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# Considerations for a collaborative approach to post-conflict development and transitional justice in Syria

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## **Abstract**

Neither transitional justice nor post-conflict development is possible without the other. Thinking about reconstruction, and development more generally, requires an understanding of core political issues of ownership, governance and participation which are similarly key concerns of transitional justice. Such issues also need to be informed by longer-term processes for development which includes strategies for rehabilitation, reform and reparation, all consequences of war which influence development outcomes.

A consideration of how post-conflict development objectives can inform a transitional justice process for Syria identifies key areas of convergence and divergence between the two fields as well as debates pertaining to the prioritisation of justice versus peace, international law, and contextualising strategies to individual states and post-conflict situations. In Syria, where work is already under way by multiple organisations and activist groups to facilitate, gather and document evidence of human rights violations in preparation for a future transitional justice process: a 'good-enough' approach to governance (Grindle, 2004), the strengthening of civil society to provide national level support, and institutional reform are identified as key areas for development intervention.

However, the success or otherwise of development interventions in these areas will rely upon a number of critical factors: the willingness of a transitional government to take ownership of post-conflict development and transitional justice processes, facilitate citizen participation by first addressing Syria's severe humanitarian crisis, and accept independent or international involvement where required; the capacity of Syrian civil society to provide national level support following an intense and prolonged period of conflict; the state of Syria's post-conflict physical and human resource; and the willingness of a divided Syrian society to accept cross-community human rights initiatives or a transitional government comprised of any one party where violations have been committed by both sides of the conflict.

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CIL	Customary international law
DDR	Disarmament, demobilisation, and reintegration
ECCC	Extraordinary Chambers in Court of Cambodia
HRBA	Human rights-based approach
HRW	Human Rights Watch
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
IDP	Internally displaced person
IHL	International humanitarian law
ICTY	International Criminal Tribunal for Yugoslavia
MDGs	Millennium development goals
NGO	Non-governmental organisation
NJWP	No Justice Without Peace
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PICC	Syrian Planning and International Cooperation Commission
PILPG	Public International Law and Policy Group
ROL	Rule of law
SAMA	Syrian Aid Management Authority
SCJA	Syrian Commission for Justice and Accountability
SDGs	Sustainable development goals
SJAC	Syria Justice and Accountability Centre
SLA	Sustainable livelihoods approach
SSR	Security sector reform
TRC	Truth and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme
UNSC	United Nations Security Council

## **Chapter 1: Introduction**

### **1.1 Background**

While transitional justice and development have, each in their own right, been topics of much theorising, debate and discussion; research on how transitional justice and development can inform and engage with each other remains a relatively new and less explored field of interest.

In the case of Syria, a state in the midst of conflict, multiple organisations and activist groups within and outside of the state have already begun work to gather and document evidence of human rights violations as well as to propose mechanisms and strategies for a future transitional justice process. A question is therefore; can that process be further informed by thinking about the relationship between transitional justice and development? How can a consideration of post-conflict development objectives inform a transitional justice process for Syria?

The United Nations (2010) define transitional justice as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (p.2). At its simplest, transitional justice comprises a collection of mechanisms designed to support the reconstruction and rehabilitation of post-conflict communities. The scope of development is, in contrast, much broader and open to interpretation. Defined by Sen as a “process that allows for the expansion of human capabilities for freedom and personal fulfilment ...” (as cited in Cobián & Reátegui, 2009, p.158-159), development in a post-conflict state is also a political process requiring widespread, non-discriminatory participation and the political will to empower local communities to realise sustainable change.

Like transitional justice, development strategies in post-conflict states are designed to facilitate reconstruction and rehabilitation. The difference is in development’s focus on moving beyond the healing process to increase the future capacity of post-conflict

states. In development, the range of activities is significantly wider and prioritises the collective group, while transitional justice focuses more intently on the individual and specific events (Cobián & Reátegui, 2009). Peace, as it relates to each concept, is an area of much debate and dissent. For development, peace and stability are pre-requisites for success; yet within the scope of transitional justice, there remains some disagreement as to whether justice or peace should be prioritised first.

Faced with a massive humanitarian crisis, mounting numbers of refugees and internally displaced persons (IDPs), and a government unwilling to step down or accept international assistance; the outlook for Syria is rapidly deteriorating. Yet, despite “decades of repression and state-sponsored violence ...” (Seils, 2013, p.1), the commitment of the growing movement of organisations and activist groups working to prepare for a future transitional justice process in Syria creates an opportunity to expand on their work and make connections with post-conflict development considerations.

## **1.2 Significance of the research**

A country of significant geopolitical and strategic importance, the majority of Syria’s population has suffered years of repression while a small and favoured Alawite minority has realised the benefit of Syria’s wealth and development. Briscoe et al (2012) advise that “[d]eep economic deprivation, authoritarian rule and ‘elite capture of public policy’ (Haddad, 2012, p.123) have intensified Syria’s deteriorating situation. Furthermore, the demise of democratic institutions and widespread destruction of infrastructure, housing, health and education services has been severe in many of Syria’s main cities. These factors and the unwillingness of the Assad regime to step down or allow humanitarian intervention, have given rise to a massive humanitarian crisis.

Despite numerous studies on transitional justice and development individually, the literature that brings the two fields together is only emergent. The author is not aware

of any research that has looked specifically at how a consideration of post-conflict development objectives can inform the design of a transitional justice process in a country where the conflict remains on-going. This, and the work of multiple organisations and activist groups to prepare for a future Syrian transitional justice process, presented a unique opportunity to undertake research into a dynamic and emergent field. This research report explores how a consideration of post-conflict development objectives can inform a transitional justice process for Syria. It brings together theories, mechanisms and strategies for transitional justice and development generally and considers their relevance to the specific context of Syria.

### **1.3 Limitations of the research**

By looking at one state alone, in this case Syria, it was not possible to assess whether or not a similar conclusion could be expected, or apply, to other post-conflict states. There was scope for some assumptions and generalisations to be made however; both transitional justice and development require that strategies be contextualised to individual states and post-conflict situations. Given the available length of the research report, it was considered more appropriate to focus on one state comprehensively than risk reducing the quality of the research by covering more content in lesser depth. Similarly, while it is acknowledged that states may choose to adopt a range of transitional justice mechanisms independently or in combination, for the purposes of the research and analysis, it was decided to focus on four core transitional justice mechanisms<sup>1</sup>: prosecution, truth-telling, reparation and institutional reform. This provided a framework from which to explore the potential for a collaborative approach to post-conflict development and transitional justice in the context of Syria.

Undertaking the research while the conflict in Syria remains ongoing, provided an opportunity to consider how mid-conflict preparations for a future transitional justice process might facilitate a more efficient post-conflict recovery. However, there was

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<sup>1</sup> Other potential mechanisms include: quasi-traditional justice mechanisms, memorialisation, amnesty, and the provision of psycho-social support.

also a risk that the volatility of Syria's situation could adversely alter the course of the research, limit its scope, and/or the likelihood of drawing substantive conclusions. Mitigations taken to address this risk included avoiding being too prescriptive at the onset of the research, maintaining an inductive approach and adapting to Syria's changing situation.

The emergent nature of the literature on transitional justice and development also meant that in addition to being part of what makes the research exciting, the availability of directly-relevant academic literature was somewhat limited. For this reason, other sources of information including the reports of international agencies and non-governmental organisations, documentaries and – with some speculation – social media and news reports (issued within and outside of Syria) were important contributors to the research. As it was not possible to travel to Syria for the purposes of undertaking fieldwork, the research relied solely on secondary sources of data. This meant a somewhat removed analysis, the rigor of which depended, to an extent, upon the veracity of the sources consulted. For this reason, a considered degree of speculation and selectivity was applied when assessing sources of information.

Most recently, the controversial re-election of Bashar al-Assad (3 June 2014) in the midst of the Syrian conflict brought a new dimension to the research and raised questions of whether or not there will be a post-conflict transitional justice process should the Assad regime remain in power. Although it was not possible to determine the impact of Assad's re-election within the scope and timeframe of the research, it seems likely that this will have a significant influence on the potential for post-conflict development and transitional justice in Syria. For the purposes of the research, and given the volatility of Syria's situation, it was decided to continue with the analysis noting that the composition of a transitional government in Syria will significantly influence the opportunity for such process.

Taking into consideration the background to the research, its significance and limitations, Chapter 2 details research methodology.

## **Chapter 2: Research methodology**

With a view to understanding how a consideration of post-conflict development objectives can inform a transitional justice process for Syria, the research utilised secondary sources and qualitative research techniques to:

- analyse existing literature on transitional justice and development;
- explore four core transitional justice mechanisms: prosecution, truth-telling, reparation and institutional reform;
- identify key debates and explore the relationship between transitional justice and development;
- consider how transitional justice and development can inform and engage with each other in a collaborative approach to the design and implementation of post-conflict development and transitional justice processes and strategies;
- assess the relevance of potential opportunities for a collaborative approach to post-conflict development and transitional justice, to Syria's specific and dynamic context.

The research was undertaken from an inductive approach which seeks to generate theories based on observations and the recognition of emerging themes and patterns (Davidson & Tolich, 2003). Beginning with an overview of transitional justice, four core transitional justice mechanisms commonly adopted by post-conflict states and their respective applications and purpose; the research sought to identify and explore emerging themes in transitional justice and development thinking.

In assessing key areas of convergence and divergence between post-conflict development and transitional justice, the research looked for areas of commonality which offered potential for a collaborative approach to both fields. The learning from this was then assessed for its relevance to Syria taking into consideration the specific challenges of the Syrian context. Unconstrained by pre-existing hypotheses, an inductive approach provided the freedom to explore the subject area and adapt as

required to reflect Syria’s dynamic situation. This was considered preferable to any attempt to pre-determine the outcome of a complex subject area that is highly political, emotionally-charged, and susceptible to rapid and ongoing change.

As, at the time of writing, the Syrian conflict remains ongoing; the main challenge of the research was the inability to undertake fieldwork. This prevented the opportunity to gain a first-hand perspective of the conflict and views on the potential for a collaborative approach to post-conflict development and transitional justice in Syria from a representative group of the Syrian population.

The following table provides an overview of the main research questions and the sources and methodology used to respond to them.

<b>PRIMARY RESEARCH QUESTION</b>		
How can a consideration of post-conflict development objectives inform a transitional justice process for Syria?		
<b>SUB-QUESTIONS</b>	<b>SOURCES</b>	<b>METHODOLOGY</b>
What are the key areas of convergence and divergence between transitional justice and development?	Academic journals; non-academic publications; popular media*; international legislation and agreements; existing case studies and reports; documentaries and news reports.	In-depth analytical study of source academic and non-academic material, existing case studies, reports, and online media including documentaries and news reports where applicable.  Research undertaken from an inductive approach to enable theories and ideas to be generated based on emerging themes and areas of commonality.
What are the challenges and opportunities for a collaborative approach to post-conflict development and transitional justice in the context of Syria?		

\*Popular media includes: You Tube, online newspapers, online discussion forums, and other social media.

Applying the methodology described here, Chapter 3 provides an overview of transitional justice, four core transitional justice mechanisms, and key debates pertaining to the prioritisation of justice versus peace, international law, and contextualising transitional justice strategies to individual states and post-conflict situations.

## Chapter 3: Transitional justice

### 3.1 Overview

Described by Teitel (2003) as a “conception of justice associated with periods of political change, characterised by legal response to confront the wrongdoings of repressive regimes” (p.69), transitional justice comprises multiple facets. For the purposes of this research, it is defined as:

The full range of judicial and non-judicial processes and mechanisms (with differing levels of international involvement, or none at all) that form part of a society’s attempts to find sustainable peace, ensure accountability, and serve justice in the wake of massive human rights abuses, violence and war. It is most suited to contexts where a change in national leadership or governance provides an opportunity to account for crimes of the past, and comprises mechanisms such as criminal prosecution, truth-telling, reparation and institutional reform, or a combination thereof<sup>2</sup>.

Notwithstanding origins attributed to the post-World War II Nuremberg Trials, it was not until the late 1980s to mid-1990s, coinciding with an international shift towards democracy, that transitional justice first began to emerge as a field in its own right (Arthur, 2009). Initially used by a reporter covering the 1992 Charter 77<sup>3</sup> sponsored “Justice in Times of Transition” conference in Salzburg, the term ‘transitional justice’ was “invented as a device to signal a new sort of human rights activity and as a response to concrete political dilemmas human rights activists faced in what they understood to be transitional contexts” (Arthur, 2009, p.326). A few years earlier, the 1988 Aspen Institute<sup>4</sup> Conference had also been elemental in considering questions and ideas that paved the way for recognising transitional justice as a field in its own

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<sup>2</sup> The definition of transitional justice provided for the purposes of this report represents a combination of definitions for transitional justice by: Clark (2013, para 7), Cobián & Reátegui (2009, p.143), Seils (2013, p.2), and the United Nations (2010 as cited in GSDRC Applied Knowledge Services, para 1).

<sup>3</sup> The Charter 77 movement was founded in 1977 by a community of Czechoslovakians to protest the violation of human and civil rights following the defeat of the Czechoslovakian reformatory movement in 1968 (Prečan, 2007).

<sup>4</sup> A Washington-based educational and policy studies organisation focused on developing leadership and open-minded discussion (The Aspen Institute, 2014).

right (Arthur, 2009). The conference sought to clarify state obligations under international law, the challenges faced by victims, and critical importance of impartiality in judicial proceedings (Arthur, 2009).

