Another variant on the emerging relationship between TJ and related issues is the relationship to land. One of the emerging issues throughout the world is that of forced displacement, forced eviction, land-grabbing, and so forth, whether as a result of armed conflict (as in Colombia) or from more recent processes of resource extraction or commercial agriculture. In many cases a skewed pattern of land ownership underlies many conflicts. What, if anything, should TJ do to address issues of land and natural resources? The question is especially pertinent since the failure to deal with impunity in the past can affect how conflicts over land and resources are confronted in the present, and the failure to deal with land issues can underlie recurrent conflicts.

A stellar panel discussed these and related issues, with a range of viewpoints. Their thoughtful responses showed that there are no easy answers to any of these questions, but that continuing debate and discussion can be useful.

Remarks by Chandra Lekha Sriram*

Transitional Justice and Peacebuilding: Tensions and Complementarities

As the request that I speak about transitional justice and peacebuilding indicates, transitional justice has indeed branched out. We have come a long way from the ''justice versus peace'' debates of the late 1980s and early 1990s. Today what we see, I would argue, is the complex interaction between two highly professionalized, transnational or internationally led sets of activities—transitional justice and peacebuilding. These may be complementary, but in reality there are tensions among practitioners over goals and specific techniques and tools. This is in part because of a lack of sufficient or mutually comprehensible communication between practitioners of transitional justice and peacebuilding, who have traditionally different types of practitioners, training, and constituencies. Yet at the same time, transitional justice activities are increasingly either subsumed within or operate alongside peacebuilding operations.

Consider, for example, the relationship between transitional justice reparations for victims and peacekeeping/peacebuilding disarmament, demobilization, and reintegration (DDR) programs for ex-combatants. Practitioners of each often assume either that these activities bear no relation to one another or that they necessarily conflict. The latter is certainly often the case. DDR programs of necessity take place early in transitions, usually well before the initiation of any prosecutions or commissions of inquiry, and almost always a long time before reparations. There is an evident tension: victims and rights advocates are likely to see early DDR packages as ''rewards'' to ex-combatants who may be viewed, rightly or wrongly, as perpetrators of serious abuses. The fact that reparations processes take place far later than DDR programs may add to the sense of unfairness: in Sierra Leone the first reparations program was undertaken in 2009, some five years after the DDR program was completed. Accountability measures such as trials and commissions may also impede DDR processes: according to some reports in Liberia, rumors spread among ex-combatants that their DDR cards would make it possible for them to be tried by the Special Court for Sierra Leone. And in some instances, transitional justice and DDR have become bound together,

* Professor of International Law and International Relations and Co-Director, Centre on Human Rights in Conflict, University of East London, c.sriram@uel.ac.uk. The author wishes to express her thanks to Tara Melish and the ASIL Program Committee for the invitation, and to Naomi Roht-Arriaza for insightful questions and for moderating the panel.

albeit not by design, as with the linkage of prosecutions, reparations, and DDR in Colombia, or the use of cleansing ceremonies to return ex-combatants in Uganda and Sierra Leone.[1]

Yet there are convergences between peacebuilding and transitional justice processes which are often not recognized: transitional justice vetting processes may complement, as well as disrupt, security sector reform activities promoted by peacebuilding missions. The same is arguably true of human rights and rule of law reform programs in peacebuilding missions. It may seem self-evident that rule of law promotion for peacebuilding is consistent with trials and other modes of accountability. However, many peacebuilding and development rule of law promoters often distinguish their activities, viewing trials and related transitional justice processes as politicized, and seeking to present rule of law activities as technical solutions to technical problems, albeit against a politicized background.[2] Thus, many people I interviewed who were working on promoting access to justice in Sierra Leone referred to the absence of justice as a cause of the conflict and of past abuses. But they often then sought to distinguish their work from transitional justice activities focusing on past abuses, emphasizing forward-looking programs such as training of community mediators and paralegals. Thus while they are not engaged in transitional justice practices in the way we often think about them, past abuses are at the heart of why they engage in their rule of law activities. The United Nations has to a degree sought to bridge this apparent gap at a policy level with the progressive reports of the Secretary-General on rule of law and transitional justice in conflict and post-conflict societies. These reports clearly treat transitional justice, rule of law promotion, peacebuilding, and conflict prevention as intertwined.[3] The challenge is often how to move past organizational stovepiped approaches to identify areas where transitional justice and peacebuilding activities converge, for good or ill.

