



Remarks by David Tolbert
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It is a great pleasure to join you this morning in Stockholm, and it is an honor for me, on behalf of ICTJ, to address such a distinguished group of professionals and practitioners. I want to thank Sida for convening this gathering and inviting me to speak. I would also like to take this opportunity to acknowledge the strong partnership that ICTJ has enjoyed with Sweden over the years.

I was invited here this morning to discuss the field of transitional justice and to highlight some ways in which justice efforts can support the development agenda, both from a normative and a contextual point of view. In doing so, I will also reflect upon the Sida transitional justice and development paper, titled “Time to Join Forces,” introduced by Ms. Sancho this morning. My remarks will also reflect on the post-2015 process and the ways in which we can work together to ensure that accountability for human rights abuses has a stronger place in the global development agenda.

Before discussing the relationship between development and transitional justice, it is worth discussing briefly what we mean by transitional justice.

Ultimately, transitional justice measures seek to help societies confront legacies of rights abuses, and to assist in fostering a culture based on human rights and accountability. The aim of transitional justice is to help repair the social contract between the state and its citizens after it has failed to protect, or actively violated, those rights. In particular, transitional justice refers to a set of measures that has emerged from the experience of societies confronted by these legacies to begin to reckon with the past. These measures include criminal prosecutions, truth-seeking processes, memorialization, reparations programs, and reform of key institutions.

In 2006, ICTJ initiated a research project to explore linkages between [transitional justice and development](#). Our research found that systematic human rights violations and systematic marginalization or cyclical poverty can affect communities in similar ways. Under either of these

conditions, citizens often no longer feel a sense of agency over their own lives or view themselves as bearers of rights.

Additionally, violations of human rights by abusive state systems work to directly undermine development: when citizens distrust their government and one another, the development of both civil society and social capital—two basic building blocks of economic and social development—is disrupted.

Similarly, experience has shown that transitions are rarely successful when other social and economic development measures do not take hold. Development support for rule of law, anti-corruption measures, and educational initiatives can assist transitional justice efforts to succeed. The two fields have much to learn from one another, and share many interdependent aims. It is also quite clear that a greater partnership between the two sectors in both funding and implementation would ensure a coherent and effective response to the challenges facing these societies.

The 2011 World Development Report took an important step in linking transitional justice with security and development, and moreover, places human rights violations at the heart of its analysis of conflict. Significantly, the WDR identified transitional justice as a “signaling mechanism” that governments can employ to build its citizens’ confidence that the rule of law will be respected and to indicate they are breaking from past practices.

The report provides recommendations for states in their efforts to end cycles of violence, as well as the impediments to development that these cycles create. The recommendations are three-fold: after conflict, security must be restored, or else risk the relapse into conflict; justice must be ensured for victims of human rights abuses, particularly to end patterns of crime and impunity; and lastly, development levels must be elevated.

The report also points to the interdependence of these recommendations: if weaknesses emerge in any one area, the other two areas can come under significant threat. A number of the countries that were involved in what is often referred to as the “Arab Spring” were high achievers on some of the major development goals, yet remained host to systematic repression with often disastrous consequences. These regimes learned that development, by itself, was not enough.

Benefits of Transitional Justice in a Development Agenda

Let me give a few examples of how various elements of transitional justice can benefit the aims of development.

By conducting criminal investigations and prosecutions for serious crimes, the state demonstrates that no one is above the law, and it marks a break with past abuses and behaviors. In addition to the clear benefits for ongoing efforts to ensure accountability in the country, pursuing justice for crimes of the past can work to rebuild civic trust in the judicial system; this trust is an essential part of creating a society based on the rule of law.

ICTJ has held a number of discussions in partnership with Sweden and other governments to bring together development actors, rule of law practitioners, and international justice experts to examine ways to assist states willing but unable to fulfil their obligation under the Rome Statute to investigate

and prosecute serious crimes, including war crimes, crimes against humanity, and genocide. These discussions (the “Greentree process”) look at what kind of assistance is needed to build necessary capacity of national judicial actors and infrastructure for the investigation and prosecution of such crimes. While some headway has been made to bring development actors into this process, it is clear that stronger partnership is needed.

Truth commissions can also unearth patterns of abuse, identify the facts about what happened, and allow victims to tell their stories. By bringing hidden events to light, these commissions encourage national dialogue about the past, but they also provide important recommendations for reform of systems that allowed patterns of abuse to take place. Often, these patterns are the same ones that create poverty and stifle development. In this way, their findings are critical for development.