Today, “the question is no longer whether there should be accountability for mass violence but what form it should take” (Fletcher and Weinstein, 2004, p.29). In reaching this point, transitional justice has passed through what Teitel (2003) identifies as three distinct phases. The first or post-war phase can be traced to the 1945 Nuremberg trials which served as the basis for the establishment of international criminal courts and tribunals (Teitel, 2003). In this phase the primary goal of transitional justice was accountability and determining whether justice should follow an “international or national, collective or individual” (Teitel, 2003, p.72) model. It was during this time that the jurisdiction of international criminal law was extended to the individual (Teitel, 2003).

Coincident with the end of the Cold War and fall of the Soviet Union, phase two in the development of transitional justice emerged in response to rapid democratisation and modernisation, and marked a move towards alternative strategies to prosecution and the adaption of the rule of law<sup>5</sup> to local contexts (Teitel, 2003). It was during this time that one of the most recognised transitional justice mechanisms the Truth and Reconciliation Commission (TRC) was born. With a primary goal of peace, the TRC sought to foster forgiveness and assist communities with the healing process by adopting a broader outlook and understanding of how and why human rights violations had occurred (Teitel, 2003). Phase two was also significant for the “privatisation and hybridisation of the law ...” (Teitel, 2003, p.94).

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<sup>5</sup> Defined as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (Report of the Secretary-General, 2004 as cited in UNROL, n.d., para 4).

The third and current phase in the development of transitional justice represents the normalisation of transitional justice strategies in response to globalisation and increasing instances of civil conflict, the expansion of international humanitarian and human rights law to peacetime contexts, and compromises in the application of rule of law standards (Teitel, 2003). Of note, the International Criminal Court (ICC) was established during this phase to provide states with insufficient national capacity or political will a mechanism through which to uphold accountability (Alexander, 2003).

Aligned with Teitel's three phases of transitional justice are also three cross-cutting approaches to justice: distributive, retributive, and restorative. Distributive justice seeks to ensure the fair allocation of resource and is of particular relevance to reparation. Retributive justice refers to prosecution strategies. It focuses on individual versus collective accountability and places the responsibility for delivering justice onto the court (Weinstein & Stover, 2004). Lastly, restorative justice seeks to foster peace and reconciliation through mediation, negotiation and engagement in public forums (Weinstein & Stover, 2004).

The challenges to transitional justice however, are many. Key debates include the prioritisation of justice versus peace, the role of international law, and the degree of contextualisation required to individual states and post-conflict situations. Further complicating matters is the potential for conflict to recur in vulnerable states and need to ensure that transitional justice processes do not support a 'victor's justice' whereby the losing party bears the punishment for crimes that have occurred while winning party offenders go un-trialled and unpunished (Eisikovits, 2009).

Taking into consideration key challenges to transitional justice, Seils (2013) argues that the greatest results can be achieved when a combination of mechanisms is adopted. He notes the importance of widespread community participation throughout all stages of a transitional justice process, recommending that "[i]nitial efforts should be directed at the mapping of violations and [community] attitudes as well as identifying capacities and possibilities for dealing with them" (Seils, 2013, p. 4). To develop an understanding

of key considerations in the design of a transitional justice process, the following considers four core transitional justice mechanisms: criminal prosecution, truth-telling, reparation, and institutional reform.

## **3.2 Mechanisms**

### **3.2.1 Prosecution**

The first example of a transitional justice mechanism in use today, the Allied-driven trial of war criminals following the end of World War II set a precedent for the international criminal tribunals that would emerge in the years that followed (Alexander, 2003). Most notable of these, the International Criminal Court (ICC) has become a symbol for the normalisation of transitional justice (Teitel, 2003). Established in 1998 by the Rome Statute<sup>6</sup>, a key advantage of the ICC has been its ability to uncover and prosecute high level war criminals that might otherwise have remained protected by those loyal to them (Alexander, 2003). Nevertheless, the disadvantages to this method are noteworthy. As many international tribunals are located outside of the country in which crimes have occurred, the distance from the scene of the crime and its victims can create a sense of separation and suspicion of outside influence (Alexander, 2003). Similarly, the potential incompatibility of legal qualifications and the laws of differing jurisdictions can reduce public confidence and undermine domestic prosecution processes (Alexander, 2003). In former Yugoslavia, the lack of connection to national reconstruction processes or a direct relationship between the International Criminal Tribunal for Yugoslavia (ICTY) and the Bosnian judicial system has adversely affected the credibility of the tribunal and potential achievement of its goals (Fletcher & Weinstein, 2004).

Domestic courts offer the local ownership and accessibility lacking in international tribunals yet can suffer from limited resource, a lack of impartiality, and the political will to deliver and enforce criminal verdicts (Alexander, 2003). In Rwanda, the lack of a

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<sup>6</sup> The Rome Statute of the International Criminal Court is an independent international organisation and the first treaty-based permanent international criminal court (ICC, n.d.). It was established by a conference of 160 states on 17 July 1998 (ICC, n.d.).

suitable domestic framework, scarcity of skilled staff, and slowness with which trials progressed, led to the development of an alternative measure, the Gacaca Courts<sup>7</sup>, to help process vast numbers of criminals awaiting trial (Alexander, 2003).

A third method of prosecution, the hybrid court or tribunal, draws on international strategies and expertise to strengthen domestic judicial processes. One of the earliest examples of the hybrid court, the Extraordinary Chambers in the Courts of Cambodia (ECCC) was established in acknowledgement of the international nature of the crimes committed during the reign of the Khmer Rouge and in support of a weak Cambodian judicial system (ECCC, 2006-2013). Based in Cambodia, the ECCC is a collaboration with the United Nations to prosecute senior leaders of the Khmer Rouge for their role in the Cambodian genocide (ECCC, 2006-2013). The court is independent however utilises both Cambodian and foreign judges to apply international standards (ECCC, 2006-2013).

### **3.2.2 Truth-telling**

Established for a specified period of time to investigate human rights violations in the aftermath of conflict, truth-telling is a restorative approach to transitional justice most commonly associated with officially sanctioned non-judicial commissions of inquiries (Alexander, 2003) such as the TRC. Believed to offer the greatest opportunity for reconciliation, the TRC promotes the healing and reconciliation of post-conflict societies while investigating and documenting human rights violations (Hamber, 2006 & Hayner, 2001 as cited in Clancy & Hamber, 2008). It has been particularly favoured in situations where there have been enforced disappearances and information withheld by a repressive regime (Teitel, 2003). Arguably most renowned of the TRCs, the South African TRC was set up to assist a post-apartheid transition in South Africa. Over five

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<sup>7</sup> The Gacaca or community court is an example of a quasi-traditional justice mechanism. A response to the capacity limitations of local courts in dealing with high volumes of cases, quasi-traditional justice mechanisms are a form of restorative justice that exist outside the formal state framework and seek to rebuild trust and achieve justice in ways that are in keeping with community beliefs and value systems (Alexander, 2003). They are a hybrid mechanism (rather than court) with origins in community-based systems that are later “integrated in part into the judiciary and regulated by law (UK Department for International Development, 2004 as cited in UN Women, 2012a, para 1).

years the TRC held public hearings with the goal of facilitating a community-wide healing process and ensuring that crimes would neither be repeated, neither denied nor forgotten (Weinstein & Stover, 2004). However, there are also disadvantages to a TRC. These include a heavy reliance on state institutions to implement TRC recommendations and the potential for victims to have to relive psychological trauma as a result of their participation (Alexander, 2003).

### *Amnesty*

Often applied within the mandate of a TRC, amnesty may be granted generally or conditionally, individually or collectively (Alexander, 2003), and is “the process by which states exercise their sovereign right to mercy by extinguishing criminal or civil liability for past crimes” (McEvoy & Mallinder, 2012, p.413). General amnesty (a form of amnesty pertaining to crimes committed during a specified period of time) surmises that crimes should be “‘forgotten’ in the sense that they are erased from legal memory, and the perpetrators are not held accountable” (Alexander, 2003, p.43). Conditional amnesty is granted on the basis of specific criteria and conditions. It surmises that “... the crime is not ‘forgotten’, but the perpetrator is exempt from certain forms of punishment” (Alexander, 2003, p.43), and is often applied in situations where an incentive is required to encourage truth-telling (Alexander, 2003).

Concerns pertaining to amnesties include who should decide on them, which crimes they should apply to (McEvoy & Mallinder, 2012), and whether or not granting them in place of justice is a violation of human rights (Alexander, 2003; McEvoy & Mallinder, 2012). However, McEvoy and Mallinder (2012) caution dismissing amnesties altogether and suggest “that appropriately designed restorative amnesties can be both lawful and effective as routes to truth recovery, reconciliation, and a range of other peacemaking goals” (p.410). In the case of the South African TRC, amnesty was offered to political offenders in exchange for revealing the truth of their participation in apartheid (Mallinder & McEvoy, 2011). This is one example of how an amnesty could be designed

to work in complement to other transitional justice mechanisms (Mallinder & McEvoy, 2011).

### **3.2.3 Reparation**

A form of distributive justice, reparation can comprise both individual and collective methods and aims to not only compensate for loss experienced as a result of conflict and crime but to “reintegrate the marginalised and isolated back into society so that they can contribute to the future rebuilding ...” (Roht-Arriaza, 2004, p.122) of their country. There are four main categories of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees (REDRESS, n.d.). Of these, restitution seeks to return victims and their communities to a pre-crime/pre-conflict situation while compensation offers support to atone for pain, suffering, trauma and lost opportunities (REDRESS, n.d.). Rehabilitation relates to the provision of social, legal and psychological care for health and well-being while satisfaction and guarantees may take the form of public acknowledgements and commemorations designed to deter conflict recurrence (REDRESS, n.d.).

Reparation may also be categorised as moral or material. Examples of individually-based moral methods include reburials and the exhumation of victim remains (Alexander, 2003; Roht-Arriaza, 2004). Collective examples include public services and memorials, education system reform, the preservation of war sites and mourning ceremonies (Alexander, 2003; Roht-Arriaza, 2004). For individually-based material methods, examples include cash payments, access to rehabilitative social services, the return of property or possessions, and opportunities for employment. Collective material examples comprise improved health and education services and the rebuild of critical infrastructure (Alexander, 2003; Roht-Arriaza, 2004).

Although helpful in restoring trust in the state and state institutions, a significant challenge of reparation is to ensure the equality of distribution. Heavily reliant on the availability and accuracy of public records where these may be damaged or no longer

exist, states can encounter difficulties in determining victim eligibility, assessing wide and disparate needs, and distributing reparations accordingly (Alexander, 2003).

### 3.2.4 Institutional reform

Institutional reform refers to the process of reviewing and restructuring state institutions that have been involved with, or supported, a repressive regime “into institutions that support the transition, sustain peace and preserve the rule of law” (United Nations, 2006, p.3). Its primary goal is to ensure accountability and prevent the recurrence of human rights violations and conflict (United Nations, 2006). This can include measures such as: vetting; lustration; disarmament, demobilisation and reintegration (DDR - see below); the reform or establishment of legal frameworks and oversight bodies; and training public officials in international law (ICTJ<sup>8</sup>, 2014; United Nations, 2006).

Of these, vetting and lustration are two practices often referred to interchangeably but with subtle differences. Vetting involves the examination of employee backgrounds with the intent to prevent those with a history of past abuse or “integrity deficits” from working in public services (United Nations, 2006, p.4). Lustration, in contrast, extends the process beyond the public service to quasi- and non-governmental positions (ICTJ, 2014b). At its extreme, lustration can include the “wholesale firing from government positions of those who served under a repressive regime” (Fletcher & Weinstein, 2004, p.29).

A further method of institutional reform, DDR programmes offer combatants an opportunity to re-integrate with civil society (ICTJ, 2014). In the first, or disarmament phase, weapons are removed and destroyed. This is followed by a demobilisation phase where combatants may be housed in camps while further background information is sought (Özerdem, 2002). In the final reintegration stage, combatants are helped to resettle within the community and provided with social services support that

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<sup>8</sup> The International Center for Transitional Justice (ICTJ) is an international non-profit organisation specialising in transitional justice. The ICTJ was established in 2001 and is headquartered in New York.

can include access to education and employment opportunities, counselling services, and housing (Özerdem, 2002).

The establishment of regulatory oversight bodies further helps to ensure that structures which have enabled human rights violations to occur are disempowered. Targeted training programmes may also help to educate public officials on legal frameworks such as peace treaties, charters and constitutional amendments which protect and promote human rights (ICTJ, 2014).

### **3.3 Key debates**

#### **3.3.1 The prioritisation of justice versus peace**

A subject of much philosophical contention and debate, the argument for which should come first, justice or peace, is one that evokes passion and divisive opinion. For peace advocates, mechanisms such as amnesty, diplomacy, negotiation, and institutional reform are preferred methods for preventing conflict recurrence. Many believe that without the promise of amnesty, there is little incentive for truth-telling and that the potential “political bias” of prosecution and indictment can raise questions of impartiality (Davis, 2013, p.45). This is perhaps why amnesty has at times appeared within the mandate of TRCs, most notably in South Africa. Justice advocates, in comparison, believe that allowing crimes to go unpunished will hinder the likelihood of a successful post-conflict transition, and that justice can help to rebalance power differentials (Hannum, 2006) and individualise guilt (Davis, 2013). In particular, prosecution is seen as a deterrent to conflict recurrence and the ICC a vehicle through which to strengthen the rule of law where local justice systems are weak (Davis, 2013).

