or two-year study and then gone. Not only do they not necessarily understand what would be useful, they do not know to whom to make their research available. They often walk in with preconceived research questions, rather than finding out what would be useful for their “subjects” to know about. There is very little partnership between Northern and Southern researchers. In the main (with notable exceptions) this is an extractive method of research: the researcher comes, asks, leaves, and writes. And that is the last anyone hears of her. Eventually, perhaps, a book or journal article appears, but the chances of it being useful or accessible to the subjects of the research are slim.

A true collaboration, though, is tough where the respondents are not researchers and have other work to do. Research projects that involve victims share these concerns, but also we must add other concerns such as the possibility of retraumatization, the need for cultural sensitivity, and the proper form of give-back. Participatory research is rare, in part because most social scientists (and especially, lawyers) do not know how to do it well, and do not have the time or make the time to be on the ground working with communities.

Why does this happen? Why is academic research not more useful to practitioners? Partly the timeframes of academia are different—funding must generally be secured far in advance, and research that is “sexy” to funders or understandable to tenure committees may not be useful by the time it is completed. There is a kind of herd mentality—people research where and what others have researched, that is to say, they do not break new ground. In law, at least, research with many authors is discounted. The predominance of Northern-based researchers is also in part a function of how academia is structured: there are far fewer full-time academics in the South; most people who teach also juggle consulting or other jobs to get by, and so have less time not only to do the research,

but also to find publication outlets. Outside of full-time academics, people close to transitional justice processes from inside may have neither the time nor the skills to solicit funding, pursue requests for proposals (RFPs), find chunks of time to write, and the like.

The predominance of researchers from the North means that they write mostly in English and publish in English-language journals. There is a great deal of work in other languages (mostly European), but not a lot crosses language barriers, so you see language silos. A few multilingual journals exist, but they are expensive and hard to manage. Researchers are also generally specialists in one area of the world, and in only a few subject matter areas. There is some communication between lawyers, political scientists, anthropologists, and public health specialists covering similar issues. But, there is little interchange between those writing on transitional justice and those exploring security studies, corruption, or natural resource extraction. The exception is a series of books that the Social Science Research Council published some years ago³⁵ and a handful of articles, but these are the exceptions. We do not go to their conferences, and they do not come to ours.

It would be useful to discuss how to reverse this dynamic. How can those of us in the North work more collaboratively with our counterparts in the South (academics and practitioners), both to define research problems and to design and implement research proposals? How can we share the credit so that it does not feel exploitative to either side? Can we, for instance, create a clearinghouse on needed research that requires the integration of North-South teams? Can we better model how to give research back to subject communities and develop ways to involve them in designing the questions that need answering? Can we build “giving back” to our research subjects into funding and academic proposals so that how well that was done becomes part of the monitoring and evaluation of the research itself? How do we get the international organizations, funders, and governments that create transitional justice and international criminal justice “menus” and budgets to do a better job listening?

³⁵ To date, seven books have been produced as part of the Advancing Transitional Justice Series, a joint project of the Social Science Research Council and the International Center for Transitional Justice. *Advancing Transitional Justice Series*, SOCIAL SCIENCE RESEARCH COUNCIL, <https://www.ssrc.org/pages/advancing-transitional-justice-series/> (last visited Feb. 26, 2018). See TRANSITIONAL JUSTICE AND EDUCATION: LEARNING PEACE (Clara Ramírez-Barat & Roger Duthie eds., 2016); TRANSITIONAL JUSTICE, CULTURE AND SOCIETY: BEYOND OUTREACH (Clara Ramírez-Barat ed., 2014); TRANSITIONAL JUSTICE AND DISPLACEMENT (Roger Duthie ed., 2012); DISARMING THE PAST: TRANSITIONAL JUSTICE AND EX-COMBATANTS (Ana Cutter Patel, Pablo de Greiff & Lars Waldorf eds., 2010); TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS (Pablo de Greiff & Roger Duthie eds., 2009); JUSTICE AS PREVENTION: VETTING PUBLIC EMPLOYEES IN TRANSITIONAL SOCIETIES (Alexander Mayer-Rieckh & Pablo de Greiff eds., 2007); WHAT HAPPENED TO THE WOMEN? GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS (Ruth Rubio-Marin ed., 2006).

PEMBERTON:

Thank you very much, Naomi [Roht-Arriaza], for drawing our attention to the unnecessary boundaries that seem to exist within academia and in practice, and also the difficulty of doing research that is collaborative rather than extractive with the populations that we seek to serve.

VAN DER MERWE:

The question of how research can contribute to policy and practice has been a constant personal challenge for me in my work at the Centre for the Study of Violence and Reconciliation (CSVR).³⁶ My work at CSVR for the last twenty years has involved trying to shape our advocacy positions and our intervention programs through the research that we have conducted in South Africa and elsewhere on the continent. At times, this involves framing our advocacy position on the basis of our research findings, while other times it is more about seeking evidence to back a pre-existing policy position which is informed by a normative commitment to human rights or other principles of justice and peace.

Is bad transitional justice policy and bad transitional justice implementation a result of lack of knowledge?

The first question to confront as a researcher engaging with policy makers is: what kind of knowledge informs their policy positions? Do they make bad policy and implement bad strategies because they are unaware of the impact of these actions? While lack of knowledge is often a critical contributor to these judgments, the main problem, I would suggest, lies elsewhere. As researchers, we need to be aware of where we can make the most impact and what the limitations of research are in contributing to a policy process. The obstacles to effective, positive policies are mainly located in the sphere of power inequalities. Research needs to be cognizant of how it contributes to or alters these political relations. Research can shed light on the likely consequences of specific policy choices for victims, affected communities, or the country as a whole. And, this knowledge has value for policy makers.

Transitional justice seeks to speak to the needs of the most marginalized, but the flipside is that it also talks to the fears of the most powerful. The lens through which to judge these choices is shaped by the self-interest of the political elites.

Can we provide knowledge that will alter policy makers' calculations in this framework of relevant costs and benefits? Particularly, within a crisis context, the decision-making parameters for policy makers is, generally, very constricted. Very limited trust and short time horizons provide limited space for adjusting

³⁶ CENTER FOR THE STUDY OF VIOLENCE AND RECONCILIATION, <http://www.csvr.org.za/index.php> (last visited Feb. 24, 2016).

these boundaries or thinking more creatively about options. Researchers and policy advocates often seem to be naive in their attempts to influence policy in a context where *realpolitik* is so narrowly constricted and the stakes are so high—involving individual and group physical and political survival.

It is these contexts that produce an uptake of transitional justice in a superficially or narrowly self-serving manner, a tick box approach to accommodate foreign demands, or the use of transitional justice mechanisms such as truth commissions and prosecutions that provides victors' truth, victors' justice and victors' reconciliation.

Within a negotiation and post-settlement context, is there sometimes more space for research to introduce new knowledge that opens up new time horizons for policy impact, loosens the boundaries of group identity and reframes policy options beyond the narrow set of choices usually considered?

Practical versus idealistic contributions:

Transitional justice research speaks to both the practical and measurable considerations that are affected by policy choices (e.g. individual well-being and community benefits), but often more powerfully talks to deeper conceptual questions relating to vision and identity—questions that can also speak quite powerfully to political leaders. Transitional justice policy advocates operate within a hotly contested terrain in terms of ideological contestation, and religious and cultural discourse. They must, as well, speak to the directly personal concerns of influential figures with personal perpetrator and/or victim identities. The assumption we make as researchers is that the facts presented speak for themselves, but these accounts may tell completely different stories dependent on the lens of the policy maker hearing these accounts.

I do believe that the policy terrain shaping competing transitional justice approaches is somewhat fluid, and this often gives researchers and human rights and victim/survivor advocates significant space to negotiate the meaning of their research findings and embed these in language that can be heard more effectively.

Meta-discourses in the post-colony:

In many African contexts, transitional justice is deeply embedded in two meta-discourses: anti-colonialism and nation building. These world views (or ideological frameworks) position transitional justice as a political process that ascribes to it a role in promoting national dignity in the context of being a victim of historical injustices and a visionary goal of building a collective identity in a context of deep ethnic divisions and a shallow collective civic allegiance to a central state. Associated with this are similarly powerful discourses relating to state-building, citizenship and cultural traditions that can be very concretely tied to specific transitional justice policy choices.

In such a dense ideological atmosphere, research that seeks to speak in rational, neutral, technical terms about generic international human rights norms or scientifically validated empirical findings have little hope of finding traction

unless local activists and political actors can see their value in bolstering particular narratives that fit these broader social change or ideological agendas.

It is critical for researchers to understand the discourse and power that shapes how knowledge is used and interpreted in policy contexts. For example, research on victims in contexts like Algeria, where the meaning of victim of State violence is almost synonymous with terrorist, or like Timor Leste, where victim refers to someone who was passive in the struggle for independence (as opposed to an active combatant), needs to do more than just highlight empirical needs and normative rights, but to help consciously engage in reframing the discourse that shapes the currency of empathy, respect, and dignity. In this dense atmosphere that gives meaning to transitional justice information, we need to ask what informs research agendas.

Framing transitional justice research agendas:

The agenda for research in Africa, when outlined by African policy makers, is generally framed in terms of documenting local achievements. There is a preoccupation with demonstrating that local knowledge—meaning local culture, local intelligence, local experience—should be acknowledged and celebrated. This acknowledgement is not just a strategy for better information gathering. It is part of what is locally understood as the very purpose of transitional justice—rebuilding African capacity in the wake of colonial destruction and correcting the global imbalance of knowledge and national dignity.

Transitional justice was initially treated by many African countries and the African Union, as a dirty word, linked to Western agendas, involving regime change, and imposed international normative judgements of savage behavior that needed to be civilized through foreign intervention. Shifting the language to one of framing the articulation of an African transitional justice approach and African transitional justice norms creates huge opportunities for strong, progressive policy discussions.

The same analogy applies to the research methodologies we choose to utilize in this field. Do we use extractive data collection where the local is the source of data and the global or Western is the source of analysis and knowledge production, or do we use the research process as an intervention that reframes this power discrepancy and addresses the disempowerment that makes individuals and communities vulnerable to future human rights abuses?

Positive practical research: unpacking complexity:

On a more positive note, I want to acknowledge the very positive policy research that has steered intervention practice (probably more than policy). There have been many practical and detailed research studies that help build nuance in service delivery—improve intervention in ways that recognize specific needs. The clearest example of this is gender research that has pointed out the gender

dimensions of conflict and the gender dynamics of interventions—and which has helped shape more gender sensitive policies and interventions.

At the same time, this also illustrates the inability of research to seriously open up the bigger ideological questions in contexts where gender inequality and discriminatory gender norms remain key continuities in the midst of formal political transition. Where research focuses on gendered harms that fit neatly into categories that can be universally condemned (e.g. war-related sexual violence against women), policies are very responsive to research findings. But, when the research touches on facts that do not fit with these dominant narratives (such as everyday sexual violence and sexual violence against men), researchers find much less traction in policy arenas.

The two simple conclusions from this discussion for researchers seeking to engage in the policy arena are: 1) research needs to be conducted and presented in a manner that can be heard through the discourse and narrative lens of policy makers, and 2) research needs to be framed in a much more ambitious way that strategically engages with the process of transforming grand narratives.

Transitional justice is influenced by research knowledge, but generally, policy makers use this knowledge very selectively to sift through it for information that can be used to improve their cost-benefit analyses. Research thus needs to challenge the framing of how costs and benefits are calculated. This is a much more ambitious goal. Conflict contexts produce very rigid frameworks for calculating what counts as a cost or a benefit, who is the in-group and the out-group that should benefit or be harmed, and the time frame that counts for such calculations. Researchers that seek to alter these parameters need to have a much more sophisticated analysis of the kind of information that can effectively contribute to such debates, and how this information can be shared.

PEMBERTON:

Thank you very much, Hugo [van der Merwe], for introducing notions of power around how research is conducted and the way that transitional justice can or cannot speak to contest power in the context in which we find the transitional justice research. Just before I open up the floor to comments from the rest of the group, I thought I would make some comments of my own. First, I would like to describe what I was thinking when I heard what was being said. It reminded me very much of what we call the interdisciplinary paradox in academia in which there is a lot of talk about doing interdisciplinary work and a lot of talk about cooperating with each other, but then we set up all our tenure decisions based around doing unidisciplinary work. We find that nearly everything is based around building not bridges between disciplines, but erecting barriers. It struck me when I heard this that something similar is happening in transdisciplinary work.

Now, we also have a tick box that we call “valorization” or “impacts generation” in the Netherlands, where we have to include a paragraph in all our research proposals in which we say how this research will matter to society. That

mostly ends up by doing a PowerPoint presentation at the end in which we use simpler language to describe what we are doing. We find that is enough engagement with society for us.

Though we are talking a lot about doing transdisciplinary work and making our science a little bit more useful for the people who actually stand to benefit from it, we end up doing, more or less, the opposite. Then there is the question of how we involve people in our research, which is very similar in effect to the way we involve people in developing the processes that we would like to see in transitional justice and countries in transition. How do we involve? Do we do truly bottom-up research, and how do we also include that in developing processes?

Maybe then, the final point is that, normally, social sciences try to shy away from politics and power in doing their research by pretending that their research is, in a certain way, objective, but this was already said. That is a, probably, very naive perspective, but that also allows power to do whatever it wants to with our research and our research findings.

Do those facts that we are producing speak for themselves, or do we need to incorporate a far more complex understanding of power in these contexts? That was at least what I took out from the three *animateurs*, but I am sure that a lot of people have other things that they thought about.

ROBINS:

Something Naomi [Roht-Arriaza] said, which takes me right back to something that is becoming central to our discussion, which is power. Some narratives are invisible because people lack power, and people have knowledge from everyday experience. That could be hugely valuable for process, but it is invisible.

Research can be about accessing that, giving it value, and disseminating it, and that is part of the process of supporting the agency of people who lack it. An activist scholar can be a conduit for victims and others to do that. I am a big advocate of participatory action research; I believe that it can be a practice that explicitly builds agency. As Antony said, that leaves behind objectivity. It takes sides: subjective research that supports victims.

It is ethical because it is about enhancing agency, and it is done on victims' terms, and it is non-extractive. Things I have done, for example, include training victims to collect data and involving ex-combatants I have worked with to address the agendas that they raise. The research agenda is set by the constituency you work with. It necessarily will have nonacademic outputs, because academic outputs are usually not of interest to those people. You need a flexible funding approach, because you cannot go to a funding agency with, "I am going talk to these people and see what they want to do."

Some of our projects have huge translation budgets because, obviously, materials are produced in certain languages. If you want to inject them into an

academic context and write papers, you need access to those data. I believe these projects have impact, and not just because they impact policymakers or process. We hope they do, but they have a direct impact on power relations. They give people more voice. They support people's agency. Now, I am also working in other ways, collaborative ways with transitional justice processes.

For instance, we have a research project working with the Tunisian Truth and Dignity Commission.³⁷ We have researchers inside the Commission doing a collaborative project with the Women's Commission to support their recommendations. We provide resources, financial and technical, but we also have access to those data, so we can support their analysis and extract it for our own purposes; so there is some mutuality of interest.

I am also working in Nepal with the truth commission and the disappearance commission there in two capacities.³⁸ First, as a technical expert, training, capacity building, but also doing research with them so that they can write chapters of the final reports. Again, collaborative research. We identify mutual interest, and that is engagement, I would argue. It is not about putting a report on a website that no one will ever read. It is about building engagement as a part of the process so you deliver research outputs in the form that people can consume. I think that is one route to impact.

PEMBERTON:

Thank you very much for that, Simon [Robins]. Maybe other people also have examples of good practice in building the bridge between academia and practice. Abdelhay Moudden?

MOUDDEN:

Yes, I have an opposite example from our experience in Morocco of equity and reconciliation. I was behind an idea that was thought to be disastrous: to engage public discussions over some questions that are theoretical, but which might have, I was thinking, some political impact, such as having a public conference on the notion of truth and then another one on the notion of state violence. That proved to be disastrous, because the audience, who were activists, wanted concrete answers that were politically oriented towards action. When we started engaging in the question: "Is there a truth?", it was problematic because we invited philosophers.

