

# Land, socio-economic rights and transformative justice

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## **Abstract:**

This paper provides a critique of the scope of existing models of transitional justice (i.e. truth commissions, amnesties and prosecutions). Transitional justice mechanisms (including those employed in South Africa) have largely focused upon individual violations of a narrow set of civil and political rights and the provision of legal and quasi-legal remedies. In contrast, this paper highlights the significance of land inequalities in producing and reproducing violations of human rights, particularly of socio-economic rights. There is a need to utilise a different toolkit, and a different understanding of human rights, to that typically employed in transitional justice in order to remedy structural violations of human rights such as those relating to land inequalities. In this context the potential for transformative (rather than transitional) justice in post-apartheid South Africa and other post-authoritarian contexts is discussed. The paper will outline a definition of transformative justice, relevant actors and relationships for such an agenda, and discuss the kinds of strategies that promise a more transformative approach.

## I: Introduction

This paper explores the relationships between land, socio-economic rights and transformative justice from a human rights perspective. The focus of the paper is on post-apartheid South Africa as a case study. Particular attention is paid to the interaction between structural violence, landlessness and broader human rights issues in post-apartheid South Africa and to the potential for advancing transformative justice within post-apartheid South Africa.

Building a critique of existing models of transitional justice, the paper first explores the relationship between structural violence and transitional justice. Shortcomings of existing models of transitional justice are highlighted. Next the paper outlines a definition of transformative justice and contrasts the approach of transitional justice to structural issues to the approach of transformative justice. This takes place with specific reference to land and related socio-economic rights. Third, the cases study of post-apartheid South Africa is introduced. Land inequalities and responses to these are discussed in relation to the potential for transformative justice. Finally, a discussion of relevant actors and relationships for transformative justice is provided and conclusions are drawn regarding the kinds of strategies that promise a more transformative approach.

Three key debates evident in the literature are highlighted in this paper. There is a question over how transitional justice mechanisms can better take account of structural, socio-economic issues and whether these mechanisms are appropriate or adequate for dealing with these issues.<sup>1</sup> A second debate surrounding how to resolve potentially competing rights claims of the landless and land owners also emerges from the literature.<sup>2</sup> There is also a broader debate over what strategies and tools are appropriate and likely to be effective in both addressing structural violence in general and addressing inequalities in land specifically evident throughout much of the literature.<sup>3</sup>

The paper concludes that existing models of transitional justice are not adequate for addressing structural violence and land inequalities or for ensuring the realisation of socio-economic rights. Transformative justice may address these shortcomings. It is proposed that for transformative justice to be achieved the involvement of a diverse range of actors is required. The paper proposes exploration of the strategies of and relationships between social movements and trade unions as

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<sup>1</sup> E.g. Rama Mani, "Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development," *International Journal of Transitional Justice* 2, No. 3 (2008): 253-265

<sup>2</sup> E.g. Deborah James, *Gaining ground?: "rights" and "property" in South African land reform*, (Abingdon: Routledge, 2007)

<sup>3</sup> E.g. Roger Duthie, "Toward a Development-sensitive Approach to Transitional Justice," *International Journal of Transitional Justice* 2, No. 3 (2008): 292-309

well as nongovernmental organisations (NGOs) in relation to transformative justice in general and land inequalities in particular.

## **II: Structural violence and shortcomings of transitional justice**

The concept of structural violence provides a means of expressing the category of human rights violations which are produced and reproduced by landlessness and land inequalities. This section of the paper outlines the shortcomings of existing models of transitional justice in addressing these. In the next section, transformative justice is outlined as an approach which puts forward an understanding of the links between human rights violations within this category.<sup>4</sup>

### **Structural violence**

Structural violence refers to a condition in which violence occurs without being precipitated by the direct actions of specific individuals against other specific individuals. It may be defined, in contrast to direct or personal violence, as a condition akin to (perhaps even synonymous with) social injustice.<sup>5</sup> It may be conceived of as a form of violence because “violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations” (emphasis removed).<sup>6</sup> Though this definition of violence is broad, in the view of Johan Galtung, it is necessary in order for the idea of peace as the absence of violence to be validly maintained without “[h]ighly unacceptable social orders” being compatible with peace.<sup>7</sup>

This broad definition of violence (to include forms of social injustice as structural violence) can be seen as a logical extension of more narrow conceptions of violence as direct, intended and personal.<sup>8</sup> Direct actions carried out by individuals or groups can affect the ability of human beings to realise their physical and mental potential. Structures which promote or maintain particular conditions also affect the ability of human beings to realise their physical and mental potential. For instance, a person’s life expectancy may be reduced by an act of direct, intended personal violence or by the failure of a system to provide adequate care for those with treatable illnesses. Similarly, a person may be physically prevented from attending school by another individual or they may be prevented from accessing education due to resources being diverted away from education or towards providing education to a different group of people. Despite the differences in the process,

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<sup>4</sup> E.g. Jelke Boesten, Gordon Crawford, Paul Gready, Lars Waldorf and Polly Wilding, “Transformative Justice – A Concept Note”. Draft concept note developed by *the WUN Transformative Justice Group*, October 2010

<sup>5</sup> Johan Galtung, “Violence, Peace, and Peace Research,” *Journal of Peace Research* 6, No. 3 (1969): 171

<sup>6</sup> *Ibid.*, 168

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

under Galtung's definition, these would each constitute examples of violence due to the outcome in each case being that someone's potential was not realised when it might otherwise have been.<sup>9</sup>

### **Critique of transitional justice**

Structural violence has been identified as an important issue by scholars addressing a variety of related and overlapping fields, such as peace-building, transitional justice and human rights.<sup>10</sup> This importance has been highlighted both in terms of addressing structural violence in itself and in terms of addressing structural violence as a root cause of, or contributing factor towards, direct and personal violence.<sup>11</sup> However, in the case of transitional justice processes, emphasis has largely been placed upon a relatively narrow set of tools (particularly truth commissions, amnesties and trials) addressing only "bodily integrity" human rights violations relating to direct, personal violence.<sup>12</sup> Indeed, Rama Mani observes that "issues of social justice seem to lie just beyond the traditional frontiers of transitional justice".<sup>13</sup> Pablo de Greiff meanwhile highlights the fact that issues such as poverty and land inequalities have tended to be overlooked in discussions over reparative transitional justice programmes.<sup>14</sup> There have, though, been moves towards expanding the focus of transitional justice to consider the impact of socio-economic structures and be "sensitive" to (if not always directly addressing) these, which might otherwise be treated as entirely separate issues relating to development.<sup>15</sup> However, in the view of Mani, expanding the focus of transitional justice to take account of social injustice presents a number of dilemmas, whilst also being necessary for transitional justice to maintain credibility.<sup>16</sup>

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<sup>9</sup> Ibid., 169

<sup>10</sup> E.g. Lisa J Laplante, "Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework," *International Journal of Transitional Justice* 2, No. 3 (2008): 331-355; Mani, "Dilemmas of Expanding Transitional Justice"; Ismael Muvungi, "Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies," *International Journal of Transitional Justice* 3, No. 2 (2009): 163-182

<sup>11</sup> E.g. Galtung, "Violence, Peace, and Peace Research"; Laplante, "Transitional Justice and Peace Building"

