



TJI
Transitional
Justice Institute

Economic Liberalism, Democracy, and Transitional Justice

Workshop Summary

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Contents

Acknowledgements and Disclaimer	1
Introduction	2
Key Concepts, Questions, Methodologies, and the Limits of Existing Theory	5
Case Studies	14
Cambodia	14
Chile	18
Kenya and Zimbabwe	23
Tunisia	28
Haiti.....	30
About the Transitional Justice Institute	34

Acknowledgements and Disclaimer

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Introduction

This report summarizes discussions that took place at a workshop held in Belfast in January 2018 that brought together scholars from law, economics, political science, sociology, and peace studies, as well as practitioners from international organizations and the case study contexts of Chile, Cambodia, Haiti, Tunisia, Zimbabwe, and Kenya. This workshop was organized by the Economic Liberalism, Democracy, and Transitional Justice project of the Transitional Justice Institute (TJI), Ulster University. The project team hosted the workshop to provide a forum for exploratory conversations on the intersections between economic liberalism, democracy, and transitional justice, with the intention of laying the groundwork for a larger interdisciplinary research project. The team felt that the time was ripe for these conversations for two main reasons. Firstly, although transitional justice is firmly established as a core component of efforts to overcome violence and fragility, it remains undertheorized in relation to interrogating the forms of democracy that should be pursued in the transitional period and addressing the socio-economic harms that may be causes or consequences of conflict and repression.

Secondly, interdisciplinary academic literature has recognized for several years that many political transitions stall or face reversals. In recent years, there has been growing awareness that even in some consolidated democracies, the quality of democracy is eroding. In response to these challenges, democratization scholars increasingly emphasize the need to build legitimate governance through inclusive participation and there is growing scrutiny of the risks posed to democratization by economic policies that increase inequality and may enable elites to capture economic and political institutions. However, transitional justice has been slow to incorporate such insights from other fields, and there has been very limited empirical research on how economic conditions, interests, and ideologies can shape transitional states' efforts to address past injustices and build stable and legitimate governments. This workshop explored these gaps within the literature.

The key themes that emerged from the workshop include:

- Empirical data from some of the case study sites discussed indicates that where the adoption of some economically liberal approaches has led to economic growth, this has not resulted in greater democratic liberalism, or even the creation of competitive liberal economies. Instead, particularly in less democratic societies, where measures related to economic liberalism are implemented, they can enable political and business elites to capture or consolidate their control of economic and political institutions. This may particularly arise where the regime seeks to legitimize itself on the need to maintain political stability in order to provide an optimum environment for economic growth and foreign investment. In such contexts, the consolidation of power in a group of elites, may result in the need for stability being used to justify illiberal policies, including suppressing democratic opposition, restricting the media, and using violent repression.

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- Elite capture of institutions may increase their capacity to select and shape transitional justice policies to promote their preferred narratives of past violence and to ensure that their exposure to criminal liability is restricted.
 - Technocratic and legalistic approaches to policymaking often obscure or overlook national and international politics inherent in policy formation and implementation. Given that decisions on the design of transitional justice policies may be driven by the self-interests of elite actors, as well as by economic or other ideologies, and contextual factors, it is insufficient to approach policymaking in this realm as a technical and depoliticized issue. It is important to engage with the politics to understand why policies are adopted and to better understand what works and does not work in supporting progress in transitional societies. This should entail engaging with political economy questions of who selects and shapes the design of transitional justice mechanisms and why. This analysis should also consider the extent to which there is transparency and stakeholder consultation in transitional justice policymaking.
 - Among the case study countries, corruption was repeatedly highlighted as a cause of violence, a motivator for elite capture of institutions, and an inhibitor of democratic consolidation.
 - Inequality was also characterized across the case study countries as a trigger for political instability and a factor that undermines national cohesion, particularly where geographic regions or minority groups suffer inequality disproportionately. It was repeatedly observed that economic policies that do not take redistribution into account often exacerbate inequalities.
 - The legacy of colonialism was also pointed to as a driver for violence and repression in post-colonial societies. These arguments highlighted in particular how repressive colonial practices have endured within institutions, particularly security apparatus, and how insufficient attention has been paid to addressing trauma and cultures of violence that colonialism created. These observations relate to a larger point that was made that economic conditions and structures in the pre-transition phase may prove difficult to alter, even in situations of fundamental political transition/regime change.
 - At the more theoretical level, the workshop explored how within academic literature and public discourse, there is often contestation over key concepts relating to the workshop themes. For example, liberalism is conflated with neoliberalism, but this overlooks that liberalism can take many forms. Broader understandings of liberalism have scope for approaches that allow for inclusion, tolerance, participation, self-determination, subsidiarity, pluralism, and more equitable social and economic conditions. Acknowledging the multiplicity of forms that liberalism can take allows for greater flexibility in addressing questions of governance and economic recovery in transitional societies, and may provide greater scope for transitional justice to address the root causes of conflict.

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- There is no single, right model for economic recovery in fragile and transitional states. Among the workshop participants, there were divergent views on whether economic liberalism, understood as purely market-orientated economic policies, is the appropriate model for transitional states. However, there was consensus that there are different models of economic liberalism and that some may be better suited to the challenges faced by transitional states. There was consensus among participants that whatever model is adopted, it should be orientated towards political and economic inclusivity.
 - Institution building is fundamental to ensuring that societies are able to transition successfully. Experience so far has demonstrated that it is a long-term process and merely trying to replicate Western institutions in other contexts is rarely successful. Theory today acknowledges that there is no clear set of blueprints for institution building. However, most academic literature and international policy papers emphasize the importance of creating transparent, inclusive, accountable, and independent institutions with clear mandates. The workshop participants noted that practice has not yet evolved on how this should be achieved.

To facilitate free discussion, the meeting was held under the Chatham House Rule, which states ‘When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed’. This report therefore does not attribute any remarks to individual participants, but it provides a general summary of discussions for a wider audience.

This report firstly summarizes the workshop’s two thematic panels before outlining the presentations and discussions from the case study sessions.

¹ Chatham House, ‘Chatham House Rule’ chathamhouse.org/about/chatham-house-rule?gclid=Cj0KCQiAiKrUBRD6ARIsADS20Lnjdlq-Frcf23Z1v4FnXJ4khAi1Ce8w2SEVWEsh--H5u-hQhEqU8SWQaAuwwEALw_wcB (accessed 27 March 2018).

Key Concepts, Questions, Methodologies, and the Limits of Existing Theory

During the workshop, five speakers delivered thematic presentations across two sessions. These presentations covered diverse, yet complementary areas of research and practice. This section summarizes each of the presentations in turn before presenting the main issues to arise in the group discussions.

The first thematic presentation began by providing a conceptual analysis of economic liberalism and neoliberalism. It observed that neoliberalism is a conceptually contested term, as understandings of it vary considerably between academic disciplines, and a politically contested term in that it is used more often by critics of particular economic policies than by neoliberalism's 'alleged adherents'. In contrast, the speaker argued that economic liberalism is more a conceptually coherent economic ideology. The speaker then stated that its key features include: prioritizing the market over the state; encouraging privatization of (most) state-owned enterprises; liberalizing trade, investment and finance policies; only lightly regulating most industries; being sceptical of high public debt; and emphasizing the importance of property rights, the rule of law, and contract rights. The speaker noted that economic liberalism was generally supportive of austerity policies to reduce public debt.

The speaker then contended that if economic liberalism is one potential model for reforming the economies in fragile states, two other liberal models are possible. One model could retain most aspects of economic liberalism whilst also allowing a larger role for the state in setting industrial policies, intervening in the markets, and owning some industries. However, the speaker cautioned that applying this model to transitional settings could be challenging where the state is too weak to have effective, efficient oversight of the market; or where widespread corruption and cronyism could be particularly problematic if there are large state-owned enterprises.

A second alternative model could be greater reliance on existing informal norms, collectivism, and local practices. The speaker gave the example of where there are well-functioning land cooperatives it may make little sense to intervene and divide the land into individually owned farms. This has the advantage of building on what works, but in transitional settings, pre-existing social institutions and norms may be problematic and, for example, may reinforce discrimination against women and minority groups.

