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Editorial Note

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Editorial Note

Introduction

IJTJ is five years old. We are confident that reaching this milestone proves the viability of a scholarly publication devoted to transitional justice. The volume of submissions and the number of subscriptions continue to rise, affirming that the questions, challenges and possibilities raised by past and current efforts to address periods of mass violence or repression continue to capture the interest and speak to the passions of scholars, researchers and practitioners. As editors, we see ourselves as moderators of this forum, providing space for debate, exploration and presentation of new ideas.

This fifth anniversary provides a convenient occasion to reflect on the practice and study of transitional justice over the same period of time. How has transitional justice, as a concept, as a set of engagements and as a method of inquiry, developed since 2007, when the first issue of *IJTJ* appeared? Certainly, five years is too brief a time frame to offer definitive conclusions about the state of the practice, but it does provide a window through which to observe some trends and to speculate about the future of the field.

Transitional Justice in the World, 2007–2011

Looking back on this time period in the field of transitional justice, there appears to be some truth to the adage, ‘The more things change, the more they stay the same.’ In reviewing transitional justice initiatives, we see that criminal prosecutions and truth commissions remain the primary interventions states utilize. The International Criminal Court (ICC) has strengthened the power of international actors relative to state authorities to initiate retributive justice as a response to atrocity crimes. Since the founding of *IJTJ*, the ICC has initiated cases in Côte d’Ivoire, Kenya, Libya and Sudan. In the case of Kenya, the Kenyan government has objected to the referral and sought, so far unsuccessfully, to thwart the international justice intervention.¹ The assertion of ICC power exclusively in African countries will continue to generate controversy about the wisdom of deploying criminal proceedings in the midst of political conflict.

At the same time, national governments have established special courts to prosecute international crimes, a few of which are noted here. After protracted

¹ ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute,’ in *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Case No. ICC-01/09-01/11, International Criminal Court (30 May 2011).

negotiations with the UN, Cambodia concluded an agreement in 2006 to set up a hybrid court, the Extraordinary Chambers in the Courts of Cambodia, to prosecute former Khmer Rouge leaders.² Bangladesh eschewed international co-sponsorship and established a domestic court, the International Crimes Tribunal, which began proceedings in 2011 against Bangladeshi wrongdoers in connection with that country's 1971 liberation war with Pakistan.³ These cases suggest that there remains considerable local pressure in countries to pursue retribution for mass crimes committed decades ago.⁴ Nonetheless, national war crimes courts are not necessarily guarantors of justice. In 2008, Uganda established the International Crimes Division of the High Court to prosecute international crimes. However, in its first test case, the High Court dismissed charges based on the country's amnesty law. The defendant, Thomas Kwoyelo, was a commander of the Lord's Resistance Army, the insurgent group that has terrorized the civilian population in northern Uganda for the past two decades. The dismissal presents a whole new set of challenges in the efforts to end legal impunity for atrocities in the country.⁵

Yet, laws change over time. Brazil found a way to move forward despite its amnesty law. The Supreme Court of Brazil upheld the country's amnesty in 2010, but, in the fall of 2011, the legislature enacted a new bill to create a truth commission. This commission is to investigate crimes committed between 1946 and 1988, including those committed during the military dictatorship that ruled the country from 1964 to 1985. Truth commissions remain a popular mechanism for states to turn to in an effort to examine violent episodes in the recent or distant past. A quick review of the past five years shows that truth commissions have been used or are underway in a diverse set of countries, including Canada, Côte d'Ivoire, Kenya, Ecuador, Honduras, Liberia, Paraguay and the Solomon Islands.