<sup>12</sup> Paul Gready, "Transformative Justice". Unpublished paper presented at "Transformative Justice: Global Perspectives" Worldwide Universities Network International Conference, (University of Leeds, Leeds), May 12, 2011

<sup>13</sup> Mani, "Dilemmas of Expanding Transitional Justice", 254

<sup>14</sup> Pablo de Greiff, *The Handbook of Reparations*, (New York: Oxford University Press, 2006): 205

<sup>15</sup> Duthie, "Toward a Development-sensitive Approach to Transitional Justice"

<sup>16</sup> Mani, "Dilemmas of Expanding Transitional Justice", 254

The first dilemma concerns the difficulty inherent in applying the targeted measures associated with transitional justice (truth commissions, trials and institutional reform) to the wide-reaching effects of social injustice. The lack of clearly identifiable individuals as victims and perpetrators does not map easily on to existing models of transitional justice mechanisms.<sup>17</sup> The second dilemma concerns the fact that transitional justice is expensive to implement and, in the absence of addressing social injustice and structural violence, may not be viewed as a priority for resource distribution.<sup>18</sup> Relatedly, Mani's third dilemma surrounds the question of how transitional justice processes can address corrupt and exploitative economic conditions during conflicts which, as a result, impact upon the capacity for facilitating development post-conflict.<sup>19</sup> Mani's final dilemma is concerned with the failure of the theory and practice of both transitional justice and development to address criminal and societal (as opposed to "political") violence post-conflict despite the (aforementioned) link between what is viewed as criminal violence and social injustice or structural violence.<sup>20</sup> This paper focuses particularly on how transitional justice and transformative justice address the nexus of land inequalities and socio-economic rights.

Recent moves towards transitional justice being used to address socio-economic inequalities, and the consequent production of dilemmas such as those raised by Mani, have engendered a range of responses. Various means of reconciling transitional justice with addressing structural violence have been suggested. These include allowing further space for the airing of socio-economic grievances in truth commissions and specifically addressing collective, societal injustices (such as land inequalities) through reparations.<sup>21</sup> These kinds of suggestions have, nevertheless, focused upon addressing structural violence only inasmuch as existing transitional justice tools can be adapted to do so. This is a shortcoming of transitional justice processes.

Lars Waldorf, on the other hand, argues that, even through the limited means of truth commissions and reparations programmes, transitional justice should not attempt to directly address structural, socio-economic inequalities.<sup>22</sup> Waldorf highlights that a number of studies<sup>23</sup> have

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<sup>17</sup> Ibid., 255

<sup>18</sup> Ibid., 256-257

<sup>19</sup> Ibid., 257-259

<sup>20</sup> Ibid., 259-261

<sup>21</sup> Tafadzwa Pasipanodya, "A Deeper Justice: Economic and Social justice as Transitional Justice in Nepal," *International Journal of Transitional Justice* 2, No. 3 (2008): 392-395

<sup>22</sup> Lars Waldorf, "Anticipating the Past: Transitional Justice and Socio-Economic Wrongs," *Social and Legal Studies* 21, No. 2 (2012): 171-186

suggested that in post-conflict societies victims (including those narrowly defined as suffering direct violence during the conflict)<sup>24</sup> often prioritise addressing socio-economic issues, such as housing, education and basic economic subsistence, over the civil and political rights issues usually focused upon by transitional justice.<sup>25</sup> He accepts that “everyday injustices rooted in historical inequalities may be as important, if not more important, for many survivors than the extraordinary injustices” of severe violations of civil and political rights.<sup>26</sup>

Bringing to mind Mani’s dilemma over the difficulty in applying transitional justice measures to socio-economic injustice,<sup>27</sup> Waldorf questions whether transitional justice can adequately address socio-economic issues in practice.<sup>28</sup> Indeed, he suggests that transitional justice processes are not necessarily particularly successful even in carrying out narrow “bodily integrity” violations-oriented mandates. For instance, truth commissions have been suggested as one of the transitional justice mechanisms which might most readily be adapted to address socio-economic grievances.<sup>29</sup> However, the political weakness attached to and the necessarily short lifespans of truth commissions mean their recommendations are easily (and frequently) ignored.<sup>30</sup> This is echoed in Steven Robins’s suggestion that on the one hand the South African Truth and Reconciliation Commission “became a number one export” whereas on the other hand since the end of apartheid “the gap has widened between this bright vision of a ‘rights paradise’ and the grim everyday social, economic and political realities experienced by the majority of South Africa’s citizens”.<sup>31</sup> Similarly, reparations programmes might be more readily adapted to addressing socio-economic inequalities than other transitional justice mechanisms. A lack of easy means of identifying potential beneficiaries for inclusion (or exclusion) in schemes, limited resources and time constraints make it difficult (following Waldorf’s view, perhaps even impossible) though to adequately address socio-economic grievances through

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<sup>23</sup> E.g. Simon Robins, “Untransformative justice: The limits of civil society and the rights discourse in post-conflict Nepal”. Unpublished paper presented at “*Transformative Justice: Global Perspectives*” Worldwide Universities Network International Conference, (University of Leeds, Leeds), May 12, 2011

<sup>24</sup> Ibid.

<sup>25</sup> Waldorf, “Anticipating the Past”, 175

<sup>26</sup> Ibid.

<sup>27</sup> Mani, “Dilemmas of Expanding Transitional Justice”, 255

<sup>28</sup> Waldorf, “Anticipating the Past”, 176-177

<sup>29</sup> E.g. Pasipanodya, “A Deeper Justice”, 392-395

<sup>30</sup> Waldorf, “Anticipating the Past”, 176-177

<sup>31</sup> Steven L Robins, *From Revolution to Rights in South Africa: Social Movements, NGOs and Popular Politics after Apartheid*, (Woodbridge: James Currey, 2008): 2

reparations.<sup>32</sup> The possibility of utilising reparations in order to address socio-economic rights violations is further constrained by that fact there is little political will to implement reparations in transitional justice programmes, and that in practice reparations are rarely implemented.<sup>33</sup>

One might take the view that Mani's dilemmas cannot be fully resolved. The case can be made that "transitional justice is inherently short-term, legalistic and corrective".<sup>34</sup> This, however, merely describes rather than solves the problem at hand. It may well be the case that the standard toolkit of transitional justice is ill-suited to addressing structural violence and violations of socio-economic rights. The standard toolkit of transitional justice in fact often seems ill-suited to addressing even the narrow set of "gross violations of civil and political rights" which Waldorf suggests should be its focus.<sup>35</sup> According to Waldorf's analysis, transitional justice overpromises that reconciliation may be delivered, cannot address the socio-economic inequalities prioritised by victims and regularly fails to deliver reparations or follow through on recommended institutional reforms.<sup>36</sup> This does not leave much room for success. Even if other transitional justice mechanisms, for example, prosecutions for gross violations of civil and political rights, are wholly successful, there still remains a question over how structural violence and socio-economic grievances might be addressed in post-conflict and post-authoritarian societies.