The final section of the first speaker's presentation focused on what works in economic recovery. Here, the speaker contended that we know more about what does not work than what works. The presentation referred to 'shock therapy' approaches, namely rapid and widespread programmes to remove the state from the economy, as measures that do not produce economic recovery. It was

contended that these approaches have fallen out of favour as it is now widely recognized that well-functioning institutions are necessary for the proper operations of markets. The speaker further contended that the main approach to economic recovery today is institution building. However, returning to the theme of what does not work, the presenter cautioned against ‘isomorphic mimicry’, namely the practice of trying to replicate Western style institutions in transitional settings,² which often results in the establishment of institutions that look like institutions in the West but are unable to carry out their functions. In presenting examples of failed efforts of institution building, the speaker also highlighted the challenge of when laws exist on paper but not in practice.

In exploring the limited evidence that exists for what does work in economic recovery, the speaker referred to the 2011 World Bank report³ that highlighted the importance of jobs, security, and justice in preventing relapses into conflict, but the speaker argued that these observations are difficult to operationalize into policy terms. The presentation then drew upon the work of Andrews, Pritchett, and Woolcock to argue for ‘problem-driven iterative adaptation’.⁴ This approach eschews addressing a context with a set model or set institutions to replicate, and instead calls for more bottom-up approaches that allow local communities to nominate their own problems, to exercise decision-making power to come up with their own solutions, and to encourage experimentation and feedback to ensure the solutions work. The one thing that can be said definitively that is true is that institution building is a slow, messy process and there is no clear set of blueprints. The speaker concluded that there is no single, right model for economic recovery in fragile states.

The second thematic presentation began by emphasizing that the research agenda underpinning the workshop is intended to deal with real world problems and have a policy impact; it is not simply an academic exercise. On this basis, the speaker argued that the project should engage with the United Nation’s Sustainable Development Goals (SDGs) (also referred to as the 2030 Agenda),⁵ as these were produced in the real world and progress towards their fulfilment can be measured. However, the speaker cautioned that state or national level measures might not always reveal local inequalities within states.

A major theme running through the second presentation was that *politics* presents a significant challenge to the implementation of the SDGs. In exploring this theme, the speaker highlighted both international trends such as the democratic recession around the world, which undermines the extent to which international actors will work together with the same positive objectives in mind to fulfil the SDGs, as well as national political dynamics, such as elite capture of transitional processes. The

² In making this argument, the speaker referenced Matt Andrews, Lant Pritchett, and Michael Woolcock, *Building State Capacity: Evidence, Analysis, Action* (Oxford University Press 2017).

³ World Bank, *World Development Report 2011: Conflict, Security, and Development* (World Bank, Washington DC, 2011).

⁴ Andrews, Pritchett & Woolcock (n 2).

⁵ UNDP, Sustainable Development Goals undp.org/content/undp/en/home/sustainable-development-goals.html (accessed 20 February 2018).

speaker contrasted this assertion of the importance of politics with neoliberalism, which it was argued seeks to depoliticize responses to intensely political issues. The speaker contended that it is important to think about the political dimensions of development, as the problem is not a lack of resources or a lack of knowledge about what works. Instead, the problem fundamentally is how to deal with the political challenges that are faced in different countries, in particular, where certain groups are able to dominate or capture the transitional process for their own purposes. The speaker argued that neoliberalism does not face up to these challenges. The overlooking or obscuring of political issues can create a difficult climate for practitioners who seek to reveal the role of power and politics in policymaking and to focus on what is going wrong in transitional societies, as they may come up against strong vested interests. Nonetheless, the speaker contended that it is not possible to look at how to achieve progress in transitional states in a narrow economic sense or as a technical exercise, it is important to recognize the politics of it. The presenter argued that projects such as TJI's Economic Liberalism, Democracy, and Transitional Justice project, can ask questions that others cannot ask because of the sensitivities. As a result, such projects have the potential to make a real contribution to understanding the importance and dynamics of the resistance against the fulfilment of the SDGs. The second presenter argued that meeting the challenges outlined in this presentation requires bringing together people with diverse backgrounds. It was further argued that multidisciplinary scholars play an important role in developing models to measure progress, but that academics have limited familiarity with political processes and the dynamics of negotiations. Therefore, a cross-fertilization of knowledge between academics and practitioners is the best methodology to grapple with the issues explored in the workshop.

The third thematic speaker moved the discussion from exploring larger conceptual issues to focusing more directly on questions of political economy in transitional justice. A number of observations framed the analysis. Firstly, it was noted intra-state conflict is now the predominant source of violence around the world. Secondly, drawing on findings of a joint UN World Bank study on conflict prevention,⁶ it was argued that the primary driver of intra-state conflict is social group specific grievances. Following from this observation, the speaker then contended that political elites may seek to select and design transitional justice processes in order to bolster their own preferred narrative of the conflict, which would generally see combatants from their own group as the 'good guys' and combatants from the other group(s) as bad. Similarly, only victims from their own group would be recognized as deserving, whereas the victimhood of persons from the other group(s) would be denied or downplayed.

Flowing from these observations, the main argument of this presentation was that rather than taking a more generic, ideological approach to economic liberalism, it is important to ask political economy

⁶ World Bank Group and United Nations, Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict (2018 International Bank for Reconstruction and Development/The World Bank) openknowledge.worldbank.org/handle/10986/28337 (accessed 27 March 2018).

questions such as who selected and designed transitional justice institutions and why? Which civil society actors participate in transitional justice processes and how does this shape the outcomes? The speaker contended that without asking such questions, transitional justice processes run the risk of embedding and deepening the very same social group specific grievances that bring about conflict. To address these questions, the speaker welcomed the theoretical frameworks put forward in the World Bank's 2011⁷ and 2017 Development Reports, which call for more bottom-up, iterative approaches. However, it was noted that these reports give little indication of how these frameworks should be implemented in practice.

To address the question of how transitional justice programmes are and should be designed, the speaker referred to SDG 10.2⁸ and SDG 16.7⁹ to emphasize the importance of responsive, inclusive, participatory, and representative decision-making at all levels.

The speaker also argued that an important element in the design of transitional justice processes should be to draw up 'historically demonstrated, credible methodologies' used by UN Commissions of Inquiry and international non-governmental organizations, such as Amnesty International and Human Rights Watch, to identify a 'credibly alleged universe of victims'. It was contended that this could be used to inform the selection and design of transitional justice processes in ways that are less vulnerable to local political and civil society actors seeking to shape the jurisdictional¹⁰ and functional¹¹ variables of these transitional justice processes to direct them away from themselves and towards their political adversaries. The speaker emphasized that to expose and reduce political manipulation of transitional justice mechanisms, specific attention should be paid the mechanisms' jurisdictional and functional elements.

Finally, the speaker contended that with respect to the role of commercial actors, whose interventions are often overlooked although they can play a decisive role in deepening and prolonging intra-state conflicts, ensuring that the jurisdictional elements of transitional justice mechanisms extend liability to those who aided and abetted serious crimes may be important. It may also be necessary to explore how commercial actors influence the functional elements of a transitional justice mechanism.

⁷ World Bank (n 6).

⁸ SDG 10.2: 'By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.'

⁹ SDG 16.7: 'Ensure responsive, inclusive, participatory and representative decision-making at all levels'

¹⁰ Eg, subject matter jurisdiction, personal jurisdiction, relationship to national courts, precision of criminal conduct, territorial jurisdiction, temporal jurisdiction, the extent which civilians, NGOs, governments and investigators are able to trigger investigations, and case selection criteria.

¹¹ Eg capacity to compel cooperation, investigative access to territory, access to and protection of witnesses, provision of information and evidence, fiscal independence, personnel provision/appointments process, process location, and apprehension and surrender of the accused.

The fourth thematic speaker moved the discussion from thinking about universal concepts and approaches towards a regional analysis of the relationship of economic liberalism to post-conflict, democratic, and developmental transitions in conflict-afflicted Arab countries. The presentation took a chronological approach beginning with the autocratic governments before the Arab Spring. It was emphasized that indicators such as Polity IV make clear that the Arab region has been the least democratized world region; but it is also a region with impressive economic development. From this, the speaker concluded that in the Arab World, there is a non-correlation between democracy and development. Scholars have labelled this gap ‘Arab Exceptionalism’ as it differs from the positive relationship between democracy and development in other world regions (however, the speaker noted that even within other regions, some individual countries experience the same non-correlation).

The speaker then presented findings from a cross-country analysis¹² that asked why Arab Exceptionalism exists. It was argued that cultural and religious factors do not provide an explanation. Instead, the speaker put forward two dominant explanatory factors. First, abundant oil reserves, which were found before democratization in the Arab region and which provide non-democratic regimes with resources to trade public goods and economic benefits against political participation rights, to spend lavishly on security and military infrastructure, and to privilege particular social groups. Second, multiple, multi-faceted conflicts, including the unresolved Arab-Israeli conflict, disruptive foreign interventions, and the growth of fundamentalist groups, undermine the growth of the democracy. The speaker noted that the impact of these factors varied between countries within the region.

