

The Economic Dimension of Justice: Bridging Transition and Sustainable and Inclusive Private Sector Development

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Introduction

Achieving a sustainable and just peace is a daunting task for any society that is emerging from violent conflict. The to-do list for those shaping the transition process is long and touches a wide range of essential issues such as reconstruction, reintegration and building new governance structures. Two of those areas that require action in times of transition are economic development and various aspects of justice. The respective roads leading to peace and stability thus need to be paved by 1) sustainable private sector development and 2) measures of transitional justice.

So far, these two approaches have been dealt with separately, with hardly any conceptual or practical intersections: the first contributing to peacebuilding by promoting sustainable economic development, the latter focusing on issues of justice during transition e.g. in terms of prosecutions, truth-telling, reconciliation, reparations, and institutional reform. However, there are very few examples of international development cooperation at present that include suitable approaches to link transitional justice and private sector development.

In order to enable a new political, economic and social beginning, conflict-affected societies need to find ways to deal with the crimes and atrocities of the past. Recently, the transitional justice debate has started to pay more attention to the implementation of economic, social and cultural rights, thus specifically addressing the structural injustices that lead to conflicts, the causes of which are often rooted in economic disparities and distributional injustices.

Despite different priorities and approaches, it is important to recognise that both fields – transitional justice and private sector development – influence one another and can thus be promoters as well as spoilers for the other. Following the understanding of transitional justice experts, for example, private sector development can only be successful if previously marginalised groups are benefiting from the interventions. Hence, both schools of thought believe that there are entry points for a holistic approach that are worth being examined more closely.

In order to bring both communities together, a workshop at the international conference 'New Horizons: Linking Development Cooperation and Transitional Justice for Sustainable Peace' in January 2010 was dedicated to 'The Economic Dimension of Justice: Sustainable and Inclusive Private Sector Development.'¹

The workshop was facilitated by the GTZ Sector Project Innovative Approaches for Private Sector Development and referred to experiences from the work of GTZ, the Centre for International Migration and Development (CIM) and the German Development Service (DED) in order to identify synergies and intersections between both fields. This paper summarises the results of the workshop discussions, thus serving as a starting point for elaborating the relevance and the potential of this approach.²

Transitional Justice: Strengthening Rights Regimes

At first, transitional justice measures are aimed at building civic trust and recognising the sufferings of a conflict's victims. In the long term, they contribute to reconciliation and the democratic rule of law, thus ultimately seeking to achieve more social integrity and to create citizenship regimes in which people are conscious bearers of rights.

¹ The conference was organised by the Working Group on Development and Peace (FriEnt), an association of eight German governmental and non-governmental organisations with the main objective to promote peace building in all areas of development cooperation. For more information: www.frient.de

² For examples of good practices see: [GTZ \(2009\): Sustainable Economic Development in Conflict-Affected Environments: A Guidebook](#).

At first sight, transitional justice only touches the legal-judicial and political dimension of a society. However, it also influences the socio-cultural, psychological and economic dimension of justice – for instance when reparations change the social fabric of a community and victims regain a respected position in society. The same is true for human rights: People too often equate them only with civil and political rights. But for the majority of victims in developing countries, the acknowledgment and rehabilitation of massive violations of their economic, social and cultural rights are just as important. Consequently, claims are arising more and more often that reparations should be available for all victims who have suffered the abuse of one or another of these rights.

Missing transitional justice mechanisms hamper economic development: If there are no institutions in place for citizens to claim their rights, they may resort to strikes, riots and civil unrest. However, these inhibit investment, job creation and economic development. Research has shown that in the face of adversity such as human rights violations, people tend to adapt their preferences downwards to avoid their expectations being defeated. This notion results in a stunted capacity to aspire and diminished economic activity – with a negative impact on general economic development.

It is key to recognise that massive human rights violations not only affect their direct victims but an entire society, because the fundamental norms holding together a society have been abused, leaving an environment of uncertainty. Human rights abuses create a climate in which people are reluctant to raise claims as they fear repression and insecurity. Thus, social interaction and coordination suffer as well and society loses confidence in its political, social and economic system.

‘These facts reveal that aspects of justice including human rights have multiple effects on the economic dimension of a society emerging from conflict’, says Stephanie Schell-Faucon, a transitional justice expert with GTZ.

Transitional justice measures can only have a long-lasting positive impact when the society concerned finds a balance between looking back (by addressing the atrocities of the past) and moving forward (by building a better future on a solid social, political and economic foundation). Successful economic development can contribute to the second notion, thus providing a society marked by conflict with a vision of a more prosperous future. However, a single instrument cannot make a significant difference on its own: Only when many measures (governance, transitional justice, economic development etc.) are combined to form a bundle of activities striving into the same direction is change towards justice possible.

