



AFRICA POLICY BRIEF

Developments in the Field of Transitional Justice

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For a long time, transitional justice has been described as a ‘nascent’ or ‘emerging’ field. While it is true that transitional justice is a youngish concept and praxis (emerging in the late 1980s), today it has definitely grown out of its infancy and moved into an age of consolidation. It is undeniable that transitional justice has developed into a dynamic field of research and practice. At the same time, it remains a highly contested field that is subject to heated debates about the precise nature, scope, legitimacy and effectiveness of the ‘transitional justice project’. Here, I reflect on five notable developments that have marked the transitional justice field over the past decade.

TRANSITION JUSTICE’S FLUID BOUNDARIES

The first trend is more a confirmation of a transitional justice trait than a new development, namely the consolidation of transitional justice as an amorphous field whose boundaries are not clearly delineated. From the outset, transitional justice has been a concept with [no fixed meaning](#). At present, the boundaries of what is or is not

[included](#) in transitional justice remain fluid and there is no agreed, [consistent definition](#) of the term. The practice of transitional justice is also [diverse](#) as there are divergent views on how societies should deal with a legacy of human rights violations. This indeterminacy of transitional justice is closely linked to the [interdisciplinary](#) nature of the field. This interdisciplinarity helps create the richness and fascination of transitional justice, but is also a source of tension.

As the field has matured, transitional justice has remained in a state of limbo: it is not a separate discipline but neither does it feel comfortable being treated as a mere sub-component of political transition studies, peacebuilding, history, international law or human rights. Transitional justice is a transversal and untethered field, but also one that is composed of scholars and experts who are deeply wedded to their particular disciplines, which results in a silo mentality and suspicions about the ‘colonisation’ of the field by this or that discipline. The finger is most often pointed at [law and politics](#) as the ‘disciplinary colonisers’, which is not entirely incorrect. The past decade has also seen a growing [distancing](#) between the [international criminal justice](#) and transitional justice fields and [practice](#), though this development is viewed [critically](#) by [some](#). The [lack of communication](#) between scholarly literatures that

deal with related issues is compounded by the fact that many policy actions in the fields of [peacebuilding](#), rule of law or democratisation that could fall under the rubric of transitional justice are frequently not labelled as such. Transitional justice's interdisciplinarity has thus often felt more like an aspiration than a reality. However, over recent years we have seen scholars increasingly draw on [concepts](#), [framings](#), [epistemologies](#), [theories](#), [methods](#) and [measurement tools](#) across [disciplinary boundaries](#) to enrich the transitional justice scholarship, moving it closer to a truly interdisciplinary field.

TRANSITIONAL JUSTICE EXPANSION

A second trend has been the expansion of transitional justice, which suggests its growing political and legal relevance in the world. One of the most notable developments has been the [vertical expansion](#) of transitional justice, which has resulted in transitional justice being implemented in a wide variety of contexts that differ significantly from the traditional 'post-authoritarian' or 'post-conflict' transitions. While conceptions of the circumstances that trigger transitional justice were initially narrowly defined, there has been a push to [expand](#) these. For instance, there is growing examination of the usefulness of transitional justice in [established democracies](#), to deal with [colonial pasts](#) (whether within the former [coloniser state](#) or the [colonised state](#)). The fact that this has become a hot topic is evidenced by the UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence also taking up this [issue](#)), legacies of [institutional racism](#), [violent extremism](#) and as part of [counterterrorism policies](#).

This expansion has been driven by observations that massive human rights violations are not an

exceptional problem limited to the narrow contexts from which transitional justice emerged in the 1980s and that linear conceptions of transitions are a poor reflection of reality. But the desirability of applying transitional justice in non-paradigmatic contexts remains a hotly debated subject. There are concerns that it leads to the dilution of the field and its [normative content](#) or that it curtails transitional justice's ability to deliver on its goals by making it more vulnerable to [political instrumentalisation](#), and because of the absence of the [institutional pre-requisites](#) for effective transitional justice in non-paradigmatic transition contexts. One central element that has emerged from these discussions is the need to shape transitional justice to local [contexts](#) and to apply [conflict sensitivity](#) to transitional justice in order to better manage its unintended consequences.