Turning to economic liberalism, the speaker argued that there had been limited economic liberalism under the region’s non-democratic regimes, such as privatization of certain enterprises, reductions in state subsidies, and trade openness. It was stated that these economic liberalism measures were not introduced out of conviction that they were more efficient. Instead, they were implemented because the regimes thought that they would perpetuate their own existence. They were self-defence measures, where the autocratic regimes were faced with rising public debts, growing fiscal deficits, mounting balance of payment pressures, and pressure from international financial institutions. The speaker argued that these measures did not result in the creation of competitive liberal economies. Instead, they led to capture of national economies by political and business elites.

The presentation then turned to explanatory factors underlying the 2011 uprisings. The speaker argued that increases in rates of unemployment to the highest levels of the world, especially among young people, were a dominant factor. To a lesser extent, growing economic inequality may also have played a role, particularly after the process of privatization of the national economy started to take hold in these countries, although this issue is controversial in the literature. Other non-economic

¹² I. Elbadawi and S. Makdisi, (eds), *Democratic Transitions in the Arab World* (Cambridge University Press 2017).

factors include population growth, increasing literacy and digital connectness among young people, feeble rule of law and property rights, and long-standing frustrated aspirations for greater political freedoms.

The speaker then asked what should replace the overthrown political-economic regimes. It was argued that given that flawed institutions were a driver of the uprisings, a primary objective should be changing or entirely replacing the institutional fabric of the country, with institutions that are capable of providing transparent, predictable policies, with clear mandates, easy to monitor, and non-arbitrary decision making, and which are independent from political inference and elite capture. In addition, to creating new institutions, the speaker argued that reconstruction also requires nation building, which was characterized as the forging of a sense of common nationhood, intended to overcome ethnic, sectarian, or communal differences; to counter alternate sources of identity and loyalty. To achieve this, the speaker asserted that the transitional model must be both politically and economically inclusive. The presenter continued that, economic liberalism, understood as the mainstay of purely market-oriented economic policies, is not the model for transition whatever liberal democracy may or may not imply in this regard. Instead, the speaker concluded that reconstruction in the Arab World requires the creation of genuine democracy and the implementation of macro- and micro-economic policy that reconciles the objectives of growth and socio-economic equity while allowing for the full potential of the private sector as an engine of growth.

The final thematic presentation focused more directly on transitional justice and explored its relationship to neoliberalism. It began by focusing on economic violence, which was defined as violations of economic and social rights, plunder of natural resources, corruption and other economic crimes, and some international humanitarian law violations (eg forced displacement, starvation, destruction of property). The presenter argued that economic violence is an elastic concept that could also potentially include structural adjustment policies and shock therapy. The speaker continued that whereas Galtung argued that structural violence can be less intentional and less direct than physical violence, economic violence is often intentional and direct. Where this is the case, the speaker advocated that transitional justice should address structural violence in a similar manner to physical violence. However, it was observed that this rarely occurs.

The speaker then turned to exploring why transitional justice mechanisms are often focused only on physical violence. It was argued that implicit in transitional justice's evolution is the liberal peace thesis that free markets plus procedural democracy will equal peace. The speaker also argued that much of the intellectual capital that infused the transitional justice field's early development came from the human rights community in the United States, which privileged civil and political rights and pressed for justice for atrocity crimes, but did not view economic and social rights as legally enforceable. In addition to factors tied to neoliberalism, the speaker noted that other contributory factors include the dominance of lawyers within the transitional justice community and the privileging of their knowledge and expertise.

The speaker was careful to note that this does not mean that transitional justice is part of a conspiracy but contended instead that it reflects the ideology and assumptions that transcend it and its dominant preoccupations reflect neoliberal ideology and the public international law more broadly. As a result, it was argued that transitional justice emphasizes ideas that are Western, modern, secular, or legal over approaches that are non-Western, religious, local, traditional, or political. Transitional justice prioritizes civil and political rights, particularly physical violence, over economic and social rights and structural violence. It calls for retributive justice, rather than distributive justice. As a result, the speaker suggests that the deep-seated assumptions of transitional justice may not be helpful for addressing the root causes of violence.

The speaker's final remarks stated in many of the critiques, liberalism is conflated with neoliberalism. However, it was argued that liberalism is a big tent and there is pluralism in the different models of democratization and marketization in different societies. The speaker asked how can 'economic liberalism' encompass both the Washington Consensus and the China model? How can liberalism include both Paul Ryan's libertarian fantasies and the Scandinavian social democratic model? The presenter further contended that the liberal tradition provides ample room for giving greater weight to inclusion, tolerance, participation, self-determination, subsidiarity, pluralism, and more equitable social and economic conditions. The speaker concluded by arguing that within a framework in which it is accepted that there can be multiple forms of liberal peace, transitional justice can play a role as a form of peacebuilding that is contextually tailored to addressing particular root causes and drivers of conflicts.

The thematic presentations prompted much rich discussion among the workshop participants. The main themes that arose were:

- **The significance of the shifting global economic order:** among the points raised on this theme were reflections on the meaning of the term 'Washington Consensus', with one participant noting that what is commonly termed as the Washington Consensus with respect to the preferred economic policies promoted by the United States in the early 1990s is closer to what is commonly described today as neoliberalism. However, the consensus in Washington that has evolved since the 1990s, today recognizes a greater role for the state and is consequently less clearly tied to neoliberalism. Elsewhere in the discussion, the Washington Consensus was contrasted with the Beijing Consensus, which it was argued had also evolved over a number of years. One speaker noted that ten years ago, the Beijing Consensus was talked about as a new model that had more scope for industrial policies and state-led development (although it was noted that many Asian countries had implemented similar approaches for decades). Today, discussions of China's role in the global economic order are often less ideological in the sense that its approach is less often discussed a model; instead, its role is now considered more commonly in a power-based, interest sense. This views China as alternate source of financing and political patronage that shifts the

global distribution of power in ways that change the models that different countries might want to use. It was argued that although less progressive or developed countries might be more sensitive to Chinese pressure, even more progressive countries are changing their approaches based on the growth of the China's economic power. It was argued that these global shifts are already shaping the pursuit of international criminal justice as the example of Syria shows that Russia and China are prepared to work together to block UN Security Council referrals of situations to the International Criminal Court (ICC).

- **Importance of power and politics:** several participants in the workshop emphasized the importance of looking at power relationships, and some argued that they are more significant than economics and global norms, although they are often overlooked in the literature. One speaker noted that the theory of economic liberalism is not the problem, the problem is to explain how it works in practice, and in particular, how elites operate using economic liberalism. Participants similarly observed that power and politics may shape transitional justice policymaking and implementation. It was argued that more research is needed to explore who decides to create transitional justice mechanisms, who determines what these mechanisms can investigate and what powers they can exercise, and who funds these institutions and ensures they that can function appropriately. It was argued that these issues are often central to the effectiveness of transitional justice processes in leading to peace, democracy, and the rule of law. The participants cited many examples to show how power and politics had influenced where international courts had been created and where they had not, and where they had been created, the crimes that fell within their jurisdiction. It was also argued that the focus within transitional justice and international criminal law on the consequences of violence, but not the causes was similarly a product of power relationships. A similar argument was made with respect to the focus on prosecuting those who are deemed most responsible for ordering or perpetrating acts of violence, whilst overlooking the role of powerful actors who aid and abet repressive regimes and non-state armed groups.
- **Property rights:** the participants made a number of observations on this theme. One suggested that property rights and the rule of law should not be viewed just as elements of economic liberalism as even if it is decided that the solution for post-conflict transitions is more inclusive development models, property rights and the rule of law are likely to be part of any such models. Another participant noted that in most economic systems, having some form of property rights and the rule of law would lead to better economic outcomes. The question is how do you operationalize that? In exploring this further, the participant questioned whether legally enforceable land deeds would function well in all contexts. It was suggested that it is possible to imagine a world where property rights are enforced more informally through social pressures and local collective decision-making that would still embrace the importance of property rights as an abstract theoretical element of economic growth but would not have the same replication questions. A third participant noted the risk that powerful actors capture and mangle property

rights. This observation was tied to the notion of lawfare where the use of law is taken as an asymmetric exercise of power where the powerful use law to silence their opponents. Another participant noted that lawfare can occur in contexts where on the surface everybody has equal access to the law, but in reality the system operates in a manner that ensures that certain people can enforce their rights far more easily than others.