In recent years, there appears to have been a slight leaning towards justice as the more likely of the two fields to prevent conflict recurrence and “a trend towards institutions which emphasise prosecution for crimes committed regardless of national sovereignty or peace processes” (Centre for Conflict Resolution, 2007, para 2). Rather than requiring a choice between justice and peace however, the combination of peace and

justice-based mechanisms possible within the scope of a transitional justice strategy offers a way in which both can be prioritised simultaneously (Davis, 2013; Sriram, 2007). Each may have differing short-term strategies and goals, however, both justice and peace prioritise the needs of victims (Simpson, n.d.), and uphold values of impartiality and independence (Hannum, 2006). Simpson (n.d.) identifies three justifications for their complementarity:

- Justice and peace are not viewed as ‘mutually exclusive’ by victims of human rights abuses;
- The primary area of disagreement, punitive justice, is just one mechanism for dealing with past-conflict;
- Distinguishing peace as a separate process risks prioritising immediate gain over a longer-term solution that incorporates lessons learned from how and why the atrocities first occurred (p.4).

### **3.3.2 International law**

Upheld by the United Nations to constitute the ‘highest law of the land’, the rule of law governs the “norms, policies, institutions and processes that form the core of a society in which individuals feel safe and secure” (United Nations, n.d., para 7). At a national level, the rule of law governs transitional justice processes and strategies aimed at facilitating dispute resolution and ensuring accountability for human rights violations and war crimes (UNROL, n.d.). Internationally this widens to include the responsibility of states for their own, and state to state, conduct recognising “that peace and security, development, human rights, the rule of law and democracy are interlinked and mutually reinforcing” (UNROL, n.d., para 6). Specifically, the rule of law is strengthened whereby:

criminal trials demonstrate the generality of law through procedural guarantees and the application of justice to those in power; truth-telling provides the basis on which legal systems can behave in the future by contributing to an

understanding of how legal systems failed to protect the rights of citizens in the past; reparations signify a commitment to the notion that legal norms matter; and institutional reform measures help to make rule of law systems operative (De Grieff, 2009 as cited in Ndulo & Duthie, 2009, p.266).

However, there are several other laws of significance to transitional justice: international criminal law, customary international law (CIL), international humanitarian law (IHL), international human rights law, and jus post bellum, as well as the concept of victor's justice.

While there is no common definition of international crimes, international criminal law concerns individual responsibility for crimes in breach of treaties and CIL (Peace Palace Library, n.d.), "those norms of conduct that amount to a 'general practice accepted as law'" (ICRC, 2010 as cited in PILPG, 2013, p.13-14). Specifically, international criminal law requires fair trials both during and outside of armed conflict (Friedman, 2013), and encompasses four categories of crimes within the scope of the Rome Statute: war crimes<sup>9</sup>, crimes against humanity<sup>10</sup>, crimes of genocide<sup>11</sup> and crimes of aggression<sup>12</sup>. In the case of Syria, while two key international treaties (the 1953 Geneva Conventions and 1955 Convention on the Prevention and Punishment of the Crime of Genocide) have been ratified, notably the Rome Statute has not (PILPG, 2013). CIL however, is applicable to all conflicts and prohibits indiscriminate attacks, and inflicting unnecessary suffering or inhumane treatment (PILPG, 2013). It promotes accountability (and amnesty where possible); commits parties to respecting

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<sup>9</sup> Defined as "serious violations of international humanitarian law that occur during international or non-international armed conflict" (PILPG, 2013, p.7).

<sup>10</sup> Defined as certain "acts committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack ..." (Rome Statute of the International Criminal Court, 1998, p.3).

<sup>11</sup> Defined as certain "acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group ..." (Rome Statute of the International Criminal Court, 1998, p.3).

<sup>12</sup> With respect to an individual, a crime of aggression is described as "the planning, preparation, initiation or execution by a person in a leadership position of an act of aggression" (Coalition for the International Criminal Court, n.d., para 3) and in broader terms, "the use of armed force by one State against another State without the justification of self-defence or authorisation by the Security Council (Coalition for the International Criminal Court, n.d., para 3).

international humanitarian law; and offers protection against plundering, displacement and environmental damage (PILPG, 2013).

Described as the law of war, international humanitarian law (IHL) is “a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare” (ICRC, 2004, para 1). While perhaps not obviously relevant to the transition between conflict and peace, the relationship between IHL and transitional justice is critical in two specific areas: the pre-conflict phase, where the application of IHL is preventive; and the transitional phase where IHL is applied to ensure that accountability for IHL violations is enforced (Salmón, 2006).

Not specific to acts of warfare, human rights law “lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups” (OHCHR, 1996-2012, para 2). It applies to all humans without discrimination and may be referred to in treaties, principles or other international law as a form of guarantee that human rights will be protected (OCHCR, 1996-2012) and fair trials assured.

Jus post bellum, or the law of the post-conflict stage is the third of three categories of law relating to armed conflict which includes jus ad bellum<sup>13</sup> and jus in bello<sup>14</sup> (Österdahl, 2012). It is intended as “the legal means by which, in combination with other instruments in post-conflict peace-building, a war-torn society will be taken through the post-conflict state of transition and brought into a state of just and stable peace” (Österdahl, 2012, p.271). While there is some debate as to whether or not jus post bellum presently exists; the creation or strengthening of it could potentially fill a gap in existing legislation to deal with the unique and specific requirements of the transition period between conflict and peace (Österdahl, 2012).

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<sup>13</sup> Defined as “relating to the initiation of war...” (Österdahl, 2012, p.271).

<sup>14</sup> Defined as “relating to the conduct of war” (Österdahl, 2012, p.271).

A final area of contention is the concept of 'victor's justice' which fails to ensure the trial of winning party offenders (Eisikovits, 2009). An example of this is believed by some critics to have occurred in the wake of the Rwandan genocide where Tutsi perpetrators were not subjected to the same level of scrutiny and punishment as their Hutu counterparts.

### **3.3.3 Contextualising transitional justice strategies to individual states and situations**

With multiple diverse mechanisms for transitional justice able to be implemented individually or in combination, the choice for post-conflict states is wide and complex. For this reason, it may seem appropriate to seek models which others have implemented to some success. However, the extent to which a model or strategy is transferrable in whole, or in part, requires concentrated consideration. Influences such as race, religion, gender, history and politics as well as the ability to verify the accuracy of what has happened and to whom, are just some of the factors that can alter the requirements of individual situations. Each context will require a customised strategy and understanding "through deep contextual, cultural and linguistic engagement with ordinary people, local notions of justice or injustice and appropriate means of redress" (MacDonald, 2013, p.4).

A challenge of locally-developed transitional (or quasi-traditional) justice mechanisms is to ensure that these comply with the requirements of international human rights law, fair trial norms and standards (Friedman, 2013). The risk of 'victor's justice' and effect of this on opportunities for reconciliation as well as the potential for unresolved tensions to influence decision-making (Friedman, 2013) are key areas of concern. Undertaking a context-specific assessment of the contribution a traditionally-based mechanism is expected to make to realizing goals for peace and reconciliation (Friedman, 2013, p.759-760) is one potential mitigation.

This chapter has described the three-phase evolution of transitional justice following the post-World War II Nuremberg trials and focus on accountability, to the emergence of alternative strategies to prosecution, and the normalisation of transitional justice

strategies. It has assessed the four core mechanisms most commonly adopted by post-conflict states, and identified key debates pertaining to the prioritisation of justice versus peace, international law, and contextualising transitional justice strategies to individual states and post-conflict situations. Chapter 4 considers the relationship between transitional justice and development. It identifies key areas of convergence and divergence between the two fields, as well as potential opportunities for collaboration.

## **Chapter 4: Transitional justice and development**

### **4.1 The relationship between transitional justice and development**

With mutually reinforcing goals for social transformation and systemic change, national ownership, good governance, democracy, peace, and security; both transitional justice and development recognise the central role of the citizen in a comprehensive approach to justice and social change. “Ultimately, lasting peace and sustainable societies cannot be built in the aftermath of massive abuses without transitional justice, nor without development. Transitional justice must be part of a comprehensive development approach in post-conflict and transitional countries” (ICTJ, 2009, p.1).

Where transitional justice can learn from development’s wider experience in areas such as good governance, human rights-based and participatory approaches, multi-stakeholder coordination and consultation, and cross-cutting issues such as human rights, gender and the environment; it is essential that development actors consider the importance of transitional justice and incorporate this into development programming and planning. Where transitional justice seeks to atone for past crimes and facilitate the healing process of a state and its citizens; development is a large, heterogeneous field that

encompasses a broad range of disciplines and endeavors to improve the quality of life of people around the world. It includes both economic and social development and encompasses many issues such as humanitarian and foreign aid, poverty alleviation, the rule of law and governance, food and water security, capacity building, healthcare and education, women and children’s rights, disaster preparedness, infrastructure, and sustainability (Greiman, 2011, p.8).

Development further works to establish agreed frameworks that can help to facilitate the recovery of post-conflict states as well as programmes that address the immediate needs of post-conflict communities and translate into long-term sustainable activity.

However, development processes have also long been alert to the questions of justice, distribution, participation and power that accompany such interventions. Similarly, transitional justice's attention to peace, justice and reconciliation can be seen to lay the foundations for broader development interventions. Common to each field is a desire to understand the root causes of conflict. For transitional justice, this helps to inform justice decisions such as, who should be prosecuted and how, the method of prosecution, and what form post-conflict reparation should take. While, for development, an understanding of not only the root causes of conflict but of the processes of impoverishment and marginalization that can contribute to conflict, serves to guide and inform the planning and design of development programmes.

With "thematic overlap" in many sectors (ICTJ, 2009, p.1) and similarities in their mechanisms for realising change, there are a number of areas in which a collaborative approach to transitional justice and development could potentially build capacity, save resources, and strengthen common processes and systems. Drawing on the expertise of development actors in good governance, participatory and human rights-based approaches can help transitional governments to ensure equal opportunity for citizen participation in the development and implementation of transitional justice strategies. In turn, the recommendations of transitional justice mechanisms such as the Truth and Reconciliation Commission (TRC) can help to guide and direct development programming.

The following considers key areas of convergence and divergence between the two fields.

#### **4.1.1 Areas of convergence**

##### *Goals*

Social transformation and systemic change:

At the heart of overarching goals for transitional justice and development is the concept of social transformation. In the case of transitional justice, this may take the

form of a victim-centered approach to justice and the strengthening of inclusive citizenship (De Greiff, 2009). However, “[t]ransitional justice [also] reinforces the idea that the poor have agency, that they are not passive actors whom the development process ‘acts upon’ but people who can engage in ‘good struggles’ to end their oppression and poverty” (Addison, 2009, p.114). This reflection on agency and, by correlation, active citizenship, as core features of transitional justice suggests that a transitional justice process not only seeks to address victims’ needs but recognises the rights and agency of victims in seeking justice for past violations and rebuilding their livelihoods. The focus on community participation and empowerment, locally-driven initiatives, and sustainability is shared with alternative development. One of alternative development’s key proponents, Robert Chambers, coined the phrase ‘putting the last first’ (Chambers, 1983) to emphasise the importance of including the oppressed and marginalized within all phases of development programming and planning.

Equally critical to transitional justice and development goals for social transformation and systemic change is the need to ensure that strategies are developed in accordance with principles of human rights. In both fields the acknowledgement of people’s needs and the right to have these needs met is critical to empowering active citizenship. However, there is some difference in the emphasis placed on human rights in each field. In the case of transitional justice, human rights sit at the centre of transitional justice strategies while from a development perspective; human rights are one of several cross-cutting issues that inform development strategies.

Cobián & Reátegui (2009) describe both transitional justice and development as “[e]thical proposals that invoke systemic processes to make necessary changes in societies described as very imperfect, where it is very difficult for changes of that sort to come about incrementally” (p.165). In a post-conflict environment, the need for restorative processes arises as a result of atypical circumstances; therefore in the case of both transitional justice and development, the response is an intentional intervention rather than subconscious or immanent process (Cowen & Shenton, 1996).

**National ownership, good governance and democracy:**

National ownership of transitional justice and development processes and non-discriminatory citizen participation are critical components of a transitional justice process yet potentially rife with challenge in states suffering widespread trauma and a history of abuse (Clark, 2011). Democratization or a return to democracy (after conflicts that may have seen abuses of power and an absence of just and transparent decision-making processes) can provide a framework for transitional justice, and is a key element of good governance. Emerging in the late 1980s to address governance-related failures in development policies (OHCHR, 2006); good governance refers to state management of public affairs and resources for social and economic development (OECD, 1995 & UNDP, 2007 as cited in Gisselquist, 2012). It encompasses principles of participation, the rule of law, transparency, accountability (IFAD, 1999), and respect for human rights, all considerations upon which transitional justice is based (OHCHR, 2006).

**Peace and security:**

While an end to war and violence is a primary goal of transitional justice, of commensurate importance is the role of transitional justice in facilitating a healing and reconciliation process. In development terms, peace and stability are pre-requisites for development to occur. However, while also seeking an end to violence and conflict, post-conflict development focuses more intently on moving beyond the healing process to reconstruct and rehabilitate local communities across multiple sectors that can include infrastructure, the environment, social services, governance, and security.

In both fields, peace-based strategies such as mediation, negotiation and reform are commonly used in the re-establishment and strengthening of local security and judicial systems to prevent conflict recurrence. For transitional justice this can involve the restructure and reform of judiciary and police forces, the establishment of vetting processes, and provision of training for judicial and security sector personnel. Development activity can also support capacity building and reform efforts in the

judicial and security sectors by providing financial, administrative and training support in a broad array of areas such as conflict management, mediation, negotiation, finance, procurement, programme management and planning.

Where a significant proportion of young men have been involved in a conflict, their disarmament, demobilization and reintegration (DDR) similarly offers potential for collaboration. Transitional justice processes can facilitate disarmament and the award of financial and social reparation, while a development-based focus on longer-term processes of training and job creation, can provide the tools and social services support required to rebuild sustainable livelihoods.