The Private Sector: Benefiting from Transition in the Long Run

There is no doubt: Conflicts massively interfere with inclusive economic growth. They undermine social capital and thus not only increase transaction and production costs, but also reduce investments. Countries affected by conflict usually do not exhibit a political, social and economic system based on the rule of law, transparency, equity and stability. However, it is exactly such a system that in the long run proves to be much more favourable for the private sector than a closed so-called war economy. Therefore, the private sector should have many reasons for promoting peacebuilding and stability.

However, there are usually some economic winners of conflicts, too: In some countries, at least parts of the private sector extensively benefit from conflict as they participate in the war economy, which is usually characterised by rent-seeking, nepotism, corruption and economic inequalities. Thus, many entrepreneurs have little interest in peacebuilding or transitional justice measures. On the contrary: They may even fear more competition and a political, social and economic system based on the rule of law, inclusiveness and stability, which in their view obstructs their particular business activities.

Accordingly, the same people often reveal only a minimal social conscience and consequently do not implement values such as equality and fair labour relations in their business practices. Exploitation and bad working conditions are a daily occurrence there. But again, when moving beyond the short-sightedness of quick wins, it immediately becomes obvious that ‘the cost of marginalisation and violence for the private sector is too high’, as Pablo de Greiff from the International Center for Transitional Justice says. ‘Everybody pays a price for institutional weakness’, he continues. ‘It is a

huge disincentive for investment.’ The challenge is, however, to also make those people, who apparently even benefit from violence and marginalisation, aware of these costs.

When the private sector is attributed an active role in a transition process, then its relationship with state institutions has to be examined more closely. This is because state institutions are a key actor in this transition. This relationship can take various forms:

In the first possible setting, the private sector acts as a driver for stronger state institutions and pushes for a better legal framework which it regards as advantageous for economic prosperity. However, in a second setting, the private sector can also support weak state institutions and oppose efforts to strengthen the state, as is (to a certain degree) the case in Nepal. In the third setting, the situation is reversed: It is the post-conflict government that protects society from anti-social, illegal and unjust business practices by applying a legal framework that is based on the rule of law and that promotes a just economic system. Of course, the state can also make common cause with a private sector that favours the assumed benefits of an unjust economic system based on privileges, corruption and nepotism. Ideally, a momentum can be created in which the awareness of a common interest in state regulation develops into cooperation between the state and the private sector to push for necessary changes.

Regardless of whether it consists of supporters or opponents to transition, the private sector is – particularly in post-conflict societies – confronted with the tension between short-term profitability and responsibility, the latter including, for instance, respecting rights and obligations, fair labour relations and contributing to financing state operations by paying taxes. In post-conflict situations which are often marked by a lack of governance, security and state regulations, it is a particular challenge to establish a sustainable balance that embraces both aspects – profitability and responsibility – in a healthy and beneficial manner.

Entry Points for Private Sector Development

According to the requirements of conflict sensitivity, development policy actors need to thoroughly analyse the role of the private sector during a conflict and in the peace process. Far more important than for external actors is the examination of the past for the country’s stakeholders themselves, including the business elite, who need to become aware of their own role during the conflict and of its economic causes.

It is vital to convince the business community that its individual contributions are necessary for them to collectively benefit from changes towards the rule of law, more equality, accountability and transparency. Therefore, much effort needs to be put into awareness building, which should help the private sector to find a new role in society and which is based on the following arguments:

- The cost of conflict hampers investment, expansion, strategic management, investment in research and development and international competitiveness.
- Insecurity and conflict affect all parts of society. Addressing these issues is in the common interest of the private sector and society in general.
- The private sector can widen its business opportunities by adhering to and thereby strengthening the (sometimes new) legal framework.
- Fewer social and economic injustices result in more trust, lower transaction costs and the building of social capital.
- Inclusion of broader social segments into the economy results in higher consumer demands and hence in better business opportunities.
- The private sector’s licence to operate is based on its usefulness for society. It therefore has a moral obligation towards society.
- Socio-economic inequality and exclusion can result in conflicts which might pose a direct threat to the property and the life of those who are perceived as profiting from injustices (which might directly affect business leaders).