The rapid expansion of both sets of activities, and increasing encroachment on one another's territory, makes this essential. However, both sets of activities face increasing critiques and demands. Space prevents a full explication of all of these, but I will discuss a few: those driven by concerns about local ownership; suggestions that transitional justice engage more directly with development and/or economic, social and cultural rights; and the expectation that transitional justice can have ''legacies,'' and in particular that it can reshape justice systems in affected states.

Expanding Demands upon Transitional Justice and Peacebuilding

The Call for ''Bottom-Up'' Approaches

Both transitional justice and peacebuilding have been subjected to the criticism that they are top-down, internationally driven, and in some cases, biased by Western values and agendas. Thus critical peacebuilding and transitional justice scholarship talk about the need for grassroots, or local, or bottom-up approaches. These critics are undoubtedly correct that these processes, often explicitly said to be created for the benefit of ''local'' people, may

[1] Transitional Justice and Peacebuilding on the Ground: Victims and Excombatants (Chandra Lekha Sriram, Jemima García-Godos, Johanna Herman & Olga Martin-Ortega eds., 2012).

[2] Peacebuilding and Rule of Law in Africa: Just Peace? (Chandra Lekha Sriram, Olga Martin-Ortega & Johanna Herman eds., 2011).

[3] UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General,* UN Doc. S/2004/616 (Aug. 23, 2004); UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General,* UN Doc. S/2011/634 (Oct. 12, 2011); UN Secretary-General, *Guidance Note of the Secretary-General: A United Nations Approach to Transitional Justice* (Mar. 2010), http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf.

seem remote or alien to those beneficiaries. Yet there is a conundrum: the scale and cost of the endeavor of rebuilding a conflict-affected state necessarily involves a large number of external actors. Even in the absence of a United Nations or other multilateral organization leading a peacekeeping or peacebuilding mission, conflict-affected countries are the site of projects by international financial institutions, bilateral donors, and international nongovernmental organizations (NGOs). These actors often focus primarily (or solely) on strengthening state institutions and legitimacy, concerned that weakness and illegitimacy contributed to the original conflict and abuses. However, populations which have developed a reasonable fear of state and other official authorities may be suspicious of their reconstruction, and equally suspicious of externally led promotion of law reform. They may similarly either feel suspicious of often limited prosecutions for past abuses, or simply feel disconnected from remote, formal, often highly technical judicial proceedings.

Thus some advocate ''local'' transitional justice and peacebuilding. This occurs in a range of ways, most notably the use of traditional justice proceedings, such as *mato oput* in Northern Uganda and *gacaca* in Rwanda, which in turn have garnered significant criticism. There has also been a turn to more localized approaches to peacebuilding, for example in rule of law and access to justice. In Sierra Leone, the United Kingdom's Justice Sector Development Programme sought to engage with customary authorities as providers of justice/conflict resolution while encouraging them to conform broadly to international human rights standards. Again in Sierra Leone, the UK supported work by the NGO Timap for Justice which supported training of community mediators and paralegals. In the same country the reconciliation/conflict resolution Fambol Tok operates at the local level there, largely financed and initiated from a philanthropist in the United States. This is not to say that genuinely local processes of conflict resolution, peacebuilding, and justice do not exist, but rather that many of the local processes known internationally are internationally promoted.