### **Defining transformative justice**

Transitional justice measures are not necessarily well-suited to addressing broader human rights issues, structural violence and socio-economic inequalities.<sup>37</sup> One way issues which lie outside the reach of transitional justice<sup>38</sup> might be addressed in post-conflict and post-authoritarian contexts is through the pursuit of a different conception of justice. Recognition of this has led to the development of models for transformative justice. Here a definition of transformative justice is outlined and explored in relation to land inequalities and related socio-economic rights.

A common thread that runs through the emerging transformative justice discourse is that transformative justice seeks to broaden the focus of measures aimed at promoting post-conflict or post-authoritarian justice for human rights abuses beyond that of transitional justice. Transformative

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<sup>32</sup> Waldorf, "Anticipating the Past", 177-179

<sup>33</sup> *Ibid.*, 177

<sup>34</sup> *Ibid.*, 179

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 175-179

<sup>37</sup> E.g. Waldorf, "Anticipating the Past"

<sup>38</sup> Mani, "Dilemmas of Expanding Transitional Justice", 254

justice seeks to contribute to the wider transformation of post-conflict and post-authoritarian societies beyond the cessation or addressing of widespread interpersonal violence and violation of “bodily integrity” rights. Crucial to this “transformative” agenda is a focus upon socio-economic structures, the ways in which inequalities may produce structural violence and a focus upon how this structural violence may effectively be addressed.<sup>39</sup> This focus is a key point of commonality between various different attempts to define transformative justice.<sup>40</sup>

In proposing her model of transformative justice Erin Daly points out that the literature<sup>41</sup> often conflates “transition” and “transformation”.<sup>42</sup> This conflation is problematic. Transition may be seen as a change “at the top”,<sup>43</sup> based on “elite bargains”.<sup>44</sup> Transformation may be seen as more wide-reaching change throughout society. According to Daly,

[t]ransition suggests movement from one thing to another - from oppression to liberation, from oligarchy to democracy, from lawlessness to due process, from injustice to justice. Transformation, however, suggests that the thing that is moving from one place to another is itself changing as it proceeds through the transition; it can be thought of as radical change.<sup>45</sup>

Daly suggests that in some cases the pursuit of transformative justice would require “a central economic component”.<sup>46</sup> However, she largely concentrates on the idea that culture must be transformed in post-conflict and post-authoritarian societies in order to prevent a return to violence.<sup>47</sup> In her view the primary purpose of transformative justice is to facilitate the two “related aims of reconciliation and deterrence”.<sup>48</sup> This is not entirely satisfactory. Firstly, this definition of transformative justice places the aims of a transformative agenda as being very similar to those of

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<sup>39</sup> Boesten, Crawford, Gready, Waldorf and Wilding, “Transformative Justice”

<sup>40</sup> E.g. Boesten, Crawford, Gready, Waldorf and Wilding, “Transformative Justice”; Erin Daly, “Transformative Justice: Charting a Path to Reconciliation,” *International Legal Perspectives* 12, No. 1/2 (2002): 79-80; Wendy Lambourne, “Transformative Justice and Peacebuilding: A Psychological Perspective”. Unpublished paper presented at “*Transformative Justice: Global Perspectives*” *Worldwide Universities Network International Conference*, (University of Leeds, Leeds), May 12, 2011

<sup>41</sup> E.g. Ruti G Teitel, *Transitional Justice*, (New York: Oxford University Press, 2000): 4-6

<sup>42</sup> Daly, “Transformative Justice”, 74

<sup>43</sup> Ibid.

<sup>44</sup> Waldorf, “Anticipating the Past”, 179

<sup>45</sup> Daly, “Transformative Justice”, 74

<sup>46</sup> Ibid., 80

<sup>47</sup> Ibid., 73-74

<sup>48</sup> Ibid., 84

transitional justice.<sup>49</sup> Secondly, there is a risk that, in setting up reconciliation as one of the primary aims of transformative justice, the agenda is being set up for failure. It is important to recognise that processes of reconciliation run deeper than merely putting in place changes “at the top”. However, it is not clear that such cultural transformation is likely to be achieved through Daly’s approach to transformative justice. By presenting reconciliation as one of the main aims and suggesting that transformative justice should be considered as part of societal transition,<sup>50</sup> Daly reinforces the idea that the tools used in transitional justice are appropriate for promoting transformation.

As previously alluded to, there has been criticism of the ability of transitional justice processes to successfully promote reconciliation.<sup>51</sup> In practice the discourse of reconciliation in post-conflict societies may be an empty one.<sup>52</sup> Chris Huggins suggests that in transitional justice “there is a constant risk that the gains made in protecting human rights and combating impunity may be undone through an increasing emphasis on ‘reconciliation’ without accountability”.<sup>53</sup> Furthermore, Daly’s focus on “deterrence” as the second key aim of transformative justice appears to reinforce the focus of transitional justice on direct interpersonal violence and violations of civil and political rights. Maintaining this focus but, importantly, recognising the potential importance of socio-economic grievances,<sup>54</sup> leaves Daly’s approach to transformative justice closer to the suggestion that there may be transformative potential within existing transitional justice mechanisms<sup>55</sup> than to broader definitions of transformative justice (discussed further below).<sup>56</sup>

In recent years several attempts have been made at defining transformative justice as more clearly broader than and separate to transitional justice. Wendy Lambourne has put forward wide-reaching suggestions that transformative justice should cover socio-economic, political,

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<sup>49</sup> E.g. Kofi Annan, *The rule of law and transitional justice in conflict and post-conflict societies*, Report of the Secretary-General, United Nations Security Council, August 23, 2004, UN Doc S/2004/616

<sup>50</sup> Daly, “Transformative Justice”, 74

<sup>51</sup> E.g. Waldorf, “Anticipating the Past”, 175-179

<sup>52</sup> Lars Waldorf, “Revisiting *Hotel Rwanda*: genocide ideology, reconciliation, and rescuers,” *Journal of Genocide Research* 11, No. 1 (2009): 104-105

<sup>53</sup> Chris Huggins, “Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development,” in *Transitional Justice and Development: Making Connections*, edited by Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, 2009): 336

<sup>54</sup> Daly, “Transformative Justice”, 79-80

<sup>55</sup> E.g. Elin Skaar, “Transformative aspects of formal TJ initiatives: Opportunities and limitations”. Unpublished paper presented at “*Transformative Justice: Global Perspectives*” *Worldwide Universities Network International Conference*, (University of Leeds, Leeds), May 12, 2011

<sup>56</sup> E.g. Boesten, Crawford, Gready, Waldorf and Wilding, “Transformative Justice”

psychosocial, symbolic and ecological aspects.<sup>57</sup> Lambourne acknowledges that this conception may be too broad – overreaching the practical possibilities of a model of justice<sup>58</sup> – and has drawn criticism for this.<sup>59</sup> Nevertheless, there are clear points of overlap between Lambourne’s model for transformative justice and the narrower proposals of Jelke Boesten, Gordon Crawford, Paul Gready, Lars Waldorf and Polly Wilding,<sup>60</sup> and indeed, the (narrower still) proposals of Daly.<sup>61</sup>

It has been suggested that there can be transformative elements within transitional justice.<sup>62</sup> The reform and effective use of legal institutions and the development of rights-based constitutional reforms as transitional justice programmes may strengthen wider democratic structures and means of political participation by building confidence in the rule of law and providing new forums in which societal inequalities and structural grievances may be aired.<sup>63</sup> Whilst the transformative effects of certain transitional justice processes may not be their primary function and they may be unintended, it is still the case that these processes can contribute towards transforming socio-economic structures.<sup>64</sup> However, though pursuing transformative justice may include the addressing of structural violence through transitional justice mechanisms, transformative justice looks beyond these mechanisms and the “transitional” lens they provide. It must be defined separately. The intention of transformative justice is to address the structural, social and economic issues which are merely overlapping with and peripheral to the existing transitional justice toolkit.<sup>65</sup> Figure 1, below, illustrates the relationship between transformative justice and transitional justice.