These bodies are employed in multiple contexts. Paradigmatically, truth commissions seek to establish an official – but invariably controversial – record of mass violations that occurred during armed conflict, or 'who did what to whom and why.' The use of these bodies is not without pitfalls, including at times of having the perverse effect of insulating those responsible from accountability.⁶ The final report of the Liberian Truth and Reconciliation Commission, released in

² Youk Chhang, 'The Thief of History – Cambodia and the Special Court,' *International Journal of Transitional Justice* 1(1) (2007): 157–172; Randle C. DeFalco, 'Accounting for Famine at the Extraordinary Chambers in the Courts of Cambodia: The Crimes against Humanity of Extermination, Inhumane Acts and Persecution,' *International Journal of Transitional Justice* 5(1) (2011): 142–158.

³ International Crimes (Tribunals) Act of 1973, as amended 13 September 2009. See also, Lydia Polgreen, 'Bangladesh Faces Atrocities of Its Independence Era,' *New York Times*, 5 March 2011.

⁴ Cath Collins, 'Human Rights Trials in Chile During and After the "Pinochet Years,"' *International Journal of Transitional Justice* 4(1) (2010): 67–86.

⁵ See, Justice Law and Order Sector, 'Justice at Cross Roads? A Special Report on the Thomas Kwoyelo Trial,' <http://www.jlos.go.ug/page.php?p=curnews&id=69> (accessed 18 January 2012).

⁶ See, Juan E. Méndez, 'Editorial Note,' *International Journal of Transitional Justice* 3(2) (2009): 157–162.

2009, may be the most prominent such report completed during the last five years. It analyzes the causes, wrongdoers and resulting suffering from the civil wars that raged in that country from 1979 to 2003. A frequent criticism of commission reports is that the recommendations receive insufficient attention. In the case of Liberia, the Commission's recommendation that scores of persons, including President Ellen Johnson Sirleaf, be barred from holding public office for their roles in the conflict generated a strong public reaction. In spite of the report, Johnson Sirleaf stood for reelection. Her decision to run, and the decision to grant her the Nobel Peace Prize, reminds us that despite the longing for clarity about the moral legitimacy of new leaders, the political and social terrain of postconflict societies is often murky.

While truth commissions are associated with the aftermath of mass violence, some countries use truth commissions to investigate and disseminate their findings of historical injustices. Canada's Truth and Reconciliation Commission, for example, is addressing the legacy of that country's Indian Residential School System, which operated for over 150 years, with the last school closing in 1996.⁷ Thousands of Aboriginal children suffered from maltreatment and abuse in residential schools run in cooperation with churches, which created a legacy of social and cultural rupture that Aboriginal and non-Aboriginal communities continue to confront.⁸

Officials also look to commissions of truth and/or inquiry to examine limited episodes of violence and upheaval. Antigovernment protests in Thailand in the spring of 2010 resulted in the deaths of 90 and injuries to 1,900. In response, the Thai government established a commission to investigate violence and to implement efforts to promote national reconciliation. The Organization of American States, meanwhile, established a truth commission to examine the 2009 ouster of Honduran President Manuel Zelaya, which eventually determined that Zelaya's removal was illegal.⁹

During this same period, we have seen little uptake in state-sponsored, community-based, alternative mechanisms to promote social reconstruction. Rwanda announced that the *gacaca* courts, which largely concluded proceedings by December 2011, successfully resolved 1.2 million cases and tried at least 130,000 individuals accused of committing gross violations during the genocide.¹⁰ Designed as an adaptation of traditional dispute resolution

⁷ Indian Residential Schools Settlement Agreement, 'Schedule N: Mandate for the Truth and Reconciliation Commission,' <http://www.residentialschoolsettlement.ca/settlement.html> (accessed 18 January 2012).

⁸ Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: University of British Columbia Press, 2010).

⁹ Honduran Truth and Reconciliation Commission, 'Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación' (July 2011), <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/TOMO-I-FINAL.pdf> (accessed 18 January 2012).