The point is that public and civil society were very suspicious of academic discourse because it is too neutral, because it is polemic, because of all the kinds of methodologies that must be followed in order to develop your argument. This

³⁷ *Supra* note 13 (linking to the Tunisian Truth and Dignity Commission).

³⁸ TRUTH AND RECONCILIATION COMMISSION, NEPAL, <http://www.trc.gov.np/> (last visited Feb. 26, 2018); COMMISSION OF INVESTIGATION ON ENFORCED DISAPPEARED PERSONS, NEPAL, <http://www.ciedp.gov.np/index.php> (last visited Feb. 26, 2018).

is one point that I think is important. The second concerns this gap between North and South. It is structural. This is not a simple reason. In the case of many small countries such as mine, we do not have the equivalent of area studies, because the country does not have any investment in that area. We do not even have embassies in a number of countries, and there are not that many international representatives in ours.

I think that if we were to have a conference like this in Morocco, very few people would attend, unless the discussion was about something that is palpable to them. Guatemala or Cambodia: these ideas are too far away, and people would not make the connections. You are not going to find any student writing a Ph.D. thesis on these issues. This is a structural problem. The challenge that I think we face is how to encourage a conversation between theory-oriented, low generating approaches that come out of academic disciplines (social science, etc.), how can we create some kind of a bridge where the voices that are very centered on specific cases might engage in a conversation that could be both related or contextualized and, at the same time, contribute to the broader more generalized theory.

DESTROOPER:

I would like to follow up on that and, in a way, my concern is also the topic that we discussed before the lunch break: the issue of discipline. Recently, I have been working together with some people in theater studies and literature studies, and I was positively struck by how much openness there is within those disciplines towards accepting the idea that there is a subjectivity, there is a possibility to do activist research and how much more of that is happening in disciplines other than the ones usually associated with transitional justice.

Specifically, in the field of theater studies, there is a lot happening in the South African context, which is much more community oriented, much more rooted in practice, and it is still seen as good scholarship. I think it is possible to have a dialogue between disciplines, whereas I think that the fields of legal studies, and also political studies, have a specific interpretation of what constitutes good research and good research practice. This should be questioned and critically assessed, and this can happen on the basis of a more interdisciplinary dialogue.

HACHED:

Yes. Maybe the case of Tunisia is different because, actually, the connection between the researchers and the advocate in practice is very strong. Even more, I would say they wear both hats, generally speaking. What I see is that, mainly, they are both researchers and advocates. They do both. Even the legislature now participates.

Several participated in the drafting of the law on transitional justice³⁹ and, now some of them are members of Parliament. The same people, they wear all

³⁹ Law No. 2013-53 of 2013 (Organic Law on Establishing and Organizing Transitional Justice),

these different hats. I do not know how you say that in English. I think it is good in some way, and it might be not very good in another way. Maybe, in Tunisia, it is like this because of the fragmentation of the powers. We do not have a winner and a loser. These people, they talk in a kind of neutral speech, this very legal, very neutral speech. It was very true for all the parties, very neutral, measured speech. Of course, this is not true, because nobody is really neutral, but these legal professionals presented in ways that suggested neutrality. Yes, we had this in Tunisia, and it was very reassuring for people. We did not go to philosophy. It was always legal, very legal theory.

WEINSTEIN:

Several thoughts. One is I just wanted to respond to Naomi [Roht-Arriaza] and also to something Anja [Mihre] said earlier. When we did our study of transitional justice literature over the period of a decade, we used several kinds of methods that allowed us to examine the literature across multiple languages. We chose to focus on French, German, and Spanish, but this Index to Foreign Legal Periodicals, if you put in the right categories, it will pick up all the literature that is in those areas. We felt fairly confident that we could say that the literature on transitional justice is much less in these other countries than one might hope. Just so you know, the data are out there.

The second thing is, I was thinking about this issue of power again. I do not know why I am harping on that today. I was thinking about powerlessness with respect to academia and with respect to civil society. In academia, you are at the mercy of those who grant tenure, right? There is a power differential. Unless, in social sciences, things have changed remarkably, which I do not think they have, as opposed to the natural sciences where people are now working in interdisciplinary labs and where they are doing away with walls across disciplines, social scientists still tend to work in siloes and are rewarded for that. In that sense, unless social scientists began to organize to change the structures of the university reward system, nothing is going change in academia.

Also, with respect to policymakers, I do not think—and it goes back to what Refik [Hodžić] said earlier about language and vocabulary—that academics have been very effective at selling policy research to policymakers. I have a very close colleague who has worked in Washington, D.C. for a number of years. He told me how policy briefs work. Policy briefs work without evidence—without evidence. Academics are considered less than helpful. We gather evidence to sell to others. If the policymakers do not read it, then there is a problem in translation—lost in translation—and there is a problem in our own sense of power and ability to influence the policies that are relevant to what we are interested in.

Thirdly, I go back to my original question earlier this morning, which is, who is the client? That gets back to something Pablo [de Greiff] said earlier, do we just focus down in transitional justice as a very specific thing? How do we sequence it? How do we think about it short-term and long-term, and who are we working for? I would like us to come back to these questions at some point because I think they are critical in terms of the future of transitional justice.

Lastly, I want to give you an example of participatory action research in Rwanda, which consumed four years of my life. We worked with Rwandan historians, students, teachers, and parents in the elementary schools and classrooms and spent years working there to try to deal with the problem that the Rwandan government refused to teach history after the genocide. Now, that is a problem from my perspective, but we did not go in with that as a bias.

Instead, we asked, "What do you think of this? What would you like to do about it?" In collaboration with the multiple stakeholders, we addressed a problem that was defined by them. We developed a history curriculum model that took into account the genocide. The government was a stakeholder. They believed in it. We trained 400 teachers to implement the model and create the curriculum. It looked like the teachers were going to teach it, and suddenly it ended. Why did it end? Political will. It was too dangerous. Sometimes participatory action works. Sometimes it does not.

PEMBERTON:

Power structures in knowledge production and power structures in knowledge translation, I think that is very important.

VAN DER MERWE:

I just have the curious sense of wanting to understand: what knowledge do policymakers have? As a researcher, I would really like to go and interview them and understand, do they think truth heals? Do they think that the South African Truth and Reconciliation Commission⁴⁰ was a success and that it produced blah, blah, blah? What knowledge do they possess? What universe do they occupy in terms of the knowledge? Research does not feature in that universe but novels and movies probably do. Archbishop Tutu and President Mandela feature in that knowledge universe. I wonder, how do we break into that knowledge cycle? That is, for me, the intriguing question.

PEMBERTON:

Yes, I have often pondered that one as well. What knowledge do policymakers have? I think that the current president of the United States at least

⁴⁰ SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION, <http://www.justice.gov.za/trc/> (last visited Feb. 28, 2018).

always makes it very clear where he gets his knowledge. It emerges from what is seen on television yesterday.

SÁNCHEZ:

Speaking of power structures and gaps and limitations, I think this is exhibit A, and look at the prices here. [Holds up a list of prices for journal articles]. These are a real problem. Sometimes I come across this fantastic article that could help, but to read it once, costs \$60.00. I completely agree with you. Unless we stand up and try to change that, because this is scholarship, and this is what gives you points for tenure. Unless we tackle that, it is going to be all the same. Thank you.

PEMBERTON:

That is what was being whispered in my ear in fact. You have to say something about open access and open source scholarship.

CODY:

I wanted to push back a bit on what seems to be a celebration of the activist scholar. My name is Stephen Cody. I am a law professor at McGeorge School of Law, University of the Pacific and, previously, at the Human Rights Center here. I think, partly, because I wear the two hats of being a lawyer and being a sociologist who does research, I see real value in separating research. Not just because of this critique of objectivity, but because, I think, when you start to act as an advocate in the scientific field itself where you are collaborating, hopefully, with practitioners and scholars on the ground, that the activism leads to a certain closed mindedness about how many potential conclusions you can come to.

I will just use, as an example, a recent project that we worked on interviewing victims at the International Criminal Court.⁴¹ I think there were questions that we would not have asked about victim participation in trials at the International Criminal Court had we been approaching the project as individuals advocating for a victim centered approach. Because we were able to ask, I think, a broad array of questions, we found lots of counterintuitive information, which ultimately, I think, helps the court to become more victim-centered.

In that role as a scientific investigator, I think it was very problematic, at least for myself, to act as an advocate. Instead, in that role, I think my job was to collect evidence to the best of our ability in an open-minded way and let that evidence speak for itself and deal with the findings. I think, particularly in this world of alternative facts and politicized journalism, that we really need to think seriously about our roles as advocates as separate from our roles as scholars. I

⁴¹ See Stephen Smith Cody, Eric Stover, Mychelle Balthazard & Alexa Koenig, *The Victims' Court? A Study of 622 Victim Participants at the International Criminal Court* (2015).

think the risk is, if you do not do that, then, suddenly, scholarship becomes what Human Rights Watch is, which is wonderful, but not scholarship—no offense, Brad Adams [Executive Director of Human Rights Watch's Asia Division].

HRW is a wonderful advocacy tool that sheds incredible light on and draws attention to atrocities around the world, but it is not a scientific or empirical investigation of a situation from all sides. I think that there is a very real danger in embracing this activist-scholar role, particularly in transitional justice, which is already so politicized as a field.

PEMBERTON:

If you go too far down that path, we might become just one opinion amongst others.

MIHR:

I also wanted to challenge the general agreement that we need more applied research, etc. I know that the funders and donors to our research have demanded this aspect—to elucidate the policy implications of our research—and we all comply at least with trying to have meetings with policymakers at the end of our studies. Fine.

Right now, I have the impression that, also, from the donor perspective, scientific councils, etc., around the world, it goes almost to the other extreme. You have to have quick research results, go to the policymakers and have an impact, and then evaluate your impact on top of it, which is almost impossible. It leads us away a little bit from, actually, what is the added value of research in comparison to NGOs, to reports, etc. I find my struggle in this is, like probably all the researchers at this table, when I apply for funding and I say, “No, I want a comparative and long-term study,” it is very unpopular.

I need more than three or four years. I want to compare four, five, six, or even eight countries. I want to look at the similarities, the difference, etc. which requires a lot of resources, patience, and time. This is very unpopular with donors because they do not see quick results. We end up in the transitional justice field with all the disciplines, so far as I can see, producing single case studies.

We have extensive knowledge, particularly about countries that went through a recent transitional justice process, where we speak the language. That is why some countries, particular in sub-Saharan Africa, but also Latin America are somewhat over-researched, not that I do not think that there should be more research, but in comparison to other countries. Here, I return to Europe. I see my role here, to study the countries in our own backyard—particularly Eastern Europe, where there is so much to learn. We know very little, including myself, even if I am geographically close to the region. I work a lot in this region, but I do not speak Hungarian, Slovak, Polish, and Russian. They are very difficult languages to learn, and I think we are losing so much as a result.

Including them, for instance, in comparative research with, maybe, countries whose language we speak and with whom we have partnerships could add value and quality to our research. The struggle is long-term research. Also, looking at cases in the past, when I came to donors and said, I want to study, even, the German case or the Spanish case where you have thirty, forty, or fifty years of experience from which to learn, this was very unpopular with donors because it had no immediate result.

Now, I come back to the practical part of the linkage, and the core of this session. I now do a lot of consultancies in Germany for the Ministry on Transitional Justice. I, just last week, had a one-hour meeting with the Minister. Everybody who knows, in research, that one hour with a minister is a lot of time. Basically, I had one hour to pin down, one sentence of my policy brief based on ten years of research that will be incorporated into the strategy. I was surprised, positively surprised, to hear Hugo [van der Merwe] say how much government policymakers knew—that they actually read the policy briefs.

They were very well-informed because we are talking about large amounts of money. We are talking, not about 100,000 Euros, we are talking about twenty, thirty, forty million Euros that the policymakers have to invest. They want to ensure that it is money well-invested. I was also positively surprised that they do think about the expected outcome. Outcomes are something that, sometimes, we are unable to define explicitly. This comes back to the question, what is transitional justice supposed to achieve in terms of justice or societal cohesion? That is the question.

I said, “What do you expect from our research? What should come out of all this? Where should its outcomes be in the short, medium, and long term?” I was very positively surprised, actually. I had various policy briefs or meetings with policymakers. On this level, I was surprised how interested they were and, hopefully, it was useful. The problem is, I think, that comparative studies and long-term research are too costly and their added value seems unclear.

PEMBERTON:

Yes, as the one who started out my career being a contract researcher for various ministerial departments, I am very much aware of the degree to which research can also be clouded by political judgment, if someone is paying for it. That is something that is definitely not what it should be; that is definitely not a road we should be going down.

PETRANOV:

I work in private philanthropy. Although we do not use the word transitional justice for our program, we use the term accountability for grave crimes. You would be very happy to hear that that work is combined in the same program with global human rights, business, and human rights, or corporate accountability, technology, and human rights.

As I said, it is evident that some of the research works, and some of the concerns are taken up. Four years ago, when we set up this program, the ratio of funding between North and South was something like—the exact number is difficult to get to—but something like 3:1. Now, four years later, it is 1:3, North to South. We do listen, and we do read what you write.

The point I wanted to make is that there is one word or one thing that hovers in the room, but no one talks about it. We talk about power, but we talk very little about money. I do not want to talk about money only because I work in a foundation, but I think it's important to look at how money for research, or money by philanthropy is allocated. I want to thank Naomi [Roht-Arriaza] for pointing me to this research about development agencies and funding for transitional justice. If this research is true, it is shocking if there is only one research paper in the last twenty years that looks at funding flows for transitional justice work.

I would dearly like to read more about how the funding institutions and agencies, and the big chunks of money come, probably, more from the United States than from the European Union and from development agencies, but who knows? I think it would be extremely useful to figure out how the funding flows are distributed. I just had a very quick look at that report, and maybe I have misread something, but as Pablo [de Greiff] finished his talk, he referred to the importance of civil society. Probably, eighty percent of our funding goes to activist CSOs and lawyers. I think three or four of them are in this room. That research that you mentioned cites a figure of something like one percent of the funding flow for transitional justice going to civil society work. I think, if that is true, that is truly scandalous, and I am not sure what the reason for this is. We cannot really talk about power and agenda setting without talking about where the money goes and how those decisions are made.

It might have been useful to have one or two of these decision makers from transitional justice in the room to tell us how they make decisions. I can tell you a little bit about how funding decisions are made. Specifically, in our foundation, we have four-year strategies, but we have two reviews of every funding program every two years. Actually, if you want to do something that is long-term, you really need to protect your program and your budget for the long-term, but, every two years, you must have one or two spectacular short-term successes. A good combination of those preserves an accountability program, that there is probably 0.3 percent of the overall budget of the whole institution, and it competes with twenty other priorities. It is really difficult, if not impossible, to maintain a long-term perspective in that practical reality of a funding agency.

The last thing I wanted to mention about practice and theories, I was trying to build a mental picture in the last few weeks of what comes out from specific projects that we are working with. If you compare that list of questions that people come to you with, questions about very practical things, to the list of what the academic output is giving us, it would be interesting to compare. Obviously, it would be a gross simplification to have a complete overlap, but some tight relationship between the two would be useful to have. I can read you the questions

from e-mails I have received just in the last week asking things like: “How do I set the database in a state institution that talks with the database of other state institutions and then the NGOs? What kind of software do I use when I record violations? How do I choose priority cases?”

Actually, these are real questions that people come up with when they are due and when they think about how to spend very small amounts of money: “Should I use my money to go to Geneva to advocate with the Human Rights Council or go to Washington? Will I have to go to Beijing?” These are the questions that the practitioners are grappling with every day. I guess my main point is that there is very little understanding about the cost of things and about the tough practical choices of how to invest time and resources that practitioners face every day. There has to be some way to make the research and to communicate to—I hate the word, but decision makers or policymakers—people who have to make decisions that involve tough choices and that involve the allocation of resources in very limited time, based always on incomplete information.

PEMBERTON:

It strikes me that private philanthropy is sometimes better equipped to do that kind of long-term funding than most of our governments now are. They seem to be changing their minds a lot more quickly than, at least, the private philanthropy organizations that I work with.

