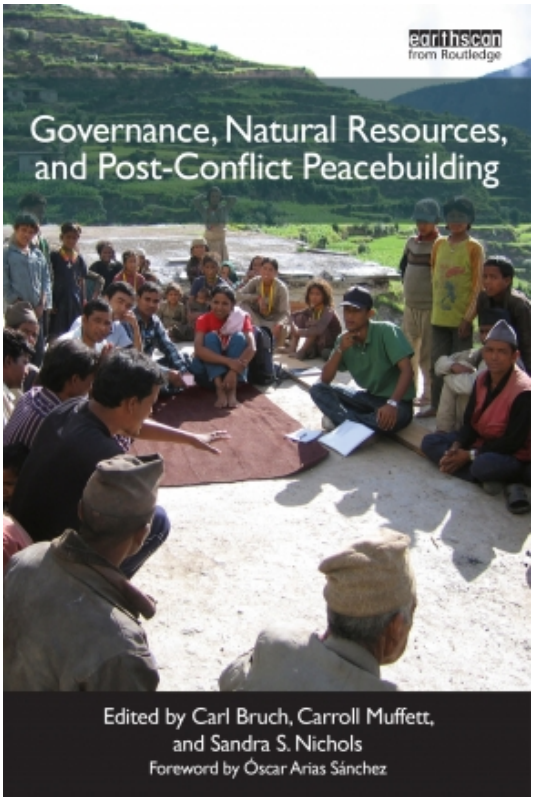


# Building Momentum and Constituencies for Peace: The Role of Natural Resources in Transitional Justice and Peacebuilding

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# Building momentum and constituencies for peace: The role of natural resources in transitional justice and peacebuilding

*Emily E. Harwell*

Transitional justice (TJ) refers to the field of practice that seeks to provide redress and prevent recurrence of abuses in societies emerging from conflict and authoritarian government. With its focus on legal accountability, truth commissions, victim reparations, and security sector reform, TJ seeks to contribute to the enabling conditions for the respect and protection of human rights and of the full citizenship rights of all people. In this way, TJ helps reestablish (or build anew) state legitimacy and social trust, particularly between citizens and the state—the foundations for a lasting peace.

TJ also represents a natural, yet underutilized arena for exploring the role of natural resources in facilitating or exacerbating abuses committed during wartime. Natural resources play a major role in many authoritarian and conflict economies. Since 1989, one-third of post-conflict countries derived more than 30 percent of gross domestic product (GDP) from extractive industries.[1] Natural resources contribute to the well-being and livelihoods of rural populations by providing means of subsistence and labor opportunities and by funding state capacity to deliver services. Therefore, well-managed natural resources can make significant contributions to development and help build and protect human security in all its forms, including human dignity and citizenship.

However, natural resource–dependent countries often underperform economically due to weak institutions for accountability and neglect of non-resource sectors.[2] When mismanaged, valuable natural resources are not simply a lost opportunity but in fact endanger long-term economic development and human security, as well as justice and basic freedoms. Misappropriated resource revenues can undermine economic performance and the quality of governance, thereby

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[1] GDPs excluding foreign grants and loans (data from International Monetary Fund country reports and the Peace Research Institute in Oslo conflict dataset). See also Le Billon (2008a).

[2] See, for example, UNSC (2002, 2007a) regarding the Democratic Republic of the Congo and Liberia, respectively.

increasing the risk of armed violence and human rights abuses (Ross 2004b; Le Billon 2005). For example, failure to control extraction of lucrative natural resources (for example, gems and other minerals) results in competition that can itself become an armed struggle. Likewise, inequity in access to subsistence natural resources (such as farmlands, forests, and pastures) often is an organizing point for grievances that lead to armed conflict, and can also be used as collective punishment against political opposition. Understanding the specific role of natural resources in the maintenance of predatory states and the facilitation of armed conflicts is central (1) to TJ's aim of understanding and repairing the context of victimization and repression of past regimes and (2) to development programs' goals of addressing impoverishment and poor governance.