¹⁰ Official Website of the Republic of Rwanda, 'File: Gacaca, the People's Court,' <http://www.gov.rw/FACT-FILE-Gacaca-the-people-s-court> (accessed 18 January 2012).

procedures, this national experiment remains controversial.¹¹ Indeed, without a clear consensus as to the goals of *gacaca*, let alone how to measure the program's success, continued discussion about the appropriate use of alternatives to trials and truth commissions strikes us as not only inevitable but also critical to informing future efforts.

Social reconstruction is also pursued by state institutions beyond the formal justice or truth mechanisms. The recent UN secretary-general report on transitional justice notes that the number of reparations programs is increasing. These measures seek to fulfill the obligation of states to make victims whole while addressing gender inequity and other root causes of conflict.¹² Looking more broadly, state programs dealing with education, development, ex-combatant reintegration, security sector reform and heritage have increasingly been approached (or at least critiqued) through a transitional justice lens. In instances in which these programs explicitly engage formal truth and justice processes, there have been attempts to promote a more complementary approach. One example is the shift in policy debates around disarmament, demobilization and reintegration (DDR) programs. The UN has moved toward a more integrative DDR approach that seeks to include transitional justice concerns.¹³ National governments have also taken on board the challenge of teaching history through a more inclusive lens and integrating inputs from truth commissions.

At the community level, a range of civil society and traditional initiatives have continued to engage formal structures, develop parallel programs and contest ownership of the transitional justice terrain.¹⁴ Local communities and victim and survivor groups involved in memory programs have been outspoken when their experiences have been sidelined or distorted, and have sometimes challenged official processes such as truth commissions, which all too often fail to satisfy demands for acknowledgment and inclusion.¹⁵ Local reconciliation and dialogue initiatives work either in the absence of formal state reconciliation efforts (e.g., Tree of Life in Zimbabwe) or in the aftermath of formal national processes that predictably fall short in fulfilling the need for local-level peace processes (such as

¹¹ Susan Thomson and Rosemary Nagy, 'Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's *Gacaca* Courts,' *International Journal of Transitional Justice* 5(1) (2011): 11–30.

¹² 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,' UN Doc. S/2011/634 (12 October 2011).

¹³ United Nations, 'Section 6.20: Transitional Justice and DDR,' in *Integrated Disarmament, Demobilization and Reintegration Standards*, http://www.unddr.org/iddrs/06/download/IDDRS_620.pdf (accessed 18 January 2012).

¹⁴ Pilar Riaño-Alcalá and Erin Baines, 'The Archive in the Witness: Documentation in Settings of Chronic Insecurity,' *International Journal of Transitional Justice* 5(3) (2011): 412–433.

¹⁵ Lia Kent, 'Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives,' *International Journal of Transitional Justice* 5(3) (2011): 434–455; Alison Crosby and M. Brinton Lykes, 'Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala,' *International Journal of Transitional Justice* 5(3) (2011): 456–476; Olivera Simić and Kathleen Daly, "'One Pair of Shoes, One Life': Steps Towards Accountability for Genocide in Srebrenica,' *International Journal of Transitional Justice* 5(3) (2011): 477–491.

Fambul Tok in Sierra Leone).¹⁶ Survivor and victim mobilization and empowerment programs (such as *Khulumani* in South Africa) have emerged in the wake of state-sponsored programs that have left victimized communities feeling even more marginalized and have underscored the need for further societal transformation.

All of these initiatives point to the need for more sustained civil society engagement in the face of state efforts that start too late, finish too early and fail to provide sufficient transformation in the lives of members of victimized communities. Whether such initiatives are growing (perhaps in response to the opportunities and shortcomings presented by national initiatives) is difficult to judge, but their impact on the field is likely to grow as knowledge and publicity of their efforts increase.