- **Empirical validation and the importance of measurement:** several participants argued that academic literature in general, and particular in relation to transitional justice, is far too often based on theoretical assumptions and normative judgments with little empirical grounding. It was suggested that this was in part due to the fact that academics sometimes write about case studies based on publications and lectures rather than detailed local knowledge. It was further contended that with respect to governance and justice, even where scholars and practitioners have sought to conduct empirical measurements these have often focused on outputs rather than outcomes, as the former are easier to measure than the latter. It was contended that such exercises run the risk of not measuring what is really important and could have distorting results.
- **Role of civil society:** one participant noted that civil society is an important element of a developed society and that it can play a significant role in many areas including the pursuit of justice. However, it was argued there is a reduction in the role of civil society in many contexts due to funding cuts, co-option of civil society personnel into government, or conversely, state intimidation of civil society activists.
- **Elite fragmentation and democracy:** one participant used the example of post-Suharto Indonesia to argue that elite fragmentation can create space to make democratization possible. In contrast, it was argued that where elites are united, it becomes easier for them to capture resources, institutions, and processes.
- **The importance of political-sensitive terminology:** one participant argued for the potential of linking the 2030 Agenda to the workshop's broader debate on the relationships between transitional justice, democracy, and economic liberalism. It was noted that the SDGs are formulated in ways that are not frightening to repressive governments as they do not talk about democracy and using this language may help a wider range of actors to engage with the goals.

Case Studies

Cambodia

The session on Cambodia had two presentations with interlinked themes. The first speaker presented an overview of Cambodia's political history since the 1970s. The second speaker used Cambodia as a case study to evaluate theoretical assumptions on the extent that neoliberal approaches can contribute to sustainable peace.

The first speaker opened their presentation with an overview of the modern historical context, arguing that Cambodia has endured a long history of oppression marked by colonial occupation and foreign intervention. The speaker noted that between 1965 and 1973, the United States as part of its wider regional campaign to fight communism in Vietnam, dropped 2.7 million tonnes of bombs on Cambodia. This exceeds the amount of bombs America dropped on Japan during World War II by almost a million tonnes.

From 1975, after Phnom Penh fell to the Khmer Rouge, the population was subjected to a radical plan to forcibly return Cambodia's economy and society to an agrarian one. The presenter said that two million people were evacuated from Phnom Penh in three days, on the pretext of avoiding American bombs. In the mass exodus to the countryside and subsequent repression under the Khmer Rouge regime, a quarter of the population died and thousands were tortured.

In 1979, Vietnam invaded Cambodia and ousted the Khmer Rouge pushing them across the border into Thailand. The speaker noted that little was done to challenge the Vietnamese occupation until after the end of the Cold War. In 1989, under international pressure, the Vietnamese withdrew and in 1991, the Comprehensive Cambodian Peace Agreement (or Paris Agreement) was signed by Cambodia and 18 other nations in the presence of the UN.

In 1992, the UN established its Transitional Administration in Cambodia, which had an unprecedentedly broad mandate. This included deploying a large peacekeeping force to provide the security needed to put in place democratic processes, in particular to enable elections to take place. The speaker noted that during its two years of operations, the mission developed a reputation for achieving very little that was positive and for a pervasive and deep-rooted predilection for sexual exploitation and abuse.

Elections were held in 1993. However, the speaker argued that their democratic aspect was undermined as despite a clear win by the Royalist party, FUNCINPEC, led by Prince Norodom Ranariddh, under the peace agreement, the party was required to form a coalition with the Cambodian People's Party, led by Hun Sen. In 1997, Hun Sen ousted his co-premier Norodom Ranariddh. This resulted in a suspension of foreign aid, though not of foreign income, since China

stepped in to fill the gap. It also delayed Cambodia's entry into the ASEAN community, which took place in 1999.

The speaker then discussed Cambodia's astonishingly successful economic development programme, which has resulted in an average of seven per cent growth in GDP every year for the last decade. At the same time, the level of aid received by Cambodia, which initially was extremely high, has dropped dramatically. For example, foreign aid as percentage of government income dropped from 120 per cent to 32 per cent between 2002 and 2015. However, this speaker argued that the distribution of the benefits of this economic success has been very unequal and maternal mortality has increased. In this speaker's opinion, power balances resulting from unequal distribution in a successful economy facilitate corruption in business and politics. The speaker contended that corruption has become an integral part of Cambodia's economic and political system. This has contributed to greater centralization of power and oligarchic control. The same prime minister has been in power for 33 years, which provides political stability but it indicates the very limited progress Cambodia has made towards democracy building. The speaker suggested that democracy in Cambodia is regressing and arguably has died. To illustrate this, the presenter noted that in 2017 one of only two independent newspapers was shut down, the opposition leader was arrested, and independent radio stations were closed down. In the speaker's view, a form of 'lawfare' has been used to de-legitimize opposition through new regulations and new laws.

The second presentation began by setting out a theoretical framework, which the speaker viewed as underpinning the neoliberal normative arguments. This framework consisted of a triple process that it is assumed will contribute to peace:

- Economic liberalism = marketization to achieve peace through prosperity
- Political liberalism = democratization through transition and consolidation
- Legal liberalism = criminalization of political violence through formal trials

The speaker then analysed this framework in general terms, noting, for example, that marketization may lead to economic growth and wealth creation, but it generally also contributes to widening inequalities. It was further argued that imposing this framework in illiberal contexts may not achieve the designed results when genuine democracy fails to take hold and where elites manipulate the criminal justice process to consolidate their hold own power.

In the remainder of the presentation, the speaker applied this framework to Cambodian experiences from the fall of the Khmer Rouge to the present day. With respect to economic liberalism, the speaker noted that the economic benefits of the policies adopted in Cambodia have been huge: some years ago, 50 per cent of the population was below the poverty line (the minimum level of income considered adequate) whereas by 2014 the figure was 14 per cent according to the Asian Development Bank. However, inequality in income levels persists. The speaker then argued with

respect to political liberalism, progress towards democracy has been poor. In the speaker's view, Cambodia is not free; it is an illiberal democracy. Finally, with respect to legal liberalism, the speaker noted that the Extraordinary Chambers in the Courts of Cambodia (ECCC) was created in 2003 to try Khmer Rouge leaders. However, the speaker observed that peace between the Cambodian government and the Khmer Rouge had been secured by amnesties for most Khmer Rouge members and today, the national criminal justice process remains a tool of the ruling party. To illustrate this latter point, the presentation referred to the 2015 World Justice Project Rule of Law Index (an analysis of states' record on meeting rule of law standards), which ranked Cambodia at 99 out of 102 countries. In 2016, this had dropped to 112 out of 113.

Based on these trends, the speaker concluded that the neoliberal assumptions that the triple process leads to prosperity, peace, and justice have some theoretical and empirical merit. Conditions in Cambodia have improved considerably compared to the prior rates of war, violence, and poverty. However, the speaker also contended that Cambodia's experience demonstrates the limits or even dangers of neoliberalism when applied to war-torn or post-war countries where asymmetrical power relations and the perception of insecurity persist, where state and civil society institutions remain fragile or extremely weak, all of which give rise to or perpetuate the politics of survival. In particular, the speaker said that in Cambodia the fact that the economy grew, and continues to grow, legitimizes the existing regime. The legitimization is strengthened by the belief that in order to have economic growth it is necessary to have political stability. On this basis, protests must be suppressed because they will lead to political instability, which in turn will result in economic problems.

The speaker said that when the UN established a transitional government in Cambodia, it was assumed that Cambodians would work together and compete for political power peacefully: but very little attention was paid to how 'power', including who holds it and how it is used, might affect this process. Once the peace agreement was signed in 1991, the temporary alliance opposing Hun Sen gradually disintegrated leaving his Cambodian People's Party free to become the dominant party and suppress opposition. In this speaker's opinion, the problem has been exacerbated by the efforts of the ruling party to politicize the judicial and legal system in order to protect its leaders from the possibility of prosecution in the ECCC for genocide and crimes against humanity. This speaker concluded that in Cambodia, elite power in conjunction with their insecurity (particularly their fear of prosecution) has driven oppression and subversion of the rule of law. Hence, although the economy has improved dramatically, progress on transitional justice issues has been stultified.