TRANSITIONAL JUSTICE INSTITUTIONALISATION

Thirdly, another dimension of the expansion of transition has been the growing institutionalisation and legalisation of transitional justice, through the proliferation of international standards and good practice guidelines on transitional justice, the growth of transitional justice practices by [regional](#) and international organisations (in particular the [United Nations](#)), and the creation of national [transitional justice ministries](#). This has led to concerns that the growing bureaucratisation, [professionalisation](#) and ritualisation of transitional justice has stymied transitional justice [innovation](#). This development also feeds into long-standing debates about the place of law in transitional justice. Some are concerned that the proliferation of soft law norms leads to a [fragmentation](#) of transitional justice, which negatively impacts coherence in the enforcement of transitional

justice norms and encourages forum shopping by states. Others, in contrast, criticise the fact that the legalisation of transitional justice results in the imposition of rigid normative frameworks and [Western liberal orthodoxy](#), which reproduces [unequal power dynamics](#).

TRANSITIONAL JUSTICE IMPACT

The fourth trend has been the expansion of enquiries into the effectiveness of transitional justice. While in [2010](#) it could still be observed that we knew very little about the impact of transitional justice, a decade later this is no longer true as there has been a significant growth in transitional justice impact studies. These have included [quantitative modelling](#), qualitative [cross-national](#) and [cross-regional](#) comparative studies, [single-country](#) or [mechanism](#) analyses, [systematic reviews](#), [surveys](#), [programmatic evaluations](#) and the development of [measurement tools](#) and [indicators](#). This responds to a growing demand for evidence-based transitional justice interventions. However, the research has so far produced [contradictory results](#). As a result, much of the current focus is on developing innovative *and* workable methodological approaches (drawing on the fields of [social science](#), socio-legal studies, sociology, development studies or psychology) and [theories of change](#) that are better able to accomplish the [difficult task](#) of measuring the impact of transitional justice.

THE CRITICAL TURN IN TRANSITIONAL JUSTICE

The final trend worth highlighting is the emergence of a '[critical turn](#)' in the transitional justice scholarship. We have not only seen an emergence of scholarship that critically examines how transitional justice has been done and what its impact is, but also a strand of scholarship that

problematizes the foundations and validity of transitional justice. On the one hand, the focus has been on questioning the political agenda and power structures that are advanced through transitional justice. The linkage between transitional justice and the liberal peacebuilding and state-building agendas has in particular been subject to critique, leading to calls for a [post-liberal transitional justice](#). Such critiques also tie in with post-colonial scholarship which points at the [ideologies](#) that underpin international law and the field of transitional justice, leaving it blind to broader or alternative [conceptions of justice](#) and to [other forms of responses](#) to harms, as well as influencing how [responsibility](#) and [perpetratorhood](#) are constructed. Closely linked to this are observations about the limited ability of [voices](#) from the Global South to be heard in transitional justice debates, and more broadly the dynamics underpinning the [politics of knowledge](#) on transitional justice.

On the other hand, transitional justice has also been problematised for its side-lining of certain justice claims and the non-recognition of certain harms. A central focus has been on remedying transitional justice's blind spot regarding [socioeconomic](#) rights violations, such as forced eviction and [displacement](#), [land rights](#), [corruption](#), the deprivation of [subsistence needs](#) and cultural rights. The past decade has seen growing debates about the need for transitional justice to promote [economic justice](#) and social justice and to address the [structural inequalities and injustice](#) that underpin violent conflicts and mass human rights violations. Transitional justice's blind spots with regard to [gender justice](#) and [present-day political violence](#) have also been pointed out. These criticisms have laid the ground for reflections on

what it would take for transitional justice to have a genuine [transformative](#) effect and to fully deliver on its promise of victim redress and empowerment, and of societal change. Finally, the critical turn in transitional justice has led to actors claiming ‘new spaces’ for transitional justice actions which can contribute to strengthening social fabrics, such as the [arts](#) and [participatory artistic projects](#) (in his [2015 report](#), the UN Special Rapporteur also recognised the relevance of non-institutional responses in the cultural realm as a component of guarantees of non-recurrence), [educational](#) activities and [reforms](#), or [civil society](#)-led initiatives.

CONCLUSION

Over the past decade, transitional justice has expanded and complexified significantly. The growing questioning, critiquing and contestations within the transitional justice scholarship reflects, I would argue, the good health of the field as it attests to its evolution from a field based largely on normative claims to a more empirically and theoretically-based field. That does, of course, not mean that transitional justice is unproblematic, nor that it is widely recognised as relevant outside of its

own field. There remain justified questions about what the specificity, aims and the added value is of transitional justice, and there remains insufficient evidence about the nature of transitional justice’s effectiveness (though, to be fair, evidence with regards to most forms of interventions with transformative aims, such as peacebuilding, peacekeeping, rule of law support, security sector reforms etc. remains highly disputed). But I look forward to another decade of exhilarating research that explores the boundaries of transitional justice, critically unpacks its validity, and pushes for a realisation of its transformative aims.

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