OOLA:

I just wanted to highlight an example of how research can be used to inform policy advocacy using a very particular alliance or partnership that the Refugee Law Project had with Johns Hopkins University. What Chris [Dolan] described in the morning as “excellent engagement” or “engaged excellence.”

One of the challenges we faced, for example, in our policy advocacy in Uganda dealing with refugees and forced migrants was a recognition that a good number of the forced migrants who were coming into Uganda from the Democratic Republic of Congo, South Sudan, and all the other conflict contexts were victims of sexual and gender-based violence. We could not put a figure on how many of the male victims, for example, were victims of this particular violation.

Yet, internationally, it was a given that women were taken to be more affected by conflict-related sexual and gender-based violence than their male counterparts. A lot of people did not have the expertise on how to approach this particular situation. We had a number of discussions with different research institutions based in the North and some, of course, in South Africa as well, to see how we could address this peculiar situation. We found, that Johns Hopkins University had done a lot of work in the area of medical research to try to understand some of these phenomena.

Then we worked together to develop a screening tool that asked very specific questions around whether or not these refugees and forced migrants had been affected by sexual and gender-based violence (SGBV). For us, the outcome was shocking because, I think, two out of five male refugees who came from DRC and South Sudan had been exposed to SGBV, either having been forced to perpetrate SGBV or having been direct victims of SGBV-related violations themselves. I think, in the figures, three out of every five female forced migrants from this context had also been exposed to similar violations. That became, for us, real evidence that we used very effectively in advocacy on sexual and gender-based violence in conflict situations, particularly for men and led to several other developments, including a protocol on SGBV investigation in the context of conflict. I think that this research, for us, was really one example I thought important to share.

PEMBERTON:

It was at least a good example of the way that quantitative data on these things can make a difference.

OEUNG:

I just want to offer some input from Cambodia. In the room, we can see many representatives from different continents already. To me, this is very interesting when it comes to the relationship between transitional justice and research policy advocacy. For me, as a practitioner, I see it is still something we need to take into consideration. Given what we discussed, this morning, about language, I would like to echo some of what was said. If we look into the domestic context, we have English, French, or other language publications, but when it comes to local the language, it is really rare.

If we look into my Cambodian context, of course, we have researchers from outside the country who have come just for a few months to do research there. Then they publish their article, their book, or their paper, and they present it abroad. They present in their country. They never come back to us to show their results, which I think is unfortunate. They interview us, for example, me, myself, I give a lot of interviews to these researchers, but they never come back with the results. I think there is something missing. We need to look into this, and I like the comment from Naomi in this regard.

When it comes to collaboration, I think of action research as complementary, like at my organization. I am not talking in the name of the Swedish embassy, but an NGO I worked with. We offered internships to international interns. Also, we collaborated on research, so they can come up with different types of research projects around transitional justice. Of course, they might focus on victim participation. They may talk about reparation. They may focus on memorialization or reconciliation, but the universe of topics chosen are limited. When it comes to the tribunal process, I think more legal scholars are very

interested in this. They come in, and they do research. Either they come to work in the court or outside the court, but, still, they focus on the tribunal.

I think action research can be done, but we also need to consider local participation—I mean, the locals who experienced the violations themselves should be connected to the researchers so they can use the findings for the mutual benefit of both researchers and the local persons. I gave you an example, the research that was conducted by the Human Rights Center at UC Berkeley.⁴² It was Patrick [Vinck] and Phuong [Pham] who engaged in this process; Patrick worked on two projects. Luckily, he collaborated with my former organization to do a presentation of the results, which was good, at least to inform those who had been interviewed at the NGO and who were engaged in this process to know what the results were. I think that should be something researchers do—to look into to making their research more useful in the contexts where they engage, to have some sort of practical results.

When it comes to funding, I agree with you, that it is quite limited. For example, in our context, there are no organizations that really can provide funding opportunities for researchers. Even myself, I want to do research, but I do not have the capacity to engage, because we need money to do it. It would be interesting as well—especially for the development agencies—to open space, not only for academic institutions, but others who really are interested in this. Spaces where we can work together with researchers to learn from their results and then do outreach based on their results in our own communities and countries. These are my comments.

FLETCHER:

A couple of somewhat disparate remarks. I wanted to react to the exchange about activist-scholars, because I think I need a point of clarification. I do not understand Jo-Marie [Burt] and Naomi [Roht-Arriaza] to be saying that being an activist-scholar depends on what questions you are asking. If you are asking victims what they want, and then you ground your research question from that perspective, this does not mean that your research is distorted or no longer objective. And, I do not think Stephen [Cody] was making this claim. I think the issue is: what are the questions that we are asking?

I can see that Stephen's research questions are designed to find information to make the court process better. Those questions may not necessarily be the same questions or the ones to which victims would be most interested in knowing the answers. That is just a difference in how you define your research agenda and its intended audience. It does not resolve some of the question, though, about extraction. Even though extraction may be more likely when your clients

⁴² Phuong Pham et al., *supra* note 17; Patrick Vinck et al., *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia* (2011).

are not the subjects of your research, I think we need to constantly guard against that. That was one point.

The second point that I wanted to make is this—and it was prompted by, actually, Salma's [Kahale] initial comments and then what Refik [Hodzic] said when he started us off earlier about contexts where you have justice pre-transition. I may have misunderstood you, Salma, so please correct me. You talked about research as documentation, that, in part, research is documentation for accountability. Whether or not there is ever a transition, accountability may be a focus of advocacy which is victim-driven now. Victims may also have other priorities now and in the future, and the relative weight of those priorities may change.

The problem that I see with the dominance of the criminal justice and accountability framework is that it tends to blot out, over time, the other agendas that victims have. That is because it is compelling. It leads. There are opportunities to actually do something, for example, pursuing criminal accountability through universal jurisdiction. If you need a success every two years, you might actually get something that looks like progress, whereas things like what Elizabeth [Lira] talked about earlier, rehabilitation, rebuilding lives, livelihoods, dealing with corruption, etc., they are much more endemic problems that need long-term attention.

Part of that is about research methods that need to change over time, but part of it is that we anchor our priorities early, which tends to prioritize accountability and then ends up, over time, crowding out other equally important priorities that emerge five and ten years and even generations later.

VAN DER MERWE:

I just wanted to reflect on the tricky situation of being in a policy collaboration relationship with an institution like the African Union and, at the same time, doing research on transitional justice. Essentially, it has been a seven-year engagement. I think, firstly, where the policy engagement is about building acceptance of the language of transitional justice when you go into an environment where people say, "No, we're against transitional justice because transitional justice means the ICC. It means a Western regime change agenda," etc., etc.

The research that you do at that stage is one of documenting the success stories, and sometimes it is really hyping up the Gacaca trials and the South African Truth and Reconciliation Commission. It is saying, "Well, there are all these positive things that demonstrate the South African approach to transitional justice." It feels like compromised research, but it is presenting certain evidence that builds a momentum that you can then turn into a very progressive policy framework that you can be really excited about. That opens up, and then you get funders who say, "Well, now, you've got the inside scoop. We will give you three years of funding for a twelve-country comparative study where you will do the research now, in terms of the policy implementation. As the policy gets

implemented, you can track how the new policy shifts that agenda.” At the same time, it is like, “Well, does that mean, once we get honest about the impact, and then do we say this partnership is going to have an endpoint once we publish our research?” That is a bit more honest.

YANAY:

Two questions and an observation. The questions are the following: one, what is the difference between restorative justice and transitional justice? Are they along a continuum? Because, basically, if we speak—as Laurel [Fletcher] spoke about victims—we are speaking about restorative justice, that they feel that their personal issue is being settled. Although, if we speak about transitional justice, it is relatively more community or nation oriented. I think that they lie along a continuum. The beneficiary, the client, at the end of the day, is a person: the victim. I am not sure that we are aware of the fact that the victim, at the end of the day, is the one who is supposed to benefit from the process.

Second question: how does the program, any program, whether restorative or transitional justice, start? Is it a bottom-up process or a top-down process? Is it initiated by the people who suffered and want justice to be made or politicians who say, “Well, let us start a process that may end our political issues”? These are different. Again, two different issues, which I think we should be aware to because, again, I am speaking from the Middle East. In the Middle East, in Jerusalem, we have got Arabs, we have got Jews, we have got Christians. We have got many, many communities, and everyone has his or her agendas. Who begins the process? Does it start from the bottom, or does it start from the top?

Finally, an observation. I teach a course on restorative justice. Only part of it is transitional justice. It is amazing, and it is open to the university. I usually have eighteen students, eighteen. It is amazing what students come to my class. I just wrote a list. Students come from economics, history, psychology, criminology, victimology, literature, poetry. Poetry students come to a restorative justice classes. Of course, gender studies, peace studies, and, finally, people who study religion and religious topics. They are all interested in the topic. They all come, and they write, afterwards, an assignment, which deals with issues in their own discipline. Fascinating, and those of you who teach at university, I suggest that you open it to people from other disciplines. Very enriching, and you receive excellent observations and excellent evidence from different perspectives to the course.

HACHED:

I have two reactions. First, about restorative and transitional justice. During our research, for us, there is a short-term transitional justice and long-term transitional justice. Long-term being the institutional reforms, what we call the fourth pillar—the guarantee of non-recurrence. In our experience, we saw that there was a contradiction between both dimensions of transitional justice because, when

we started, when the process started, to have justice for the victims, we needed to accuse the people who were civil servants, okay? But, to make the reforms, we needed civil servants to do the reform work, especially in the police. You cannot just, in one day, in twenty-four hours, put everyone away from the system. Even if you do so, they block your reforms.

My second comment is about research and practice advocacy. My organization is at this intersection. We do research, but not academic research. It is policy-oriented research, as you said. Doing that, we accumulate much material. When we do proposals for our funders, we always put in funding to create databases on all the material we gather, and we take on full-fledged researchers with a view to creating partnerships with universities and with university programs. Students, researchers, and professors can have access to the research we do, I mean the material we have. We have had, for example, to translate material from one language to another, and this could be interesting for researchers, of course.

The second point is, maybe, also, the funders. They seek to fund projects more related to what is going on now. In our case, we were very oriented toward security sector reform at the beginning. Transitional justice, for us, in our project, was always related to security sector reform. Thanks to that, we very easily secured funding, because security sector reform is the main concern now. Maybe, also, how we present the purpose of the research can be important.

HONDORA:

The discussion prompts for this session includes this statement: “The experiences of field-based advocates, too often, are not reflected in transitional justice immediate processes.” The question I would ask is, how much of a problem is this, really? When we look at the notion of transitional justice, very often and for the most part, we are indeed talking about criminal justice initiatives.

Therefore, lawyers and criminal justice operators have a role to play in that. Beyond that, the other fields—for me, there is a question of, do the other fields that could influence transitional justice—have they formed a coherent message and a body of work that is coherent and sufficient to be able to influence these processes? A different way of putting this across is that you will have field-based advocates who can either be human rights organizations that will issue reports, or you will have academics who will be quoted. You have think tanks. At the end of the day, perhaps, the question I am asking, a bit from a distance is, how big a problem is this?

PEMBERTON:

That is a very good question, I think, to end this session. How big of a problem is it that we are discussing?

IV.
DISCUSSION #4

Question: Based on thirty years of research and experience, what is it that we should be doing in response to mass violence?

BURT:

We are going to start discussion number four. The question that is guiding us is: based on thirty years of research and experience, what is it that we should be doing in response to mass violence?

FONSEKA:

Thank you. Basically, we are talking about thirty years of lessons learned. I thought I will start, connecting with the Sri Lankan—my own—experience and raise some broader points, which have been flagged throughout the day. I thought I will bring it back to some of the key issues that we should be thinking about. In terms of lessons learned, I also thought it was quite ironic that we are looking at—I am looking at—Sri Lanka when so many things have gone wrong in Sri Lanka.

We had efforts at peace building, conflict resolution, and responsibility to protect. If anything, Sri Lanka's a good case study of what not to do. I will try to flag some of it throughout the conversation. When one talks about what areas to avoid, it is a good starting point to ask what are the key areas? What are the priorities?

In Sri Lanka, we are going through a process of transitional justice and constitutional reform—a whole package of promises of reform. It has gotten to a position where there is a growing frustration, anger that things are not moving fast enough. The delays also give us a time for reflection that we are trying to use in the best way possible. One of the things that we have done most recently is two consultation processes: one for constitutional reform, and another for transitional justice. A key thing is that these consultations went on across Sri Lanka. We spoke to a whole range of actors from victims to civil society to political actors. I was part of the transitional justice consultation process.

The consultation challenged a lot of norms that were in the public domain, ideas that reflect the dominant narrative. This was a good wake-up call for us. Taking lessons from the past, as well as the more recent consultation processes, one thing that we must all factor in—and in Sri Lanka, very much so—is the political stuff: the politics of reconciliation, the politics of accountability, the politics of everything in a way. It is very easy to hide behind the norms. I am a lawyer, so it is very easy for me to hide behind the laws and forget the realities, the politics that get things moving. That is why I started with lessons that are learned in the international dimension as well as the national dimension. Sri Lanka, if anyone knows, went through nearly three decades of war, and the last stage was rather—it was a bloody end.

In terms of the international dynamics and politics, it was that—and we see that happening with Syria and so many other countries—however much we pushed in terms of the humanitarian catastrophe, international politics played out such that we could not even get a Security Council session on Sri Lanka. The interests of the international actors played out. One must always factor in the agendas, the interests of various actors. I do not think I need to name these. You cannot divorce it and say, “We only talk about the humanitarian dimension. We only talk about responsibility to protect.”

In terms of domestic politics, we have continued to learn that there are agendas of the various political actors that need to be factored in. When one talks about mass violence or transitional justice, it is not straightforward. You need to think about gender or the politics that come in from the executive, from the legislature, from civil society, from within groups, as well. In Sri Lanka, very much the diaspora as well.

Politics is something we need to be very much engaged with, but also aware of and to also understand the spoilers, the critics, constructive and otherwise, the various actors, the various factors that need to be taken on board. In deciding to move forward, one needs to also be very much aware of the context. In Sri Lanka, the context would be very different from what we would hear from Columbia, or Kenya, or other countries. It is not just taking one case and saying, “In Argentina, in Chile it happened several decades ago. It would work in Sri Lanka.”

This process is very much content specific. Who were the actors? What is their agenda, and how does that play in the present dynamic? As I speak, we have a U.N. Human Rights Council session ongoing in Geneva, and Sri Lanka is one of the countries that is going to be discussed next week. In that, we have a moment of getting some engagement, some momentum, but what we realize is that it is also very much Geneva-specific. How does it translate to the context? How does it translate to what is happening or not happening in Sri Lanka? How does one also use it in the best way possible? One of the positive things that has happened in the last couple of days is that the U.S. administration, even though it seems to be rather chaotic, has taken a particularly strong position on the Sri Lankan issue at the Human Rights Council. How that translates after the Council session ends remains to be seen. Those are the factors I think we need to be very conversant in, as Geneva, Washington D.C., and New York have their own dynamics.

How that translates on the ground, how it works with the local actors also needs to be factored in. You cannot work in a vacuum. That is one of the main points that I wanted to make: the politics, the context, the actors, the timing—all of these things need to be factored in.

The second point I want to raise from our own experience is on the ownership of various actors. We heard Pablo [de Greiff] talk about victims and civil society, and I think those are very important actors that need to play a role. As we have learned, in several countries, including Sri Lanka, the role of political actors, the politicians, the donor community all are important. Is there political will to carry through? Civil society victim groups can keep the pressure up, can

keep raising issues. We are doing the best we can in terms of saying justice is important, but there are also other areas such as reparations, truth, non-recurrence, security sector reform. I talk about this in terms of the particular grouping, the ownership. The voices we have heard about it as well: how representative are they?

I have two more points. The third is, how representative is the process? Is it inclusive, or is it seen as a very elitist process? In Sri Lanka, transitional justice is seen as very Colombo-driven (that is the capitol), a very elitist process. How do you get the language right, get people to understand and connect with the process, but also to understand what it is and what it may not be? That is, I think, something very important.

The fourth point is the linkages. It should not be seen as a process that addresses donor agendas or that latest case. In Sri Lanka, there was a session two years ago where Beth van Schaak and I spoke. I talked about the transitional justice industry coming into Sri Lanka. It is ticking the boxes. What are the linkages with other processes in a country?