Transitional Justice in *IJTJ*, 2007–2011

IJTJ is a forum for dissemination and discussion of developments in the field. In these pages, we seek to provide space for scholars and practitioners to share their data, interpretations and ideas about transitional justice. While *IJTJ* engages new developments in practice – our Notes from the Field section features analyses and reporting on ongoing initiatives from those engaged with them – we do not aspire to provide up-to-the-minute coverage of new mechanisms or initiatives, as other organizations fulfill that function.¹⁷ Rather, we publish a variety of approaches to the subject. We feature reflections on processes and trends, many from social scientists who test common assumptions about transitional justice, such as what interests or institutions it serves, who benefits and how, and the unforeseen consequences of interventions. Other reflections probe the meaning of this endeavor, such as what justice is and according to whom, and how transitional justice processes are experienced by various stakeholders, including victims, perpetrators, international justice institutions, donors and the elusive ‘international community.’

Normative questions permeate *IJTJ*'s volumes: What ought to be the values that transitional justice interventions seek to promote? Should these include reconciliation and tolerance? At what cost? Who gets to decide and define how a family, community or nation should move beyond a bloody past and ‘get on’ with a democratic future? How should we think about this particular moment in global affairs? We occupy a curious time, one in which our preoccupation with justice after civil upheaval seems to outstrip our attention to preventing or attending to the systemic injustices – economic, social, political¹⁸ – that

¹⁶ See, Andrew Iliff, ‘Root and Branch: Discourses of “Tradition” in Grassroots Transitional Justice,’ *International Journal of Transitional Justice* (forthcoming).

¹⁷ See, for example, *International Justice Tribune*, a biweekly magazine on international criminal justice.

¹⁸ Rama Mani, ‘Editorial: Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development,’ *International Journal of Transitional Justice* 2(3) (2008): 253–265.

fuel the causes that erupt into paroxysms of violence. We have an international criminal court to prosecute war criminals, yet millions of civilians are deprived of adequate water, nutrition and healthcare through public neglect and corruption. There is a conspicuous absence of international accountability for these injustices.

The challenge for the field of transitional justice is to see if a set of questions, principles or practices exists to unite this divergent universe of cases. *IJTJ* offers a collection of manuscripts that is building a body of knowledge from multiple disciplines and perspectives intended to help us to engage with these foundational questions. International and domestic prosecutions for crimes in the near and distant past continue to be pursued in multiple regions of the globe. Truth commissions endure despite predictions that retributive justice would trump restorative justice. Clearly, while transitional justice has passed from being an incidental event to an accepted (though not always implemented) feature of political transitions, we still have much to learn. *IJTJ* has published articles examining transitional justice in multiple forms and regions and in different periods of time with regard to both the moment of transition and the evolution of transitional justice efforts. Cases have been drawn from the global North and South, with authors writing from academic institutions, nongovernmental organizations and law firms throughout the world.

We have also sought to spotlight particular topics in our special issues that deserved greater attention. Our first special issue, on gender and transitional justice, brought together voices that expanded the conversation beyond its familiar focus on accountability for gender-based violations in conflict. Gender in transitional justice includes, for example, the configuration of masculinity and its deployment in conflict as well as in transitions, and the ways in which gender plays out in transitional justice schemes, including reparations, criminal courts and truth commissions.

In our second special issue, on development and transitional justice, we sought to frame a conversation that had begun in disparate circles. The community of development scholars and practitioners and their counterparts working in transitional justice had each taken up the question of the limitations of justice in transitions. Transitional justice, as conventionally understood, responded to events categorized as atrocity crimes without attending to underlying structural inequalities. Those studying and working in the field were in a unique position to identify and call attention to the pitfalls in conventional transitional justice approaches. Retributive justice takes individual accountability as its subject and does not engage social and political structures directly. Truth commissions may or may not identify systemic contributors to violence or repression, and, where they do, their record with implementation in this regard has been weak. Highlighting new thinking on the relationship between transitional justice and the justice that results when communities emerging from mass violence are able to enjoy economic equality and prosperity pushed the boundaries of the

transitional justice field in ways that we hope will continue to generate new thinking and knowledge.