Transitional Justice and Economic Concerns

Transitional justice has not traditionally focused upon economic social and cultural rights, nor has it been the province of development assistance. However, as development assistance involves expanding rule of law assistance in countries which have experienced serious abuses, it invariably intersects with transitional justice activities, as I have discussed above. Thus scholars and practitioners have debated whether transitional justice activities should seek to address development concerns, or, more minimally, not to interfere in them.[4]

At the same time, a different critique has been leveled: that transitional justice focuses exclusively on violations of civil and political rights, and that the exclusion of redress for violation of economic rights excluded is problematic for individuals in post-conflict societies and potentially for stabilization, given potential for disputes over housing, land, and property. I agree that these are very important issues that peacebuilding and development actors need to address in conflict-affected countries.

However, it is not evident that transitional justice can or should be the venue to address these demands, given that transitional justice already has such overwhelming expectations pinned upon it, many of which it does not serve well and perhaps cannot so serve. The resources required are unlikely to be available, and this may simply place greater expectations

[4] Transitional Justice and Development: Making Connections (Pablo de Greiff & Roger Duthie eds., 2009).

upon transitional justice processes than they can reasonably manage.[5] Where, exactly, the line should be drawn between transitional justice processes addressing violation of civil and political rights and economic, social, and cultural rights or development challenges remains unclear. That is to say, prosecutions of individuals for ''disappearing'' individuals but not for expropriating their property in the process would appear to distinguish somewhat arbitrarily among abuses of the same persons. The same may be true of exclusion of corruption charges when trying individuals for crimes against humanity committed simultaneously, whether in support of, or supported by, corruption.

Legacies of Transitional Justice and National Justice Systems

Finally, transitional justice measures are increasingly expected to leave legacies behind for affected societies. At one level, this should not be surprising, given the strong emphasis many scholars and practitioners place upon victim-centered approaches to justice. However, one specific expected legacy relates directly to peacebuilding: the demand that accountability measures, particularly local, international, hybrid, and transnational trials, make direct contributions to building national legal systems. Thus, for example, the Special Court for Sierra Leone has been expected to provide a legacy for the national judicial system, despite the formal institutional separation of the two, and the narrow mandate of the former and thus of the specialized legal knowledge it might be expected to impart. I remain skeptical that transitional justice mechanisms such as trials, regardless of where they are conducted, can assist (re)development of national legal structures, and concerned that they may instead promote a degree of brain drain in countries with limited trained legal personnel. In Sierra Leone, the most tangible legacy of the Special Court is the court and prison infrastructure. The latter has been transferred to the national prison authority and houses some female prisoners in considerably better facilities than the main Pademba Road prison in Freetown. This is undoubtedly positive. The effects of the transfer of the court facilities remain less clear: they are largely being transformed into a peace museum and memorial.[6] Similarly, there is reason for skepticism regarding the effects of the International Criminal Court (ICC) via ''positive complementarity.'' For example, the former ICC prosecutor claimed that ICC scrutiny would help to promote domestic or hybrid prosecutions in Kenya. However, only a small number of low-level prosecutions resulted, with increasingly strong resistance to the court by Kenya despite public protestations of state cooperation, culminating in the election in March of two ICC accused, Uhuru Kenyatta and William Ruto, to the posts of president and deputy president, respectively.[7]

Space limitations prevent further reflection, so I close with the observation that transitional justice has indeed branched out, to engage peacebuilding, and with demands that it expand further. I would caution against overreach.

Remarks by Deborah Isser*

The questions posed to this panel deal with the purported expansion of transitional justice into areas of international criminal law, institutional reform and rule of law promotion, and

[5] Lars Waldorf, *Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,* Soc. & Legal Stud. 1 (2012); Justice and Economic Violence in Transition (Dustin Sharp ed., forthcoming 2013).

[6] http://www.sierraleonetrc.org/index.php/sierra-leone-peace-museum.

[7] Chandra Lekha Sriram & Stephen Brown, *Kenya in the Shadow of the ICC: Complementarity, Gravity, and Impact,* 12 Int'l Crim. L. Rev. 1 (2012).

* Senior Counsel, the World Bank.

https://doi.org/10.5305/procannmeetasil.107.0083 Published online by Cambridge University Press