The key element in the negative relationship between abundant natural resources and human rights abuses is the former's frequent association with weak governance institutions. High-value natural resources provide revenues that allow repressive or neglectful political regimes to stay in power by insulating them from accountability to their citizens. Such regimes routinely violate human rights and weaken governance checks and balances, as has been the case in many so-called "petro-states" such as Angola, Equatorial Guinea, Iraq, Nigeria, and Saudi Arabia (Ross 2004c; Fearon 2005). As discussed in reports of the panels of experts to the United Nations Security Council (Security Council)[3] and Security Council resolutions,[4] dysfunctional natural resource management and law enforcement can enable security forces to engage in targeted violence, displacement, forced labor, and property crime against communities in extraction areas, as in the Democratic Republic of the Congo (DRC), Liberia, and Sierra Leone, among other countries. Natural resources often facilitate and sustain rebel movements otherwise lacking the financial means to mount insurgencies, especially when would-be belligerents have access to resources that are easily extracted, transported, and sold without expensive technology (Ross 2004a, 2004b; Nordstrom 2004; Le Billon 2008b). And as pointed out by Herfried Münkler, the longer the armed conflict goes on, the more the rule of law is eroded, leading to increased human rights abuses and an acceptance of violence as a normal occurrence (Münkler 2005).

In order to effectively address victims' needs, restore legitimacy of state institutions, and prevent renewed conflict, traditional TJ measures of legal

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[3] See, for example, UNSC (2002, 2007a) for reports for the Democratic Republic of the Congo and Liberia, respectively.

[4] See, for example, Resolution 864 and Resolution 1173 regarding Angola (UNSC 1993, 1998); Resolution 1643 regarding Côte d'Ivoire (UNSC 2005a); Resolution 1756 regarding the Democratic Republic of the Congo (UNSC 2007b); Resolution 1343 and Resolution 1521 regarding Liberia (UNSC 2001, 2003a); and Resolution 1132 and Resolution 1306 regarding Sierra Leone (UNSC 1997, 2000). See also Resolution 1625 for the Security Council's resolve to strengthen conflict prevention through attention to the role of natural resources (UNSC 2005b), and Resolution 1653 regarding the role of natural resources in the proliferation of arms in the Great Lakes region of Africa (UNSC 2006).

accountability and truth seeking must be analyzed within the larger context facing most post-conflict societies. In natural resource–dependent countries, this context often centers around the political and economic benefit derived from control of natural resources and the negative impacts on civilians. In the realm of accountability, a natural resource focus might contribute to bringing legal cases against the worst perpetrators of economic crimes in key resource sectors that are directly linked to human rights abuses. Such cases, whether criminal or civil, could yield recovery of stolen assets that could be used for reparation for victims. In truth seeking, an awareness of the role of natural resources might involve direct investigation of injustices that supported authoritarian regimes, contributed to the onset and fueling of armed conflict, or led to abuse of targeted groups. In reform of the security sector, a natural resource focus might support the vetting and debarment of perpetrators from future concession licenses, positions of authority in resource ministries, and from private firms that provide security services to the extractive industries.

Drawing examples from the DRC, Liberia, Sierra Leone, South Africa, Timor-Leste, and Uganda, this chapter offers an empirical examination of how TJ initiatives have engaged or failed to engage with the natural resources sector. It then discusses how a carefully expanded focus of some TJ programs to include natural resources can achieve a more nuanced understanding of violent conflicts and the need for post-conflict justice. Highlighting some of the challenges facing such an expansion, the chapter argues that in many cases the challenges can be overcome and suggests how an expansion might work operationally.

Yet, even when successful, the expansion of TJ to include natural resources can only make a modest contribution to the prevention of future abuses. In comparison, post-conflict development and peacebuilding have a broader programmatic scope and far greater financial and human resources available, making them more likely to have a lasting impact, particularly in regard to reforms of judicial or natural resource institutions. Consequently, the chapter argues that the deepened knowledge of the modalities and impacts of armed conflict gained from including natural resources in TJ's scope should be used to inform improved coordination between TJ and a variety of peacebuilding and development operations. In this way, both TJ and post-conflict development programs can achieve a more durable and just peace by more effectively contextualizing their interventions and by working together to coherently build public awareness and ownership to push political reform forward.