In Sri Lanka, we are going through the constitutional reform process, and we are trying to see how you connect the two—constitutional reform and transitional justice—but we must also ask what it is that is so distinct with the two different processes. One thing we are looking at is a transitional justice clause within the constitution, would it get buy in? Would it get more support? It is something we are looking at, but there is a lot of pushback. In terms of not having a siloed approach, but also making sure the integrity of the process is not undermined by connecting or keeping it separate. This too is something very much to factor in. Also, for us, the constitutional reform linked to transitional justice should be the priority in Sri Lanka. Unfortunately, constitutional reform and economic revival have taken priority instead. Transitional justice has taken a back seat. This outcome is connected to politics as well, but then, what is the role of civil society and others to keep that issue alive? That is a big issue.

Finally, another important concern is communication and, linked to communication, is terminology or language. In Sri Lanka, transitional justice is seen as a new area. It is seen as a Western concept. How do you make it more tangible and relatable? Some of the things we have done is to have simple guides to explain what justice is? What would a hybrid court mean? What would a truth and reconciliation commission be? But also, explaining language.

There is always the problem of who understands what high accountability is or what international and criminal law is. In the local language, and I think it was raised before, these concepts may not be understood or even used. Sometimes it is important to even just have glossaries, and that is something we have done. With the support of certain donors, we have made glossaries to explain these concepts in the local language and in the local context.

What would work in Columbia or South Africa may not be what people connect to in Sri Lanka. It is necessary to have buy-in, to have ownership, but also, we need to be very mindful of fatigue. Thirty years means people have had these conversations and disappointments for a long time. In terms of fatigue, how

do you also look at it in a new lens? Is it possible to inject some energy or excitement? I will leave it at that.

OOLA:

I will keep my reflection very open at this state because I think Chris [Dolan], in the morning, already discussed many of the issues we are confronting in Uganda, but also because, at the moment, I find myself in South Sudan where I am learning a lot and developing an appreciation of how the different contexts vary.

I want to start by agreeing with many of the conclusions that were made today, in particular, the comment by the keynote speaker, that transitional justice has become center stage in the past three decades, partly because of the rapid research, documentation, and development in this field. Importantly, I think transitional justice has been accepted as a distinct field of study and field of practice separate from the human rights discourse. I think this is evident from the growing databases.

If you see, there are a growing number of transitional justice institutes, growing number of journals, growing numbers of networks, growing numbers of toolkits and guidelines at all levels. We are now beginning to see master's courses and degrees awarded to transitional justice experts. Of course, we also have the International Center for Transitional Justice (ICTJ), which, for many people, is a barometer for whether or not transitional justice is happening.

I think it is also time to reflect on the impact of these breeding grounds and guidelines that we have in place. For me, I think the growth of transitional justice over the last thirty years has two distinctive features. One, there is a lot of movement in transitional justice research. Two, there is very limited impact on the ground, or at least transition as we expect. In other words, the impact of the growing body of transitional justice research and initiatives varies depending on the extent to which a particular society is conforming to the agreed, automatically prescribed notions of transitional justice. I want to look at this impact at three different levels: starting at the local level, which I call the grassroots. I will look at it at the national level, and at the international level.

At the local level, we are more familiar with, in particular, northern Uganda. There are a lot of creative non-judicial transitional justice processes going on there. These, unfortunately, have not been the focus of much research, because they do not fit into the toolboxes that we have. Things like traditional rituals are not a subject of these discussions nor examples that are cited, but the formal mechanisms, as Chris said, have stayed in the center.

I also think the reason these mechanisms have been ongoing and, perhaps, more effective in places like northern Uganda is because there is less dependence on expert advice and donor conditionalities. I suggest, going forward, that, maybe, transitional justice researchers should pay more attention to these locally driven, very creative, non-formal mechanisms, not with the intention of professionalizing

them and formalizing them, but to learn some critical lessons. And, where necessary, I would like the resources to support our transitional justice learning.

At the national or state level, I think I can summarize the impact of transitional justice research more in terms of experimenting or documenting the formal processes, like truth and reconciliation commissions. This space largely has been dominated by transitional justice studies and comparisons of whether or not these particular mechanisms comply with the prescribed guidelines. Many of them have been donor driven and based on expert advice.

As I said and Chris said in the morning, many of the experts are former interns to many of us in the Global South. Two, three years later, they return as international advisors to the government. With this endless policy prescription, we have seen endless transition. We do not know when the transitional justice process will come to a stop. In Uganda, we have spent nine years developing a transitional justice policy, and we are still waiting for when the implementation will start.

At the international level, I think transitional justice has been treated largely as an extension or application of international human rights law, international humanitarian law, international refugee conventions, and the rest, with total disregard for local politics. As someone said in the morning, transitional justice policies end up strengthening state institutions that are largely responsible for the violations. Also, there is a preoccupation with prosecution as an indispensable transitional justice mechanism at the international level.

There is a lot of imposition of normative standards across all the processes and repeatedly what has been said, cooptation by lawyers and human rights practitioners, which is another term to make transitional justice mechanisms enforce human rights standards even when human rights mechanism themselves have failed to uphold justice. Of course, we have seen the professionalization of the field, which somebody, again, said in the morning, takes away the voices from the victims and the affected communities. In my opinion, I need to make the point that the ICC, at the international level, is seen as a gold standard when it comes to a transitional justice process. For local actors to be taken seriously, the ICC should be involved in their work or their work should be seen as complementary to the ICC's work. This ends up being an attack on amnesty laws across different contexts.

Finally, in conclusion, I want to suggest that there are some lessons that we can learn from transitional justice at the local level. More importantly, I want to describe our conception of justice in post-conflict or post-atrocity contexts. Actually, we have three approaches that I should mention. There is a mechanism for dealing with any transgression. You can pound out a number of local rituals, such as *mato oput* and *nyouo tong gweno*. *Mato oput* has been loosely translated to mean drinking up the bitter. There is *nyouo tong gweno*: stepping on the egg.

Each of these mechanisms are meant for specific transgressions. None is considered to be more important than the other, but the decision on whether or not to implement a particular mechanism is largely based on the appropriateness at a particular time, and there is no gold standard. Thank you very much.

SÁNCHEZ:

How to respond to mass violence? Unfortunately, we are having this discussion in the midst of one of the greatest humanitarian crises we have experienced globally in recent times. The question this panel broadly discusses, is: what are we doing wrong or what should we be doing that we are not? This is the million-dollar question.

To start, I would like to point out that, in my opinion, the human rights movement has made remarkable efforts to address the greatest problems of our time. It is never a bad time, however, to rethink agendas, interests, and methods. And, we should not be closed off to criticism. So, at least, I do not think that we are in the end times of human rights. I would say that for both the logic of rights and the mechanisms used by the human rights movement we can apply that idea attributed to Churchill: that democracy is the worst system of government except for all those other forms.

But there are at least four issues that haunt me in my academic reflections and in my professional practice as a human rights activist and as a supporter of a negotiated transition in Colombia. I admit that none of them are new and that there has been much said and written about each, but we continue to find a rocky road ahead of us.

The concept of justice:

The international transitional justice industry continues to defend a very limited idea of justice, which is difficult to extend to new contexts. The liberal democracy recipe of the 1990s is confronted with different visions of political, social, and well-being expectations in many societies. If the discussion of the conflict prevention and management model is not part of those expectations, any intervention formula will have limited sustainability. For example, I think that at this point we should stop wondering if the transitional justice agenda should or should not include economic, social, and cultural rights, but rather ask ourselves, in cases where this is already the situation, what should the approach look like so it can be more productive?

Timing:

We must stop thinking about transitional justice as a transitional tool that is applied immediately after conflict. First, because this vision gives very few prevention tools (beyond non-repetition efforts). Second, because in some cases transitional justice could serve, modestly, as a tool to cease hostilities, as I believe has been the case in Colombia. Third, because experience has already shown us that the tasks of transition generally lead to long, complex and extensive processes. The idea of a clear entry and exit point for transitional justice intervention seems increasingly unrealistic.

Preferred mechanisms:

It is time to talk about the legal fetishism that the human rights movement has imposed on transitional justice strategies. The obsession with the law and, in particular, with criminal law and punishment, each time contributes less to the prevention of massive atrocities and to what to do in the aftermath. This is not a call to regress in the fight against impunity; rather, it is a reflection on how to put it into context and how to make the most out of its potentialities, but without believing that it is the magic wand of conflict prevention and the construction of coexistence.

Ownership and the capacity of driving change:

Despite the *mea culpa* of international organizations, academics, and global activists, transitional justice interventions are still made mostly as foreign impositions on communities seen and treated as savages. And, in many cases, just like these interventions arrive out of nowhere, when you least expect it, they are gone. We owe ourselves many discussions and reflections about the ethical pedestal from which we propose our activism and research, about the interaction with the people in the field, and about our own agenda and the interests and expectations of those we find in this path.

SONGA:

I will endeavor to just give a few perspectives based on some of the interaction we have had, especially from the Kenyan context.

Mass violence and how a society emerges from it is a significant determinant of the trajectory transitional justice takes in terms of: the actors involved, the mechanisms employed, the level of public support, and whether it will be sustained or not. Where mass violence concludes with a clear-cut victor-vanquished dynamic, criticisms of victor's justice emerge where mechanisms are claimed to prioritize the punishment of the vanquished through tribunals and other prosecutions to the exclusion of the transgressions by the victor who possesses absolute political power. Where a society emerges from an episode of mass violence through mediation and peace agreements, the imperative to silence the guns (to borrow the parlance of the African Union) by bringing the parties of the conflict to the table comes face-to-face with the transitional justice aspirations to make a clean break with the past, which should ideally include the exclusion of those culpable of mass atrocities from political life, as well as holding them accountable for their actions.

This latter scenario has made mediation/peace agreements a transitional justice issue since it establishes the basis for a negotiated sense of justice while also detailing or preempting the manner in which transitional justice is carried out.⁴³ This opens the door to multiple actors including politicians, religious

⁴³ Godfrey Musila, *Learning on the Job? The 2007-2008 Crisis and Role of the African Union in*

leaders, victims, the public, and civil society to shape the aftermath of mass violence, but they are heterogeneous in their different interests and priorities.

One example is the Kenya National Dialogue and Reconciliation (KNDR).⁴⁴ CSOs made an immense contribution to the mediation process. Their submissions and meetings with the Panel of Eminent Persons who steered the KNDR contextualized the crisis and helped it to formulate appropriate corrective measures. They described the extent of the crisis, the atrocities committed, and the probable outcomes if the negotiations failed.⁴⁵ However, the question of ownership persists. Are these truly participatory processes or elitist agreements?

Mediation provides different opportunities for transitional justice in different contexts: it can open the door not just to silence the guns but also develop a comprehensive reform agenda that addresses underlying issues as a pathway to future conflict prevention. In Kenya, the national dialogue and reconciliation process provided not only a peaceful settlement to our post-election violence crisis, but also a framework for transitional justice on the basis of its agenda items. These called for: 1) immediate action to stop violence and restore fundamental rights and liberties; 2) immediate measures to address the humanitarian crisis and promote healing and reconciliation; 3) how to overcome the political crisis; and 4) addressing long-term issues and solutions.⁴⁶

Articulating a broad-based agenda and its ratification in peace-agreements does not necessarily denote true consensus or the long-term commitment that the agenda suggests. This brings to the fore the challenges in reconciling the objectives of peace agreements and transitional justice agendas. The political consensus that is considered essential to peace agreements can become a hindrance to transitional justice processes. This can be seen, for example, in the experience of prosecutions, in cooperation with truth commissions, and in the implementation of the commission's outcomes, especially the case when there is no true transition. For example, in Kenya's coalition government and subsequent administration, where persons who were the subject of prosecutions also are at the apex of government. It reminds me of the quotation: "power is power; once you obtain it people find ways to accommodate you." Victims, victim groups, and stakeholders, such as civil society, have different levels of interest, involvement, and commitment at different stages based on their resources, competencies, and external influences. For example, Kenya's peace vs. justice and prosecutions vs.

Transitional Justice in Kenya (Dec. 18, 2011) (unpublished manuscript), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539955.

⁴⁴ See generally SOUTH CONSULTING, THE KENYA NATIONAL DIALOGUE AND RECONCILIATION: BUILDING A PROGRESSIVE KENYA (2011), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/Background-Note.pdf> (providing background on the creation, goals and outcomes of the Kenya National Dialogue and Reconciliation initiative).

⁴⁵ OFF. OF THE AU PANEL OF EMINENT AFRICAN PERSONALITIES, BACK FROM THE BRINK: THE 2008 MEDIATION PROCESS AND REFORMS IN KENYA 30 (2014), available at http://www.kofiannanfoundation.org/app/uploads/2014/08/backFromBrink_web.pdf.

⁴⁶ SOUTH CONSULTING, *supra* note 44 at 1.

reparations debates and how these changed with the entry of the Kenyatta administration.

Conclusions:

- There are limits to the impetus for transitional justice provided by mediated settlements/peace agreements and the imperfect transitions that accompany them, and we must resist the temptation of unrealistically overloading it with expectations of fulfilling a broad-based agenda within a rigid structure and on timelines that reduces aspects of it to rhetoric.
- Linkages must be made between the classical transitional justice and broader agendas such as democratization, rule of law, and a long view adopted by stakeholders in terms of support from the State, donors, civil society, and, in some cases, the international or regional mechanisms that midwife peace agreements.
- Emphasis on or preoccupation with criminal prosecutions risks obscuring or inhibiting the opportunities presented by other mechanisms such as truth, justice and reconciliation commissions, and reparations. We should not view the failure of prosecutions as the end all of the transitional justice agenda. For example, in Kenya, we have had to engage with the Kenyatta administration to further the discussion of reparations even in the absence of prosecutions.
- Connection with the processes are key: we speak of victim-centered approaches, but how do we realize them? How the agenda developed, the priorities identified, and whether there are sufficient feedback and grievance mechanisms that respond to victims' needs are key indicators. Kenyan victims' negative experiences with the ICC's Trust Fund for Victims⁴⁷ is instructive in this regard.
- Should it be about transformation? I submit to you the words of Albie Sachs, former judge of the Constitutional Court of South Africa: "Unlike transition, transformation never ends; our society needs constant renewal. It is we the People, who produced our Constitution, and it is We, the People, who must ensure that its full vision is achieved. In our lifetime."

BURT:

Thank you so much. Let us open the floor to comments, questions, and feedback.

BICKFORD:

Really interesting panel. I felt like there were a lot of leitmotifs here that are interesting to me and that really resonated with me. I wanted to try and see if

⁴⁷ TRUST FUND FOR VICTIMS, <https://www.trustfundforvictims.org/en/home> (last visited Mar. 1, 2018).

I could sum them up in some pithy quick formats. One of them I would call something like the paradox of best practices. That is, we are at a place, in terms of professionalization in this field, that you lose some creativity. I will come back to each of these.

Second is the problem of putting the tools before the goals, which I think is a very big problem in this field. I think that we, when I was at the International Center for Transitional Justice—I am sure it is not like this now—but I think I was very guilty of that as well. I will come back to that.

The third is kind of putting the product or the outcome over the process and the real importance of reinventing the wheel. We have this expression in English, you should not reinvent the wheel, as if there is an axiomatic truth to that. In fact, if you want to learn how to build a wheel, if you want to really make a good wheel, and you want to do capacity building around wheel building, then it makes sense to reinvent the wheel. That is the third idea.

On the paradox of best practices, I think we are at a place where there is so much experience and so much knowledge and so much of a field here that we think we know the answers, in spite of the fact that everyone here is saying we do not know the answers. The problem is that—and this fits into the tools, to a certain degree—we do have a checklist approach, I feel, to a lot of this stuff. You are supposed to have a truth commission, and it is supposed to look like this. We really do know the best way to develop selection panels for truth commissions. We really do know the best way to approach all of these kinds of questions. This is wrapped up in people's careers and in their scholarship and in their self-identity.