There are already positive examples of post-conflict societies where transitional justice interests and economic benefits coincided: In Sri Lanka, the business community established a multi-ethnic

reconciliation committee within the chamber of commerce according to the principle 'We trade together – together we contribute to a better society, to society's and our own benefit'. In other countries, however, the private sector belongs only to one conflict party and thus does not have the basis for such initiatives, according to Markus Mayer, summing up some of International Alert's experience with private sector development in post-conflict settings. In addition, the private sector's interests (in terms of short-term profitability) are often not compatible with the various notions of justice and the rule of law. In Nepal, for instance, the private sector too often pursues business policies which are based on exclusion, nepotism, corruption and patronage. Such a situation presents a major challenge to all efforts to link transitional justice and economic development and it reveals that these efforts can only be successful when all relevant actors are on board.

Private sector development should not only address the top of a country's economy. It is vital to strengthen small and medium enterprises, too. Such a bottom-up approach should go hand in hand with capacity building with a view to establishing some form of self-organisation by the business sector so that it can fulfil its role as a stakeholder in a national dialogue on peacebuilding and on the future shape of society.

Entry Point: National Dialogue

Post-war societies generally stand at a crossroads and have to decide on the nation's future model of political, social and economic development. The more inclusive this decision, the better. Therefore, a broad national debate which involves all major stakeholders could be a good starting point for sustainable peace and for rehabilitating the social and economic infrastructure. However, too often, societies do not allow enough time and space for such a dialogue. 'In South Africa, for instance, we did not invest sufficient time and participatory effort into a discussion about the economic model that should shape our country's future', says Stephanus du Toit from the Institute for Justice and Reconciliation in South Africa.

The private sector, which is not often involved in peacebuilding processes, should also be part of the dialogue, thus assuming a measure of social responsibility. On the other hand, for a victim of the conflict, participating in a national dialogue means becoming a rights bearer who can participate in defining the country's future – a role that showcases his or her resumed position in society.

Development cooperation can play a vital role in supporting such national dialogues, ranging from capacity training with a view to enabling stakeholders to contribute effectively to the dialogue, to financially supporting the institutional framework.

Another promising entry point for linking transitional justice and private sector development is the promotion of Corporate Social Responsibility (CSR). This can strengthen economic, social and cultural rights and positively influence the corporate behaviour of economic elites. Awareness-raising measures need to clearly outline the immediate and long-term benefits of accountability and integrity and provide practical support for strategy development and implementation.

In summary, all the approaches described above provide the private sector with the opportunity to genuinely grow in economic, social and political terms as well as in line with transitional justice requirements regarding justice and equality.

General Entry Points for Development Cooperation

In general, it is essential that development cooperation actors only assume the role of a facilitator. Transitional justice and private sector development are, and should be, genuinely national responsibilities. However, development actors can play an important role, for instance by

- supporting constituencies that are in favour of transitional justice and inclusive economic development,
- offering the private sector and the conflict's victims awareness-building opportunities, for instance for the private sector on its potential positive impact on the peace process,

- strengthening the rule of law and the security sector,
- coherently addressing human rights in foreign and development policy,
- sequencing their interventions in accordance with transitional justice requirements and
- providing space for and supporting dialogue.

Links between transitional justice and private sector development can be established in numerous ways, for example ‘when reparations are employed in such a way that they meaningfully contribute to the development of society as a whole instead of being paid to the beneficiary as a lump sum’, explains Markus Sterr, head of the economic development and employment division with the German Development Service (DED). Programmes of demobilisation, disarmament and reintegration (DDR) also provide links for transitional justice and the private sector: They offer opportunities for the private sector to play an active role, especially with regard to reintegrating former combatants into the workforce. In Rwanda for instance, conflict prevention has been supported through transitional justice measures. As a recent study indicates, about five per cent of the development cooperation budget between 1995 and 2005 was allocated to transitional justice measures.

Summary and Outlook: Interdependencies between Transitional Justice and Private Sector Development

A society based on rights, trust and the rule of law is a prerequisite for poverty reduction and economic development, which in turn contribute to stability and peace. On the other hand, transitional justice presupposes a certain degree of development in terms of framework conditions and institutions, which need to be in place to secure the functioning of transitional justice measures (e.g. truth commissions, criminal courts, payments of reparations).

Regardless of all intersections pointed out above, one aspect should be borne in mind: It remains important that each instrument – transitional justice as well as economic development - first has to fulfill its own purpose. Thus, transitional justice measures do not primarily aim to address economic injustices. However, in the context of the continuing debate on the effectiveness of development assistance in conflict-affected environments, holistic approaches that integrate one perspective into the other are very important.

While the concept of transitional justice is often seen as focusing on short-term impacts, private sector development rather focuses on longer-term change and growth processes. By bringing together both perspectives, coordinated action and coherence of work would be enhanced, at the same time laying the foundations for economic activity and recovery.

In future, more exchange and dialogue between the two fields of transitional justice and private sector development will be necessary – especially in order to better support a country’s recovery process and to foster sustainable peace and stability.