Following the presentations, the workshop participants discussed a number of themes:

- **Absence of a correlation between growth and democratization**, at least in East Asia: one participant stated that the absence of a correlation occurred as economic power comes with political power: the more money someone has, the more they can influence an election. A second factor is that economic growth gives a regime legitimacy: if the country is doing well, people tend

to accept that the regime in power is entitled to govern and do not raise objections if it uses undemocratic methods of crushing opposition because political stability is seen as essential to economic growth. It was observed that many critical scholars argue that market liberalization leads to a weakening of the state: but one participant suggested that in East Asia the opposite is true. The East Asian economic model depends on the state having a powerful role – a difference reflected in the move from the ‘Washington consensus’ to the ‘Beijing consensus.’

- **Privileging of political stability, economic growth, and market-oriented economics over democracy and justice:** it was noted that in both Cambodia and Haiti political stability, economic growth, and an export-oriented market, have been prized and protected at the expense of democracy and justice. It was pointed out that business leaders in Haiti were unconcerned by the absence of a robust rule of law system as their economic initiatives may be expedited in its absence as all that is required is money and contacts. The participants observed that in Cambodia the primary concern of investors is not to promote the rule of law, but to ensure stability. Illiberal regimes justify political repression by arguing that they are promoting stability to ensure that foreign investors are not scared away. The participants further noted that China is the number one investor in Cambodia and it is not concerned with the rule of law so long as its investments are profitable.
- **Corruption:** one participant suggested that corruption helps fuel economic growth: money laundering brings money into the country that is then invested. Another participant responded that to some extent this may be true, but only if the corruption is limited. If the scale of corruption becomes too much, not enough of the money coming in will end up in hands of the productive side of the economy.
- **The extent to which Cambodia’s rapid economic growth benefited employees:** it was stated that the benefits to employees were limited because investors were attracted to economies in which labour costs are low. Benefits would only accrue to factory workers if the opposition parties pushed for higher wages and labour rights. In Cambodia, this does not happen, since the priority is political stability and economic growth, not democracy. However, another participant noted that in response to pressure from the United States in the 1990s for higher standards as a condition of trade, labour conditions and wages had improved. This participant suggested that since Cambodia joined the World Trade Organization in 2004, its factories are no longer being named and shamed for poor labour conditions in the same way that they used to be. In addition, this participant noted that wages increased in 2017 in response to political pressure from opposition parties.

Chile

The session on Chile had two presentations that complemented each other in analysing Chile's past and present. The first provided a historical overview of the linkages between the military regime of Augusto Pinochet and neoliberal economic policies. The second focused on contemporary attitudes to democracy within Chile.

The first presentation began by noting that Chile's 'neoliberal experiment' was one of the first laboratories for what became known as neoliberal economic policies. As a result, it has been extensively explored in academic literature and popular culture. The speaker started telling the story of this experiment with the 1970 election of President Salvador Allende, who had a mandate to move Chile towards socialism through democratic means. The speaker noted that the Allende government's economic policies included gradually moving towards public ownership of economy, redistribution through increasing salaries and public expenditure, introducing high trade barriers, and price controls. The speaker noted that these policies resulted in growth and rising wages between 1970 and 1972, but then the economy collapsed dramatically. The collapse resulted in hyperinflation, the draining of foreign reserves, falls in GDP and real wages, shortages of basic commodities, and widespread public disorder on the streets of Chile. The speaker noted that the military used both the deterioration in the rule of law and the economic collapse to justify seizing power in a 1973 coup, backed by the CIA (the United States' foreign intelligence service).

Once the military were in power, they engaged in a brutal and systematic programme of suppressing their perceived political opponents, including enforced disappearances, extrajudicial executions, arbitrary detentions, and torture. The presentation referred to the work of Javier Couso, who argued that Chile's neoliberal experiment, which was launched in 1975, 'could be implemented only under the context of a dictatorship in which the most fundamental liberties were severely curtailed'.¹³

The presentation noted that neoliberalism in Chile began with the appointment of the 'Chicago Boys' in 1975. This term refers to a group of Chilean economists who had been educated in the United States and were heavily influenced by the work of Milton Friedman and other scholars from the Chicago School of Economics. The speaker argued that the Chicago Boys shared the military's goals of fighting Communism and economic stagnation through a technocratic regime that would avoid demagogic and inefficient economic policies, which they saw as resulting from the way that democracy operated in Chile. It was further argued that authoritarianism allowed the Chicago Boys to exercise exceptional autonomy in designing economic and social policy and that between 1975 and 1982, they used this autonomy to introduce a 'shock therapy' programme. This entailed rapid and widespread measures to transform Chile into a liberalized, world-integrated economy in which market forces were left free to guide most of the economy's decisions and the government's scope

¹³ Javier Couso, 'Trying Democracy in the Shadow of Authoritarian Legality: Chile's Transition to Democracy and Pinochet's Constitution of 1980' (2012) 29(2) *Wisconsin International Law Journal* 393.

for economic intervention was substantially curtailed. Measures introduced under this programme included privatizing land and industry, abolishing price controls, liberalizing imports, deregulating financial market and capital flows, suppressing trade unions, and changing welfare provisions. In exploring the consequences of the Chicago Boys' programmes, the speaker noted that policies initially generated an economic recovery in 1979 and 1980, which created an impression that the military regime was economically competent. The speaker suggested that this impression was a factor in the military winning a 1980 referendum on the adoption of a new constitution, which was designed to embed authoritarian features into Chilean governance on a permanent bias. The speaker noted that the military had timed the referendum well as by 1982, the Chilean economy faced another crisis, which was characterized by high levels of indebtedness and growing inequality. The crisis triggered a wave of public demonstrations against military rule. Business elites simultaneously began to pressure the military to change their economic policies. The military responded to these pressures by replacing the Chicago Boys' neoliberalism, with more pragmatic economic policies. However, these policies were biased towards wealthier parts of Chilean society and inequalities continued to grow. The military also continued to maintain its tough position towards labour and grassroots organizations and opposition political parties. However, these groups were able to organize, which resulted in the military's defeat in a 1988 plebiscite, and the holding of democratic elections in 1989.

The speaker's final remarks reflected briefly on the democratic period. It was observed that although the left-wing coalition that governed Chile from 1990 to 2010 (and is again currently in power) introduced some measures designed to ensure greater redistribution, by and large, neoliberal policies were accepted by the left and right wings of the political spectrum in Chile and there was no pressure for radical change. The speaker noted that the Chilean transition to democracy has been politically stable and the country has enjoyed considerable economic success compared to the rest of Latin America. However, it was noted that Chile has high rates of inequality and the 1980 Constitution, which was intended to create a 'protected democracy', although amended, remains in effect.

The second presentation focused on outlining the complexities, challenges, and opportunities of Chile's transition towards democracy. The speaker began by noting that Chile is often presented as a successful case of democratization within Latin America and the world. It was stated that political stability, economic growth, and the strengthening of its institutions are recognized as characteristic of this post-dictatorial period and Chile is today ranked highly on global indicators relating to democracy, rule of law, and governability. During the first two post-dictatorial governments, Chile's economic growth was double the regional average and the country experienced a rapid and extensive reduction in poverty as well as substantial progress on social indicators, including life expectancy and employment rates. The speaker argued that these positive outcomes resulted from the structural transformations that were introduced during the dictatorship and were consolidated after 1989. The speaker argued, however, that the left-wing coalition governments left very little room for civil society actors, with the result that the civil society that had been active during the dictatorship

became fragmented and deactivated. The government and political parties highly controlled political participation and as a result, social demands were channelled through institutional mechanisms. The speaker described this as a top-down governance strategy in which the fast expansion of mass consumption and major neoliberal reforms redefined the relationship between the society and politics.

The speaker then moved to the second part of the presentation, which related to the 2011 'political earthquake' in Chile. It was noted that in 2010, a right-wing government was elected for the first time since the dictatorship and in 2011, the largest demonstrations for 20 years took place. The context rapidly switched from a passive civil society to widespread mobilization, constant demonstrations, and violent unrest in cities across Chile. The demonstrations began by calling for improvements in the quality of public education, but in the subsequent years, demonstrators have protested for other issues including pension reform and environmental rights. The speaker contended that the aftershocks of these demonstrations are still present in the Chilean political landscape and these movements redefined the Chilean political agenda. For example, when the current, left-wing President Michelle Bachelet was re-elected in 2013, she incorporated the social movements' demands for a new constitution and free public education into her political programme. However, the speaker observed that these developments have been insufficient to stem declines in public trust in Chile's institutions and in the number of people voting in elections. The speaker noted that the growth in demonstrations and the rise in disaffection with democracy have been interpreted by some scholars as signs that the Chilean model has failed.