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<sup>57</sup> Lambourne, “Transformative Justice and Peacebuilding”; Wendy Lambourne, “Transitional Justice and Peacebuilding after Mass Violence,” *International Journal of Transitional Justice* 3, No. 1 (2009): 28-48

<sup>58</sup> Lambourne, “Transitional Justice and Peacebuilding after Mass Violence”, 46

<sup>59</sup> Waldorf, “Anticipating the Past”, 180

<sup>60</sup> Boesten, Crawford, Gready, Waldorf and Wilding, “Transformative Justice”

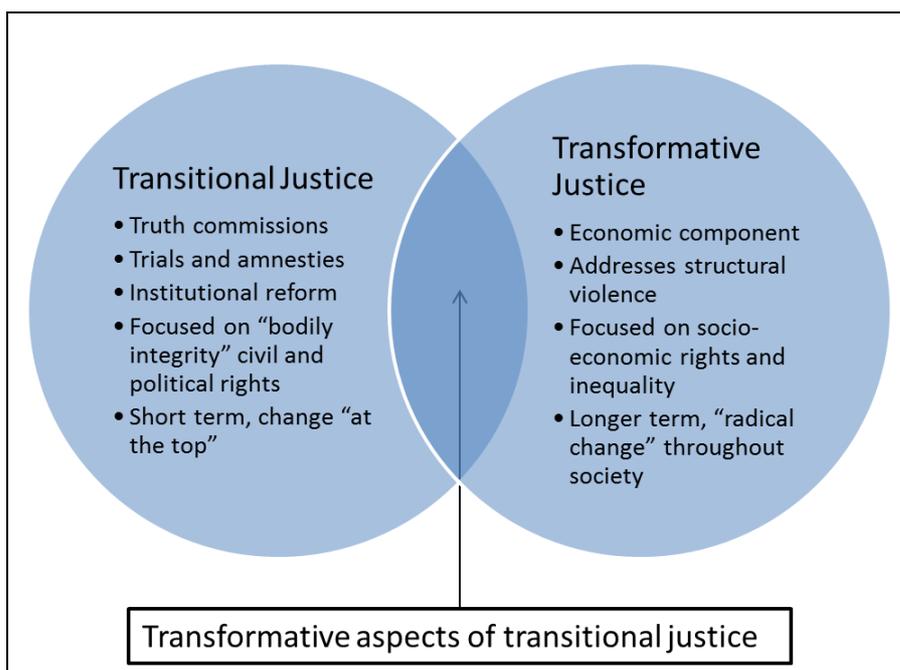
<sup>61</sup> Daly, “Transformative Justice”

<sup>62</sup> Skaar, “Transformative aspects of formal TJ initiatives”

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> E.g. Boesten, Crawford, Gready, Waldorf and Wilding, “Transformative Justice”



**Figure 1: Relationship between transformative justice and transitional justice**

### III: Land and socio-economic rights in South Africa

Land is a particularly important area of contestation with regard to socio-economic inequalities and structural violence. According to Tafadzwa Pasipanodya “the demand for equitable redistribution of land motivated people to wage war” in a variety of countries (including South Africa) yet has largely failed to be addressed as a “source of unrest” in these countries post-conflict.<sup>66</sup> Land ownership, access and use acts as a nexus in which a variety of – at times competing – human rights claims intersect. There are a number of established and legally protected human rights which can be seen as articulating a right to land. For example, there is a right to property (which may include land) articulated in the Universal Declaration of Human Rights.<sup>67</sup> The right to food (which is also protected by UN mechanisms)<sup>68</sup> may be seen as providing a gateway to a right to land as this right may be realised through access to agricultural land. Similarly, the right to housing – again protected by international mechanisms<sup>69</sup> – can be seen as a gateway right through which existing structures of land ownership and access may be challenged on human rights grounds.

<sup>66</sup> Pasipanodya, “A Deeper Justice”, 390

<sup>67</sup> United Nations, *Universal Declaration of Human Rights*, General Assembly resolution 217A (III), UN Doc A/810 at 71 (1948): Article 17

<sup>68</sup> United Nations, *International Covenant on Economic, Social and Cultural Rights* General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976, Article 11

<sup>69</sup> *International Covenant on Economic, Social and Cultural Rights*, Article 11

There is, however, a tension between protecting the rights of existing property-owners and realising the right of those without property to own property without discrimination. An analytical lens on socio-economic inequalities and structural violence may be useful in revealing resolutions to this tension. In pursuing transformative justice it is necessary to take into account the effects of structural inequalities in contributing to direct violence and violations of bodily integrity rights as well as the impact of these inequalities as forms of indirect violence in themselves. With this lens it is possible to judge whether existing structural conditions are just and whether they promote or inhibit positive transformation and the realisation of human rights in post-conflict and post-authoritarian societies.

### **Interaction between land, structural violence and transformative justice**

In South Africa, addressing structural violence stemming from land inequalities can be seen as a key element in the promotion of transformation towards a more just society post-apartheid. By the end of apartheid in 1994, up to 87% of land in South Africa was owned by the white minority.<sup>70</sup> This was largely a result of colonialism and the subsequent implementation of laws such as the 1913 Native Lands Act and the policy of forced removals under apartheid.<sup>71</sup>

Whilst it is the case that South Africa's high profile and oft-praised transitional justice processes (especially the Truth and Reconciliation Commission) did not focus on structural, socio-economic grievances such as those relating to land, there have been some attempts to address these structural issues since the transition to democracy. Since 1994 a number of land reform policies have been put in place covering three broad categories: restitution, redistribution and tenure reform.<sup>72</sup> The initial target of these policies was to redistribute 30% of white-owned agricultural land into black ownership by 2014.<sup>73</sup> This would be achieved through a market-based

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<sup>70</sup> IRIN, "South Africa: Land redistribution back on the front burner"; Sam Moyo, "The Politics of Land Distribution and Race Relations in Southern Africa," *Identities, Conflict and Cohesion (2000-2005) Programme Paper No. 10* (Geneva: United Nations Research Institute for Social Development, 2004): 1-2; James, *Gaining Ground?*, 3

<sup>71</sup> IRIN, "South Africa: Land redistribution back on the front burner"; Moyo, "The Politics of Land Distribution and Race Relations in Southern Africa", 1-2; James, *Gaining Ground?*, 3

<sup>72</sup> James, *Gaining Ground?*, 3-5

<sup>73</sup> Cheryl Walker, *Landmarked: Land Claims and Land Restitution in South Africa*, (Johannesburg: Jacana, 2008): 20; World Bank, "Options for Land Reform and Rural Restructuring in South Africa". Report presented at the *Conference on Land Distribution Options*, (Land and Agricultural Policy Centre, Johannesburg), October 12-15, 1993