All of that is not trivial. What it means is that we sometimes lack the creativity. I have seen this directly. I arrived in Liberia—I have only been there two or three times, so I cannot speak really definitively about it, but my experience was—I said, "What's happening here?" They said, "Oh, we have a big truth commission." I said, "Oh, why?" They said, "I don't know. We have a big truth commission." This also fits into tools before goals.

The answer was, "We have a truth commission. We got a truth commission," and the emphasis was on the truth commission. When I had a number of conversations, I said, "Well, hold on a sec. What's the goal of the truth—why?" When it came down to that, it seemed like the truth commission, maybe, was not the best tool. Maybe the best tool was drawing on oral history traditions, drawing on other kinds of traditions, something that would be far less expensive, something that would be far more deeply rooted in other practices, and existing institutions.

I also had the same experience around a truth commission in Nigeria when I arrived there. They said we were going to have a national conference. The national conference was going to deal with all this, but the donors wanted a truth commission, and all the experts flew in—I was one of those experts—and said, "Here's a checklist. This is what a truth commission is supposed to look like." That is a big problem. We did that at ICTJ, and it was with the best intentions. The tools part is where we spent so much time at ICTJ, talking about perfecting the tools. It was these mechanisms.

That was the word, mechanisms. The mechanism, mechanism, mechanism, mechanism, mechanism, mechanism. Less discussion, nowhere near enough discussion about the goals that you are trying to accomplish. By the way, what are those goals? What are those goals? I will tell you, for me, after twenty-five years, I have come to the conclusion that what I think is most interesting about transitional justice is actually the construction of narrative. I will put my cards on the table. That is what I think it is. The fact that Pinochet did not go to jail is actually irrelevant to me. What is relevant is that there was a narrative constructed in Chile about the dictatorship that was very powerful and important and changed over twenty years. Anyway, we need to think about those goals. It makes a big difference what tools we are going to use, depending on what the goals are.

If the goal is construction of narrative, you look for voice. You look for empowering voice. You look for history. You look for text. You look for trials, but you look for trials to construct a narrative. Paradigmatic trials are going to help you construct a narrative. Different goals have different tools. Product over process, we need to start these processes saying, "Okay, what's the goal?"

Let us build towards the goal. Let us build our own mechanisms and our own tools, and then let us fly in international experts to help out if we have a specific question about our tools and goals, not right at the beginning to set up the checklists and explain. Again, been guilty of it myself, and I feel like it was a big mistake we have made all along. I think we need to now say, "Okay, the humility of best practices should be that we are actually going to start a lot of these processes earlier and build them up from the ground up."

ROBINS:

What I would like to do is take the language of victim centeredness at face value and ask what that would actually imply. This, I think, addresses Harvey's [Weinstein] question, who is the client? I think the victim has to be the client. I take that to its logical conclusion and ask, what is justice, and who defines it? I would say the victim does that. What we have is a normative practice that is legally defined as rights-based, and I think the goal of that practice, if we are honest, is liberal democracy. That is the goal.

It is a hugely ideological apparatus, which is why there are these assertions that research is not political. If you are doing transitional justice, you are doing politics. It is ideological. We should be honest about that. That is why we talk about civil and political rights and not social and economic rights, and why Pablo's [de Greiff] discussion, as Nelson [Sánchez] said this morning, I think, is unconvincing. It is politics that dictates a focus on civil and political over social and economic rights, because you do not need social and economic rights to integrate an economy into global neo-liberalism.

The practice we have is global. It is prescriptive. It is mimetic. It is a self-interested industry that defines the shape of transitional justice as elite and metropolitan. That maps onto North and South. I would argue the victims, despite the rhetoric, are instruments of this. They are witnesses in trials; they testify in

truth commissions. They are not agents. That is what participation means. It means somebody tells you what to do, and you do it on their terms.

There is no agency. They are rarely and only partially beneficiaries on the terms that they would define. That is why we need a bottom-up approach. We need exactly the sort of practices that are invisible to international transitional justice practice that Stephen was talking about earlier. We need to find a justice that can be defined by those who most need it. Can I make one more point?

My final point is, if we know what the goals of transitional justice are, how does it work? Again, Pablo, this morning, mentioned the great successes, but you have got a very complex post-conflict, post-authoritarian society. How do you know the outcomes that you attribute to those two or three formal institutional mechanisms really came from that when you got all sorts of stuff going on there? What is your theory of change? How does a truth commission deliver what you claim it delivers? How does a trial stop repetition?

I do not know. No one can tell me. If you do not have a theory of change or a credible explanatory mechanism, how can we test it empirically? It is an article of faith, the whole institution of transitional justice, an article of faith driven by normative engine of rights. To guide future practice, we need to know how these things work. You need to tell us that, and then we need empirical data that can test that. Then we can have a practice that is evidence based, not faith based, normatively based, and politically driven.

QUINN:

One of the things that Stephan [Parmentier] said earlier today was about transitional justice mechanisms having been used, but systems and structures still continuing to exist. Farah [Hached], when you were speaking earlier this morning, this really hit home to me, in part, because in Canada, for example, we are having a conversation right now about settler colonial effects. What is different than in “regular” colonial places is that the settlers never left. The settlers are still there, they are still in power, and so on. In thinking about, based on thirty years of research and practice, what is it that we should be doing? I do not know how transitional justice maps onto places like that, but I do know that it falls short.

Are there things that we could be doing? I think, when Stephan pointed that out this morning, it is something that my students and I and people in my world tend to think about quite a lot. I think that that is something that transitional justice people like us need to think about, which is employing and continuing deploying and redeploying these kinds of mechanisms without any kind of change or upset or unsettling is problematic.

PARMENTIER:

I do not want to sound repetitive. I think Louis [Bickford] and Simon [Robins] said a lot of what I wanted to say already but let me briefly summarize in three points. First, it seems to me that it is time to start separating mechanisms

from issues. Our toolbox approach or toolkit approach is all about the mechanisms and perfecting them. Thank you for your self-incrimination, by the way, and some confession. It is a form of justice after all, in the long run. Justice being done to yourself. The idea of mechanisms does not make sense—and I completely converge with you—without knowing what you want to achieve and what is to be achieved, maybe, in some ways, or how empirically it works? In our work, we have been trying to look at key issues that will have to be addressed in some way, but the way in which they are addressed can be very open. Some of the key issues are accountability, like reparations and so on, but how they are actually addressed is a different thing, whether it is through courts or tribunals, or other kinds of truth commissions, or whatever. It is up for debate. I often compare it to the discussion in human rights between universalism, under one hand, and uniformity. These are very different notions that we seem to conflate. I think it could be useful to separate them. Something can be universal and, yet, be very different in practice or in outcome.

Second, prevention over cure. I think we need to pay much more attention to issues of prevention, whether it is early warning, or even that is too late. Possibly so. Not only for ethical reasons or to reduce the potential suffering of victims and society in general, but even for economic reasons. It is actually much cheaper to invest in prevention than it is in the cure. Imagine just thinking—and I give this to the students as an example—of the mind-boggling budgets that international courts and tribunals are consuming every year. This is not to say that it should not be spent, but is an equal amount then spent on prevention or on the Trust Fund for Victims, for example, which is a voluntary fund? Huh? Imagine at the ICC; it would save us a lot of hassle and trouble later on if we were to invest more in thinking and in designing mechanisms of that nature.

Finally, I think many of the problems in transitional justice research and activism are based on the prescriptive nature of it. This is more the interdisciplinary or the disciplinary perspective. It is often very prescriptive, very normative, and, as you rightly say, where is the evidence? Let us try to investigate things, explore things, try to explain, if possible. You need other techniques and other tools for that.

Even talking about tools, which mean social science tools, not only at legal perspective or not only prescriptive perspective. In that sense, I heard Pablo's [de Greiff] plea, also, as one to enlarge the field and to try to involve many more disciplines, the theory of change, the particular empirical ways of dealing with outcomes and processes, and so on. It will have to change if we are going to make progress, I think, in the next couple of decades.

PEMBERTON:

Following on from something that Simon [Robins] just said, that the end goal of transitional justice seems to be liberal democracy, and I think I would very much agree with that. That also brings to mind then a distinction that Jeremy

Waldron made between thinking about the questions that we face as either circumstances of politics, or circumstance of justice.⁴⁸

It strikes me that transitional justice falls very heavily under circumstances of politics, which is where basic political questions still need to be answered before circumstantial justice can fully be dealt with. It strikes me that transitional justice also falls into a trap of having a rush to justice when, still, the basic political sphere has not been developed. That does also mean that I do not think that we can actually do the thing that I think Simon was also suggesting, that we can do away with politics, then.

Essentially, transitional justice would then always be a vehicle for politics. Maybe one of the things that we are also addressing is that we stand to set up procedures or mechanisms as we perceive to be neutral and to perceive to be a void of a politics and then place them in a situation in which basic political questions still need to be addressed. I think that is probably the mismatch that we keep confronting in these situations.

MIHR:

Just to add to the debate about measures, instruments, etc., that, Camilo [Sánchez], you also raised and Louis [Bickford]: I would like to plea for the fact that transitional justice has been extremely adaptive over the last decades, actually adding measures, mechanisms, and instruments. I would like to stay with the terms because, again, coming from the European experience, transitional justice—even if some similar terms existed in the 1950s after World War II—they would have conceptualized that, for example, memorials or amnesties would be part of it.

It also shows that the whole concept of transitional justice has been very adaptive. Nevertheless, this is where I come back to how I understood Pablo [de Greiff] today. Therefore, I would disagree with your disagreement, if you will allow it.

From what I understand, most of the positive experience on the impact of transitional justice measures we have thus far, have been in countries where there was some sort of institutional or bureaucratic institutions and inheritance. However autocratic or totalitarian the regime was, there was at least some sort of what you could call a court, police, other administrative institutions, or whatever. During the transitional justice process, one could build on this, reform the institutions, enhance them, etc. Whereas, now, the last decade and longer, we have encountered countries—and he mentioned, I think, Sierra Leone and the DRC in

⁴⁸ JEREMY WALDRON, *LAW AND DISAGREEMENT* 102 (1999) (defining “circumstances of justice” as “those aspects of the human condition, such as moderate scarcity and the limited altruism of individuals, which make justice as a virtue and a practice both possible and necessary”; and “circumstances of politics” as “the felt need among the members of a certain group for a common framework or decision or course of action in some matter even in the face of disagreement about what that framework, decision, or action should be”).

particular—in which governmental and state institutions have never really been in place or were fragile prior to and during the times of conflict.

Sudan is another case where, of course, we have to explore new methods, more narratives, definitely, in traditional mechanisms. There is no doubt about it, and I have not heard anybody seriously, in this conversation, demand that we apply the same measures that we applied in West Germany to South Sudan. That would, I think, completely be out of context.

We have to be open-minded and see, what kind of measures and mechanisms we can take from past experience that can be adapted to particular situations and which ones we can just drop because they do not suit the timing, sequence, or circumstances? Not all measures that work in one country in the first ten years will work in another context. Nevertheless, today, I think there is enough evidence on how each transitional justice measure can or cannot influence regime and societal transformation. Sometimes we have research about just one measure, trials, memorials, amnesty laws, or whatever, so extensive that we know, nowadays, more or less, how even individual measures or mechanisms function or do not function in the anticipated way; for example, whether or not trials lead to more enhancement of the culture of the rule of law in a country or not.

WEINSTEIN:

I have some questions. First, is anyone willing to do a trial of post-conflict justice in which you do not use any of the current methods that we now call transitional justice? No truth commission. No trial right away. Actually going into the country and finding out what people want to have happen—other than stopping the fight. Is anybody willing to try do that? Second question, are we trapped by our experience? Law works with precedents, and it seems to me that we keep going back to the precedents. This question is phrased, what should we be doing?

Well, so far, I think, hearing from most people, we basically should be doing the same things, maybe tweaking a little. What stops us from being creative and saying—I have surveyed lots and lots of people, victims in Uganda and Rwanda and Bosnia and Kosovo, and when you ask questions, you get very different kinds of answers—what do victims want? They want to feel safe. They want to feel secure. They want education for their children. They want to have jobs. They will say that right after the violence is over, such that while millions of dollars are being poured into trials that may satisfy some parties, I am not sure that it is necessarily satisfying victims.

Let me get around to this word “victims,” because the word has come up a lot. Victim, victims. There is no single victim. There are many people who have been affected, and they are affected in different ways, often because of what they have brought to the terrible events, often because of what they have experienced, and they often want different things. We have homogenized it into one thing that

everybody should have. The question is: why do we do that? Do we do that because it makes us feel better? I am not sure.

The last point gets around to your question, Borislav [Petrov], about money. Let us talk about money. We all know millions and millions of dollars go into the trials and truth commissions. Are we happy with how we are spending this money? Given the fact that we are not entirely clear about what our goals are, why are we pouring all this money into it like this? Should we have poured money into Sierra Leone's health system before Ebola threatened the entire world? There are ethical choices to be made, but we do not discuss these ethical choices.

The last thing with respect to money is that, if funders want something fast, that means that their goal is to see very specific mechanisms for something in the short run, and they do not really want to fund the long-term goals. They are not interested in democracy, democratization, or building long-term institutions. That is the fact. Then the question is, does that then become development? Well, do development folks really understand what has happened or the implications of the repression or atrocities? Again, we have the silo problem.

FLETCHER:

I guess, in the spirit of confession and self-incrimination, I will say that I started this work committed to norms. I migrated to evidence-based work and was very interested in measurements and thought that that would tell me more about how I should think about norms and their deployment. I have, maybe, come full circle, or in a spiral, back to norms, in part. We say we need evidence-based practice as though we think that the evidence will tell us something that we can define as working or not working.

We are talking about, in situations of mass violence, a catastrophic violence that has had widespread impacts. We use, with the goal of a liberal democracy, rights as the language in which to talk about them. That is, essentially, a normative project. We do not put rights up to a vote, because they instantiate values that we think are important, even if we cannot realize them. The fact that we cannot try everyone does not become an excuse not to try anyone. We do not decide whether or not we are going to have a voting system or we are going to have a water system.

These are competing priorities. They compete in a budget, but they are both recognized as rights, the right to water and the right to justice. I think there is something valuable there, and I think that we create a false dichotomy when we think either we are going to fund the ICC, or we are going to fund something else, because I think that, as a practical matter, that money would not be transferrable. These are political processes, and what is available for one project will not be able to be transferred to another. We make it seem as though this is an equation we can manipulate.

I do take very seriously this idea that we have this gap between a top-down templatization checklist of what we should be doing, and what are the priorities on the ground. This is discussed in a book that is been around for a

couple years by Stephen Hopgood,⁴⁹ who talks about Human Rights in capital letters and human rights in small script with the idea being that human rights may be the label that we give a broadly-based social and political program of anti-subordination, and we package it into rights, and we professionalize it, and we institutionalize it, and it becomes something else. Can we get back to, can we fit everything into a rights-based framework?

I am not sure, and that is one of the limitations of rights. Can we then take seriously a question of reinterpreting what those rights are from the ground up so that, when we are using a rights-based language and we are asking about priorities, we allow that it might look different in Kenya than it does in Syria at different points in time? We do not abandon rights because we cannot realize them all at the same time. I feel that that is a little bit of where I worry the conversation goes when we say everything needs to be measured—not everything, I am overstating for the purpose of discussion—but not everything we care to know can be measured.

HODZIC:

I have so much to say—but I will not. I will just try to express something that is not a full-blown sense of frustration, but is slowly building up at the way that our discussion is dispersed and how I am losing the site of the goals, as Louis [Bickford] put it, in terms of, where do we want to go? I find a lot of what is being said, sometimes, decontextualized from the reality of what these situations are like. What is it that we are dealing with? Here, in talking about mechanisms, whether they are necessary, or do we have alternatives?

We seem to simply disregard the fact that there are frameworks or State obligations that have been adopted and that are imperfect, but that is what they are. Try, and honor, and things—she said that she had an hour with a minister in Germany. Try talking to policymakers who make these decisions outside of these frameworks. They are terrified immediately. Do not be creative. I want to fit this into something that I know. Ninety-nine percent of them do not actually know what we take for granted that they know. When we say transitional justice, they immediately think, “Does it fall into human rights, or does it fall into development? Where is the connection?” For us to start questioning that without actually going to the table with something and saying, “Okay, this does not work, so let us go back to the 2004 report and change it,” I think is wishful thinking.