In the third part of the presentation, the speaker presented and analysed three hypotheses that have been put forward by scholars and politicians to explain Chileans' dissatisfaction with the political system. First, some commentators have attributed these trends to the origins of the Chilean political and economic model in the authoritarian regime. Today, the constitution, the education system, the pension system, and other aspects of Chilean society are considered products of the Pinochet government that have endured into the democratic era. Since the eruption of the demonstrations, the legitimacy of the model has been questioned. However, the speaker discounted this explanation by observing that many countries have constitutions that were not drawn up through democratic, inclusive, and participative means.

A second hypothesis relates to the highly unequal levels of income distribution in contemporary Chilean society, which is viewed as a product of the limited capability of the free-market economic model to produce social equity. Again, the speaker expressed doubt about the robustness of this explanation by noting that inequality has existed in Chile since colonial times. It was also observed that wealth distribution is a problem in many countries, but does not necessarily give rise to political disaffection and demonstrations.

The third hypothesis explored by the speaker was that in recent decades, Chile has undergone a modernization process and has reached a development threshold with higher wealth, and greater access to education, health care, and information. The speaker suggested that this could have contributed to the expansion of Chileans' normative horizon beyond material integration to more symbolic integration, represented by a growing appetite for equity, fairness, and social protection. This in turn could have led to greater scepticism about the authoritarian origins of Chile's political and economic model and the inequality problem. The speaker stated that modernization is a process full of contradictions: it may produce a wave of discomfort because it brings more freedom but leaves people more alone and dissatisfied.

The speaker closed the presentation by noting that the end of Chile's transition to democracy has been proclaimed several times: when Pinochet was arrested in London in 1998, when Pinochet died in 2006, when President Sebastián Piñera and the first right-wing government was elected in 2010. However, the presenter contended that the Chilean transition is an ongoing phenomenon, even though the dictatorship ended 28 years ago. It was argued that at times, it seems to advance, and at other times, it seems to recede. Overall, the speaker argued that modernization is strongly linked to ending the authoritarian legacy and improving the quality of its democracy.

The ideas raised in the group discussions following the presentations included the following:

- **The success of Chile's transition to democracy:** one participant noted that Chile has been rated as a consolidated democracy in the Polity IV ranking for several years, and asked whether based on the challenges to Chile's democracy identified in the presentations, whether there are problems with existing indices and whether new definitions of democratic governance are needed. The resulting discussion noted that there are well-established problems with existing democracy indicators. It was further argued that Chile's wave of demonstrations should be viewed as an indicator of the success of the transition. This argument noted that in contrast to the dictatorial period, demonstrations can now take place in Chile, and that the demonstrators' demands are for better quality of education and environmental rights rather than political participation rights. It was further argued that although political participation through elections has been decreasing in Chile, the demonstrations offer people new ways of influencing the political agenda and have allowed more voices to be heard.
- **The role of international and foreign drivers:** this discussion noted that different international actors have played positive and negative roles during the dictatorship and transition. For example, the CIA had played a strong role in supporting the military coup. In contrast, international human rights actors worked with Chilean human rights defenders to build pressure on the dictatorship. During the transition, there was limited international intervention, which it was argued was because international actors were happy with the direction and approach of the Chilean transition. However, with respect to transitional justice, the Inter-American human rights system

has been influential in shaping moves towards greater truth and accountability for human rights violations committed during the dictatorship.

- **Tradition of democracy and the rule of law in Chile:** the discussion explored the extent to which the political, legal, and economic history of Chile since independence could in part explain the success of its transition. It was noted that Chile had a long history of democracy prior to the Pinochet regime, established political parties, and a strong rule of law tradition. While the rule of law was impaired during Pinochet regime, the idea remained, in that sense, institutions continued to function throughout that period. However, it was noted that during the early years of the transition, although the military had left power, Pinochet continued as a senator for life and the military had a high degree of autonomy. In addition, the Pinochet-era constitution, although amended, remains in place and efforts to replace it have been delayed.

Kenya and Zimbabwe

The session covering Kenya and Zimbabwe included three presentations. Two focused on the political and economic conditions in Kenya and explored how these relate to violent conflict and transitional justice. The third presentation addressed the situation in Zimbabwe, focusing on the background and challenges associated with the recent military coup and structural challenges such as impunity.

The first presentation on Kenya focused on the economic and political structures in the country, including an overview of current and past economic policies and the challenges associated with them. The presenter provided an overview of Kenya's foreign and economic policies from the first post-independence government to the current administration. In this regard, the presenter explained that the country has historically pursued a policy of non-alignment with the West and Soviet bloc, though maintaining diplomatic relations with both. The presenter also noted that the economic structures inherited from the colonial period meant that production has focused on primary commodities for export and that only subsistence wages were paid. Poverty was therefore seen as a key challenge, although the presenter stated that post-independence governments have put in place a range of policy measures to tackle it. These have generally been based on a liberal economic model, including most recently the 2030 Vision (adopted in 2007). Although these policies have had some positive impact on reducing poverty, the presenter observed that poverty levels and inequality remain high.

The presenter further commented on democracy, noting that Kenya is formally a multi-party democracy but one which faces significant democratic challenges, including frequent electoral violence. At the same time, the presenter linked reform processes in Kenya to the resolution of the widespread violence that followed the 2007 elections. In this regard, the speaker emphasized that a new constitution adopted in 2010 provides for significant progress, including devolved government, an extensive bill of rights, and other reforms. As an example of its positive impact, the presenter observed that the institutional reform facilitated by the 2010 constitution installed more faith by politicians in state institutions, evidenced by the losing side to the 2013 elections pursuing a judicial resolution of the electoral dispute rather than calling for its supporters to take to the streets. The presenter also commented on the recent electoral crisis in Kenya that involved an initial election in August 2016, which was later annulled by the Supreme Court. Fresh elections followed shortly after, which the main opposition candidate boycotted, followed by demonstrations and a level of violence. The presenter further spoke about trade, noting that Kenya is a member of a range of economic blocks such as the East African Community, which is seen to generally benefit economic growth in Kenya.

The presenter concluded by pointing to key drivers of election violence in the country, including:

1. Inequality
2. Inequitable geographical distribution of resources
3. Failure to address historical injustices
4. Discrimination against vulnerable groups including women
5. Unemployment, in particular among youth who are consequently easily manipulated by politicians
6. Ethnic-based politics
7. Corruption
8. An absence of alternative dispute resolution mechanisms relating to a sentiment among Kenyans that 'all problems are legal rather than political'
9. A capitalist model that undermines national cohesion and unity because a small group of persons have gained excessively from private ownership
10. A police force based on a 'colonial mentality' that often uses excessive force
11. Challenges associated with international institutions, specifically the failure of the ICC to advance accountability for the 2007-2008 post-election violence
12. The failure of the UN Human Rights Council to adequately address violations in Kenya
13. The absence of effective 'cash transfer systems' targeted at disadvantaged communities, such as those used in Brazil

The presenter finally remarked that liberalism, democratization, and economic development are not sufficient to guarantee long-lasting peace and security in transitional societies such as Kenya.

The second presentation on Kenya focused on examining the impact of transitional justice on the country's political culture. The presenter started by outlining the background to transitional justice in Kenya, including international mediation efforts relating to the disputed 2007 elections. The presenter also provided an overview of the mechanisms put in place to address the post-election violence, including criminal accountability; a Truth, Justice, and Reconciliation Commission (TJRC); efforts aimed at reparations and advancing victims' rights; and legal and institutional reforms.

Next, the presenter set out three topics of relevance to the overall theme of the workshop, namely

1. Democracy, economic liberalism, and violence
2. Transitional justice and political culture
3. Global economic forces, justice and transition

With respect to the first topic, the presenter's main argument was that a political and economic system, including a (partly) failed democracy and largely unrestricted market mechanisms coupled with corruption and nepotism has been a central cause of violence in the country. In this regard, the

presenter observed that the formal aspects of democracy, such as a multi-party system and regular elections, are less important from the perspective of preventing violent conflict compared to substantive issues relating to political identity and political programmes, transparency, and accountability.

Concerning the second topic, the presenter argued that rather than facilitating transition and contributing to a change in political culture, political and economic elites who wish to maintain the status quo have captured and/or manipulated transitional justice in Kenya. The presenter observed that the political and historical narratives developed by the country's political and economic elites have proven highly efficient in undermining transitional justice efforts, thus challenging assumptions in the scholarship that law can transcend politics and be an independent and strong driver of political change.