In Tunisia, for example, ICTJ provided substantial technical support and assistance to the drafters of the newly-passed transitional justice law, probably the most comprehensive law of its kind anywhere. ICTJ is now focusing its efforts on the design and creation of the Truth and Dignity Commission, which is seen by many as the cornerstone of the country’s transitional justice process. The work of the Commission will support other measures created by the transitional justice law, including reparations and specialized Human Rights chambers.

Reparations are also a central part of societal transformation after repression or conflict. Compensation to victims may manifest in collective reparations, public apologies, or individual payments to victims, all measures that can reinforce accountability and help to transform the relationship between citizen and state. Reparations programs can also have a catalytic effect on the delivery of on-going development services. For example, Peru’s reparations program, which reached many marginalized indigenous communities, helped to build the capacity of the regional government institutions that delivered it.

Lastly, institutional reforms encompass the public steps taken to transform the state into one that promotes transparency and accountability in the name of human rights. This includes vetting human rights abusers from the police and security services, as well as undertaking the reform of the judiciary, police, military, parliament and other institutions of government that have been responsible for ordering or permitting serious abuse.

Colombia, Bosnia, and the Sida Trend Paper

It is useful to move from the abstract to a specific example to show the interplay between the development and justice fields on the ground, by taking the example of Colombia, a country in which ICTJ has been closely engaged since 2003.

Colombia’s ongoing armed conflict has lasted decades, and has produced an estimated 6 million victims. In terms of development, when we examine the situation in Colombia, we are essentially looking at two different realities: the reality of those living in thriving urban centers such as Bogotá, and those living in poor, rural areas. While Colombia is recognized as a steadily-growing middle-income country, the image masks severe inequalities, where the poorest and most marginalized continue to suffer the consequences of a conflict that has lasted decades.

This duality really lies at the center of the conflict, and fuels an illicit rural economy including drug trafficking, extortion, illegal mining, and more. Recognizing this, the government of Colombia is attempting to redress the historic neglect of rural Colombia by increasing citizen security, and bringing basic public services and private investment into these areas. However, conflict persists, perpetuating an environment of instability where the implementation of transitional justice measures is enormously challenging.

Despite these hurdles, ICTJ has been able to support the implementation of a comprehensive transitional justice program, providing comparative and specific policy advice to the authorities in charge of implementing reparations, as well as to those working on truth-seeking and historical memory. ICTJ works closely with Colombia's justice sector and provides technical advice on the adoption of prioritization strategies for the prosecutions of conflict-related crimes.

Today, as the government and the FARC rebels engage in peace talks in Havana, transitional justice issues are a core component of the negotiations. ICTJ supports the Colombian efforts to reach a sustainable peace by providing technical expertise and promoting a national debate on a full range of justice options.

Although there are many aspects of Colombia's transitional justice efforts, I would highlight the issue of reparations, and its relationship with development in the country. The fundamental question that we need to ask ourselves is: How can the government support the development of historically marginalized areas of the country that have been affected by the conflict, while at the same time ensuring the right to reparations for the estimated 6 million victims of the conflict? Given these circumstances, development activities should take account of the needs of victims and their right to redress.

A reparatory component of any development effort in Colombia should:

- Be accompanied by a clear acknowledgment of responsibility by the state through its highest authorities for the neglect and historical marginalization. This derives from a lesson observed in the implementation of reparations in Colombia, where victims interviewed by an ICTJ study had expressed reservations about the value of the reparations policy as it has not been always accompanied by a clear acknowledgment of state responsibility;
- Ensure the participation of victims of human rights violations in defining development priorities;
- Guarantee non-repetition, which means that no illegal armed groups, either former guerillas or former paramilitaries or regrouped criminal bands would be tolerated. One of the main concerns of victims interviewed by ICTJ in areas of persistence of conflict is the concern about security.

Aside from the context in Colombia, I would like to take this opportunity to comment on the development and transitional justice Sida Trend paper, which discusses Guatemala and Bosnia. I think it makes many excellent points and only wish there was more time to comment.

In regard to Guatemala, a country in which ICTJ has had a deep engagement, the paper makes all the right observations. Over the years, we have worked closely with (now former) Attorney General Claudia Paz y Paz and with victim groups, and have also provided advice and assistance on a variety of other fronts. As the paper notes, a key issue in Guatemala is the “overarching impunity” that exists in that society, and our experience there confirms this.