A common research agenda could provide new insights into areas that need improvement. One topic for future research for example is the question whether or not private sector development initiatives have been more successful in those countries, that have applied transitional justice measures. Lessons could be learned by taking a closer look at the cases of Rwanda and Nepal. Other questions for future systematic research arise from the challenges of foreign businesses entering the market of a post-conflict state.

Case Study Nepal: Out of Stagnation

Four years after reaching a comprehensive peace accord, Nepal still finds itself in a situation that is neither war nor peace. The country faces a difficult political, social and economic situation with land issues being unresolved, a destroyed infrastructure, a largely stalled peace process and a lack of governance and progress regarding the development of a constitution. The war still leaves its marks in Nepal’s private sector, too: It mainly consists of a small and well-connected elite that still functions according to a conflict logic. Paternalistic management structures, widespread corruption and lack of mutually benefiting labour relations contribute to a difficult point of departure for sustainable economic development in general and inclusive private sector development in particular.

From a transitional justice perspective, civil, economic, social and cultural rights are continuously being violated and neither the private sector nor the political elite seriously promotes a transition based on equality, the rule of law and transparency. In this unfavourable situation, the private sector can play a crucial role in contributing to stability and a successful transformation to lasting peace. According to Catrin Fröhlich, a CIM expert working for the Nepalese National Business Initiative, the contributions of the private sector could be:

- linking with other civil society actors to advocate for the rule of law, security and the fight against impunity and corruption. This requires awareness-building on the fact that these issues are of equal importance to the private sector and other parts of society and the development of alternative and effective advocacy strategies,
- engaging in a dialogue on the structure of the future economic system based on a consensus between political parties, the private sector and other parts of civil society. This requires trust building and capacity building regarding cooperative negotiation,
- living up to its social responsibilities and societies' expectations by applying conflict sensitive and responsible business practices. This requires capacity building on the benefits of such practices, as well as on the development and implementation of adequate strategies, and
- creating awareness within society about the positive impact of the private sector on the development of the county by demonstrating integrity, accountability, transparency and by promoting inclusiveness.

Links:

[Sustainable Economic Development in Conflict-Affected Environments. A Guidebook](#),
GTZ (ed.) | Eschborn | 2009

[Transitional Justice and Development: Making Connections](#)

Pablo de Greiff and Roger Duthie (eds.) | Social Science Research Council | June 2009

[Inclusive Economic Growth, Transition and Justice in Nepal](#)

Catrin Fröhlich | Paper presented at the FriEnt conference "New Horizons: Linking Development Cooperation and Transitional Justice for Sustainable Peace" | Berlin, 27 – 28 January 2010

[New Horizons. Linking Development Cooperation and Transitional Justice for Sustainable Peace](#)

FriEnt Conference Website

[International Alert: Peace and Economy](#)

Sustainable Economic Development (SED) in conflict-affected environments (CAE)

The following SED approaches have demonstrated their potential to contribute to crisis prevention and conflict transformation, if they are do-no-harm-checked:

Business environment reform needs to achieve quick tangible results in CAE. However, reforms are never impartial and involve many stakeholders. Sequencing and coordination of reform processes are hence key success factors.

Sector or value chain promotion is focused on up-grading strategic sub-sectors or value chains. Participatory processes and effective dialogue between stakeholders are important for building trust and fostering cooperation for a common goal. This is also true for **local and regional economic development initiatives**, which are useful for addressing regional disparities.

Skills development and employment promotion facilitate access to decent employment and income. In CAE it contributes to facilitate social and economic (re)integration of conflict-affected groups and hereby to the recovery of livelihoods.

Financial system development can help decreasing inequalities and restoring social cohesion, as it improves the access to financial services, also for excluded groups.

Private sector development and business initiatives for peace have often been driven by a government, donor or aid agency. Recently, the international private sector itself has started initiatives to promote peace, stability and social responsibility amongst companies.

Source:

[Sustainable Economic Development in Conflict-Affected Environments. A Guidebook](#),
GTZ (ed.) | Eschborn | 2009

Transitional Justice

Transitional justice is a societal, political and judicial response to systematic or widespread violations of human rights.

It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take many decades.

Experience suggests that to be effective transitional justice should include several measures that complement one another. These include a combination of judicial and non-judicial processes, such as criminal prosecutions, truth commissions, reparation programmes, memorialisation and remembering efforts, trauma work, and reforms of state institutions, in particular in the security and justice sector.

Sources:

[International Center for Transitional Justice](#)

[Transitional Justice and Civilian Conflict Transformation](#)
Udine Kayser-Whande/Stephanie Schell-Faucon | 2008