#### *Concerns*

Vulnerable operating contexts:

Emerging to address needs arising from periods of intense conflict and abuse, transitional justice and post-conflict development must function in environments troubled by mass population displacement, trauma and physical devastation. Resources may be scarce or unevenly dispersed, the availability of qualified people and therefore the capacity of local institutions limited or non-existent, and food supplies decimated through environmental damage. Root causes of violence pertaining to race, religion, gender and politics may continue to exist, and there can emerge a complex mix of national and international actors vying to realise their own interests in the recovery of post-conflict states.

Each of these factors alone is cause for concern and demonstrates the extreme vulnerability of the context in which transitional justice and post-conflict development occurs. Understanding and reflecting a consideration of the background to the conflict and context, as well as which aspects of transitional justice and development may be possible in each phase of recovery, is critical to the planning and development of collaborative strategies.

Governance and accountability:

Concern for the capacity of post-conflict states to make informed decisions and adhere to principles of good governance and accountability is common to both fields. In many instances, transitional governments and state institutions may lack leadership capacity, and the physical and human resource required to govern vulnerable states. Where an existing government or regime is overthrown or steps down, a newly appointed transitional government may lack governance experience and be faced with learning the intricacies of good governance amidst a fragile environment and the competing interests of state supporters and opposition. Also of concern is a level of distrust in the state and state institutions that can intensify in the aftermath of conflict. States and state institutions or private sector elites may have been compromised by human rights violations or affiliated with root causes of the conflict (Lenzen, 2009) raising questions of impartiality and motivation. There may also be potential for victor's justice.

Where populations have fled or suffered massive extermination and displacement, there can be multiple human resource gaps to be filled in both transitional justice and development settings. Similarly, the time required to rebuild local capacity and address educational gaps (where conflict has deprived youth of critical formative education years) can leave shortfalls that require outside intervention in the immediate term. With respect to accountability, human rights lie at the heart of transitional justice strategies, and in recent years have become a key concern of development actors. This is reflected in steps taken by the United Nations to place a commitment to human rights and development at the centre of the Millennium Development Goals (MDGs) and acknowledge their vital contribution to "addressing the discrimination, exclusion, powerlessness and accountability failures that lie at the root of poverty and other development problems" (OHCHR, 2006, p.8). From a transitional justice perspective, accountability at a judicial level involves bringing perpetrators of war crimes and human rights violations to account by way of mechanisms such as criminal prosecution, truth telling, reparation and institutional reform (Addison, 2009). However, these strategies alone do not prevent victor's justice, which also requires accountability

mechanisms in place to hold the institutions that govern these processes to account. From a development perspective, both donors and recipients must be held accountable. This requires processes to ensure that states and state institutions are held responsible for their development practices, particularly as this relates to donor funding and conditionality<sup>15</sup>; but also that donors such as government ministries, international development agencies and financial institutions are held to account for ensuring that aid reaches its intended recipients and is utilized to address locally identified priorities.

Short-term gain versus long-term sustainability:

In both transitional justice and development there is a risk that short-term, immediate needs, or a desire for justice, take priority over long-term considerations. From a transitional justice perspective, a decision to focus on one strategy alone may risk longer-term peace and reconciliation. For example, prosecution, a primary strategy of many transitional states, may satisfy an immediate desire for justice, yet fail to analyse the root causes of the conflict or offer recommendations for reparation and reform. The scale of prosecution required in a post-conflict setting may also influence the selection of prosecution methods. An example of this is the Rwanda Gacaca Courts where genocide suspects were trialled for offences ranging from minor to serious crimes (Human Rights Watch, 2011). While the courts have been the subject of much criticism and debate, a significant question raised by the use of a community-based traditional justice mechanism, is whether or not trialling vast numbers of perpetrators in a short period of time can trivialise the seriousness of their crimes and risk the quality and fairness of trials. (Human Rights Watch, 2011)

Contextual influences:

In both transitional justice and development fields, there is increasing recognition of the influence of factors pertaining to race, religion, gender and politics; also the need

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<sup>15</sup> Requirements attached to aid that outline specific actions recipients must undertake in return for a loan or grant. Conditionality has been primarily associated with programmes of the International Monetary Fund (IMF), the World Bank, and other national development agencies (Killick, 2008).

to respond to root causes of the conflict and contextualize strategies to each state, post-conflict situation, and development requirement. From a development perspective, acknowledgement of the critical influence of contextual factors emerged in the 1980s in the form of alternative development theory, a backlash to the one-size-fits-all development approaches of the 1950s-60s. Described by Nederveen-Pieterse (1998) as a shift in development thinking to locally-driven, participatory and people-centred practices, this cultural shift in development placed the oppressed and marginalised at the centre of development strategies. Transitional justice similarly requires a consideration of contextual factors. An example of this is the TRC which analyses contextual factors in the course of investigating root causes of violence. Also within the scope of transitional justice, is the imperative to ensure that the needs of women and children remain at the fore of mechanisms and strategies (Clark, 2011). This correlates to an increasing focus on cross-cutting issues such as gender in development programming.

Contextual factors influencing a local situation can also stem from outside influences, such as the geopolitical interests of neighbouring countries, development partners, international financial institutions, and donor agencies. Differing motivations can affect the conditionality under which aid is granted and may further fuel political tension where competition for influence is high and driven by high-value resource incentives. For this reason, the geopolitical interests of any external actors must also be considered in the development of transitional justice and development strategies.

#### *Working space*

Transitional justice and post-conflict development share a common working space in post-conflict situations. Entire countries may be in a state of humanitarian crisis following widespread displacement and destruction, with peacekeeping or military forces still present, resources scarce or non-existent, and ongoing cultural and political tensions. For both transitional justice and development there is also a question of whether or not to allow international involvement and the complexity of geopolitical

interests that can accompany offers of assistance. Factors such as capacity and resource constraints, political instability and power imbalances, structural governance issues, a lack of accountability mechanisms, and the real or perceived impartiality of the state or state institutions; can heighten the need for external involvement yet equally introduce multiple actors with competing agendas to a vulnerable state. This presents opportunities for collaborative strategies and programming yet also risks duplication of effort and outcomes that reflect external interests more than address the immediate needs of the local community.

#### *Actors*

Transitional justice and development each require the involvement of multiple actors. Of these, the state and state institutions are arguably most significant for their role in overseeing the design and implementation of transitional justice and development strategies, developing policy, maintaining robust and transparent administrative systems and processes, and ensuring accountability. Large multilateral agencies also play a significant role in resourcing transitional justice and development activities and reforms. This may take the form of financial assistance, technical expertise, physical infrastructure, or capacity-building, administrative and programming support.

Civil society and non-governmental agencies (NGOs) also have a role in supporting transitional justice and development by helping to educate communities and facilitate citizen participation in all aspects of the process. They are usually the groups immersed in the local context and thus best placed to act as intermediaries in facilitating stakeholder consultation and determining the support, or otherwise, of local communities. Civil society and NGOs can additionally offer a critical perspective as evident in Syria, where a number of NGOs are working to collate and document evidence of human rights violations for use in a future transitional justice process (see Chapter 5). In development terms, civil society and NGOs may also design and implement development activities. They can reach places and communities that the state and large international agencies are unable to reach or have no interest in

reaching, offer technical and social support to local communities, give voice to minority groups, and advocate for policy change and widespread citizen participation in development activity (Desai, 2008).

Perhaps most importantly however, the broader population is, in its own right, a key actor in all aspects of a transitional justice and development process; from needs assessment to the design, implementation, monitoring and evaluation of programmes and strategies. As those most affected by the implementation of transitional justice and development strategies, it is the participation of the local population and their support for these processes that will determine the success or otherwise of any strategy.

#### *Approach*

Given the centrality of human rights at the heart of transitional justice goals for social transformation, active citizenship and democracy; development approaches to good governance, participation and human rights are of particular significance to the design and implementation of transitional justice strategies. While good governance implies basic principles of democracy and accountability such as democratic and transparent election processes and the separation of judicial and legislative bodies; achieving this poses numerous challenges (Gisselquist, 2012). Gisselquist (2012) advises that "... 'good governance' is an extremely elusive objective: it means different things to different organisations and to different actors within these organisations" (p.21). Furthermore, the complexity of each area of responsibility means that it is very difficult for a state to attend to each one simultaneously. Good governance may promote ideals beyond what is realistic or required in states with extensive post-conflict development needs (Khan, 2005 as cited in Fritz & Rocha Menocal, 2006). To address this, Grindle (2004) proposes a "good enough" approach to governance which, rather than seeking to address all concerns at once and to the same level, focuses on the minimal conditions required to realize political and economic development, enhance state

capacity in critical areas, and ensure actions are commensurate with local contexts (as cited in Fritz & Rocha Menocal, 2006, p.5-6).

Participatory development, described by Mohan (2008) as the “involvement of local people in their own development” (p.45), is based on the participatory action research techniques of Paulo Freire. It seeks to reframe participation as a process through which community members are empowered as rights-holders to make informed decisions and contribute their knowledge and experience to the development process (Mohan, 2008). Development’s experience in this field can help to train and educate transitional justice actors in participatory action methods for community consultation as well as the design and development of strategies that reflect goals for democracy, active citizenship and empowerment. The ICTJ (2009) advise that development’s experience working with grassroots and civil society organisations and participatory approaches offers invaluable insight and learning to the development of transitional justice strategies. Even so, transitional justice differs from development in that many of the key participants in a transitional justice process may have been victim to, or witnessed, horrific abuses. For this reason it is important that the level of participation possible amongst traumatised victims is assessed and strategies adapted accordingly to ensure that participation is comprehensive and that structures are in place to provide accountability and victim protection (Brett, 2003 as cited in Mohan, 2008).

A “conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights” (OHCHR, 2006, p.15), a human rights-based approach (HRBA) utilises the principles and standards of international human rights treaties to guide development programming. From the perspective of transitional justice and development, the analysis of human rights as part of an HRBA can offer invaluable insight into the root causes of conflict and poverty, local power distribution, and the vulnerability of individuals and the wider community (OHCHR, 2006). To identify the type of intervention required, an HRBA takes a holistic approach to

evaluating legal, political and social frameworks with a view to increasing the capacity of the state and wider community (OHCHR, 2006). Development's experience with this approach can help transitional governments to analyse and understand contextual influences and the immediate needs of the community, identify resources required, and undertake an informed process of reform.

From a legislative perspective, the rule of law and legislation such as international criminal law, international humanitarian law (IHL) and international human rights law provide a framework for the design and implementation of transitional justice strategies in accordance with fair trial norms and standards (Friedman, 2013). However, development is predominantly guided by norms and standards in the form of internationally endorsed principles and agreements<sup>16</sup>. For the most part these agreements are ratified by large multilateral agencies and organisations such as the United Nations however, they cannot be legally enforced. Neither are they ascribed to by all actors. The private sector, large businesses and civil society organisations may take action independently of these frameworks.

#### **4.1.2 Areas of divergence**

Despite many areas of convergence and complementarity between transitional justice and development, there are several noteworthy areas of divergence. Perhaps most significant is the considerably larger scope of development, a huge heterogeneous field comprising a multitude of sectors, actors and practices which occurs over a much longer timeframe than that usually ascribed to transitional justice. Work in areas such as justice, accountability and reform, all key elements of transitional justice, comprise only a small proportion of development's scope of work. A second area of divergence relates to human rights which are a central issue for transitional justice versus a cross-cutting issue for development. While a violation of human rights drives the need for a

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<sup>16</sup> Examples of such agreements include the 1948 Declaration of Human Rights; the 2005 Paris Declaration on Aid Effectiveness founded on principles of ownership, alignment, harmonisation, results and mutual accountability; the 2008 ACCRA Agenda for Action which proposed improvements in ownership, inclusive partnerships, delivering results and capacity development; the concept for sustainable development made famous by the 1987 Brundtland Report, the MDGs and their successor, Beyond 2015 (the Sustainable Development Goals or SDGs).

transitional justice process, a HRBA to development works to ensure that human rights are taken into consideration and upheld in the planning, design and implementation of development strategies.

At a practical level, transitional justice strategies may be implemented as either individual mechanisms or a combination thereof. Development activity may be sector or project specific, or form part of a wider multi-sector or national development plan. Issues addressed by transitional justice focus primarily on the individual and communities affected by war. They investigate specific acts of abuse over a specified period of time and aim to establish individual responsibility (Cobián & Reátegui, 2009). In contrast, matters addressed by development are significantly broader and designed to facilitate improvements across the collective group (Cobián & Reátegui, 2009).

Intended to facilitate healing, peace, justice and reconciliation; transitional justice mechanisms may result in recommendations but not the technical expertise, financial, physical and human resource required to implement them (Cobián & Reátegui, 2009). Development strategies, in contrast, offer specific, often technical, assistance (from the international community) across a broad range of sectors which can include governance, security and justice but also infrastructure, health, the environment and education.

From a legislative perspective, a transitional justice process can prove a catalyst for the development of new or revised legal frameworks such as constitutional amendments and peace treaties that protect and promote human rights (ICTJ, 2014). However, development relies more on international pressure to ensure conformity with internationally agreed principles, norms and standards such as those pertaining to good governance. Each requires states to accept responsibility for their own and state to state conduct. However, while transitional justice actors may have had some involvement in the conflict, a complication for development is that development actors may have observed or directly/indirectly supported a violent regime (Lenzen, 2009). In both cases, this raises issues of impartiality and transparent decision-making.