Similarly, we noticed increased attention to ways in which local communities experience state-driven and other top-down transitional justice initiatives. In our third special issue, on global and local approaches to transitional justice, we offered a platform for authors to look at how intended as well as inadvertent changes in perceptions of the past and present crept in as outsiders, whether nationals or internationals, inserted ‘justice’ in local communities and sought to promote social repair. Indeed, the study of the effects of transitional justice on local communities generates valuable data. This information serves policy makers as they design course corrections and consider new alternatives. At the same time, studies that generate a deeper understanding of how transitional justice plays out on the ground enrich scholars and practitioners alike.

As the field develops, there is a push to define and measure the success of transitional justice interventions. Our fourth special issue, on evaluation of transitional justice, pushed past the normative platitudes about transitional justice promoting ‘truth,’ ‘justice’ or ‘reconciliation’ and probed what is meant by these amorphous terms, how they might be translated into measurable concepts and what we learn from evaluating such processes. This contribution does not eschew the need for normativity – after all, to learn that communities prioritize security over justice at one moment in time does not tell us what value we should place on retribution – but rigorous empiricism about the terms of the debate helps us to narrow and clearly identify the gap between what we can measure and what we seek to explain.

Our most recent special issue, on civil society, social movements and transitional justice, took a new look at the role of civil society. The volume acknowledged the various contributions that nongovernmental groups have made to transitional justice while resisting the urge uncritically to celebrate their achievements. Indeed, a balanced assessment reveals unexamined and understudied ways in which the organized and independent voice of civil society has been critical in surfacing uncomfortable truths about the ways that transitional justice mechanisms may suppress the aspirations of victims, as well as occasions in which civil society has been complicit in repression.

We will continue to use special issues to convene particular conversations, but these issues are adjunct to our regular issues that showcase the cutting edge of scholarship in the field. The authors in the current issue are no exception.

This issue of *IJTJ* includes theoretical and empirical contributions from scholars and practitioners, who reflect on the impact of institutional transitional justice processes, provide a view of locally based efforts and offer observations about ongoing initiatives. In ‘The Sharp End: Armed Opposition Groups, Transitional Truth Processes and the *Rechtsstaat*,’ Colm Campbell and Ita Connolly push beyond the well-established analytic categories in the study of the field – those of victims, perpetrators and the state – to focus on the distinct role that armed

movements can play in postconflict transitional justice processes, using Northern Ireland as their case study. States are paying greater attention to the use of customary practices as part of transitional justice, yet the study by Bert Ingelaere and Dominik Kohlhagen of how such practices in Burundi are distorted by state actors is carefully rendered in ‘Situating Social Imaginaries in Transitional Justice: The *Bushingantahe* in Burundi.’ Renée Jeffery reconsiders the justice versus peace debate in her article, ‘Amnesty and Accountability: The Price of Peace in Aceh, Indonesia,’ finding that the inability to prosecute former rebel combatants has not resulted in the negative outcomes predicted. Rather, human rights protections have been strengthened, leaving us to question the conventional wisdom on this topic. In ‘Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste,’ Simon Robins sheds light on how victims in Timor-Leste perceive the effects of the transitional justice mechanisms in that country, adding more evidence that those on the ground favor economic support and that local priorities diverge from international preferences for prosecutions. Jelena Subotić, in ‘The Transformation of International Transitional Justice Advocacy,’ draws our attention to transitional justice practitioners and identifies a convergence with regard to the ambitions of the field and the emergence of an international cadre of professionals who promote its goals. Briony Jones relies on empirical methods to challenge assumptions about the impact of institutional reforms on reconciliation in ‘Exploring the Politics of Reconciliation through the Case of Education Reform in Brčko District, Bosnia and Herzegovina,’ and considers how recipients of institutional reforms mediate and alter their intended effects. In Cambodia, trials against former high-ranking Khmer Rouge officials are underway and Christoph Sperfeldt offers a perspective on the roles that civil society groups have assumed and assesses their impact on the Court in ‘Cambodian Civil Society and the Khmer Rouge Tribunal.’