“willing buyer, willing seller” approach.<sup>74</sup> However, by 2008, the date by which the 30% target for transfer of land to black ownership was expected to be achieved was moved back to 2025.<sup>75</sup> The scope of land reform policies have not been as ambitious as many would have liked and, moreover, even the (arguably) modest targets of these policies have not been achieved on time. There has been increasing criticism of this approach in academic commentary.<sup>76</sup> Furthermore, there has been resistance to this approach from a diverse group of actors including NGOs,<sup>77</sup> trade unions<sup>78</sup> and social movements.<sup>79</sup> It is important to highlight the fact that trade unions and union groupings critical of the current approach include those attached to the Congress of South African Trade

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<sup>74</sup> World Bank, “Options for Land Reform and Rural Restructuring in South Africa”

<sup>75</sup> Republic of South Africa, Department of Land Affairs and Department of Agriculture, *The Land and Agrarian Reform Project (LARP): The Concept Document*, February 2008 (Pretoria: DoA, 2008): 35

<sup>76</sup> Stephen Greenberg, *The Landless People’s Movement and the Failure of Post-Apartheid Land Reform*, (Durban: University of KwaZulu-Natal, 2004); James, *Gaining ground?*; Lungisile Ntsebeza and Ruth Hall, eds., *The land question in South Africa: the challenge of transformation and redistribution*, (Cape Town: HSRC Press, 2007)

<sup>77</sup> Susan Tilley, *An Examination of Market-assisted Agrarian Reform in South Africa*, (Cape Town: ILRIG, 2002); Urban LandMark, *Do Informal Land Markets Work for Poor People?: An assessment of three metropolitan cities in South Africa*, Literature Review (Tshwane: Urban LandMark, 2007): 13-16; War on Want, “Landless in South Africa,” <http://www.waronwant.org/overseas-work/food-justice/landless-in-south-africa> [accessed September 1, 2010]

<sup>78</sup> Congress of South African Trade Unions, “COSATU submission regarding the Expropriation Bill,” Draft Submission on the Expropriation Bill [B16-2008] presented to the Portfolio Committee on Public Works, June 18, 2008. [https://www.givengain.com/cgi-bin/giga.cgi?cmd=cause\\_dir\\_news\\_item&cause\\_id=2137&news\\_id=72432&cat\\_id=1585](https://www.givengain.com/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=2137&news_id=72432&cat_id=1585) [accessed September 1, 2010]; Patrick Craven, “COSATU backs SACP campaign,” November 3, 2004. <http://hosting1.unwembi.co.za/sacp/main.php?include=docs/pr/2004/pr1103.html> [accessed September 1, 2010]; South African Press Association, “Speed up land reform – Cosatu” *Fin24* February 9, 2006. <http://www.fin24.com/Economy/Speed-up-land-reform-Cosatu-20060209> [accessed September 1, 2010]

<sup>79</sup> Greenberg, *The Landless People’s Movement and the Failure of Post-Apartheid Land Reform*; Gerhard Kienast, “Abahlali baseMjondolo – how poor people’s struggle for land and housing became a struggle for democracy,” <http://suedafrika.habitants.de/?p=15> [accessed September 1, 2010]; War on Want, “Landless in South Africa”; Toussaint Losier, “The Struggle for Land & Housing in Post-Apartheid South Africa,” *The San Francisco Bay Area Independent Media Center* January 12, 2009. <http://www.indybay.org/newsitems/2009/01/12/18562116.php> [accessed September 1, 2010]

Unions (COSATU) as well as independent unions.<sup>80</sup> Along with similar calls from the South African Communist Party (SACP) for faster and more radical land reform,<sup>81</sup> the opposition of COSATU to existing land reform policies is particularly significant given the roles of COSATU and the SACP in government as part of the tripartite alliance with the African National Congress (ANC). Recent suggestions by the government that their approach to land reform may change are discussed below.<sup>82</sup> The relationships between and approaches of actors such as NGOs, social movements and trade unions are particularly relevant for understanding how a transformative justice agenda might be pursued. These are discussed further below.

### **Analysing post-apartheid South African land policy**

In attempts to address structural inequalities in access to and ownership of land in post-apartheid South Africa, one key challenge is clear. This surrounds the abovementioned question over whether to privilege the protection of property ownership or the right to access land without discrimination in any given situation. Pursuit of transformative justice in South Africa must address this challenge. As alluded to above, the human rights case is not necessarily straightforward. As well as being protected by international mechanisms, the right to property is also legally protected in the South African Constitution.<sup>83</sup> However, South African law (in addition to the international instruments mentioned above) also protects rights which can be seen as articulating a right to land such as the

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<sup>80</sup> E.g. South African Press Association, "Speed up land reform – Cosatu"; War on Want, "No Land! No House! No Vote!" <http://www.waronwant.org/component/content/article/16523> [accessed August 31, 2011]

<sup>81</sup> IRIN, "South Africa: Land redistribution back on the front burner"; Blade Nzimande, "Build working class power in the whole of society: SACP May Day 2007 Message," Address to *SACP May Day Rally*, (Secunda, Mpumalanga), May 1, 2007. <http://www.sacp.org.za/main.php?include=docs/sp/2007/sp0501.html> [accessed September 1, 2010]; David P Thomas, "The South African Communist Party (SACP) in the Post-apartheid Period," *Review of African Political Economy* 34, No. 111 (2007): 135

<sup>82</sup> E.g. South African Press Association, "'No abandoning land reform'," *Independent Online* February 21, 2012. <http://www.iol.co.za/business/business-news/no-abandoning-land-reform-1.1239139> [accessed March 4, 2012]; Jacob Zuma, "State of the Nation Address by Jacob G Zuma, President of the RSA on the occasion of the Joint Sitting of Parliament," February 14, 2013, <http://anc.org.za/show.php?id=10074> [accessed March 10, 2013]

<sup>83</sup> Republic of South Africa, *Constitution of the Republic of South Africa*, Act No. 108 of 1996, [Date of Promulgation: December 18, 1996] [Date of Commencement: February 4, 1997]: Section 25

right to food (protected in Section 27 of the South African Constitution)<sup>84</sup> and the right to housing (protected by Section 26 of the South African Constitution).<sup>85</sup>

Furthermore, the right to property itself can be seen as implying a need for land reform in situations such as post-apartheid South Africa. Colonial and apartheid governments put in place policies which discriminated between those who could and could not own property. In order for the right to property to be realised equally by all post-apartheid, distributions of land ownership resulting from previous discriminatory regimes may be challenged. Section 25 the South African Constitution specifically provides for the possibility of property (including land) being expropriated for a public purpose including for the purpose of creating more equitable land distribution through land reform.<sup>86</sup> Use of this provision is one way in which transformative justice in relation to land could be pursued.