## **4.2 Potential areas for collaboration**

Given the extent of convergence apparent in the goals, concerns, and approaches of transitional justice and development, a shared working space and common actors; there may be benefit to be gained from a collaborative approach to transitional justice and development that pools expertise and resources. The following considers the rationale for a collaborative approach to transitional justice and development within the framework of the four core transitional justice mechanisms identified in Chapter 3.

### *Prosecution*

A contributor to the long-term stability required for sustainable development, the threat of prosecution, a key transitional justice strategy, can serve as a deterrent to conflict recurrence (ICTJ, 2009). However, there is also a role for international development agencies, civil society and NGOs in aiding prosecution efforts. This may take the form of financial and/or technical support for training and capacity building in the judicial and security sectors, the establishment of robust administrative systems and processes, and provision of physical infrastructure and human resources (ICTJ, 2009). Civil society and NGOs can also help to gather and document evidence of human rights violations as evident in Syria (see Chapter 5), educate the community on transitional justice and the use of social media as an organisational tool, and establish networks to ensure that communities are kept remain informed. Furthermore, the experience of international development agencies in stakeholder coordination can help to facilitate consultation and prosecution processes across multiple stakeholders and sectors (ICTJ, 2009).

While prosecutions can consume substantial development resources and at times have an adverse impact on peace negotiation processes, “trial testimony, evidence, and arguments can generate momentum for change by raising public awareness of the issues, their connection to massive abuses, and the need for institutional reforms” (ICTJ, 2009, p.7). The ICTJ (2009) note that development in the form of donor support, particularly with respect to judicial reform, “can contribute to the establishment of

acceptable norms of behaviour and enable future domestic prosecution” (ICTJ, 2009, p.8).

Other areas for collaboration include a role for development in supporting the human and physical infrastructure required to enable trials to be undertaken in the locations where crimes or abuses have occurred, the provision of legal expertise to assist with drafting new legislation, and security support for trials and witness protection.

### *Truth-telling*

Designed to address broader questions of how and why abuses have occurred (Harwell & Le Billon, 2009), the TRC, a primary truth-telling strategy, is described by the ICTJ (2009) as contributing “to the understanding of the structural and institutional dimensions of mass violations” (p.3) and the factors and influences that enabled them. However, while TRCs can offer recommendations to prevent conflict recurrence and abuse, they do not have the mandate to implement them. For this reason, there is a role for development in transforming TRC recommendations into action and incorporating their findings into development policies and programming (ICTJ, 2009; Clark, 2011). The ICTJ (2009) advise that truth commissions can provide valuable “insight on development-related issues such as the rule of law, natural resources and land, and educational and health sector reform” (p.3), and note a role for development in analysing the links between various sectors, crimes and human rights abuses (ICTJ, 2009). Other ways in which development can contribute to truth telling strategies include lessons learned from participatory development approaches, financial and technical support to commission proceedings, research and analysis into emerging themes, training in record-keeping and the standardisation of systems and procedures, and security sector support to govern proceedings and protect key witnesses.

Specific to amnesty within the scope of a TRC, a role for development is, on first glance, more difficult to determine, nevertheless there are still ways in which transitional justice and development can work together. In post-conflict societies, a significant challenge associated with institutional reform measures such as vetting and lustration

is that they can leave the state and state institutions with a deficit of people with the capacity to undertake critical functions. For this reason, where amnesty has been provided to those who have been involved in, or committed, crimes; there may be a role for development in supporting their re-training, reintegration and rehabilitation. This could include support for social services such as counselling; training in international law, negotiation and mediation; monitoring vetting and rehabilitation processes; coaching and mentoring.

### *Reparation*

The “[t]ransitional justice method that aims most directly at improving the quality of life of victims, and in the case of collective reparations, of communities as well” (ICTJ, 2009, p.4); reparation offers perhaps the greatest opportunity for a collaborative approach to transitional justice and development. Aimed at recognising victims as rights-holders and restoring trust in the state and state institutions, reparation and development programmes should complement rather than substitute for each other (ICTJ, 2009). Where reparation programmes can provide resources and/or financial assistance to strengthen the capacity of civil society to manage development programmes; development actors such as large multilateral agencies and government aid programmes have experience in human rights-based and participatory approaches. Development actors can also provide physical infrastructure, financial and/or technical resource, and networks to facilitate stakeholder consultation and coordinate, monitor and evaluate reparation programmes (ICTJ, 2009). Using the example of gender, development programmes offer an opportunity “... to leverage from and maximize the benefit from reparations for women’s empowerment that could be achieved through micro-finance, the generation of jobs and livelihoods, land restitution, and access to education, health care, legal aid, and other services” (Clark, 2011, para 41).

Other potential contributions of large multilateral agencies and government aid programmes are in the provision of technical and/or sector support, needs assessment, and monitoring and evaluation expertise across a wide range of sectors. An example of

how these might be brought together is the “development-centered” reparation and rehabilitation policy which was called for by the South African TRC in the aftermath of apartheid (Roht-Arriaza & Orlovsky, 2009, p.190). The TRC proposed a variety of “health and social services, mental health services, education, housing and institutional reform” measures to actively empower individuals and communities as agents in their own development (Roht-Arriaza & Orlovsky, 2009, p.190).

#### *Institutional reform*

To ensure the sustainability and effectiveness of transitional justice processes and strategies, it is critically important to build state and institutional capacity (Clark, 2011). “[J]ustice sector-wide development support can improve a country’s ability to prosecute crimes against humanity committed by their citizens” (Clark, 2011, para 22 and help to change policies that contributed to the violations occurring (ICTJ, 2009). Development thinking can also help to facilitate and inform community participation and consultation. An example of this is the United Nations Development Programme’s (UNDP) work in Guatemala where the UNDP created a forum through which stakeholders could come together to discuss an approach to transitional justice (Clark, 2011). Clark (2011) emphasises the capacity-building support that development can provide and the need to “make the link between supporting access to justice for conflict-related crimes with a systematic effort to drive reform in the justice and security sectors” (para 39).

Development actors such as bilateral and multilateral agencies, government aid programmes, and the private sector, can also assist civil society organisations to oversee judicial processes and strengthen local security services (UNDP, 2008). An example of this is the UNDP’s support for the Rwanda Gacaca courts in the aftermath of the Rwandan genocide. The UNDP helped train local judges in new laws, supported administration efforts to document learning and trials, and trained local staff in the use of a “Village Area Network” for collecting and disseminating information about the trial (UNDP, 2008, p.27).

*Chapter 4: Transitional justice and development*

Chapter 4 has considered the relationship between transitional justice and development. It has identified key areas of convergence and divergence as well as potential areas for collaboration in the context of four core transitional justice mechanisms. Based on this analysis, Chapter 5 considers the particulars of the Syrian conflict, the context-specific challenges to post-conflict development and transitional justice in Syria, and considerations for a future transitional government.

## **Chapter 5: The challenge for post-conflict development and transitional justice in Syria**

In an attempt to quell increasing and widespread anti-government protests, Syria's 48 year state of emergency<sup>17</sup> was lifted by Bashar al-Assad on 19 April 2011. Originating in response to a civilian assault by three policemen in Damascus, the later arrest of a group of Syrian teenagers for painting city walls with "[t]he people want to topple the regime" (Damascus Bureau, 2013a, slide 5) and hunger strikes in Adra Prison; the protests had begun peacefully yet soon spiralled into one of the worst civil wars of all time (Damascus Bureau, 2013a; Haid, 2013a). For many years Syria's emergency law had suppressed government opposition and provided little citizen protection from human rights violations (Damascus Bureau, 2013b). However, removing it did little to ease increasing civil unrest (Weiner, 2013). As protests grew in number and strength, the Assad regime's increasing use of violence and the unwillingness of the Arab League and United Nations to intervene only further incited calls for an end to the regime (Damascus Bureau, 2013a).

Three years later the conflict has grown in complexity and vigour with multiple groups forming the opposition, and a large proportion of Syria's national army siding with, and resourced by, the regime (Dawlaty & NJWP, 2013). Recent estimates suggest 9.3 million people inside of Syria requiring humanitarian assistance including 6.5 million internally displaced persons (IDPs), of whom 46% are children (OCHA, 2014). Further complicating matters is the presence of increasing sectarian division and extremist religious sects (Divin, 2014), the alleged use of chemical weapons by government and opposition forces, the controversial mid-conflict re-election<sup>18</sup> of Bashar al-Assad on 3 June 2014, and an international community divided over whether or not to intervene.

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<sup>17</sup> A state of emergency was implemented in Syria by the Ba'ath party's National Council of Revolutionary Command in 1963.

<sup>18</sup> A number of Western states have questioned the validity of the June 2014 Syrian election which has been deemed illegitimate by the European Union for allowing only those within government-controlled areas of Syria the opportunity to vote (Al Jazeera, 2014).

The full impact of Assad's re-election on a post-conflict development and transitional justice process for Syria is presently unknown. However, from a transitional justice perspective, it seems unlikely that recent events will quell work under way by an increasing number of Syrian civil society groups (based within Syria and along the Turkish border), news agencies, citizen journalists and activists, international consultancies and research facilities; to gather, document and analyse evidence of international criminal, humanitarian, and human rights law violations in Syria (PILPG, 2013). Many of these organisations are also helping to facilitate and/or train others in evidence-gathering techniques in preparation for a future transitional justice process (PILPG, 2013)<sup>19</sup>. Actors and organisations identified in the 2013 research of the Washington-based Public International Law and Policy Group (PILPG) as directly or indirectly contributing to the collection of transitional justice evidence for Syria include:

**Syrian civil society organisations:** Syrian Justice and Accountability Centre (SJAC); Kawakibi Center for Documenting Violations; Center for Documentation of Violations in Syria (VDC); Centre for Civil Society and Democracy in Syria/Syrian Centre for Democracy and Civil Society; The Damascus Center for Human Rights Studies (DCHRS); Dawlaty; The Local Coordination Committees of Syria; Syrian Center for Documentation; Syrian Center for Media and Freedom of Expression (SCM); Syrian Commission for Justice and Accountability (SCJA); Syrian Kurdish Institute for Documentation and Studies; Syrian Observatory for Human Rights (SOHR); Syrian Shuhada (PILPG, 2013).

**Syrian news agencies:** Orient News; Shaam News; Ugarit News (PILPG, 2013).

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<sup>19</sup> Further information on the actors and organisations listed as working, or having worked, to collect, compile, facilitate and provide training in transitional justice evidence for Syria is available in *Annex 1: Actors Documenting Syria Transitional Justice Evidence (p.41-80)* of the 2013 report *Mapping Accountability Efforts in Syria* prepared by the PILPG in collaboration with the SJAC.

**Intergovernmental organisations and bodies:** The Arab League; United Nations Office of the High Commissioner for Human Rights (OHCHR); United Nations Human Rights Council – Independent Commission of Inquiry (PILPG, 2013).

**Foreign government initiatives:** British Foreign and Commonwealth Office (FCO); Office of Syrian Opposition Support (OSOS) (PILPG, 2013).

**International non-governmental organisations:** Alkarama (Dignity); Amnesty International; Arabic Network for Human Rights Information (ANHRI); ARK F.Z.C. (Analysis Research Knowledge); The Day After Project: United States Institute of Peace (TDA); Doctors without Borders ; Freedom House; Frontline Defenders; Human Right First (HRF); Human Rights Watch (HRW); International Crisis Group (ICG); Justice for Syria; KurdWatch; No Peace without Justice (NPWJ); Observatory for the Protection of Human Rights Offenders; Physicians for Human Rights (PHR); Public International Law and Policy Group (PILPG); Reporters Without Borders; Reliefweb; Strategic Research and Communication Centre (SRCC); Syrian Emergency Task Force (SETF); Syrian Human Rights Committee (SHRC); Syrian Network for Human Rights (SNHR); Syria Tracker; Tsamota Ltd. (The Selection and Maintenance of the Aim); Union of Syrian Medical Relief Organisations (UOSSM); Women Under Seige (PILPG, 2013).

**International news agencies:** Al Arabiya News; Al Jazeera; British Broadcasting Corporation (BBC); The Christian Science Monitor; Cable News Network (CNN); New York Times; Reuters; The Telegraph (PILPG, 2013).

However, issues such as the impact of the ongoing nature of the conflict on those actors and organisations based within Syria, and thus difficulty in coordinating efforts; a rapidly deteriorating in-country security situation and scarcity of resource; reporting biases; and the inexperience of many groups with a legislative approach to gathering evidence pose significant challenges (PILPG, 2013). It is also unclear to what extent the geopolitical influence of foreign backers, such as the United States, United Kingdom, and European Union, may be influencing the evidence-gathering processes of some

groups. Further research into these latter points would be valuable but is outside the scope of this research report.

## 5.1 Transitional justice

### *Justice versus peace*

Some NGOs such as Dawlaty<sup>20</sup> and No Justice Without Peace<sup>21</sup> (NJWP) have clearly stated the case for transitional justice, favouring an approach that combines both justice and peace-based mechanisms albeit with a slight preference for justice as the more likely to realise sustainable peace and prevent conflict recurrence (Dawlaty and NJWP, 2013). Justice also aligns with the preference for prosecution expressed by Syrian nationals interviewed in the 2013 collaborative study “*He who did wrong should be accountable*”: *Syrian Perspectives on Transitional Justice*<sup>22</sup> of the Syria Justice and Accountability Centre (SJAC)<sup>23</sup> and Charney Research<sup>24</sup>.

Public confidence to speak freely and participate in a transitional justice process will likely depend upon the constitution of the transitional government and seems unlikely without some assurance of victim protection. Whether or not this provides an opening for some level of international involvement in the form of a hybrid court, peacekeeping force or arbitration commission; will depend upon the willingness of the Syrian population to accept such assistance, and the consequences of an international community divided in their support for the regime and opposition. Further challenging

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<sup>20</sup> Dawlaty is a Syrian non-governmental organisation working to build local capacity, promote citizen participation, and raise awareness of transitional justice and human rights (Dawlaty, n.d.).