One of the unique aspects of post-conflict situations is their urgency. This urgency can act as a double-edged sword—a tension that needs to be anticipated. Urgency helps bring financial and technical resources and awareness together (both locally and from the international community) in ways that can help build political will and momentum for reform. But urgency can also lead to the compromise of the hard (and longer-term) work of building sound governance institutions, in order to get industry investments quickly flowing with the expectation that these visible results will lead to strengthened confidence and economic

recovery. Such a trade-off is a risky and high-stakes gamble, especially if it results in the neglect of the very institutions whose weaknesses led to the conflict in the first place.

This is but one example of the myriad peacebuilding programs that often work in isolation and even at cross-purposes to each other, as well as to TJ. The chapter concludes with an example of fruitful collaboration between TJ and a variety of development actors in Liberia's forest sector reform, and offers a few strategies for improving effectiveness of interventions, given the scale of problems needing attention in post-conflict situations.

## PAST ENGAGEMENT OF TRANSITIONAL JUSTICE WITH NATURAL RESOURCES

The four major interventions associated with TJ (that is, legal accountability, truth seeking, reparations, and security sector reform) have so far only rarely engaged with issues relevant to natural resources, focusing instead on gross violations of civil and political rights. Where natural resources are relevant, this has been a missed opportunity to more fully capture the nature of authoritarian belligerent power and the experience of victims. A partial understanding of injustices contributes only partial solutions, which may, in fact, be counter-productive when joined with other transitional programs as a whole. Expansion of programmatic focus, however, is not without costs and risks (the magnitude of which varies with each context); these challenges and how they might be addressed are examined below.

### Legal accountability

Post-conflict prosecutions have rarely addressed crimes associated with natural resource extraction. These crimes, known as natural resource crimes, include:

- Corruption in issuing extraction and export licenses.
- Embezzlement of natural resource–derived revenues from state coffers.
- Violence, looting, and forced displacement of communities in extraction areas.
- Forced labor for natural resource extraction.
- Trade of UN-sanctioned commodities.
- Trade of natural resource commodities in exchange for military materiel, in violation of UN arms sanctions, arms conventions, or moratoria.

There are several sound arguments for broadening the traditional focus of TJ on pursuing legal accountability to include these natural resource–related crimes. First, as noted above, the pattern of control and criminality in authoritarian regimes and among violent belligerents is intimately tied to the financial rewards of crimes in natural resource sectors. Therefore, as both a conceptual and practical matter, efforts to pursue accountability for civil and political abuses are

rendered less effective by the neglect of economic crimes that facilitate and motivate those abuses (Carranza 2008; Duthie and de Greiff 2007). Additionally, when impunity continues for natural resource crimes, which arguably are more widespread and have broader societal effects than those typically covered in post-conflict trials, this sends the counterproductive message that there is still no rule of law in the "new" society. Finally, trial testimony, evidence, and arguments presented in court can generate momentum for change by raising public awareness about natural resource crimes, their connection to massive abuses and atrocities, and the need for institutional reforms.[5]

In the next section, the examination of legal accountability continues, and by studying the empirical evidence, the challenges to winning convictions are revealed.[6]

### *International tribunals*

Judicial systems in transitional governments frequently lack capacity and are too politically freighted to try cases effectively, particularly where they implicate those still wielding power. In such scenarios, international courts are the last resort for legal accountability. While amnesties granted during a peace process may apply to domestic violations, such claims have been disallowed for violations of international law.

There are, however, limited examples of trials dealing directly with natural resource–related crimes. When related to corruption, some have argued that the dearth in cases is not due to prosecutors' preference to pursue civil and political crimes, but rather to the relative weakness in international law to address natural resource crimes. This misses the point that many natural resource–related crimes are themselves a violation of human rights and humanitarian law, with existing legal tools available for prosecutions, including:

- Prohibitions against pillage.[7]

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[5] Public awareness is best achieved when trials are made widely accessible through live radio feeds, which is especially important when trials take place in foreign courts.

[6] For a legal review of the advantages of courts for development and post-conflict ends, see Drumbl (2009).

[7] Rome Statute of the International Criminal Court (hereinafter Rome Statute), July 17, 1998, pt. 2, art. 8(2)(b)(xvi) and (e)(v); Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (hereinafter the Hague Regulations), October 18, 1907, arts. 46 and 47; Convention (IV) Relative to the Protection of Civilian Persons in Time of War (hereinafter Geneva Convention IV), August 12, 1949, art. 33; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (hereinafter Additional Protocol II), June 8, 1977, 1125 UNTS 3, art. 4(2c).