In terms of realities on the ground—and something I wanted to talk about in response to something Andrew [Songa] said—I think, also, we have to be clear about, what it is that we are talking about here. If we are talking about mass atrocity, there are certain things that happen in order to allow for mass atrocity, like dehumanization, like the complete shift in identity, in how people see themselves and how they see their brother, their neighbor which allows them to be able to slit their throat and think they are doing something good. That is key.

⁴⁹ Stephen Hopgood, *The Endtimes of Human Rights* (2013).

They do not see themselves as evil orcs from *Lord of the Rings*. They actually think they are doing a very difficult job that no one else wants to do for their people, for their group. I know, because I experienced this. To get to that point, there has to be an effort—a huge effort—invested to dehumanize the other to the point where you see them as a problem, as vermin that need to be removed.

Transitional justice deals with this. It deals with this. The tools that we have are imperfect, and I am with Louis on this. I think that narratives, issues of identity, not only ethnic or state identity, are important. Transition states are looking for a new way to identify, to build identity. What they do ninety nine percent of the time is go to the past to find the source of this. In the past, they find enemies. They find the other, always, to set themselves apart. We have to take that reality into account when we are talking about this. If we have other ways of restoring victims' dignity, let us not forget, in all these polarized societies, people who perpetrated or supported these crimes always play a significant role. What Fredy [Peccerelli] was talking about, of course, in Guatemala, State institutions are manned by people who committed crimes because that is the reality. Of course, in Bosnia, that is the case. You are building a new society with these people. You cannot expel them all or imprison them all. This why it takes such a long time. In that kind of reality, excuse me for just, very briefly, going to my presentation that was not to be.

When you say how criminal justice processes changed Kenya, imagine former Yugoslavia in which, as I said, in '93, we had no choice. Still, we were killing each other when this enormous new entity landed upon us with one message: we will give you justice. That is all you want to hear. All you want to hear is that someone will actually come and provide this justice. It framed everything.

What it did and what criminal justice processes do, as you know, is turn the issue of justice into a continuation of war by other means. We finally had an arena in which it was, again, us against them, only in other roles. That completely annihilated any talk of State responsibility, any mention of issues like forgiveness, for God's sake. He who forgives, be damned to eternity. No acknowledgement of the other and their suffering. It was all about: "I want a victory. I lost, and I want a victory, this time in court."

Expectations were built to the point where you could not meet the expectations of Bosnian Muslims—I come from that group—if you had every single Serb quartered on the public square. That would not have met the expectations, because we want billions in reparations. We want them to be marked as genocidal for eternity, because that is what these processes feed. I think that discussions of consequences always have to go back to context. Context is everything.

I just want to say to Louis, I fully agree. I fully agree, and I am very happy to say that ICTJ is getting to the point—we are publishing a major work in a month

or so,⁵⁰ which will basically set out this case. The context is everything. In certain cases, it will not be any of these mechanisms. It will be your local imam who will be in the best position to provide witness support, witness protection, and justice, because he will be able to humanize the other. This has nothing to do with any policy framework that we know but is the reality on the ground.

My greatest fear is—I was just in the Hague, discussing this mechanism that has been adopted by the U.N. General Assembly—on the policymaking level, we are still in 1991. That is where we are. The Office of the High Representative in Bosnia and Herzegovina and the United Nations are still slotting these ideas into the frameworks that date back to that age. Nothing has been learned. Mark my words. Nothing has, from all the work, from all the experience, still, the wheels of the United Nations, when they start, they simply just go. You can stand in front of them, be run over, and left as a pancake on the road. That is the reality, and I do not know what we can do, but I would really like us to talk about, what can we do? What can we as a group, do?

HACHED:

To comment on this, during the lunch, we discussed why Tunisia did not go to an internal conflict and why we chose the national dialogue. It is a question. Why? The context, of course, because we are a homogenous country, society maybe. We are a small country. In my opinion, there is something interesting: culturally, in our families, we are educated for compromise. Any Tunisian you speak with will tell you, “In Tunisia, we always look for compromise.” We are used to hearing that.

We have an expression. When two children in the house are in conflict, fighting, always, the parents tell them: “Kiss your brother, and then we talk.” First, we have to feel that we belong to the same family. Then we talk, and sometimes we do not talk. Sometimes the one who was the victim will not have justice, because the compromise, the conciliation—not reconciliation—is more important than justice, actually. Now, also, the people from the old regime for example, they are using that for reconciliation., saying, “Now, it’s okay. We shall, altogether...,” the same way.

Is it good? In the long run, I do not know. Until now, it worked. People who were educated differently, Tunisians who are educated differently, maybe they do not accept that because they think it is a frustration for justice. Maybe, for the majority, it is not such a big frustration. I do not know. It is a question mark. I do not know.

⁵⁰ Int’l Ctr. for Transitional Just., *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (Roger Duthie & Paul Seils eds., 2017).

HONDORA:

I raised my tag when I heard an intervention suggesting that transitional justice mechanisms could or should depend on context, that those in Germany, for example, follow a unification, would necessarily be different, say, from Sudan or, say, Sierra Leone. I want to challenge that by perhaps asking the question, are the transitional justice needs, not mechanisms, between, perhaps, those and the so-called Global South, those and so-called Global North, any different? Secondly, is it true, can it be true, that the mechanisms deployed would depend on that context?

I will be the first to admit that context, context, context—as everybody has been saying—is absolutely important, but there are certain basics that I think are universal. All the others will depend on what you deploy, and how you deploy a particular mechanism. How it is played out in a particular country should be influenced by what is really happening on the ground, by the demand for security, demand for justice, demand for non-recurrence, demand for development. Those, for me, are pretty universal.

V.

CLOSING REMARKS

MIHR:

First, what was the common narrative of this whole day today, and what is common through all the sessions? I noted three things and I hope you can share the observation or add to it later on.

First of all, we started off this North/South more about the differences and less about the similarities. In the first hour, it became clear it is difficult to stick with this divide. It is actually a global dialogue, if you want to call it a dialogue at all. The divide is more or less a power divide and less a societal one. People want peace and stability everywhere around the world, but the ways in which this is aimed at, are different. These power divides, or imbalances of power exist, whether it is about who benefits from it, who has the strength—these were the terms I use—the power, the influence, the money, etc.

Secondly, we look very much at the individual, the victim or the victimizers, and even used the word empowerment of individuals, not empowerment of political institutions. But the empowerment of the individual very much depends on partnerships, on donors, on states, on institutions, even on international organizations. It can also depend on ideologies, on traditions, etc., etc. This power idea, I am sure this is not the end of the discussion. Maybe it is the beginning of a discussion and identifying where the divides are.

A third element that came through, in particular, now, in the last session was this: what is the purpose of transitional justice? I think we are not wasting time—when I say we, I mean the community and for the next however many

foreseeable years and decades—to spend time on rethinking, what is the purpose of transitional justice measures? Individual or institutional change and empowerment, or both and to what extent? What are the possibilities and what are the limits of transitional justice?

Yes, the context has changed, so we have to think about the purpose of transitional justice. Not abolishing it entirely, but maybe thinking about it and how we aim to use it. For example, whether we use these measures for democratic institution-building, or whether it is best suited for individuals, such as victims. I am sure, from what I understood from you throughout the day, for many people right after a conflict the truth and fact-finding missions are more important than institutional reforms. Individuals should benefit from it. Institutions should benefit from individuals, and so on.

In the first session, we were asking the question: is there a gap between North and South? That seems to be more of a global dialogue instead of a North/South or South/North dialogue. The divide is constructed. Nevertheless, the question whether there is a gap remained and the answer is yes, from what I understood.

This “yes” was very soon defined. It depends on whether you focus on institutional transitions or victims, and there is a divide on how the North, maybe, talks about transitional justice, more institutionally-focused, whereas for the South, victims are the greatest concern. It is not resolved. There is not enough justice brought to victims. That came through in the first session. Very soon, this shifted also to the issue of power.

Another important issue that came up in the first session is that, there is a certain responsibility issue. Participants raised that there is a particular responsibility by actors in the so-called Global North, because many of the problems and conflicts occurring in the so-called Global South are legacies of colonialism or other interventions in the past and present by States and actors based in the Global North. And thus, the Global North and South are somewhat linked by history and the present. Many of the issues of the past will not be resolved until the Global North, for example, former colonial powers, come to terms with their own past. That is linked, and there is, maybe, also, a specific divide. In the first session, also, there was a debate about, where is the raw material, the research question? Where is the material, and who manufactures it?

In the first two sessions, we addressed the question of research and how data are obtained. This depends very much on how we have access to the material, and where we have access. There are some regions in the world where we have easier access to the material because of language. Some people also brought in that it is not only the national languages or regional languages, but the need to pay attention, in particular, to the local languages. If you really want to bring the benefits of transitional justice down to the local, to the people, this is where we have to open up. But I would very much doubt that these benefits will only be constructed and the responsibility of only one part of the world, namely in the Global North, particularly when it comes to translating experiences elsewhere into

local languages and contexts somewhere else. I think the Cambodian case that was mentioned brought this up.

Another issue discussed was on the evolution of transitional justice. There again, very soon, the discussion addressed the question of: what we are focusing on when we talk about the evolution and development of transitional justice? Its core lies in criminal justice, trials, etc. and those dominate much of our current assessment of how we measure impact, success or otherwise explain any correlation between transitional justice measures and the transformation of society. It has evolved, but criminal justice is still very, very prominent in the whole discussion of transitional justice. But it was also brought up that transitional justice is also about economic and social justice and not only in political terms, and that has been already approached in some contexts and some cases of transitional justice.

The Tunisian case, definitely, is one of the first. I think the Colombian case is also a lot about social justice. I thought we became more circumspect about the role of criminal justice during the second session. The roles of the ICC, ICTY, and ICTR were not mentioned so much, but there was more discussion on how these instruments and mechanism can contribute to social justice, how to make the best of them.

There also are different developments on the academic and research level, and on the practitioner level in the various countries. Something that stuck out during the debate was, when we talked about practical examples, it was very much about the dignity, the autonomy of organizations, or individuals, etc., and that the academic world, which links us to the third section.

In the academic world, a researcher's job is basically to reflect on the possible impact or contribution of transitional justice in post-conflict or authoritarian situations. We came to this in the third session, during which we outlined challenges and possible problems in this respect. But referring also to Pablo's [de Greiff] talk, of course, highlighting that we are still in the beginning of better understanding how transitional justice measures work across the world, and that we have to be more self-critical. We are still very State-focused, paying less attention to societal transformation. This also is due to the fact that many transitional justice processes are driven by specific donors' interests.

It was highlighted throughout all the sessions that one reason why we often focus in our research on States and institutional developments is because we can better measure accountability processes there than with societal transformation at large. Measurable results and even clear data and facts are what donors want to see in reports by their counterparts in the affected countries. They want to see where the money goes, etc. It is a little bit like the chicken and the egg, concerning the question of whether donors determine how the transitional justice processes relate to the actual atrocities that happened. How do we get out of this vicious cycle and bring the benefits of transitional justice measures more to the ground, to the people and institutions concerned, and to the practitioner? One way would be to empower victims—this came up over and over again throughout the second session.

Then, finally, the fourth session on research combined aspects of the first and the second sessions. I am not repeating the details, but everybody seems to agree that we need more of this applied research in terms of what actually — what this knowledge base transfer and exchange between practitioners and researchers, between North and South — can lead to. There is a disconnect between the research and the abundance of knowledge we apparently have, and the practical world, particularly in post-conflict situations, which to some extent also divides the Global North (research and donor focused) and the Global South (victim and practitioner driven.)

These disconnects were, thus, highlighted between the knowledge that we produce and the concrete situations in post-conflict societies that may vary with context and country concerned. The disconnects between research knowledge and practitioner experience; the different disciplines within the research; and the disconnect among donors and research. Then, an important point made was that there is already a disconnect in the pre-transitional phase, while a conflict or dictatorial regime is on-going, between, for example, when South-based CSOs report on the crimes and the evidence they see and when North-based reporters do, because of the priorities these “reporters” see in the crimes and violations of human rights that are happening.

This disconnect in the research data and practice, is also connected to language and access to information and resources. Hundreds of local dialects, often particularly spoken by minorities and marginalized groups which are more often victims of systematic violence, make fact finding and reporting a challenge of its own. Although we all know this, it is worth highlighting, keeping in mind that many conflicts and violent outbreaks that merit a transitional justice process remain unnoticed because of the lack of documentation resulting from language barriers. If we want to make a difference, we should be aware that these challenges still exist.

Generally speaking, after thirty years of systematic transitional justice research, still we are asking the question: what do we actually want to achieve with transitional justice? We have to look at it more from the end results expected, from what we really want to achieve with fact- and truth-finding missions, with trials, with memorials, or with compensation funds. Do we really want to change and transform regimes and conflict torn societies from an unjust or authoritarian or whatever society, to a different kind? And, if one of the answers is yes, do we agree that democracy is still the mode of governance that we aim to achieve with transitional justice measures? We can disagree on that, but we should not forget that freedom and justice is the basis of the liberal democracy that many conflict-torn societies are aiming for.

There were two more points mentioned on the topic of the goals of transitional justice. One is to secure non-recurrence of violence and injustice: “We just don’t want this whole thing to happen again.” But this wish for non-recurrence almost seems to be disconnected from the type of political regime— regardless of whether this regime is another dictatorship or a democracy. This suggests that, as long as there is peace and stability, it does not matter. Is that what

is meant by non-recurrence? I would say not. Some suggested that, for a really sustainable non-recurrence, we need a liberal democracy to prevent future conflicts.

Another important theme that emerged was about the benefits for victims, for the individual. That seems to be something that came up over and over again during the afternoon and also reflects the composition of the group in the room. I would, however, suggest that it is critical to also discuss what transitional justice measures actually give the greatest benefits to the individual, to victims or survivors of atrocities. Again, this concerns how the benefits to individuals, mainly victims, are often disconnected from the political regime that exists. But the type of political regime may very much determine the kinds of trials (open or closed), what type of compensation will be offered, whether there will be fact-finding missions and what kind? Whatever one calls it, a transitional justice-prone political regime is probably more rule of law-based than an autocratic political regime.

Another point that was highlighted in the fourth session concerns actors such as donors and policy makers or CSOs, and their inclusive or exclusive involvement in a transitional justice process. That often determines the outcome. We had the experience from Kenya's transitional justice process, in which one had to include a certain group of actors and stakeholders and leave out others, otherwise, it would not work.

I think I will leave it there. Thank you so much.

PARTICIPANT BIOGRAPHIES

LOUIS BICKFORD

Louis Bickford directs MEMRIA.ORG, a new social enterprise dedicated to collecting, analyzing, and distributing personal narrative accounts of past violence. Until recently, he managed the Global Human Rights Program at the Ford Foundation, where he supported the international human rights field and worked with human rights organizations in every world region.



Prior to joining the Ford Foundation in 2012, he was on the Executive Leadership team of the Robert F. Kennedy Center for Justice and Human Rights, where he also acted as the Secretary General of RFK Europe and managed the Center's office in Florence, Italy. Before that, Bickford was the Director of the Policymakers and Civil Society unit at the International Center for Transitional Justice (ICTJ), where he was a founding staff member in 2001. During his time at ICTJ justice, he developed the organization's work on memory, as well as in various national contexts including in Bosnia, Burma, Cambodia, Liberia, Mexico, Morocco, and Nigeria; and managed global networks of transitional justice activists and practitioners. He has also been a consultant for the Oak Foundation, the Bertha Foundation, the United Nations

Development Program (UNDP-Sarajevo), and the Canadian Truth and Reconciliation Commission, among others.

Bickford is an adjunct professor and teaches regular graduate seminars on human rights at Columbia University and New York University. He received a Ph.D. from McGill University and a master's degree from the New School, both in political science.

JO-MARIE BURT

Jo-Marie Burt teaches political science at George Mason University, where she is also director of Latin American Studies and co-director of the Center for Global Studies. She is also a senior fellow at the Washington Office on Latin America (WOLA), where she conducts research and writes commentaries on human rights and transitional justice issues in the region.