<sup>21</sup> Founded in 1993, international non-profit NPWJ works to protect and promote human rights, justice and the rule of law (NPWJ, n.d.). It offers technical assistance in the form of legal expertise, conflict mapping and documentation of evidence, and collaborated with Dawlaty to produce the July 2013 publication “*Transitional Justice in Syria*” (NPWJ, n.d.; Dawlaty & NPWJ, 2013; TDA, 2014).

<sup>22</sup> In August 2013, the SJAC and New York-based Charney Research interviewed 46 Syrian adults comprising a mixture of regime and opposition supporters within and outside of Syria for their views on the possibilities for transitional justice in Syria (Smeltz & Khoury, 2014). While the scale of the research is far too small to be considered representative of the Syrian population, the research offers some insights into the feelings of Syrians on what may or may not be palatable as part of a transitional justice process.

<sup>23</sup> Primarily funded by the United States, the SJAC is registered in The Hague and was founded in 2013 to promote justice and accountability by creating and maintaining a consolidated database of evidence against human rights violations in Syria (Weiner, 2013).

<sup>24</sup> New York-based consulting firm Charney Research was established in 1997 and offers expertise in public policy research, public polling in times of transition, democratic and economic reform (Charney Research, n.d.).

peace in Syria is the widespread availability of arms and a “culture of revenge” (Charney & Quirk, 2013, p.2) referred to by a number of participants in the 2013 study of the SJAC and Charney Research. Whether or not post-conflict disarmament and the reintegration of state and non-state combatants into the community are possible will be driven by the commitment of a transitional government to refute victor’s justice and seek justice for all (Dawlaty & NPWJ, 2013).

Also of relevance to the prioritisation of peace versus justice is whether or not it is possible to realise either in a state of humanitarian crisis, or whether some measure of stability must first be achieved to enable humanitarian assistance. It is difficult to argue that a population must first have basic needs such as food, water, and shelter met (also post-conflict development considerations), to regain their capacity to participate in a transitional justice process. This is one area in which development thinking and experience in needs assessment, social assistance and community reconstruction, may contribute to enabling Syria’s refugees and IDPs to rebuild their capacity and claim citizen rights.

#### *Prosecution and legislative requirements*

A crucial task in the early stages of a transitional justice process for Syria will be determining the period of time to which the process should apply and whether it relates only to those crimes committed during the current conflict; those committed since 2000 when Bashar al-Assad first became President; or those dating back to 1971 when Hafez al-Assad<sup>25</sup>, who ruled the country under an emergency law, first came into power (Damascus Bureau, 2013; PILPG, 2012).

Other critical considerations for Syria include the need to ensure the coordination, standardisation, and international compliance of evidence-gathering techniques presently being used by organisations and activist groups in Syria, as well as meeting Syria’s obligations under customary international law (CIL as described in Chapter 3). A transitional government may also wish to consider what existing elements of Syria’s

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<sup>25</sup> Hafez al-Assad, the father of Bashar al-Assad, was the President of Syria from 1971 until his death in 2000.

penal code could be used for criminal accountability and utilise these to form a hybrid court that combines elements of Syria's penal code with relevant aspects of international law (Dawlaty & NPWJ, 2013).

#### *Contextualisation*

Although transitional justice is most suited to a "change in national leadership or governance which opens up an opportunity to account for crimes of the past" (Seils, 2013, p.2), in Syria there are two major obstacles to this process; the consequences of the Assad regime remaining in power and whether or not there is an opposition group acceptable to the Syrian public. There is also a question of who will determine the composition of a Syrian transitional justice process, the type and level of consultation to occur, and to what extent, if any, international involvement will be accepted. Given the likelihood of Syrian preference for a Syrian-led process yet also history of sectarian and political division; determining an independent body acceptable to the wider population will likely prove challenging. Taking population diversity and a potential mistrust for geopolitical agendas into consideration, one option could be to establish a dedicated Syrian transitional justice office or ministry (Dawlaty & NPWJ, 2013). Such a body would seem best placed to assess the advantages and disadvantages of international arbitration. However, this too would require issues of transparency and independence to be addressed.

#### *Amnesty*

For a transitional government, a ruling on the question of amnesty is one which could influence public support for a transitional justice process. In the 2013 study of the SJAC and Charney Research, Syrian interviewees expressed a strong disregard for amnesty with the exception being some support for offering amnesty to Assad in exchange for

stepping down<sup>26</sup>. In Lebanon, a post-conflict amnesty law which enabled many perpetrators to escape punishment caused widespread feelings of injustice and has contributed to ongoing instability (Dawlaty & NPWJ, 2013). There may however be some opportunity for compromise in the form of conditional amnesties granted on the basis of specific criteria and conditions (Alexander, 2003).

### **5.1.1 Transitional justice mechanisms**

The question of whether domestic law, international law, or a combination of the two should govern prosecution is one that will critically shape a transitional justice process for Syria. Despite a likely preference for prosecution and Syrian-led processes, it seems unlikely that Syria will achieve its prosecution goals without some form of international arbitration in an environment where both sides to the conflict have committed violations. Syria's non-ratification of the Rome Statute (discussed previously in Chapter 3), means that the only option available to Syria to access the International Criminal Court (ICC) is for the United Nations Security Council (UNSC) to issue a conditional referral or referral-deferral. Under a conditional referral, the UNSC would need to provide a legal guarantee that, in the event the conflict failed to cease by a predetermined date, they would refer Syria to the ICC (Kersten, 2013). A referral-deferral would require two UNSC resolutions; one, referring Syria to the ICC, and a second deferring any investigation and prosecution in Syria for 12 months to allow time for the conflict to cease (Kersten, 2013). Given the complexity of these options, an alternative for Syria may be a hybrid model of domestic prosecution supported by international involvement (PILPG, 2012). While this would require Syria to accept international assistance, the hybrid model could potentially provide a level of independence and resource not possible with a purely domestic process. The

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<sup>26</sup> Throughout the Syrian conflict, Bashar al-Assad has announced a series of general amnesties, the most recent following his re-election on 3 June 2014. The latest amnesty extends to all crimes with the exception of terrorism and includes foreigners who entered Syria with the intent of joining a terrorist group or committing a terrorist act. It is presently unclear whether or not the amnesty will apply to political prisoners or those accused of aiding the opposition. There is also some scepticism that it appears to reduce rather than eliminate sentences and may be part of a wider tactic to undermine the opposition and West (Barnard, 2014).

development of a quasi-traditional justice mechanism comprising both formal and tradition-based-processes could also be considered. However, a culture of impunity (CIHRS et al., 2013), increasing sectarian division, and tensions between local Sharia/mixed courts and opposition judiciary<sup>27</sup> (Dawlaty & NPWJ, 2013) suggest that a consensus on the methods and systems to be used (without some form of independent intervention) may be unlikely, the safety of victims and witnesses unassured, and risk of victor's justice high.

The most common truth-telling strategy, a Truth and Reconciliation Commission (TRC) could be used in Syria to source and collate the information required to inform the content and award of reparations (PILPG, 2012). The 2013 study of the SJAC and Charney Research revealed many of the Syrians interviewed to be unfamiliar with the concept of a truth commission yet willing to consider it, particularly with respect to evidence-gathering and reparation components (Charney & Quick, 2014). Notwithstanding, a TRC may not be the most appropriate mechanism in Syria where an existing culture of impunity (CIHRS et al., 2013) may increase the potential for former state combatants and public perceptions of impartiality, to adversely influence truth processes and proceedings (Woody, 2009).

A form of distributive justice, reparation programmes comprising any, or all of, financial, social and material support to victims for hardship or losses suffered as a result of conflict, may offer the greatest opportunity to address the immediate social and economic needs of the Syrian community. With widespread internal displacement and large volumes of refugees who may seek to return to Syria in a transition, it seems likely that realising goals for transitional justice and the full participation of minority groups and victims will first require Syria's severe humanitarian crisis to be addressed. As the testimony of refugees and IDPs who have experienced or witnessed violations will also be critical to their investigation and documentation (Dawlaty & NPWJ, 2013); reparation programmes can play a crucial role in supporting community reconstruction

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<sup>27</sup> Local Sharia<sup>27</sup> and mixed courts are increasingly intervening in the Syrian conflict however, a lack of oversight and accountability mechanisms have created tension with opposition judiciary (Dawlaty & NPWJ, 2013).

and providing the basic social and rehabilitative services to facilitate widespread participation (PILPG, 2012). Increasing numbers of Syrian women who have been subject to sexual assault and violence in refugee camps and detention centres, as well as children who have been targeted or conscripted for fighting, may also benefit from appropriately designed reparation programmes that offer gender-based social and rehabilitative support for post-conflict reintegration.

At a governance level, institutional reform will ideally be undertaken in combination with transitional justice mechanisms for prosecution, truth-telling and reparation. In the case of Syria, it is likely that a new security sector institution or the retrenchment of regime security services will be required in addition to: a disarmament, demobilization and reintegration (DDR) programme for state and non-state combatants; the redistribution of military resources; an analysis of state institution policy models (Brzoska & Heinemann-Grüder, 2004); training, and capacity needs assessment. Within Syria, Dawlaty and NJWP (2013) identify a significant resource base of professionals with specialist skills in the public service, justice, security, and education sectors; who could potentially assist with the design and implementation of transitional justice processes. Establishing a transparent vetting system is one way in which a transitional government could utilise this existing resource while providing the public with confidence that those occupying these professions have not been complicit in acts of violence (Dawlaty & NJWP, 2013).

## **5.2 Post-conflict development**

Even before the current conflict in Syrian began, increasing and widespread inequality, rising unemployment levels and alleged acts of corruption were contributing to a frail economic and social infrastructure (Halabi, 2013). Despite this, a severe humanitarian crisis, and infrastructure devastated by conflict, the Syrian government has continued to resist offers of international aid (Halabi, 2013). If the Assad regime remains in power, this seems unlikely to change. However, even with a transitional government receptive to international assistance, there are potential issues associated with the

acceptance of aid. In Iraq and Lebanon, for example, sectarian division intensified as a result of an influx of post-conflict foreign aid and obstructed opportunities for development and reform (Halabi, 2013). Given the increasing sectarian division in Syria, this is a potential risk of international assistance that a transitional government would need to assess and mitigate.

Further complicating future post-conflict development activity in Syria is the possibility that development actors (national or international) may have witnessed, been complicit in, or turned a blind eye to atrocities that occurred during the course of the conflict (Lenzen, 2009). This may bring into question the transparency and independence of development processes and incite a lack of trust in development actors and activities. To address this may require some form of screening or vetting process for development actors similar to that recommended for public officials as part of a transitional justice strategy. Other key issues for post-conflict development in Syria include the massive food security, social and shelter needs of a population bereft by displacement and agricultural devastation; as well as the psycho-social state of a traumatised population who require their basic needs to be met before they can fully participate in the consideration and implementation of post-conflict development strategies.

### **5.2.1 Post-conflict development objectives**

Given the enormity of the humanitarian crisis gripping Syria, there will be an immediate post-conflict development need for interventions that allow sufficient time for reconstruction and rehabilitation but are also time-bound to prevent fostering aid dependency (Halabi, 2013). Halabi (2013) proposes a 15 year intervention comprising: an initial three year response and recovery phase to build social cohesion and centralise administration; a four year development and transition phase focused on economic and social policy reform; and an eight year sustainability phase in which aid is gradually phased out and local capacity developed to the point of self-reliance (Halabi, 2013).

The goal in Syria will be to “dismantle the regime not the state” (CCSDS, 2013, p.1). This will require the establishment of robust and transparent vetting processes for public officials, and the development and implementation of monitoring and oversight mechanisms for state institutions (Bennett, 2013). Halabi (2013) recommends transitioning the current Syrian Planning and International Cooperation Commission (PICC)<sup>28</sup> to a parliament-supervised Syrian Aid Management Authority (SAMA) to address the authority and capacity constraints of its current structure<sup>29</sup>. He advocates that priority be given to utilising existing state capacity and locally-centralised governance structures; and that post-conflict development should be directed to areas where goals for peacebuilding and state-building intersect, for example DDR, institutional reform, and treaty negotiation (Halabi, 2013).

Ensuring a centralised aid management structure and prioritising the needs of Syria’s returning refugees and IDPs will similarly be critical to the success or otherwise of Syria’s post-conflict development (Halabi, 2013) as will garnering the support of civil society in reaching remote or less accessible communities and areas. Halabi (2013) recommends targeting socially-focused programmes that facilitate the participation of the Syrian community and the redistribution of regime wealth across Syrian society. In transitional justice terms this could work in collaboration with a post-conflict reparations programme. A further and key objective of post-conflict development will be the timely rebuilding of critical public and private infrastructure as well as engaging with regional actors to assess potential areas for collaboration in Syria’s reconstruction (Halabi, 2013).

Chapter 5 has explored key issues and debates pertaining to transitional justice and post-conflict development in the context of Syria. It has identified potential transitional justice options and the likely objectives of a Syrian post-conflict development process.

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<sup>28</sup> Formerly the State Planning Commission (SPC), the PICC is the main point of contact for international donors and government on matters pertaining to aid, development, and socioeconomic strategy in Syria. It is presently overseen by the Syrian Prime Minister and Cabinet (Halabi, 2013).

<sup>29</sup> Personal correspondence with a member of the international donor community (n.d. cited in Halabi, 2013, p.6).

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Based on this analysis, Chapter 6 looks at how a consideration of post-conflict development objectives can inform a transitional justice process for Syria.