For the third topic, the presenter observed that while major powers, including the US and the UK, initially supported transitional justice efforts, they later downplayed the importance of human rights, the rule of law, and accountability and prioritized other interests including perceived security and economic interests in the region. The presenter emphasized that the consequences previously pointed to by especially the US administration of electing a candidate suspected of crimes against humanity never materialized. Central to this presentation was an argument that multi-party democracy coupled with a particular version of the liberal economic model, has been a source of conflict, rather than a solution, in Kenya. Part of the reason for this is that democracy has not been associated with issue-driven politics and the political and economic system has permitted high levels of corruption, nepotism, clientelism, and highly unequal distribution of resources.

The third presentation in this session focused on the political and economic situation in Zimbabwe. The presenter first provided an overview of key developments in the country since independence, including controversies surrounding the Mugabe regime and a detailed description of the context surrounding the recent military coup in the country. In this regard, the presenter observed that the unconstitutional actions of the military, though unexpected, coincided with calls for profound political change among large segments of the population, something which must be viewed in light of the violence and impunity endorsed by the Mugabe regime. At the same time, the presenter observed that the military coup sets a dangerous precedent, in that the military has established itself as an arbitrator of political processes that endangers democratic transition.

The presenter next focused on the topic 'violence and democratic recession', emphasizing that for more than half a century, Zimbabwe's politics has been embedded in a tradition of violence and that little that has been done since colonial times for Zimbabweans to rehabilitate them from that violence. The presenter argued that there has been an assumption among political elites in the country, inherited from colonial times, that violence is a tool that can be used at any time for control and domination, something that has repressed and traumatized large segments of the population.

The presenter also addressed the current economic structures in the country, noting that economic growth – including making Zimbabwe an attractive destination for capital – is viewed as the primary goal by the political leadership and democratic and rule of law ideals have been subordinated to that. According to the presenter, the focus on neoliberal economic reforms, economic growth, and stability has come to the detriment of transitional justice, including efforts to promote memorialization, dignity, restitution, and accountability. The presenter argued that to be successful, a transition in Zimbabwe must address human rights issues, including accountability.

The presenter further addressed the National Peace and Reconciliation Commission Act, which was signed into law in January 2018. This Act made operational a Commission that was created by the 2013 Constitution and was appointed in 2016. Section 252 of the Constitution sets out the key objectives of the Commission, which include:

- Ensuring post-conflict justice, healing, and reconciliation
- Implementing programmes to promote national healing, unity and cohesion, and the peaceful resolution of disputes
- Encouraging people to tell the truth about the past and to facilitate the making of amends and the provision of justice
- Developing procedures and institutions to facilitate dialogue between political parties, communities, and other groups
- Taking appropriate action on complaints it receives from the public

The presenter argued that the National Peace and Reconciliation Commission could present an important opportunity to address the cycles of violence in the country, provided that the commissioners are committed to peace and reconciliation. Noting that victims must be at the centre of the debate, the presenter concluded by observing that the current regime has prioritized economic stability above anything else, whereas transitional justice and human rights issues have received insufficient attention.

In the debate following the presentations, a range of case specific and more theoretical issues were raised:

- **Transitional justice in the absence of a pre-existing political transition:** it was discussed whether it is possible for transitional justice to succeed in the absence of a pre-existing political transition. Participants addressing that topic were generally sceptical of the idea often endorsed in transitional justice scholarship that the law has significant, independent potential to transcend politics and facilitate profound change in the absence of political will. One participant added that to understand these dynamics, it is necessary to examine the resources available to various stakeholders, in this regard noting that states will tend to have significantly more resources than actors working to promote transitional justice goals, including civil society actors and international organizations such as the ICC.

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- **The role of international organizations, foreign powers, and economic actors in transitional justice:** the debate raised questions relating to the role of international organizations, foreign powers, and economic actors in transitional justice. Participants debated how international organizations, specifically the ICC, might affect and frame transitions. In this regard, one participant noted that even if institutions such as the ICC face significant obstacles in giving effect to accountability norms, they could not be disregarded analytically since they can have a significant impact on political developments in intervention countries. As to the role of foreign powers, one participant questioned whether these could be expected to set aside economic and security interests where such interests are perceived to conflict with accountability and other transitional justice objectives. Concerning the role of economic actors in transitions, it was noted that such actors may play a role both in facilitating and funding violence, but also in ending violent conflict, especially when they perceive their economic interests are jeopardized by instability. In this regard, one participant emphasized that the business community in Kenya played a central role in ending the post-election violence as it became clear that the escalating violence was threatening economic stability in the country.

Tunisia

The session on Tunisia included two presentations. The first focused on the economic and political conditions in the country prior to and after the 2011 uprising and the second analysed the transitional justice measures put in place to address violations in the country.

The first presentation focused on understanding the factors that triggered the uprising in Tunisia in 2011. The presentation commenced by setting out the background and context of the uprising. The presenter noted that unemployment, regional inequality, corruption, lack of political freedom, and poor living conditions were key underlying reasons for the protests that led to the political transition. The presenter emphasized the importance of examining the economic conditions in the pre-transition phase, noting that while Tunisia was doing better than its Middle Eastern and North African neighbours in terms of economic growth, it should not necessarily be viewed as a success story. Despite economic growth of about five per cent during the 2000s and a decreasing poverty rate, income inequality has remained high and persistent. Further, distribution of wealth and resources is not equal across the country, as large disparities remain in economic welfare and access to basic services such as healthcare and sanitation.

On this basis, the presenter observed the existence of two types of inequalities, namely economic inequality and inequality of opportunity, which were both seen as potential drivers of violent conflict because they damage social trust. Drawing on economic data collected, the presenter concluded that households' demographic composition, educational level of the head, and regional and urban/rural locations are the main drivers of overall inequality in Tunisia. The presenter further observed that household geographic characteristics (region of residence and urban-rural status) were found to significantly contribute to the welfare disparity in the country and their magnitude seems to rise over time. On this basis, the presenter observed that targeted interventions and more appropriate investments in favour of the less advantaged population in rural and inland areas in Tunisia could have significant potential for improving the overall equity in the country.

The second presentation on Tunisia provided an overview and discussion of transitional justice processes put in place following the 2011 uprising. The presenter first noted that two commissions were created by the interim authorities after President Ben Ali left office: one to investigate corruption and embezzlement charges directed against the Tunisian government, and one to investigate the use of excessive force by security forces (which led to 38 deaths in the context of the 2011 uprising). The presenter observed that Ben Ali's family is alleged to have been a main beneficiary of corruption.

Next, the presenter stated that the first truth commission, established after Ben Ali's departure, had a limited mandate to gather victim testimonies relating to violence occurring in the period from the start of the revolution in December 2010 until the first elections in October 2011. The presenter

further explained that key questions relating to the mandate and operations of the commission had not been adequately addressed, including how and by whom reparations could be provided in the absence of a clear legal framework; the amount of money that the government could budget for reparations; and issues relating to the definition of victims.

The presenter further explained that in the post-Ben Ali context, the transitional government created a Ministry of Human Rights and Transitional Justice in January 2012, and in June 2014 the *Instance Vérité et Dignité* (the Truth and Dignity Commission) was established. It is expected to release its final report and recommendations in 2018 or 2019. The commission is tasked with investigating human rights violations since 1955 (and thus including violations committed in the last phase of colonial rule). It is empowered to receive submissions, hear testimonies, and provide reparations, collectively or individually. So far, the commission has received around 62,000 submissions and 11,000 persons have provided testimony, said the presenter.

Lastly, the presenter addressed the so-called ‘economic reconciliation law’, adopted in September 2017, which is intended to grant amnesty to former and current regime figures, state agents, and business executives accused of corruption and other economic crimes. The presenter was sceptical of the law, noting that it will suspend all prosecution, trials, or sentences against public servants and other agents for acts linked to corruption and embezzlement. The presenter further noted that the law would prevent future vetting of the public administration, thereby allowing former and current state officials and others who aided, abetted or otherwise assisted a system characterized by abuse to benefit from a general amnesty. The presentation concluded by showing a short documentary relating to the Tunisian revolution and the transitional justice measures discussed in the presentation.