It has also been noted that conceptions of what constitutes ownership and the nature of tenure have a significant impact on debates to do with land reform policies.<sup>87</sup> Those with “informal rights” (as opposed to legal rights or entitlements) to land they are occupying or using, may argue that they in effect own this land and as such should have their right to property protected.<sup>88</sup> Further tenure reform opens up scope for transforming property (including land) relations and thereby promoting a more just outcome, through which socio-economic rights might be realised. Making specific reference to South Africa, Huggins argues that land tenure reform should be integrated with transitional justice processes.<sup>89</sup>

To privilege the rights of existing property-owners without exception would necessarily limit the rights of the landless to access land, for example for food or for housing. However, any land reform policy – particularly those explicitly aiming at redistribution of land – will limit the rights of property-owners to some degree. A dilemma exists from a human rights perspective with regard to the degree to which either the rights of property-owners or the rights of the landless may justifiably be limited in order to allow the rights of others to be realised. Keeping in mind the concept of structural violence and the aim of promoting transformative justice goes some way to resolve instances of prima facie competing rights claims over land. A question may be asked regarding whether existing structures of land distribution maintain a form of violence, and whether it is

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<sup>84</sup> Ibid., Section 27

<sup>85</sup> Ibid., Section 26

<sup>86</sup> Ibid., Section 25

<sup>87</sup> James, *Gaining Ground?*, 8

<sup>88</sup> Ibid., 9-15

<sup>89</sup> Huggins, “Linking Broad Constellations of Ideas”

possible to move towards its negation (peace – broadly defined). Land distribution in South Africa maintains structural violence. For example, Huggins highlights that South Africa’s “business-as-usual agrarian policy has meant that those black farmers who have claimed land and have attempted to start smallholder farm enterprises are struggling to succeed within a wider economic system geared for large-scale production”.<sup>90</sup> The “socio-spatial exclusion” and the division between shack settlements of landless people and “citadelis[ed] and securitis[ed]” urban areas present in formally desegregated South African cities is another example of this.<sup>91</sup>

In attempting to explain the reasons behind South Africa’s “business-as-usual” approach to addressing land inequalities post-apartheid,<sup>92</sup> Deborah James identifies two opposing theoretical frameworks around which land reform policies are based.<sup>93</sup> These are the demand-driven development paradigm and the egalitarian development paradigm. James argues that since 1994 South Africa’s land reform policies have followed the demand-driven paradigm.<sup>94</sup> In doing so, existing property rights of current landowners have been privileged over the rights of the landless. As “survival depends on access to assets, particularly land”, the realisation of landless people’s rights is limited and the fact that “[t]o be landless, especially in countries that have undergone political and economic crisis, is often to be among the most vulnerable ranks of the population” is brought to the forefront.<sup>95</sup>

The demand-driven approach to land reform can be seen as failing to address the (structural) violence inherent in existing land distribution in South Africa. Moreover, this approach has been pursued despite the fact that prior to the end of apartheid the ANC and its allies had advocated a more egalitarian model of land reform. The Freedom Charter of 1955 stated that “land [shall be] re-divided amongst those who work it, to banish famine and land hunger... All shall have the right to occupy land wherever they choose”.<sup>96</sup> The rhetoric of high profile ANC members, such as Joe Slovo, prior to the negotiated settlement to end apartheid indicated that land redistribution would be central to any transition to democracy. In 1986, Slovo (who was at the time General Secretary of the SACP and Chief of Staff of the ANC’s armed wing, Umkhonto weSizwe), stated that

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<sup>90</sup> Ibid., 352

<sup>91</sup> Nigel C Gibson, *Fanonian Practices in South Africa: From Steve Biko to Abahlali baseMjondolo*, (New York: Palgrave Macmillan, 2011): 25-27

<sup>92</sup> Huggins, “Linking Broad Constellations of Ideas”, 352

<sup>93</sup> James, *Gaining Ground?*, 57

<sup>94</sup> Ibid.

<sup>95</sup> Huggins, “Linking Broad Constellations of Ideas”, 338

<sup>96</sup> Congress of the People, *The Freedom Charter* adopted June 26, 1955, Kliptown

“the redistribution of the land is the absolute imperative in our conditions”.<sup>97</sup> As mentioned above, the ANC’s alliance partners have continued to call for a change in land reform policy. However, despite the recent re-emergence of pro-redistribution sentiment in pronouncements by leading ANC members (outlined further below), post-apartheid land policy has thus far followed the demand-driven paradigm.

Cherryl Walker argues that many – if not most – ANC supporters had expected post-apartheid land reform policies to be more radically redistributive and less market-led than those that have in fact been put in place.<sup>98</sup> Many had expected land reform to be based on a policy of land nationalisation or expropriation without market-determined compensation rather than a “willing-buyer, willing seller” model.<sup>99</sup> It has been argued that the ANC’s plans for policies such as land nationalisation were abandoned for a number of reasons. For instance, the limited success of similar policies in other contexts such as post-independence Mozambique and pressure to enact market-oriented policies from powerful national and international business groups and international financial institutions such as the World Bank have both been cited.<sup>100</sup> It has also been suggested that the most important factor in determining the “demand-driven”, market-led approach of South African land reform policies has been the strong legal protection of the right to property provided by the South African Constitution. This protection means efforts to redistribute land through a more aggressive policy than “willing buyer, willing seller” may be legally hampered. It has consequently been seen by some as an unjust compromise accepted by the ANC in negotiations to end apartheid.<sup>101</sup> It is important, however, to note that the South African Constitution does allow land to be expropriated without market-level compensation (though the market value must be taken into account).<sup>102</sup> Current constitutional protection of the right to property might legally hamper certain land reform policies. More radical policies than those so far pursued are nevertheless permissible under the Constitution.

Despite the suggestion that current policies are ineffective and result in the maintenance of existing land inequalities, the ANC has maintained that addressing land inequalities is a continuing priority. In February 2012 Gwede Mantashe (ANC General Secretary) commented that to “remove

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<sup>97</sup> Cherryl Walker, *Landmarked: Land Claims and Land Restitution in South Africa*, (Johannesburg: Jacana, 2008): 51

<sup>98</sup> *Ibid.*, 51-55

<sup>99</sup> *Ibid.*; James, *Gaining Ground?*, 226-227

<sup>100</sup> James, *Gaining Ground?*, 10-11; Walker, *Landmarked*, 51-52; *Ibid.*, 63-64

<sup>101</sup> Naefa Kahn, “Land and Agrarian Reform in South Africa,” *Policy: issues & actors* 20, No. 12 (2007): 4-5

<sup>102</sup> *Constitution of the Republic of South Africa*, Section 25

the land question from the centre of the ANC's agenda, [would] be betraying what was the immediate challenge after the formation of the African National Congress".<sup>103</sup> Even more recently, President Jacob Zuma has suggested that the abovementioned clauses in the South African Constitution allowing for the possibility of land to be expropriated will be used.<sup>104</sup> Given this – at least rhetorical – commitment, the presence of the tension between demand-driven and egalitarian development paradigms is once again evident. There is both a tension between whether the right of landowners to property should trump the right of the landless to access land and a tension between whether the law protecting property rights should trump the law allowing for expropriation of land. Taking a broad understanding of violence, and focusing upon the potential for addressing this through transformative justice provides a means by which these tensions may be resolved. Actors relevant to the pursuit of this as well as the roles of their relationships and strategies are explored below.