In presenting the case of Bosnia, I think the paper “hits the nail on the [proverbial] head” by focusing on trust—or, more precisely, the *lack* of trust. Despite the many transitional justice measures that have been undertaken, in my view, the underlying political settlement in Bosnia has made the creation of civic trust very difficult.

The Dayton Accords created what is essentially an ethnically based political system and has resulted in institutions that no one trusts. At the end of the day, transitional justice has as a key objective the re-establishment of trust in key state institutions, something that is made all the more difficult under the Dayton accords. Thus, this reinforces the point we often make, that transitional justice efforts need a political opening sufficient to effect social change that is not only based on accountability, but creates institutions that can be trusted.

As the Sida Trend paper notes, there are many important achievements in terms of transitional justice processes in Bosnia. In particular, the Bosnia State Court, which both in both design and implementation is a model for criminal accountability for serious crimes, including corruption. However, the ethnically-based nature of the Dayton Accords—and the entities that it established—has undermined those efforts. For example, the State Court itself has come under fierce political attack, which results from the ethnically-based politics reinforced by the Dayton settlement.

I also believe, as the paper notes, the lack of a truth commission is a significant lacuna in the Bosnian process. It would have provided an opportunity to examine the underlying causes of the conflict without being tied directly to the culpability of particular political leaders. While holding those leaders criminally accountable is important, a truth commission would have been more difficult to demonize than some of the trials. However, the very nature of the Dayton accords are such that a truth commission would also have faced great difficulties, similar to those faced by civil society leading RECOM efforts to establish a truth commission.

Thus, I think it is very useful to remember that in order to have development and justice, we need peace agreements that can foster the building of trust. Sweden and ICTJ are well-placed to work with negotiators on this front. ICTJ and the Kofi Annan Foundation recently convened a high level discussion with mediators and transitional justice experts to address the efficacy of transitional justice measures, specifically truth commissions, emerging out of peace processes. Indeed, we need more understanding and dialogue in this area.

Post-2015 Process

Turning to the post-2015 process, the Millennium Development Goals (MDGs) were quite effective in achieving a sustainable reduction in poverty and human development. However, in that process, justice was left by the proverbial wayside.

The report of the High Level Panel to the Secretary-General reflects an awareness that justice should be an element in the post-2015 development process, but what is generally lacking is the importance of existing commitments of states to uphold human rights, peace and security, particularly in terms of preventing and responding to serious crimes, including genocide, crimes against humanity, and other large-scale and systematic human rights violations. I would argue these are necessary preconditions for the development of societies.

Overall, my view is that we have a long way to go to ensure that the global development agenda includes a secure place for accountability for massive human rights abuses. While I personally believe that an independent goal on justice would be a critical step to supporting human rights and making the link between these fields much stronger, I think there is little likelihood that an independent goal on justice will be included in the new global development framework. Given this state of play, the focus should now be on the development of indicators to help track progress on justice and human rights.

Indicators that could have a catalytic effect and support national strategies for accountability and human rights include:

- A strategy or blueprint for addressing weak or failing justice systems is made available at a high quality technical level for national justice systems. This could include a model National Criminal Justice Policy, which would address, e.g., national police, army, intelligence (if applicable), judiciary and prosecution with a view to increase accountability. Baseline indications of the financial and technical resources necessary to achieve the results desired as well tools to measure and impact in line with previous relevant experiences (e.g., Chile (relative success), Guatemala (relative failure));
- A national platform or forum for victim groups and other civil society actors to be able to advocate for justice in specific counties or situations, utilizing regional and global mechanisms where needed. This approach would enable coalitions to emerge that advocate for accountability efforts as well as provide support for victims;
- Support for the complementarity principle, with continued engagement with development actors as this is a key opportunity for justice, not just criminal justice but other transitional justice measures as well, e.g., reparations;
- Universal legal identity, and last but not least;
- Effective access to justice.

ICTJ would be very happy to work with Sweden and other like-minded states to think about how we move forward on this kind of process both politically and substantively.

In concluding, I would like to leave you with a statement made by UN Deputy Secretary-General Jan Eliasson on the event on rule of law, transitional justice, and development in New York on November 1, 2013. Eliasson stated:

There is already broad consensus that the [global development agenda] be ambitious and inspirational, with sustainable development at its core and the eradication of poverty as its top priority. But, poverty will not be alleviated without justice. The rule of law should have its place in this new agenda.

Thank you.