Looking Ahead

We are proud of what *IJTJ* has achieved to date and remain committed to strengthening its distinctive features. The journal was established as a collaborative project between institutes in the global South and North in order to provide international coverage of transitional justice as well as to ensure that *IJTJ* reaches and reflects audiences in the global South, where the vast majority of transitional justice mechanisms are located. *IJTJ* is housed at the Centre for the Study of Violence and Reconciliation in South Africa. The University of California, Berkeley, remains the North-based academic partner, but the sponsoring unit is now the School of Law, where the Human Rights Center is housed. This change reflects the expansion of human rights programming at the law school and will facilitate new links between *IJTJ* and the Berkeley campus.

Scholarship in the field of transitional justice draws from those working across and beyond the academy. The multidisciplinary character of the investigative tools in the field offers rewards and challenges. Drawing together disparate

cannons of research poses challenges of finding a common vocabulary with which to have meaningful engagement, but bringing together knowledge production from a variety of academic departments provides for a rich conversation in these pages that more than justifies the effort. Over time, empiricists and theoreticians contest and debate the appropriate methods, lessons and meanings that each perspective offers on transitional justice. Those scholars who focus on institutions – courts, tribunals, truth commissions, UN agencies or nongovernmental organizations – complement and challenge those for whom the perspective and experience of a particular community – victims, perpetrators, national elites – or a particular segment of the population – women, children, former combatants – are most salient. Nevertheless, we acknowledge that writings from the disciplines of the social sciences and law predominate in *IJTJ* and encourage submissions from across the humanities to broaden even further the conversation that we host. In the same vein, a founding principle of the journal was to provide a platform for the work of South-based authors and practitioners. We acknowledge that we have room to improve our record in this regard.

Events in the world continue to provide new material for transitional justice scholars to study. The ‘Arab Spring’ ushered in political changes across the Middle East and North Africa (MENA). New regimes in Egypt, Libya and Tunisia confront choices about how these countries will address the legacy of abuses of the prior regime. Unrest continues in Bahrain, Syria and Yemen, posing the question of whether and when we will witness transformations that will include efforts to achieve transitional justice. We expect to see scholarly treatment of transitional justice across MENA in these pages in future volumes. We also expect to publish results of sustained studies of past transitional justice efforts. While revolutions and national political transitions offer dramatic opportunities to inaugurate transitional justice, the evolution of transitional justice responses to more historical abuses continues to provide rich material for reflection.

We face the challenges ahead encouraged by the record of *IJTJ*'s achievements of the last five years. These achievements would not have been possible but for the dedication of Nahla Valji, *IJTJ*'s first managing editor. Nahla guided *IJTJ* from its conceptualization and inception through its first five volumes. Hers was a labor of love, for there is no way we can repay the debt of gratitude we owe to her unflagging efforts in putting *IJTJ* at the forefront of transitional justice scholarship and policy debates. While she leaves this position, we welcome her as a member of the Editorial Board and look forward to working with her in this new capacity.

Lucy Hovil joins *IJTJ* as its new managing editor. Some of you may be familiar with Lucy's work in these pages. She was an author on a Notes from the Field piece on gender-based violence in internally displaced persons camps in Uganda in our special issue on gender and transitional justice, and she served as a guest editor for the 2011 special issue on civil society and transitional justice. We welcome her in her new capacity.

Perhaps the greatest achievement in the field during the tenure of *IJTJ* has been simply that transitional justice is now firmly on the local and international agenda. While progress in addressing the challenges to pursuing justice when a shift from conflict or authoritarian rule occurs may be difficult to judge, the level of understanding of the obstacles is more nuanced, local actors are more outspoken and simplistic templates are more effectively countered. It is to the power of ideas to change the world and our understanding of it that we dedicate our efforts.