### **Criticism of South Africa's current approach**

Current South African land reform policies have not been particularly successful in righting historical injustices and allowing all people in South Africa to realise their rights equally. Criticisms of the current approach have come from a range of actors and have been for a number of reasons. One issue, which is particularly pertinent when analysing the degree to which structural violence can be reduced, is the suggestion that the current land reform process has focused too much on restitution rather than redistributive policies and addressing tenure reform.<sup>105</sup> Huggins states that "there is a strong argument that any attempt to redress injustice over land rights must look not just at individual cases of dispossession but at the entire land tenure system".<sup>106</sup> In South Africa many of those who have benefited from land reform (through restitution) have not been the poorest or most marginalised groups (who might benefit from wider redistribution or tenure reform). Those black people who are in a position to have land restored to them are likely to have been part of the relatively small and comparatively well-off group of black people who owned land prior to losing it during minority rule.<sup>107</sup> In order to address the structural inequalities which remain present in South Africa a wider reaching, transformative agenda is necessary.

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<sup>103</sup> South African Press Association, "No abandoning land reform"

<sup>104</sup> Zuma, "State of the Nation Address"

<sup>105</sup> Walker, *Landmarked*, 28-29; James, *Gaining Ground?*, 7-8

<sup>106</sup> Huggins, "Linking Broad Constellations of Ideas", 352

<sup>107</sup> Paul Gready, "Land scarcity, land grabs, land reform, land rights", (lecture, University of York, February 25, 2010) ; James, *Gaining Ground?*, 7-8

The failure of post-apartheid land reform policies to adequately address the needs of the poor has been cited by social movements in particular as an issue and as a cause for campaigning against current policies and approaches to land reform. The Landless People's Movement, Western Cape Anti-Eviction Campaign and Abahlali baseMjondolo, for example, have all boycotted elections as part of "no land, no vote" campaigns and have linked criticism of current land reform policies to a broader critique of the ANC's overall approach.<sup>108</sup> NGOs have also been critical of the current approach. Some, such as the International Labour Research and Information Group (ILRIG), have been critical of current policies explicitly due to the neoliberal direction of the ANC's approach, including their market-led land reform policies.<sup>109</sup> Others, such as Urban LandMark, have focused less on providing a critique of the ANC's overall approach and more on strategies of how markets can be made to work for the poor in order to improve the effectiveness of land reform.<sup>110</sup> Important for this research is the fact that these actors (as well as others, including COSATU and non-COSATU affiliated trade unions) have taken action both individually and in varying degrees of collaboration in order to promote alternative means of realising the rights of landless people.

#### **IV: Relevant actors and relationships for a transformative approach**

Keeping a focus on the pursuit of transformative justice, particular actors, their relationships and their strategies in relation to addressing land inequalities are especially worthy of exploration. The historic and contemporary importance of social movements, trade unions and NGOs to the praxis of human rights and social justice in South Africa is important for exploration of land, socio-economic rights and the pursuit of transformative justice. In particular, the positioning of NGOs, trade unions and social movements in relation to each other and in relation to the state is relevant to this issue. Some allusion has already been made to the roles social movements aligned with the United Democratic Front (UDF) and trade unions closely linked to the ANC played in opposing apartheid.

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<sup>108</sup> Abahlali baseMjondolo, "A short history of Abahlali baseMjondolo, the Durban Shack Dwellers' Movement," <http://www.abahlali.org/node/16> [accessed September 1, 2010]; S'bu Zikode, "Abahlali baseMjondolo (Shack Dwellers) Movement," Speech made to *Abahlali baseMjondolo Annual General Meeting*, (Blue Lagoon, Durban), December 14, 2008, <http://www.indymedia.org.uk/en/2008/12/415682.html> [accessed September 1, 2010]; Western Cape Anti-Eviction Campaign, "Revolutionary Ubuntu: The shack dwellers and poor people of South Africa," <http://www.eblackstudies.org/ebooks/ubuntu.pdf> [accessed September 1, 2010]; The Poor People's Alliance, "About the Alliance," <http://sekwanele.wordpress.com/about/> [accessed September 1, 2010]

<sup>109</sup> Tilley, *An Examination of Market-assisted Agrarian Reform in South Africa*

<sup>110</sup> Urban LandMark, "About Us," <http://www.urbanlandmark.org.za/aboutus/index.php> [accessed September 1, 2010]

During this period social movements affiliated to the UDF shared many of the same aims as the ANC in striving towards principles such as those set out in the Freedom Charter.<sup>111</sup> However, the failure of the post-apartheid ANC government to fully implement these principles, including with regard to land, has led to contemporary social movements operating across a broader spectrum of support for and opposition to the ANC and the wider post-apartheid state. It has been argued that these actors (especially social movements) have filled a vacuum in political opposition in post-apartheid South Africa since the late 1990s.<sup>112</sup> There remain some social movements which engage the state and the ANC to some extent, and some which have been entirely co-opted, whilst others display outright opposition.<sup>113</sup>

As noted above, one of the shortcomings of transitional justice processes has been tendency for change to occur through elite bargains and the transfer of power at the top.<sup>114</sup> The centrality of elite bargains might go some way to explaining why post-apartheid land policies have not been heavily geared around redistribution or otherwise addressing the structural violence inherent in the existing distribution of land. In order for the shortcomings of transitional justice to be overcome and a transformative approach pursued there needs to be a move away from elite bargains. Social movements and community based organisations articulate concerns of those affected by issues such as land inequalities.<sup>115</sup> Social movement praxis is therefore important for understanding how a transformative justice agenda might be promoted.

A similar state of affairs to that of social movements exists regarding trade unions. The activities of trade unions, often in alliance with the ANC and anti-apartheid social movements, were central to the anti-apartheid struggle and the eventual transition to democracy.<sup>116</sup> However, as noted above, COSATU has been critical of many of the ANC's policies in government. Moreover, a number of non-COSATU affiliated unions have emerged occupying a range of positions in relation to

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<sup>111</sup> Nigel C Gibson, "Introduction – Calling everything into question: Broken promises, social movements and emergent intellectual currents in post-apartheid South Africa," in *Challenging Hegemony: Social Movements and the Quest for a New Humanism in Post-Apartheid South Africa*, edited by Nigel C Gibson (Trenton: Africa World Press, 2006): 18-23

<sup>112</sup> Richard Ballard, Adam Habib, Imraan Valodia and Elke Zuern, "Introduction: From Anti-Apartheid to Post-Apartheid Social Movements," in *Voices of Protest: Social Movements in Post-apartheid South Africa*, edited by Richard Ballard, Adam Habib and Imraan Valodia (Scottsville: University of KwaZulu-Natal Press, 2006): 15

<sup>113</sup> Gibson, "Introduction", 1-27

<sup>114</sup> Daly, "Transformative Justice", 74; Waldorf, "Anticipating the Past", 179

<sup>115</sup> E.g. Mcedisi Twalo, personal interview by author, Cape Town, July 4, 2012

<sup>116</sup> SAinfo, "Trade unions in South Africa."