Burt's research focuses on state violence, human rights, and transitional justice; social movements and revolutions; and state-society relations in Latin America. She brings to her teaching years of experience working with human rights organizations in Latin America and the United States, including Peru's National Human Rights Coordinator, Peace and Justice Service (SERPAJ)-Uruguay, and WOLA. As a researcher for the Peruvian Truth and Reconciliation Commission, Burt prepared a report on the evolution and impact of political violence in the urban community of Villa El Salvador that was incorporated into the Commission's Final Report. She previously worked as editor at NACLA Report on the Americas. In 2010, Burt was the Alberto Flores Galindo Visiting Professor at the Pontifical Catholic University of Peru. She has published widely on Latin American politics and society in academic journals, edited volumes, and in journalistic magazines and newspapers.

PABLO DE GREIFF

Pablo de Greiff was appointed by the U.N. Human Rights Council to serve as the first Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence in 2012. He was renewed in 2015 and will hold the position until May 2018. In January 2015, he was also asked to be part of the United Nations Independent Investigation on Burundi, a mission of Independent Experts to address the situation in Burundi. He is currently senior fellow and director of the Transitional Justice Program at the Center for Human Rights and Global Justice of the School of Law at New York University (NYU). Prior to joining NYU, he was the Director of Research at the International Center for Transitional Justice (ICTJ) from 2001 to 2014.



Born in Colombia, he graduated from Yale University (B.A.) and from Northwestern University (Ph.D.). Before joining ICTJ justice, he was an associate

professor with tenure in the Philosophy Department at the State University of New York at Buffalo, where he taught ethics and political theory. He was the Laurance S. Rockefeller fellow at the Center for Human Values, Princeton University, and held a concurrent fellowship from the National Endowment for the Humanities.

De Greiff is the editor or coeditor of ten books, including *The Handbook of Reparations* (Oxford, 2006), *Transitional Justice and Development: Making Connections* (SSRC, 2009), and *Disarming the Past: Transitional Justice and Ex-combatants* (SSRC, 2010), among others. De Greiff has published extensively on transitions to democracy, democratic theory, and the relationship between morality, politics, and law, and is in the board of editors of the *International Journal of Transitional Justice* and of several book series related to the topic.

TINE DESTROOPER

Tine Destrooper is a scholar in residence at the Center for Human Rights and Global Justice at New York University's School of Law and a fellow at the Wissenschaftskolleg, Berlin. Before this, she worked as a post-doctoral researcher with the Law and Development Research Group at the University of Antwerp and with at the Center for Governance and Global Affairs at the University of Leiden.



She obtained her Ph.D. at the European University Institute, Florence, where she specialized in the relationship between armed conflict, social movements and gender in Central America. She holds a Master's Degree in Conflict, Security, and Development from University College London and an undergraduate degree from the University of Leuven. She worked for several government agencies in Belgium, as well as for the U.N. High Commissioner for Refugees. She has published work in, among others, *Human Rights Quarterly*, the *Journal of Human Rights Practice*, and *Development in Practice*. Her current research project focuses on the role of social movements in implementing transitional justice mechanisms.

CHRIS DOLAN

Chris Dolan has worked in sub-Saharan Africa since 1992. His work with survivors of conflict-related violence has involved ex-combatants, refugees, and internally displaced persons, both women and men, as well as sexual and gender minorities and refugee sex workers. His Ph.D. from the London School of Economics and Political Science, now published as *Social Torture: The Case of Uganda 1986-2006*, is one of the leading texts on the war in northern Uganda.



In his capacity as director of the Refugee Law Project, an outreach project of the School of Law, Makerere University in Uganda, he has since 2006 led the organization to occupy a pre-eminent position in debates and practice of

transitional justice in Uganda and the wider region. This has included establishing two institutes: the Institute for African Transitional Justice, an annual weeklong event raising critical issues in the development of context-appropriate transitional justice, and the South-South Institute on Sexual Violence against Men and Boys (2013, 2015, 2017). He also conceptualized and directed the background documentation and editing of Uganda's first *Compendium of Conflicts* (2014) as the basis for any comprehensive planning for transitional justice in Uganda, and ensured the establishment of the National Memory and Peace Documentation Centre, Uganda's first "history clinic" (2010). The Refugee Law Project is intimately involved in national policy development, as well as in documenting key transitional justice processes such as the International Criminal Court's Dominic Ongwen trial, and the trial of Thomas Kwoyelo by the International Crimes Division of Uganda's High Court.

LAUREL FLETCHER

Laurel E. Fletcher is clinical professor of law at Berkeley Law where she directs the International Human Rights Law Clinic. Fletcher is active in the areas of human rights, humanitarian law, international criminal justice, and transitional justice. As director of the International Human Rights Law Clinic, she utilizes an interdisciplinary, problem-based approach to human rights research, advocacy, and policy.



Fletcher has advocated on behalf of victims before international courts and tribunals and has issued numerous human rights reports on topics ranging from sexual violence in armed conflict to human rights violations of tipped workers in the U.S. restaurant industry. She also has conducted several empirical human rights studies, including of the impact of detention on former detainees who were held in U.S. custody in Afghanistan and Guantanamo Bay, Cuba. She served as co-editor-in-chief of the *International Journal of Transitional Justice* (2011-2015).

Her recent publications include "A Wolf in Sheep's Clothing? Transitional Justice and the Effacement of State Accountability for International Crimes," 39 *Fordham Intl LJ* 447 (2016); "Refracted Justice: The Imagined Victim and the International Criminal Court," in *Contested Justice: the Politics and Practice of International Criminal Court Interventions* 302 (C.M. De Vos, Sara Kendall, and Carsten Stahn, eds., Cambridge, 2015); and "Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals," 7 *J Hum Rts Prac* 177 (2015) (Harvey M. Weinstein, co-author). In 2009, she and Eric Stover published *The Guantanamo Effect: Exposing the Consequences of US Detention and Interrogation Practices* (UC Press).

BHAVANI FONSEKA

Bhavani Fonseka is a senior researcher and human rights lawyer working with the Centre for Policy Alternatives in Colombo, Sri Lanka. She has worked on issues related to human rights and the rule of law in Sri Lanka for over a decade. She has appeared as counsel in several landmark cases filed in the Sri Lankan Supreme Court and Court of Appeal and been involved in the civil society advocacy around the U.N. Human Rights Council, which resulted in several resolutions on Sri Lanka.



Presently, her work focuses on transitional justice issues in post-war Sri Lanka, including issues around truth, justice, reparations, and non-recurrence and examining policy and legal reforms which has led to several publications. Her edited volume on transitional justice issues relevant to Sri Lanka will be published in early 2017. She was an adviser to the Consultation Taskforce appointed by the Government of Sri Lanka in 2016 and a member in the drafting committee to formulate the National Human Rights Action Plan for Sri Lanka for the period 2017-2021.

She has a LL.B. (Hons) (Bristol), LL.M. (Denver) and M.P.A. (Harvard). She was an Asia 21 Fellow and a Mason Fellow at the Kennedy School of Government, Harvard University. She was a 2015 Eisenhower Fellow.

FARAH HACHED

Farah Hached is a lawyer and the founding president of Labo' Démocratique, a Tunisian think tank founded in 2011, which aims to contribute to the establishment and promotion of democracy. Currently, as president of Labo' Démocratique, she supervises the Observatory of Transitional Justice, launched in December, which will publish a quarterly report on the transitional justice process in Tunisia.



During the Tunisian democratic transition, Hached initiated and managed several projects related to the security sector reform, transitional justice, and transparency. She was part of a working group created by civil society organizations to follow the parliamentary discussion on the transitional justice law project. She launched a documentary film, "Memory at Risk," which presents the methods of surveillance of the Tunisian political police during the rule of President Ben Ali, and she is co-author of a three-volume book, *Tunisian Revolution and Security Challenges* (2015). She has conducted several consultations with members of the Ministry of Interior and Ministry of Justice and other government agencies, as part of her work. She designed a training needs-assessment report and an intensive training program about security sector governance in Tunisia, targeting members of the Parliament, members of the security sectors and civil society.

Hached obtained a Master's Degree in Public Law from the University Panthéon-Assas (Paris) with a specialization in human rights, an executive LL.M. from Northwestern University (Chicago), and a Certificate of Business Administration from IE Business School (Madrid).

REFIK HODZIC

Refik Hodzic joined the International Center for Transitional Justice (ICTJ) as director of communications in March 2011. At ICTJ, Hodzic oversees its publications, outreach, and the global online presence in English, Spanish, and Arabic. In his current role, Hodzic leads ICTJ's efforts to catalyze public debate on transitional justice in key contexts like Colombia and Tunisia and global discussions on key issues like the role of media in transitional justice or the international community's political commitment to the struggle against impunity. At the same time, Hodzic continues his active engagement as a transitional justice specialist in developing and implementing public campaigns advocating for victims' rights, such as the "White Armband Day" in Bosnia and Herzegovina, and through publication of various articles and essays, including the *Independent*, *Al Jazeera English*, *El Faro*, *The National*, *The Balkanist*, and other specialized platforms focused on international and transitional justice.



Prior to this, for nearly two decades, Hodzic worked in transitional justice as a journalist, filmmaker, as well as an expert in public information and outreach campaigns for international and national courts seeking justice for war crimes. While working with the International Criminal Tribunal for Yugoslavia from 2000–2004 and 2006–2010, he served as the Tribunal's spokesman and outreach coordinator for Bosnia and Herzegovina. He also headed the public information and outreach section of the Court of Bosnia and Herzegovina, where he developed a comprehensive public information and outreach strategy for the court and the state prosecutor's office. In 2004, Hodzic co-founded XY Films, an independent film and television production company producing documentary films dealing with the legacy of war crimes committed during the 1990s.

Hodzic served as an honorary witness at the Truth and Reconciliation Commission of Canada, a role bestowed on persons of highest moral and professional qualities, tasked with witnessing and promoting the work of the commission on revealing the truth about abuses committed at Canada's "Indian Residential Schools." In 2016, Hodzic received the Civic Courage Award from Fontbonne University in St. Louis.

TAWANDA HONDORA

Tawanda Hondora is an investments director at Humanity United (HU). In this role, he is responsible for developing and implementing key thematic and country investment strategies. Currently, his main focus is Sudan.



Prior to joining HU, Hondora worked as the head of strategic litigation at Amnesty International during which time he led the organization's global litigation initiatives before diverse domestic appellate and international courts in matters raising international human rights law and international humanitarian law issues. Prior to that, Hondora, who is dual-qualified, worked in private legal practice in the United Kingdom and Zimbabwe both as a private and public law litigation attorney. Hondora has held a number of senior management roles: as a partner at the law firm Kantor and Immerman, deputy director in Amnesty International's Africa department (with a focus on conflict countries) and the Law and Policy Department, and as a board member of various nonprofit organizations.

A holder of a Doctorate Degree in Law and Finance from Warwick University (UK), which focused on the propagation and effective regulation of asset-securitization in emerging markets, Hondora has published articles on international human rights law, public international law, and international investment law issues.

SALMA KAHALE

Salma Kahale, a Syrian national, is the Executive Director of Dawlaty, an NGO that works with young nonviolent activists and youth, building their capacity on civic education, transitional justice and the nonviolent movement in Syria.

She has nine years of experience in child protection and youth engagement with UNICEF, Save the Children, and Mercy Corps in Syria, as well as regionally.



Kahale holds a Master's Degree in Gender, Development and Globalization from the London School of Economics. She is currently based in Beirut.

RIANNE LETSCHERT

Rianne Letschert has been rector magnificus of Maastricht University since September 2016. She studied international law at Tilburg University, the University of Amsterdam, and the University of Montpellier. She obtained her Ph.D. from Tilburg University in 2005, with a thesis entitled “The Impact of Minority Rights Mechanisms, Exploring the Competing International Organizations that Formulate Policy and Legislation on National Minorities.”



In March 2011, Letschert was appointed professor to the newly established chair in Victimology and International Law at Tilburg University. From April until August 2010, she was a visiting research fellow at the Lauterpacht Centre for International Law at the University of Cambridge as well as a research fellow at Clare College in Cambridge, where she is a lifelong member. In 2014, she also held a visiting professorship at the University of Barcelona. She has written and edited various books, and published articles in national and international scholarly journals.

Letschert received a Vidi grant from the Netherlands Organization for Scientific Research (NWO) in May 2015 for her research on the impact of international tribunals on societies and people who are confronted with serious violations of human rights and international crime. She is an expert consultant on casualty cases to the Special Tribunal for Lebanon, and she also previously directed the International Victimology Institute Tilburg (INTERVICT). In 2012, she became a member of the Young Academy of the Royal Netherlands Academy of Arts and Sciences (KNAW) and was appointed as its chair in April 2015.

ELIZABETH LIRA

Elizabeth Lira is a Chilean clinical psychologist, researcher, and family therapist. She is currently the dean of the Faculty of Psychology (2014-2018) at the University Alberto Hurtado in Santiago, Chile, where she previously served as director of the Center for Ethics (2006-2014).



She has been honored with several prizes for her work with victims of human rights violations, including the American Psychological Association International Humanitarian Award (2002) and has published widely on the impact of political violence. She was a member of the National Presidential Advisory Commission for the Qualification of Disappeared Detainees, Political Executed and Victims of Political Prison and Torture (2010-2011) and the Chilean National Commission on Political Prison and Torture (2003-2005).

HELEN MACK

Helen Beatriz Mack Chang is the founder and president of the Myrna Mack Foundation, an organization dedicated to challenging the culture of impunity within the Guatemalan military and seeking justice for survivors of human rights abuses. A businesswoman by trade, she was transformed into a leading human rights and judicial reform activist following the government-ordered assassination of her sister, Myrna Mack, in 1990.



In 1997, she was named head of the Commission for Justice Strengthening, a multi-sectorial body that aimed to improve civilian oversight of Guatemala's security forces. She helped co-found the Pro-Justice Movement in 1999, which aimed to promote greater transparency in electing justice officials. In 2009, she helped form the Guatemala Forum, a network of over 50 organizations supporting the work of the International Commission against Impunity in Guatemala (CICIG). In 2011, she served as the head of the Presidential Commission on Police Reform in Guatemala and championed reforms to strengthen, modernize, and professionalize the Guatemalan National Civilian Police (PNC).

Mack has received several significant recognitions of her work, including the Right Livelihood Award in 1992, considered the alternative Nobel Peace Prize winner; the Notre Dame Prize for outstanding public service in Latin America in 2005; the King of Spain Prize in Human Rights in 2006; the Order of the Legion of Honor in Grade of Knight of the Government of France in 2011; the Washington Office on Latin America (WOLA) Human Rights Award in 2012; and, in June 2014, she received an Honorary Doctorate in Law from the University of Guelph in Canada.

ANJA MIHR

Anja Mihr is founder and program director of the Humboldt-Viadrina Center on Governance through Human Rights in Berlin, Germany. She has held professorships for public policy, international relations, and human rights at the Willy-Brandt School of Public Policy, Erfurt University, and at the Netherlands Institute of Human Rights (SIM), University of Utrecht, Netherlands.



She has been head of the Rule of Law Department at The Hague Institute for Global Justice and carried out a number of visiting professorships for human rights, including at Peking University Law School in China together with the Raoul Wallenberg Research Institute on Human Rights, Lund University in 2008. From 2006-2008, she was the European program director for the European Master's Programme in Human Rights and Democratization (EMA) at the European Inter-University Center for Human

Rights (EIUC) in Venice, Italy. She received her Ph.D. in Political Science from the Free University in Berlin, Germany, in 2001.

Mihr has been teaching governance and human rights with an interdisciplinary approach since 2002 in various European, U.S., and Chinese institutions, and developed her own Master's Program on Governance and Human Rights in 2015. She has been one of two principal investigators and research directors of the European ORA Project on the Impact of Transitional Justice Measures on Democratic Institution-building. Her work focuses on transitional justice, public policy, governance, and human rights.

She has published a number of books and articles on international human rights regimes, human rights education, transitional justice, European human rights system, and NGOs and has served as co-editor of the *European Yearbook of Human Rights* as well as the *German Journal for Human Rights*.