In the debate following the presentations, participants raised questions and made comments relating to case specific and more general questions, including:

- **Transparency and appropriate mandates for institutions of transitional justice:** participants in particular discussed the mandate of Tunisia’s Truth and Dignity Commission, including its temporal jurisdiction that allows it to investigate abuses under the last years of colonial rule. Civil society had been suspicious about this broad temporal mandate, which participants explained was a consequence of political agendas of specific political parties. More broadly, participants noted the lack of transparency in the creation and operation of transitional justice measures in the country, in this regard pointing the recently adopted legal framework that facilitates amnesty for economic crimes.
- **Democratic consolidation:** participants commented on the prospects for consolidating democracy in Tunisia and the extent to which Tunisia should be viewed as a success story in the region. One point made in this regard was that various democratic institutions mandated by the Transitional Constitution are yet to be established or have been created in ways that are not consistent with the principles of the Constitution.

Haiti

The presentations on Haiti focused on the challenges of democracy building in a context where, with the assistance of foreign powers, political stability is prioritized over the protection of human rights and enhancement of democratic processes with the result that social struggles and economic conflicts are frozen or denied.

The first speaker on Haiti began their presentation by asserting that the development of democracy and the transformation of state structures is a radical project that is inherently messy, conflict-ridden, incremental, and uncertain. Therefore, it should not be assumed, as many commentators do, that democracy in Haiti is a failure: it is simply a young democracy with some serious legacy challenges that it must confront.

The next part of the presentation focused on the historical context of democracy development in Haiti. Haiti is part of a small island, which it shares with the Dominican Republic. It has never been at war in modern times but Haitian history is marked by political conflict. It became independent from France in 1804. The speaker said that for the next 50 years, the state, which was ruled by generals at that time, was heavily preoccupied with avoiding another French invasion. Between 1888 and 1915, no Haitian president completed his seven-year term: ten were either killed or overthrown. Between 1862 and 1915, the United States sent warships into Haitian waters 17 times and then occupied the country from 1915 to 1934.

During the Cold War, Haiti was ruled by the Duvalier family dictatorship, which was supported by the United States Agency for International Development. The speaker argued that free and fair elections did not take place until 1990, nearly five years after 'Baby Doc' Duvalier fled to France ending the Duvalier regime. The former priest Jean-Bertrand Aristide was elected with a large majority but was in power for only eight months before he was ousted in a military coup in 1991. The military ruled Haiti for three years but was eventually removed following armed intervention from the United States. Aristide returned in 1994 but was only permitted to serve the remainder of his term and could not stand for election in 1996. He was re-elected in 2000, but the speaker noted the election led to political deadlock between pro-Aristide and anti-Aristide forces. The speaker stated that Aristide was ousted in 2004 following a wave of armed violence and was 'persuaded' by the United States (along with Canada and France) to go into exile.

The UN Stabilization Mission in Haiti (MINUSTAH) was deployed in June 2004 and a UN mission has been present in Haiti ever since. The speaker added that following the earthquake in 2010, international donors came in en masse and supplanted the Haitian state in order to begin reconstruction. Citing Sydney Mintz, the presenter argued that if the policy prescriptions of international donors continue to sustain the present distribution of economic power in Haiti none of their efforts will effect a long-term political benefit.

The presenter observed that Haiti's population has been and continues to be deeply divided between the elite and the masses of Haitians, which is reflected in an urban/rural divide, a French/Creole language divide, a light/black skin colour divide, a literacy divide, and an economic divide. The wealthiest one per cent of the population monopolizes 46 per cent of the national revenue. The speaker said that Haiti's rural citizens are overlooked, notably through the lack of public services such as education and health care.

In the speaker's opinion, the tendency of the international community to prioritize political stability above all other goals puts unrealistic expectations on Haitian society. Societies emerging from authoritarian regimes or armed conflict take time to adjust and frequently the adjustment is marked by violence, as was the case in both France and the United States. The speaker suggested that the 'keeping the pressure cooker lid tight down on the pot' approach of Western donors informs the type of democracy that emerges. Whose interests will govern if social struggles are frozen or discouraged? The speaker further argued that the weakness of democracy building programmes in Haiti is that they focus on the machinery, on capacity building, and pay insufficient attention to the socio-economic structures of power in a society. For example, too many programmes are aimed at training and too few are directed towards differentiating state institutions from oligarchic control. The speaker argued that a lot of attention is paid to institutional building but comparatively little is paid to how institutions are built. Institutions emerge from social struggle in an organic process, in which outsiders should not engage. If outsiders do engage in these battles, they automatically delegitimize the emerging institutions because of their foreign imprint.

The second speaker focused on the role of the United Nations in prioritizing political stability by armed force to the detriment of human rights protection and democracy building. MINUSTAH was deployed in 2004 in the wake of the coup against Aristide with a mandate to, among other things, provide security so that elections could be held. As early as December 2004, MINUSTAH's first force commander, General Heleno Ribeiro Periera, complained to the Brazilian Congress that the mission was under heavy pressure from the United States, Canada, and France to use intense force in Cité Soleil to bring order and end the frequent kidnappings and lorry hijackings that were disrupting economic activity in the business districts of Port-au-Prince. Cité Soleil was a poor marginalized community of 300,000-400,000 people where support for Aristide's party was strong and where armed gangs were believed to be active.

The first elections to be held after the 2004 coup against Aristide took place in February 2006. They had previously been postponed four times. In the run up to the election and continuing to 2007, MINUSTAH carried out a series of major armed raids in Cité Soleil. One of the largest took place on 6 July 2005, a few months before the elections were initially scheduled to take place. MINUSTAH stated that it expended 22,700 bullets, 78 grenades, and five mortars in the densely populated neighbourhood where many people lived in houses made of salvaged metal that were easily penetrated by bullets. The speaker said that it is likely that at least 20 people were killed in that raid,

in addition to the gang members who were targeted. It was noted that at least three children died as a result of wounds they sustained whilst in their beds. In another operation on 21-22 December 2006, MINUSTAH stated that it expended 10,000 bullets. The speaker said that it is estimated that 20-30 people died on that occasion. The speaker argued that the excessive force used by MINUSTAH during the period 2005-2007 was largely in response to pressure from Haiti's elites and from foreign powers to forcibly secure political stability so as to protect the interests of Haiti's business community. Other approaches were pursued to resist policies introduced by President Aristide and to weaken his support. For example, in 2003, Aristide's government had introduced legislation to increase the minimum wage but had been persuaded by the United States that it would not be in Haiti's interest to do so. In addition, the speaker noted that prior to the 2006 election, Haiti's Provisional Electoral Council announced that no voting would take place in Cité Soleil. Registered voters from Cité Soleil had to leave their neighbourhood to vote. In making a more general observation about Haitian elections, the speaker said that a repeated refrain heard across all sectors of Haitian society is that in Haiti 'we do not have elections, we have selections'.

The speaker observed that many legislators in the Haitian Senate regarded MINUSTAH as an occupying force whose role was to ensure that factories and other export-oriented businesses were protected from political violence and from political demands that might affect their profits. The speaker noted that the Senate repeatedly passed resolutions demanding that the mission leave (including a unanimous resolution in 2013 demanding that MINUSTAH leave by June 2014) but these were ignored by the UN Security Council, which relied on the president's consent to the mission's presence. MINUSTAH's mission finally ended in October 2017 but it has been replaced by a smaller police mission known as MINUJUSTH.

During the subsequent discussion, a number of issues arose:

- **Aid programmes in Haiti:** one participant noted that they had no objection to aid per se but questioned whether aid was being spent on the right needs. In this speaker's view, aid money would be much better spent on literacy programmes than on democracy building programmes, which cannot succeed because of political barriers.
- **Potential for the consolidation of democracy in Haiti:** one participant responded that democracy building is about the social forces developing and creating it. Therefore, instead of supporting sweat shops, which only benefit the elites who profit from them, money should be put into economic programmes that reach out to those who have been disenfranchised and that empower people economically in the rural areas. This participant said that money should be put into strengthening those social forces in the country that are wanting political change rather than supporting elites who have no interest in democracy and who benefit from having a population that is uneducated since an uneducated population provides a source of cheap labour.

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- **Effectiveness of foreign aid:** it was suggested that any intervention from foreign powers, for example, in the form of aid, depends on the support of the host state government. If the host government is not interested in funding rural economies, there is little that the aid donating countries can do about it. One participant said that given the extent of the donor aid contribution to the national budget, aid agencies do in fact have considerable ability to demand that a certain amount of the aid is spent in certain ways and the government probably could be persuaded to invest in a literacy campaign. The participant suggested that donating countries, particularly Canada, are wasting their money because the projects they are funding are not bringing about the goals they hoped.

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