## **Chapter 6: How can a consideration of post-conflict development objectives inform a transitional justice process for Syria?**

With shared aspirations yet differing mandates and jurisdictions, transitional justice and development each have a role in informing and engaging with the other to collectively progress goals for national ownership, good governance, institutional reform, reconstruction, rehabilitation, and reparation. Each seeks to empower citizens to be agents in their own lives and development, to facilitate their participation in democratic decision-making processes and effect sustainable change. To this end, the more vulnerable of society such as women, children, victims of trauma, the marginalised and oppressed are placed at the centre of transitional justice and development strategies. From a transitional justice perspective, this may be demonstrated by transparent and participatory justice processes that assure victim protection and facilitate healing, peace and reconciliation. For development this includes work to promote social and economic growth, facilitate opportunities for community participation and empowerment, and support vulnerable communities with access to essential infrastructure such as secure housing, water and sanitation that provide a foundation from which to rebuild sustainable livelihoods (Cowen & Shenton, 1996).

In Syria, one of the major issues in thinking about development informing transitional justice is the level of international involvement, in both transitional justice processes and post-conflict reconstruction, given the equally important desire for national ownership and wariness of foreign interests. The level and type of humanitarian or development assistance available to Syria will likely depend upon the geopolitical interests of neighbouring countries and international donors; and which, if any, humanitarian or development organisations are ultimately granted permission by a Syrian transitional government to assist. Further issues include, the extent to which a coordinated and comprehensive process of stakeholder participation and consultation

is possible where the ability to address critical cross-cutting issues of gender and human rights may be limited by the lack of a “cross-community human rights movement” (Pupavac, 2004b, Agger, 2001a & Mimica, 2001 cited in Clancy & Hamber, 2008, p.26); opportunities to practice good governance are hindered by multiple opposition sides; and the severity of Syria’s humanitarian crisis necessitates an immediate response to address critical short-term needs versus long-term holistic requirements.

In exploring how post-conflict development objectives might inform a transitional justice process for Syria, the following considers these issues in the context of post-conflict development thinking relating to key areas of convergence in national ownership, good governance and institutional reform, reconstruction and rehabilitation, and reparation.

### **6.1 National ownership**

As transitional justice is most suited to contexts where a “change in national leadership or governance structure opens an opportunity to account for crimes of the past” (Seils, 2013, p.2), the recent re-election of Bashar al-Assad may preclude the opportunity for transitional justice assuming an end to the Syrian conflict while the Assad family remains in power. Nevertheless, for the purposes of this research, should the Assad regime be overthrown or step down in exchange for amnesty; a Syrian transitional government will face the complex task of effecting change in an environment characterised by “deep [and worsening] social, geographical and sectarian divisions, the size and effects of which are unpredictable” (Haid, 2013b, p14). To this end a demonstrated commitment to national ownership and the political will to consult multiple and diverse stakeholder groups as well as draw on independent or international expertise where required, will be critical to the success of a transitional justice process.

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From a post-conflict development perspective, an essential component of national ownership will be an acknowledgment of the imperative to address Syria's immediate humanitarian needs and incorporate these into long-term reconstructive and rehabilitative planning. Such planning should focus initially on areas where state-building and peace-building intersect (Halabi, 2013). In Syria, this could include the reform of state institutions that have been complicit in violations of international law; a programme of reparation to facilitate long-term reconstruction and rehabilitation; a disarmament, demobilisation and rehabilitation (DDR) programme to support the reintegration of state and non-state combatants into Syrian society; and the provision of psycho-social support for Syrian victims, refugees and internally displaced persons (IDPs). Development thinking in participatory and human rights-based approaches can help to guide the development of socially focused programmes that facilitate the participation of the whole of Syrian society in all aspects of this process.

Within the scope of national ownership is also to what level, if any, international involvement in a post-conflict Syrian transitional justice and reconstruction process would be acceptable to the Syrian public. The Day After Project (TDA) (2012) highlights the need for a Syrian transitional government to anticipate and assess the consequences of international involvement in transitional justice processes (and by correlation post-conflict development), and proposes maintaining the ability to call on international expertise subject to respect for Syrian authority. This would enable Syria to retain ownership of post-conflict development and transitional justice processes yet also access international expertise, resource, and capacity-building support to ensure Syria's compliance with international law.

Assuming international agencies and development actors were called upon by a Syrian transitional government, or granted permission to enter Syria and contribute; key areas in which development thinking can further assist include working with the transitional government to bring together the current Syrian Planning and International

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Cooperation Commission (PICC), the civil society groups already working to prepare for a future transitional justice process in Syria, and local Sharia and judiciaries to assess opportunities for a collaborative approach to post-conflict development and transitional justice, and formulate policy. A working group comprised of these actors could assess and agree a role for each in post-conflict development and transitional justice processes, evaluate the need for a dedicated Syrian transitional justice body and determine its decision-making authority and relationship to the PICC. Critical from the perspective of both fields would be managing public expectations, messaging and outreach (TDA, 2012) including the setting transparent and time-bound objectives.

A final consideration pertaining to national ownership of a transitional justice process in Syria is the question of amnesty. From a development perspective, a critical issue in realising post-conflict development objectives is the impact of conflict on the availability of human resource and specific technical expertise. Whether or not Syria would follow Yemen's example and grant amnesty to Assad and his officials (Maalouf, 2013), a conditional amnesty established in combination with vetting processes may offer an opportunity to retain the institutional knowledge of those not directly involved in the conflict and thereby lessen the impact of human resource and capacity losses. Development experience in needs assessment could also help to identify the critical skills required for Syria's reconstruction and rehabilitation with a view to utilising existing state capacity and skills where possible and providing capacity-building support and training where resource is limited or non-existent.

## **6.2 Good governance and institutional reform**

Encompassing principles of national ownership, democracy, participation, human rights, peace, security, and accountability; good governance is a key area in which development thinking and experience may offer support to a newly formed Syrian transitional government. Given the extent of Syria's devastation and severity of humanitarian crisis, adopting a 'good enough' approach to governance (Grindle, 2004)

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is a development tactic that could assist a Syrian transitional government to build on their existing strengths and prioritise immediate needs and interim steps that can be taken within the scope of a broader reconstruction and rehabilitation strategy. Complementary to this a public outreach programme based on development-informed participatory and human rights-based techniques may enhance the transparency of the process and strengthen democratic governance. A participatory and human rights-based approach (HRBA) to the development of a transitional justice process for Syria would provide flexibility in the selection of mechanisms and tools to accommodate the diverse make-up and needs of Syrian society, as well as facilitate the opportunity for the voice of all sects and ethnic groups to be heard. Even so, while development thinking pertaining to an HRBA can provide a framework for taking local notions of justice and development into account, this would need to be implemented with some caution in Syria. Pupavac (2004b), Agger (2001a), and Mimica (2001) identify that “a rights-based approach in ongoing ethno-national conflict has the potential to exacerbate the dispute, as the promotion of human rights in the absence of a cross-community human rights movement is also liable to reinforce the solipsism of the divided ethnic groups” (as cited in Clancy and Hamber, 2008, p.26).

Acknowledging that no single entity can realise goals for transitional justice and development alone, one way in which a Syrian transitional government could potentially mitigate this risk is by establishing a role for civil society in all aspects of a transitional justice process. Development thinking suggests a significant role for civil society in providing capacity-building and technical expertise in areas in which a post-conflict or transitional government may be lacking as well as an extensive community network and reach. Drawing on development’s experience in this area could help a Syrian transitional government to: coordinate and collate the work already underway by a number of civil society groups to facilitate, gather and document evidence in preparation for a future Syrian transitional justice process; extend public outreach processes and education to areas or groups within Syria that might otherwise not be

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reached; and facilitate forums for citizen empowerment and the strengthening of democratic governance (Santiso, 2002). Strengthening Syrian civil society to provide such support at a national level is also a potential mitigation to international involvement in post-conflict development or transitional justice processes being neither sanctioned nor desirable to the Syrian population. Given local wariness of foreign interests and the potentially questionable credibility of a transitional government dominated by any one party (where violations have been committed on both sides of the conflict), establishing a role for civil society will likely prove a critical component of Syria's post-conflict recovery (Kanaan, 2013).

In addition to establishing a role for civil society, the reform of Syrian institutions that have been complicit in the conflict, and implementation of frameworks for regulatory oversight, accountability, monitoring and evaluation will be essential. In particular, the reform of the Syrian security and judicial sectors will be a critical component of a transitional justice strategy. In this respect, development partners can contribute their experience in the application of the rule of law, international standards and norms, to the development of judicial processes and practices that meet Syria's specific contextual requirements and comply with international law. Similarly, development partners may help to guide Syrian reform processes with their experience in multi-stakeholder coordination and consultation, conflict resolution, capacity-building, mediation, and negotiation.

A police state with a history of police involvement in politics, uncoordinated secret intelligence agencies with no jurisdictional limits, limited or no regulation, and a legal structure that allows citizens to be tried by military courts (Ziadeh, 2013); security sector reform (SSR) in Syria will be an essential element of good governance. Seeking to disarm and reintegrate combatants, as well as rebuild or re-establish functional well-governed security institutions that restore public confidence (Brzoska & Heinemann-Grüder, 2004); the combination of addressing short-term security requirements and

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developing strategies for longer-term sector reform may help to strengthen the relationship between transitional justice and development (Farr, Schnabel & Krupanski, 2012). Given the high proportion of young men involved in the Syrian conflict, also relevant to Syria will be the need for a comprehensive disarmament, demobilisation and reintegration (DDR) programme, an area in which development partners could potentially offer technical, financial and administrative assistance.

Notwithstanding, a key reform-related issue for Syria will be that under existing Syrian law it is very difficult to prosecute public officials who have committed human rights violations (Ziadeh, 2013). Given this, and post-conflict challenges associated with a loss of resource and institutional knowledge, one option for Syria may be vetting. While vetting requires clear criteria and political will; the experience of the UNDP (2006) suggests that an “imperfect public service is usually preferable to no public service at all” (p.14). There may therefore be a role for development partners in assisting a Syrian transitional government to assess governance gaps and develop vetting processes (UNDP, 2006). This could be complemented by the provision of technical and/or financial support to the establishment of a regulatory oversight body such as a dedicated transitional justice office or ministry (Dawlaty & NJWP, 2013). In addition to providing advice and oversight of transitional justice processes, tasks of a regulatory body in Syria could include work to establish human rights training programmes for public officials, and the standardisation of information and evidence-gathering processes across government and civil society (Seils, 2013).

To further support the development of robust governance and accountability systems that the Syrian population can have confidence in; widespread consultation that includes refugee and minority groups within and outside of Syria, will be critical to realising Syria’s goals for transitional justice. Rather than pre-determining a set of mechanisms, a Syrian transitional government will ideally first undertake a comprehensive process of planned assessment and consultation focused on the

“mapping of violations and attitudes as well as identifying capacities and possibilities for dealing with them” (Seils, 2013, p. 4). The experience of large multilateral development agencies in stakeholder consultation and coordination as well as their international networks and connections to civil society, could potentially assist a Syrian transitional government with this process. From a development perspective, the right to be consulted is a determining feature of a human rights-based approach to development and reflects the requirement for national consultation under international human rights law (O’Flaherty, 2004 as cited in OHCHR, 2009). Even so, posing significant challenges for a Syrian transitional government will be widespread population displacement and potential public mistrust or fear of government institutions. One possibility for Syria may be the approach taken in Sierra Leone, where although a full national post-conflict consultation process was recognised as impossible during the transition, non-governmental organisation (NGO) assistance was sought and proved invaluable in gathering public views (O’Flaherty, 2004 as cited in OHCHR, 2009). The result was the inclusion of a Truth and Reconciliation Commission (TRC) in the Lomé [peace] Agreement which reflected the needs of the community as identified by Sierra Leonean NGOs (O’Flaherty, 2004 as cited in OHCHR, 2009).

### **6.3 Reconstruction and rehabilitation**

Bringing a holistic and longer-term perspective to thinking about transitional justice, post-conflict reconstruction and rehabilitation; development thinking takes a whole of stakeholder approach to activity design and implementation that includes the consideration of critical cross cutting issues such as human rights, gender, and the environment. The severity of the humanitarian crisis in Syria however will likely necessitate an internationally-supported response to address immediate areas of vulnerability and ensure basic needs are met before a participative and HRBA to post-conflict development and transitional justice is possible. In this respect, a Syrian transitional government will need to carefully assess the impact of an immediate and

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focused response to address critical societal needs. With experience in disaster response and balancing such trade-offs from work in other post-conflict states, key areas in which development partners and thinking may assist include helping to guide a Syrian transitional government through the process of identifying immediate rehabilitative steps and incorporating these into long-term strategic planning.

Notwithstanding, a potential conflict between political incentives for transitional justice and the longer-term reconstructive efforts of post-conflict development in Syria may impact the opportunity for reconstruction and rehabilitation. The extent of violations that have occurred in Syria and immediacy of a desire for justice (notwithstanding the significant time required to trial serious crimes) may be a contributing factor to a likely preference for prosecution which could be seen as able to realise faster and more tangible results. This could jeopardise the learning to be gained from other transitional justice mechanisms such as the TRC which Syria could choose to adopt. A Syrian TRC could offer a forum through which to identify and record the history and root causes of the Syrian conflict and its consequences. The findings of the TRC could then be used to inform the prioritization of post-conflict development reconstruction and rehabilitative efforts to Syria's worst affected areas and institutions.