Although still prohibiting pillage, the Hague Regulations allow a series of exceptions (articles 48 through 56), including usufructuary use of natural resources in order to support the occupation and provide for the civilian population, providing the use

- Prohibitions against forced labor and attacks against civilians by security forces guarding natural resource extraction operations.[8]
- Prohibitions against forced displacement.[9]
- Security Council resolutions prohibiting the trade in particular commodities.[10]

The Geneva Convention's prohibition against pillage applies to both its ordering and authorization, and requires no systematic state strategy.[11] The prohibition applies to "all types of property, whether they belong to private persons or to communities or the State" (ICRC n.d.). Pillage is not limited to the seizure of assets by force; courts have deemed pillage to include acquisitions through contracts based on intimidation, pressure, or a position of power derived from the surrounding armed conflict, as well as knowingly receiving goods obtained against the will of the true owner (ICRC 2006). Further, the prohibitions apply to everyone, including nonstate insurgents and individuals in the private sector. For example, at Nuremberg, the U.S. Military Tribunal and the International

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does not diminish or damage the substance of the asset (Langenkamp and Zedalis 2003). The prevailing interpretation (known as the U.S. "Open Mine" Doctrine, based on Roman law) has been that renewable resources such as timber may be extracted and already open mines (for example, for oil, gas, minerals, and gems) may be exploited, but new ones may not be initiated (Cummings 1974; Buckland and McNair 1952). Likewise, under the Hague Regulations (articles 48, 49, and 55), profits from natural resource extraction must be directed toward the costs of administering the occupied territory and not toward enrichment of individuals or the occupying state. Although article 55 of the Hague Regulations specifically mentions only agriculture and forests, the Nuremberg trials interpreted the regulations to include other "raw materials needed for German factories" (Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, 1950; Nazi Conspiracy and Aggression, vol. 1, chap. XIII, Germanization and Spoliation Judgment of Nuremberg International Military Tribunal against German War Criminals, Findings on War Crimes and Crimes against Humanity). The introduction to the judgment states that "public and private property was systematically plundered and pillaged in order to enlarge the resources of Germany at the expense of the rest of Europe." It should also be noted that pillage, theft of private property, and receipt of stolen goods are also crimes in most domestic jurisdictions.

8 UN International Covenant on Civil and Political Rights, arts. 6, 7, and 17 (December 16, 1966); Hague Regulations, art. 25; and Geneva Convention (IV), art. 3(1)(a)–(d).

9 Rome Statute, arts. 7(1)(c) and (d); 8(2)(e)(v) and (xii); and 25(3)(d).

10 For example, diamonds and oil in Angola (UNSC 1998, 1993); diamonds and oil in Sierra Leone (UNSC 2000, 1997); diamonds and timber in Liberia (UNSC 2001, 2003a); and diamonds in Cote d'Ivoire (UNSC 2005a). However, not all countries have implementing legislation in place, which provides a loophole for sanctions violators. For example, Leonid Minin—who had operated a logging company that provided arms to Charles Taylor in Liberia, in exchange for preferential logging rights—was arrested in Italy but released for lack of territorial jurisdiction; he nevertheless had his European-based assets frozen (Judgment of the Court of First Instance [Second Chamber], January 31, 2007, Minin v. Commission of the European Communities, Case T-362/04 [2007] E.C.R. II-002003).

11 Geneva Convention IV, art. 33; Additional Protocol II, art. 4(2)(g).

Military Tribunal prosecuted defendants from several major industrial conglomerates. These included Friedrich Flick of Flick Kommanditgesellschaft, who was convicted of spoliation and plunder of occupied territories, and the German banker and war profiteer Karl Rasche, who was convicted of looting and spoliation.[12]