ABDELHAY MOUDDEN

Abdelhay Moudden, a Moroccan national, received his Ph.D. in Political Science from the University of Michigan. He has been on the faculty of Mohamed V University in Rabat since 1978, teaching political science and international relations. He is the founder and the academic director of the Center for Cross Cultural Learning since 1995 and founder in 2005 of Ribat al Koutoub (www.ribatalkoutoub.ma), an electronic magazine in Arabic which specializes in book reviews.



Moudden is a former member of the Moroccan Truth and Reconciliation Commission and of the Consultative Council for Human Rights. His most recent publications include "Ihbat: Disillusionment and the Arab Spring in Morocco," *Journal of North African Studies*, Fall 2015 (co-authored with Taeib Belghazi), and in Arabic, "The Painful Past and Justice" (2011), "Dilemmas of Political Reconciliation" (2013), and "Transitional Justice and Liberalized Autocracy: The Case of Morocco" (2013).

JEUDY OEUNG

Jeudy Oeung is currently a political officer at the Embassy of Sweden in Phnom Penh, Cambodia, where he manages Swedish support in the area of human rights and democracy in relation to civil society and acts as a focal point for issues related to the judiciary and political development in the country. He is also an attorney-at-law.



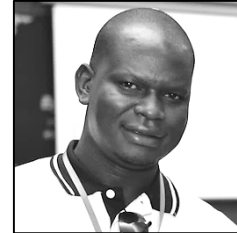
He serves as a member of the Board of Directors of Kdei Karuna (KdK), a local NGO (formerly the International Center for Conciliation), which works to promote social harmony, peace, and justice through oral history education, social dialogue, and memorialization. He previously worked for the Cambodian Human Rights Action Committee

(CHRAC), a coalition of Cambodian NGOs. He has worked for over eight years in the areas of human rights, the Khmer Rouge tribunal, and legal and judicial reform.

He holds a Master's of Art in International Relations from Pannasastra University of Cambodia (PUC) and a Bachelor of Law from Royal University of Law and Economics (RULE), Cambodia.

STEPHEN OOLA

Stephen Oola is currently a senior advisor on legal and constitutional affairs at the Joint Monitoring and Evaluation Commission (JMEC) overseeing the implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan. Oola is the co-founder and director of Amani Institute Uganda, a peacebuilding think tank based in Gulu, northern Uganda, and an advocate (attorney) in the High Court of Uganda.



Until September 2016, he was head of the Conflict, Transitional Justice, and Governance Program at the Refugee Law Project (RLP), School of Law, Makerere University in Kampala (2013-2016). He also led the Research and Advocacy Department at RLP from 2010-2012 and conducted a countrywide reconciliation and transitional justice audit in Uganda (2011-2012). From 2007-2009, Oola was the transitional justice lawyer at RLP.

Oola holds a LL.B. (Hons) from Makerere University and a Master's of Art in International Peace Studies from the University of Notre Dame, U.S.A. As a pre-doctoral fellow at the University of Antwerp, Belgium (2012), his interest and expertise was in transitional justice, peacebuilding, and development in Africa. Oola led the drafting of the National Reconciliation Bill for Uganda, the African Union Transitional Justice Policy Framework, and JMEC's Transitional Justice Strategy for South Sudan. Oola is a member of the African Commission on Human and People's Rights' Advisory Committee on the Study on Transitional Justice in Africa.

STEPHAN PARMENTIER

Stephan Parmentier studied law, political science, and sociology at the universities of Ghent and Leuven (Belgium) and sociology and conflict resolution at the Humphrey Institute for Public Affairs, University of Minnesota-Twin Cities. He currently teaches sociology of crime, law, and human rights at the Faculty of Law of the University of Leuven and previously served as the academic secretary of the Faculty of Law (2002-2005) and head of the Department of Criminal Law and Criminology (2005-2009). He is a Board member of the Centre for Global Governance Studies at the University



of Leuven and a member of the Leuven Mediation Platform. He is also in charge of international relations in criminology at Leuven University and, in July 2010, was elected secretary-general of the International Society for Criminology (re-elected in August 2014). He serves on the Advisory Board of the Oxford Centre of Criminology and the International Center for Transitional Justice (New York).

Parmentier has served as a visiting professor (Oñati, San José, Sydney, Tilburg, Tokyo, Venice), visiting scholar (Oxford, Stellenbosch, Sydney) and guest lecturer in the fields of human rights, justice and peace, criminology, and socio-legal studies. He is the founder and co-general editor of the international book *Series on Transitional Justice* (Intersentia Publishers, Cambridge/Antwerp), and editor of the *Restorative Justice International Journal* (Routledge, Abingdon). He co-founded and co-directs the Flemish Inter-university Research Network on Law and Development and co-organizes the summer course on Human Rights for Development. He also serves as a referee to the European Research Council funding schemes of the European Union, and several national and international research foundations.

Over the past quarter century, he has been an advisor and consultant to the European Committee for the Prevention of Torture, the Belgian Minister of the Interior, the Belgian Federal Police, the King Baudouin Foundation, and Amnesty International. His research interests include political crimes and transitional justice, human rights and migration, and restorative justice and peacebuilding. Between 1999 and 2002, he served as the vice-president of the Flemish section of Amnesty International.

FREDY PECCERELLI

Fredy Peccerelli is the executive director of the Forensic Anthropology Foundation of Guatemala (FAFG). Since his return to Guatemala in 1995, he has dedicated his life to upholding human rights and dignity through the application of forensic sciences. Peccerelli is an internationally renowned human rights defender and forensic anthropologist, and founding member of FAFG.



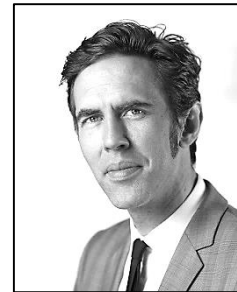
Today, as FAFG's executive director, Peccerelli leads the development and implementation of a Multidisciplinary Human Identification System that applies victim investigation, forensic-archaeology, anthropology, and genetics to uncover the identity of victims of mass human rights abuses, and the truth behind their disappearance. Applied in over 1,800 cases throughout the country, the system supports the search for and identification of victims from Guatemala's internal armed conflict (1960-1996). FAFG is the sole organization that family members trust to search for their loved ones, and these trusting relationships now reach internationally as FAFG is sought after in other post-conflict countries. Working within and supporting Guatemala's Public Ministry, the ministry uses the evidence uncovered by the FAFG to hold the perpetrators accountable for their crimes against humanity committed during the conflict. FAFG is often called upon to

testify and present expert reports in emblematic cases in the Guatemalan judicial system. Peccerelli has testified as expert witness in the 2013 genocide case against Ríos Montt in a Guatemalan national court, as well as before the International Criminal Court for the former Yugoslavia (ICTY), and the Inter-American Court of Human Rights.

Peccerelli was the Queen's University 2015 Chancellor Dunning Trust Lecturer. He has been presented with the Special Honors Medal from Canadian Governor General David Johnston; the Abraham Lincoln Brigade Archives (ALBA)/Puffin Award for Human Rights Activism; the 2008 Heinz R. Pagels Human Rights Scientists Award; and was the first recipient of the Washington Office on Latin America (WOLA) Human Rights Award. Time Magazine and CNN named Peccerelli one of "50 Latin American Leaders for the New Millennium."

ANTONY PEMBERTON

Antony Pemberton is professor of victimology and director of INTERVICT, the International Victimology Institute Tilburg at Tilburg University in the Netherlands. He is a political scientist and a criminologist. His research interests concern the broad topic of Victims and Society, including victims' perspectives on justice, societal reactions to victims and processes of victimization, cultural victimology, narrative victimology and the ethics of victimology. He has published over 80 articles, book chapters, and books on the subject of victimology. Most of his current ideas are reflected in his inaugural address in Tilburg, *Victimology with a Hammer: the Challenge of Victimology* (Prismaprint, 2015).



BORISLAV PETRANOV

Borislav Petranov is director of global rights and accountability for the Open Society Human Rights Initiative. His portfolio supports the organizations anchoring the human rights movement and work on transitional and international justice.



Before joining Open Society, Petranov reviewed protection systems for human rights defenders as a consultant to the Ford Foundation. He has also served as the Sigrid Rausing Trust's deputy director and program director for civil and political rights, and as a Moscow-based program officer for human rights and justice at the Ford Foundation. At INTERIGHTS (the International Centre for the Legal Protection of Human Rights), he managed the organization's work in Central and Eastern Europe, focusing on litigation before the European Court of Human Rights and various U.N. bodies, as well as on Europe-wide projects related to access to justice and legal aid, and anti-discrimination.

Working with colleagues on advisory bodies of the Institute for the Study of Human Rights at Columbia University and the Center for Reproductive Rights, Petranov has contributed to research and litigation strategies on reproductive rights, and on freedom of conscience and belief.

Petranov holds an LL.M. in international human rights law, with distinction, from the University of Essex. He also served as a junior research fellow at Wolfson College, Oxford.

JOANNA R. QUINN

Joanna Quinn is director of the Centre for Transitional Justice and Post-Conflict Reconstruction and associate professor of political science at the University of Western Ontario in London, Ontario, Canada. Her research considers acknowledgement in overcoming the causes of conflict, or the recognition of past events, and looks at its potential to affect real and lasting change. She seeks to understand why bystanders and outsiders do not care to understand what has taken place in survivor communities, and ultimately never engage in processes of acknowledgement and reconciliation in those communities. Her current project further specifies the acknowledgement hypothesis (Quinn, 2003, 2010), demonstrating the importance of “thin sympathy” or a basic understanding of the needs of the other as a necessary condition for action. Quinn’s current work focuses on bystanders and outsiders, two groups normally excluded from the victim/perpetrator binary, but which are crucial to the success of social rebuilding. She has studied reconciliation and acknowledgement, through truth and reconciliation commissions and traditional justice, in Uganda, Fiji, Solomon Islands, and Haiti.



SIMON ROBINS

Simon Robins is a practitioner and researcher with an interest in transitional justice, humanitarian protection, and human rights. His work is driven by a desire to put the needs of victims of conflict and rights violations at the heart of efforts to address their legacies, and engaging with victim-centred, therapeutic, and emancipatory approaches to histories of violence. This has led to much of his work critiquing contemporary, liberal transitional justice, and seeking approaches to justice after conflict that prioritize local agency, process over goals, and that challenge unequal power relationships and structures of exclusion at both local and global levels: a transformative justice. The issue of persons disappeared and missing in armed conflict remains a focus of his work, and he published a book on this theme recently.



He is a senior research fellow at the Centre for Applied Human Rights at the University of York, and consultant for a range of international agencies. He is currently working on research projects addressing transitional and transformative

justice in Tunisia, in Nepal with the Truth and Reconciliation Commission, the Disappearance Commission and victims' groups, and on the issue of migrant bodies, missing to their families, at Europe's southern borders.

NAOMI ROHT-ARRIAZA

Naomi Roht-Arriaza is distinguished professor of law at UC Hastings College of Law. She grew up in New York and Latin America, including stints in Chile, Guatemala, and Costa Rica. She earned a B.A. from UC Berkeley, a M.A. from the UC Berkeley Goldman School of Public Policy, and a J.D. from the UC Berkeley School of Law. Roht-Arriaza has worked as an immigration paralegal, an organizer, and a teacher for a nonprofit focused on corporate accountability. After graduating from law school, she clerked for Judge James Browning of the Ninth Circuit Court of Appeals in San Francisco. During 1991 to 1992, Roht-Arriaza was the first Riesenfeld Fellow in International Law and Organizations at UC Berkeley School of Law.



Roht-Arriaza is the author of *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (2005) and *Impunity and Human Rights in International Law and Practice* (1995), and co-editor of *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*. She is a co-author on *The International Legal System: Cases and Materials* (6th ed.) with Mary Ellen O'Connell and Dick Scott (Foundation Press 2010). She continues to write on accountability, both state and corporate, for human rights violations as well as on other human rights, international criminal law, and global environmental issues. In 2011, she was a democracy fellow at the U.S. Agency for International Development, and in 2012, she was a senior Fulbright Scholar in Botswana.

NELSON CAMILO SÁNCHEZ

Nelson Camilo Sánchez is a research coordinator at the Center for the Study of Law, Justice, and Society (Dejusticia) and an associate professor at the Universidad Nacional de Colombia in Bogotá. He holds a J.D. from the Universidad Nacional de Colombia, an LL.M. in International Legal Studies from Harvard Law School, and a J.S.D. from the Universidad Nacional de Colombia. During 2004-2005, he received the Rómulo Gallegos scholarship from the Inter-American Commission of Human Rights (Washington D.C.).



His recent publications include "Corporate Accountability, Reparations, and Distributive Justice in Post-Conflict Societies" (in *Corporate Accountability in the Context of Transitional Justice*, edited by Sabine Michalowski) and "Return within the Bounds of the Pinheiro Principles: The Colombian Land Restitution Experience" (*Washington University Global Studies Law Review*, co-authored with David Attanasio).

ANDREW SONGA

Andrew Songa is a lawyer and human rights advocate with over six years of experience in the areas of legal research, policy formulation and analysis, domestic and international policy advocacy, and civic education. His work has centered on the thematic areas of indigenous peoples' rights, forced migration, land rights and transitional justice. He is currently the program manager in the area of transformative justice for the Kenya Human Rights Commission (KHRC) and sits on the board of the Constitution and reform Education Consortium (CRECO).



Songa is a member of the Steering Committees of the Kenya Transitional Justice Network (KTJN) and has previously served in the same capacity for the Protection Working Group on Internal Displacement (PWGID). He is currently a member of the Advisory Committee for the Study of Transitional Justice in Africa currently being undertaken by the African Commission on Human and Peoples' Rights (ACHPR) as well as a member of the Reference Group assisting the ACHPR to draft a General Comment on the Right to Redress for Victims of Torture and Other Ill Treatment.

HUGO VAN DER MERWE

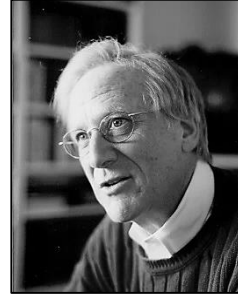
Hugo van der Merwe is director of research, knowledge, and learning at the Centre for the Study of Violence and Reconciliation (CSVR) in South Africa. Since joining CSVR in 1997, he has developed and managed numerous research advocacy and intervention projects relating to transitional justice, reconciliation, and peacebuilding in South Africa and the African continent.



Van der Merwe is the co-editor-in-chief of the *International Journal of Transitional Justice* (Oxford University Press). His publications include *Assessing the Impact of Transitional Justice* (2009), *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (2008), and *Conflict Resolution Theory and Practice* (1993). He received his doctorate in Conflict Analysis and Resolution from George Mason University (1999).

HARVEY WEINSTEIN

Harvey Weinstein (M.D., M.P.H.) is senior research fellow at the Human Rights Center of the University of California, Berkeley and a retired clinical professor in the School of Public Health. As associate director of the Human Rights Center from 1998-2005, he directed the Forced Migration and Health Project and was co-principal investigator on three other projects: Communities in Crisis; Justice, Accountability and Social Reconstruction in Rwanda and Former Yugoslavia, Intrastate Conflict and Social Reconstruction; and Education for Reconciliation in Rwanda: Creating a History Curriculum After Genocide.



He is the author of *Psychiatry and The CIA: Victims of Mind Control* (APA Press, 1990) and co-editor of *My Neighbor, My Enemy: Justice and Community After Mass Atrocity* (Cambridge University Press, 2004). He was founding co-editor of the *International Journal of Transitional Justice*. He has written articles on empathy, reconciliation, social reconstruction, history and identity, and the limits of justice. His chapter, "Victims, transitional justice and social reconstruction: Who is setting the agenda?" appeared in Inge Vanfraechem, Antony Pemberton, Felix Mukwiza Ndahinda, *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Routledge, 2014) and his paper (with Laurel Fletcher) titled "Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals" appeared in the *Journal of Human Rights Practice* (2015). His chapter (with Laurel Fletcher), "Transitional Justice and the 'Plight' of Victims" is forthcoming in the "Handbook of Research in Transitional Justice" (Elgar, 2017). He is a past-chair of the Refugee and Immigrant Caucus of the American Public Health Association and a distinguished fellow of the American Psychiatric Association.