Notwithstanding the impact of any immediate humanitarian response; the potential for conflict recurrence, and the availability, capacity and psychological state of a post-conflict Syrian population, will influence opportunities for community rehabilitation and participation in the planning and implementation of post-conflict development and transitional justice strategies. Contextual issues such as the existence of multiple opposition sides to the conflict and extremist religious groups, widespread sectarian division, gender discrimination, vast numbers of refugees and IDPs, and extensive psycho-social and psychological trauma will have a significant impact on both fields. Care will need to be taken to ensure that local hierarchies, sectarian or ethnic divisions

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and other contextual factors do not alter or skew the real or perceived authenticity of participatory processes. Anckermann et. al. (2005) emphasise the criticality of strengthening local capacity to participate in national consultation and development processes by taking a long-term approach to addressing the needs of a traumatized population. In this respect, a decision by a Syrian transitional government to accept international aid and collaborate with local and international development partners and Syrian civil society will be critical to understanding the root causes of the conflict and facilitating a long-term strategy for on-going cultural and psycho-social support to the reintegration of victims and combatants into Syrian society. The severe devastation of infrastructure and massive numbers of IDPs in Syria will also likely necessitate interim housing and social service facilities as well as temporary sites and structures for local institutions and businesses. Development partners, with extensive international links to government, the private sector and civil society, may be well placed to assist the coordination and provision of physical infrastructure as well as food, water, security, health, education and housing programmes to address Syria's post-conflict requirements.

A further consideration for post-conflict development and transitional justice processes in Syria will be the social changes that can occur during times of conflict. An example of this is the Syrian women who have been targeted for their support of, or affiliation to, the opposition, and as a result are less willing to accept roles of subservience (Abdullah, 2013). Such changes have the potential to alter the make-up of Syrian society in a country where a woman's place in family hierarchies is based on religious and/or historical roots. While potentially politically fraught, there seems a likely role for development's experience in gender-related assessments and education, the prevention of gender-related violence, and incorporating gender considerations into the development of a comprehensive post-conflict development and transitional justice strategy for Syria.

#### **6.4 Reparation**

In addition to potentially offering the greatest opportunity for a collaborative approach to post-conflict development and transitional justice in Syria; a specifically targeted programme of reparation may offer the greatest potential to address critical cross-cutting issues of human rights, gender and the environment, and their impact on Syria's post-conflict development and reconstruction processes. Notably, the restoration of land, reestablishment of health and social services, reintegration of refugees and IDPs to local communities, and the availability of resource to build sustainable livelihoods; will all rely to an extent on the scale of reparation offered as part of a transitional justice strategy. As such, the transparency and effectiveness of reparation assessment and allocation processes in Syria, and the resource available to implement reparation programme recommendations and requirements, will have a significant impact on Syria's post-conflict development opportunities.

Rather than "a 'substitute' for reparation" (Carranza, n.d. as cited in UN Women, 2012b, p.5), and subject to the willingness of a Syrian transitional government to accept international involvement and/or a role for Syrian civil society; development partners can offer significant financial, technical and administrative support to reparation programmes that may strain Syria's already diminished local resources. In the 2013 study undertaken by the SJAC and Charney Research, compensation (a form of reparation) was not only regarded as the preferred approach to justice alongside prosecution but as a means by which Syrians could begin to rebuild their lives (Charney & Quirk, 2014). Notwithstanding, in a situation where the whole of Syrian society has suffered the impact of the Syrian conflict, the type and focus of reparation will be particularly important. Were focus to be given primarily to individual reparations, there is potential for reparation processes to increase existing sectarian divisions. TDA (2012) advise that "the technical and political process of defining victimhood is highly contentious and potentially destabilizing" (p.57) and recommends that focus in Syria be given to collective reparations such as memorialisation, commemoration and

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“community-oriented economic, service, and reconstruction programs” (TDA, 2012, p.57).

Adopting a development-inspired HRBA approach to the design and development of a reparation programme in Syria may also help to address issues of sectarian division and facilitate the involvement of marginalized groups such as women, children, refugees, IDPs, and other minority sects. While reparation remains the responsibility of a transitional government (Sarkin, 2013), UN Women (2012b) have found general preference for approaches that link development efforts to community based programmes focused on addressing legal and social needs, economic development and sustainable livelihoods. The specific challenge for Syria will be whether or not there is sufficient post-conflict civil society capacity to manage and oversee such programmes. Further areas of collaboration in Syria could include linking a reparation programme to development thinking on strategic partnerships and stakeholder engagement, capacity building for state institutions and civil society, resource management (UN Women, 2012b), gender, and equitable compensation in all post-conflict phases (Abdullah, 2013).

From an environmental perspective, the severe decimation of land and agricultural crops in Syria suggests that there will be a likely need for post-conflict environmental and social impact assessments. This alongside the widespread displacement of individuals and communities across Syria and into neighbouring countries poses a significant challenge to Syria’s post-conflict development and transitional justice activities. Huggins (2009) advises that “[to] be landless, especially in countries that have undergone political and economic crisis, is often to be among the most vulnerable ranks of the population” (p.338). For this reason, a sustainable livelihoods approach (SLA) to land restoration is an area in which development thinking may assist a Syrian transitional government in the design of a reparations programme. Placing the rural poor at the centre of its strategies, the SLA seeks to increase understanding of poverty

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and how people develop and maintain their livelihoods, identify opportunities and constraints, and guide rehabilitative actions to address these in consultation with local communities (IFAD, n.d.). Like good governance, a SLA is not legislative but contributes guiding principles to development activity which could be used to inform the development of a reparations programme in Syria. This includes principles such as the importance of placing people at the centre of SLAs and being informed by local communities and contexts, developing broad multi-stakeholder partnerships, building on existing community strengths, and taking a long-term holistic view of the process (IFAD, n.d.).

Although not a primary instigator of the Syrian conflict, resource issues have contributed to its escalation where a small group of Alawite elite have controlled the majority of Syria's resources. This will have a significant impact on the ability of a transitional government to implement a reparations programme in Syria without some form of international assistance. In Syria, the impact of mismanaged water resources and climate change-induced drought on the agricultural sector (Edelen, 2014) coupled with the ongoing devastation of the conflict, internationally imposed sanctions (BBC, 2012) and refusal of the Assad regime to accept international assistance; have contributed significantly to Syria's intensifying crisis. This alongside the high level of resource being supplied to the national army by the Assad regime suggests a situation of 'resource capture' whereby the wealthier strata of society manipulate the distribution of resources to their own advantage (Homer-Dixon, 1994). In terms of human resource, relevant to Syria will be the impact of widespread displacement, loss of life, and therefore potentially many of the skills and expertise needed to facilitate a transitional justice process. Similarly impacting the availability of resource for post-conflict development and transitional justice in Syria may be the impact of any lustration or vetting processes implemented by a transitional government. Large-scale removal of resource through such processes may result in significant skills gaps and shortages, leaving limited or no institutional knowledge to contribute to activity design

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and development. Humanitarian relief and development agencies can however, offer significant financial, physical and human resource to address immediate shortfalls and assist with building the capacity of the local population to undertake reconstruction efforts. Notably, given the scale of potential reparations, vast numbers of likely recipients and the extent of financial resource required to support a reparation process in Syria, TDA (2012) advocate the establishment of a “special state trust fund” and early collaboration with international donors to secure funding for this (p.57).

Chapter 6 has looked at how a consideration of post-conflict development objectives can inform a transitional justice process for Syria with respect to key areas of convergence between the two fields. While unable to draw substantive conclusions owing to the on-going nature of the Syrian conflict, Chapter 7 recommends areas for further research and offers final thoughts on the potential for a collaborative approach to post-conflict development and transitional justice generally and in the context of Syria.

## **Chapter 7: Conclusion**

### **7.1 Conclusion**

Development approaches to good governance, human rights, participation, a role for civil society and institutional reform are relevant across the range of transitional justice mechanisms. With mutually reinforcing goals for social transformation and systemic change, national ownership, democracy, peace, and security; transitional justice can learn from development's experience in these fields and apply such learning to the design and implementation of transitional justice strategies. However, the question of whether seeking justice or peace should take priority is a subject of much debate. Seeking justice requires some level of peace and stability to begin with however, this may also not be possible in the absence of justice. For this reason, the greater question is perhaps whether the first step should be a humanitarian response to address the immediate needs of a post-conflict state, followed by a simultaneous and collaborative approach to post-conflict development and transitional justice.

In prosecution terms development interventions can help to: prevent victor's justice; ensure victims are protected and provided with equal opportunity to be heard; facilitate institutional reform, particularly in the justice and security sectors; and develop just and transparent processes for judicial proceedings and vetting. With respect to truth-telling, this may include the in-depth analysis of root causes of violence and take the form of widespread non-discriminatory citizen participation in a truth-telling process such as the Truth and Reconciliation Commission (TRC). In terms of reparation, it requires a consideration of cross-cutting issues such as gender, human rights and the environment, in the design and award of reparations; and with respect to amnesty, alternative options to prosecution.

Although states may elect to adopt other transitional justice mechanisms as standalone concepts or in combination, there are four core mechanisms most commonly adopted by post-conflict states: prosecution, truth telling, reparation, and institutional reform. While development experience can inform all four core

transitional justice mechanisms, reparations offer perhaps the greatest and mutually beneficial opportunity for a collaborative approach. In this respect, development partners can contribute the technical expertise, physical, human and financial resource to implement actions recommended in the findings of transitional justice mechanisms such as the TRC; as well as helping to restore critical social services and infrastructure as part of a long-term strategy to build resilience and sustainable livelihoods.

Whether or not a transitional government selects to adopt transitional justice mechanisms in isolation or combination thereof will influence the opportunity for a collaborative approach to post-conflict development and transitional justice. Ideally, a combination of transitional justice mechanisms is one way in which goals for peace and justice can be addressed simultaneously. An example of this could be a strategy that includes criminal prosecution by way of a domestic, hybrid, international or community court; and peace mechanisms such as the reform of state institutions, and establishment of a TRC and reparations programme. However, a combination approach may not be possible in all states or post-conflict situations. This may be the case in Syria where a likely preference for a Syrian-led process and prosecution, a culture of impunity (CIHRS et al., 2013), and government resistance to international involvement, may limit opportunities to implement primarily peace-based mechanisms such as the TRC.

Further complicating a transitional justice process for Syria is a massive humanitarian crisis, widespread sectarian division, and violations committed on both sides of the conflict. Syria's failure to ratify the Rome Statute means that the International Criminal Court (ICC) could only be available to Syria by referral of the United Nations Security Council (UNSC) which remains divided over whether or not to intervene. A human rights-based approach to transitional justice may also aggravate existing ethnic divisions and reinforce the autonomy of multiple groups and sects. Where there does appear potential is in a collaborative approach to 'good enough' governance (Grindle, 2004) which would build on the strengths of Syria's existing institutions, assess and

address immediate humanitarian needs, and incorporate these into long-term reconstructive and rehabilitative strategies. There may also be potential in strengthening Syrian civil society to facilitate stakeholder consultation, educate the Syrian public on post-conflict development and transitional justice strategies, and in the event that international involvement is not accepted, provide domestic level support to key post-conflict development and transitional justice interventions such as the reform of Syria's state institutions.

At a holistic level, understanding the impact of transitional justice processes on the reconstruction of post-conflict or transitional states requires an understanding of core political issues of ownership, governance and participation. Without political will, some level of sustained peace and stability, national ownership and a commitment to change; justice, and development beyond an immediate recovery response appear to have limited value. In the case of Syria, the composition of the transitional government (assuming an end to the current conflict) and whether or not this, or any party, will prove acceptable to a population rife with sectarian division will greatly influence the opportunity for post-conflict development and transitional justice in Syria.

## **7.2 Areas for further research**

While this research report has provided some initial thinking on how a consideration of post-conflict development objectives might inform a transitional justice process for Syria, it has not been possible within the scope of a 60 point research paper to explore in depth a number of issues and areas of interest that have arisen. In light of this, the following areas pertaining to transitional justice and development generally, and more specifically to the context of Syria, are recommended for further research:

### *General*

- If a repressive regime remains in power during the post-conflict transition, what happens to preparatory initiatives to gather evidence and develop thinking and strategies for a future transitional justice process?

- What is the role of social media in post-conflict development and transitional justice? How might it be used as a revolutionary and/or educational tool, and what are the benefits and risks associated with this?
- How should a collaborative approach to transitional justice and development be implemented in practice? At what point should this occur, who are the key actors and who should identify and select them?

*Specific to Syria*

- What would an office dedicated to transitional justice in Syria look like? What would be the composition (i.e. domestic, international or hybrid) and what powers and decision-making authority would it have?
- How is work to gather and document evidence of human rights violations by a growing number of organisations and activist groups within and outside of Syria being coordinated and quality controlled? Are the groups working together or in opposition, and with the same or opposing objectives? How are they being funded, and what are the real or perceived geopolitical influences?
- What is the impact of the recent and controversial mid-conflict re-election of Bashar al-Assad on the opportunity for post-conflict development and transitional justice in Syria?

A consideration of how post-conflict development objectives can inform a transitional justice process for Syria has proved a fascinating area of research. Given the fluidity of the situation in Syria and emergent nature of the literature on transitional justice and development; rather than offer a definitive answer or recommendation, the discussion and ideas put forward in this report are designed to stimulate further thinking on how post-conflict development and transitional justice can inform and engage with each other, both generally and in the context of Syria. Each post-conflict state will have differing needs and requirements therefore the degree of contextualization required will vary widely from case to case. It is hoped that this research report will inspire further interest in this emergent field which, while challenging and complex, may offer

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significant opportunity to maximize the use and application of resource in post-conflict settings, and decrease the potential for post-conflict development and transitional justice strategies to be undertaken in competition with, or isolation of, the other.

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