<http://www.southafrica.info/business/economy/policies/tradeunions.htm> [accessed August 31, 2011]

engagement with the state, such as the farm workers' union Sikhula Sonke, which has taken part in election boycott campaigns over land and housing issues.<sup>117</sup> Similarly to social movements, trade unions provide a space in which grassroots participation and articulation of social, economic and political concerns may take place. Whilst the (often) different membership constituencies of social movements organised around land and related issues and trade unions (and organisations political affiliations) can cause tensions, there can be value added by trade unions to action on land issues.<sup>118</sup> For instance, trade unions often have greater resources than grassroots social movements, which can lead to more effective action if these resources are made available for land rights campaigning purposes. Furthermore, in instances where land issues overlap with the recognised industrial mandate of trade unions (for example regarding farmworkers' housing) then the established arenas for negotiation with employers and government might be used to advance transformative justice aims in relation to land.<sup>119</sup>

NGOs occupy an important position in the politics of post-apartheid South Africa. With many NGOs having operated during the apartheid era working towards various different specific ends and being based on a variety of ideological positions the same is true in the post-apartheid era. Indeed, post-apartheid "social movements and NGOs have mobilised locally in order to leverage access to state resources such as land, housing and health care".<sup>120</sup> However, as a result of the different ends being pursued and their varying political positions there is a precarious relationship between NGOs and social movements, which themselves hold a range of different aims and political positions.<sup>121</sup> This is complicated further by these actors' relationships with trade unions and with the post-apartheid state. Moreover, NGOs can act as intermediaries between local or community-based activism and the formal political sphere at a national level as well as providing links to international

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<sup>117</sup> Steven L Robins, "Introduction," in *Limits to Liberation after Apartheid*, edited by Steven L Robins (Oxford: James Currey, 2005): 9-11; SAinfo, "Trade unions in South Africa"; Woman On Farms Project, "Who is Sikhula Sonke?" <http://www.wfp.org.za/sikhula-sonke/> accessed August 31, 2011]; Yugendree Naidoo, "Farm workers announce election boycott." *West Cape News*, April 7, 2009. <http://westcapenews.com/?p=599> [accessed August 31, 2011]

<sup>118</sup> E.g. Mike Louw, personal interview by author, Cape Town, July 6, 2012

<sup>119</sup> E.g. Mario Jacobs, personal interview by author, Cape Town, July 30, 2012; Howard Mbana, telephone interview with author, July 16, 2012; Sikhula Sonke official, personal interview by author, Stellenbosch, July 17, 2012

<sup>120</sup> Robins, *From Revolution to Rights in South Africa*, 5

<sup>121</sup> *Ibid.*, 21-25

spheres of influence through funding streams and participation in transnational networks.<sup>122</sup> As Robins puts it, NGOs and social movements acting in partnership deploy “both local rights-based strategies and globally connected modes of collective mobilisation in marginalised communities”.<sup>123</sup> It is therefore important to explore the ways in which these relationships and the strategies of these actors might be used to promote transformative justice. It has already been highlighted that NGOs (and trade unions and social movements) operate across a broad spectrum of political positions and tactical approaches. Maintaining a critical lens on the realisation of socio-economic rights, the addressing of structural violence and the pursuit of transformative justice provides a means by which the strategies of these actors might be evaluated.

## **V: Conclusion**

There are several major themes which emerge consistently throughout the literature. There are also gaps evident in the foci of the existing literature, which warrant exploration through further research. The first key theme, which is evident throughout the body of literature, is that structural, socio-economic inequalities impact upon post-conflict and post-authoritarian societies significantly. This is both as sources of tension which can lead to unrest and conflict and as social justice issues which must be addressed to facilitate development.

Another theme present in much of the literature, and responding to the first theme mentioned above, surrounds the concern that structural, socio-economic issues are not being widely or effectively addressed. There is the suggestion that whilst there is potential for the widely applied transitional justice mechanisms to address these issues to a greater extent, that this has (for the most part at least) not happened.<sup>124</sup>

There is also the suggestion in much of the literature that transitional justice on its own cannot adequately resolve structural, socio-economic issues.<sup>125</sup> Moreover, focusing specifically on addressing land inequalities in South Africa, the literature highlights a tension between the legal rights of existing landowners and the legal and moral rights of landless people. It is suggested that, in

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<sup>122</sup> Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics*, (Ithaca: Cornell University Press, 1998): 9

<sup>123</sup> Robins, *From Revolution to Rights in South Africa*, 5

<sup>124</sup> E.g. Pasipanodya, “A Deeper Justice”

<sup>125</sup> E.g. Mani, “Dilemmas of Expanding Transitional Justice”

line with the themes of the wider literature, post-apartheid policies have largely failed to address structural inequalities in land in South Africa.<sup>126</sup>

Based on these themes a number of conclusions are drawn, which are laid out more fully below. It is concluded that existing models of transitional justice are not adequate for addressing structural violence and land inequalities or for ensuring the realisation of socio-economic rights. Following on from this conclusion, it is proposed that exploration of the strategies of and relationships between social movements, trade unions and NGOs in relation to transformative justice in general, and land inequalities in particular, is necessary.

Keeping in mind the focus in wider literature on the impact of structural violence on post-conflict societies and the potential for this to impact upon continuing and future conflicts, there is a gap within the literature on land in South Africa. There is a body of literature analysing and criticising the current approach to land in South Africa and there is some literature on alternatives to the current policy paradigm, plus some literature on the actors (such as trade unions, NGOs and social movements) which have opposed the current approach.<sup>127</sup> However, there is a gap in the literature regarding the detail of how actors such as NGOs, trade unions and social movements might effectively promote alternatives to the current paradigm. It is argued above that these actors are important to promoting a more transformative approach. NGOs, trade unions and social movements engage in a variety of action and interact with each other in various formal and informal networks. There is a need to investigate these relationships further, applying an analytical lens turned to the effectiveness of, and potential for, new approaches to addressing land and related socio-economic rights issues.

Related to the above conclusion is the following. Whilst there is some literature on the need for transformative justice to be pursued using a wider toolkit than that associated with transitional justice,<sup>128</sup> there is not a great deal written about what tools could be used effectively to promote a transformative agenda addressing structural, socio-economic inequalities such as land distribution in South Africa. There is therefore a particular need for research in contexts such as South Africa to be carried out exploring the practical possibilities for furthering transformative justice and addressing structural issues such as land inequalities. This paper has attempted to highlight the shortcomings of transitional justice in relation to these areas and has put forward a broad definition of

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<sup>126</sup> E.g. Greenberg, *The Landless People's Movement and the Failure of Post-Apartheid Land Reform*; James, *Gaining Ground?*; Walker, *Landmarked*

<sup>127</sup> E.g. Greenberg, *The Landless People's Movement and the Failure of Post-Apartheid Land Reform*

<sup>128</sup> E.g. Mani, "Dilemmas of Expanding Transitional Justice"; Skaar, "Transformative aspects of formal TJ initiatives"

transformative justice. Moreover, some proposals have been made with regard to the need to engage with the praxis of social movements, trade unions and NGOs in order to gain insight into how a transformative agenda might be pursued. This paper is, however, limited in its scope. The key conclusions here are regarding the need for a conception of transformative justice to be applied in order to overcome some of the shortcomings of transitional justice and regarding the need to explore the strategies of diverse actors and networks in promoting this agenda. In order to develop these further and in order to come to more detailed conclusions regarding the content of effective strategies in promoting transformative justice it will be necessary to carry out further research.

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