A few international cases have dealt with natural resources more directly. The Special Court for Sierra Leone, founded in 2002,[13] used exemplary language in issuing indictments, which explicitly recognized the role of valuable natural resources, especially diamonds, in contributing to the country's civil war, and brought charges for crimes in direct association with the struggle for control of the mines. In the case, *Prosecutor (David M. Crane) against Charles Taylor*, the Revolutionary United Front (RUF) defendants and former Liberian president Charles Taylor were charged with "joint criminal enterprise of trying to take control of Sierra Leone territory, especially diamond mining areas . . . and the reasonable foreseeable outcomes of that enterprise including crimes of unlawful killings, use of child soldiers, physical and sexual violence, abduction, forced labor (in mines), looting of civilian property."[14]

Notably, while pillage charges with respect to looting civilian property were brought against Taylor and members of the RUF, similar charges for pillaging natural resources were not leveled against the defendants.[15] The fact that the prosecutor did not indict anyone with the war crime of pillage of natural resources may indicate that he lacked familiarity with the necessary elements of the charge of pillage.[16]

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[12] United States v. Flick et al., VI Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 at 1187 (Flick case) and United States v. Von Weizsaecker, XIV Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 at 314 (Ministries case). Although not specifically dealing with natural resources, the U.S. Military Tribunal also convicted individuals from the firms Krupp and I.G. Farben for seizure of property under the "illusion of legality" without fair compensation and for the purposes of misappropriation for self-enrichment rather than administering the territory. See United States v. Krupp et al., IX Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 at 1327 (Krupp case); United States v. Krauch et al., VIII Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10 at 1081 (I.G. Farben case).

[13] On January 16, 2002, the United Nations and the government of Sierra Leone signed the Agreement for and Statute of the Special Court for Sierra Leone. For the text of the agreement, see www.icrc.org/applic/ihl/ihl.nsf/ b0d5f4c1f4b8102041256739003e 6366/65cb6be7caca532cc1256c1d0027f549?O penDocument.

[14] Special Court for Sierra Leone, Case No. SCSL-03-I, March 23, 2003.

[15] For further discussion on prosecuting wartime pillage of natural resources, see Anne-Cecile Vialle, Carl Bruch, Reinhold Gallmetzer, and Akiva Fishman, "Peace through Justice: International Tribunals and Accountability for Wartime Environmental Damage," in this book.

[16] In an effort to address this gap, James Stewart and colleagues at the Open Society Justice Initiative have drafted guidelines and conducted legal training for prosecutors on the crime of pillage (Stewart 2011).

The International Court of Justice (ICJ) ruled, in 2005, on a landmark case that has revitalized attention on the justiciability of pillage of natural resources as a war crime. The ICJ found in *Democratic Republic of the Congo v. Uganda* that although there was no evidence of a state strategy to use its military to pillage the DRC's resources, Uganda nevertheless failed in its obligation as an occupying power to prevent pillage of natural resources by its armed forces and by their nonstate collaborators in the occupied Congolese province of Ituri, which is rich in gold and other minerals.[17] The court relied heavily on evidence published in the final report of the Judicial Commission of Inquiry into Allegations of Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo (also known as the Porter Commission), set up by the Ugandan government in May 2001 and headed by Justice David Porter (JCI 2002). In paragraph 242 of its judgment, the ICJ quotes liberally from the commission findings that there is "ample credible and persuasive evidence to conclude that officers and soldiers of the UPDF [Uganda People's Defence Force], including the most high-ranking officers [including Commander Brig. Gen. Kazini], were involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities did not take any measures to put an end to these acts." In fact, the court asserted, the officers and soldiers likely profited personally from natural resource extraction. The ICJ issued a ruling ordering Uganda to pay reparations to the DRC. However, the court did not assess the extent of the reparations, and encouraged Uganda and the DRC to negotiate the amount. In the event that the parties could not agree to a sum, the ICJ retained jurisdiction to determine the amount of reparations. Analyses, such as those made by Henry Wasswa, claim that it will be nearly impossible to enforce a compensation ruling, but they maintain that the case nevertheless represents a positive step toward peace and legal accountability (because Uganda accepted the judgment) (Wasswa 2007).

National courts that are not party to a conflict have started to try their citizens and companies who have engaged in natural resource-related offenses during conflicts. In a case tried before a national court foreign to the Liberian conflict (a French federal court in Nantes), Global Witness and other nongovernmental organizations (NGOs) filed a complaint against French timber wholesaler Dalhoff, Larsen, and Horneman for the French criminal violation of recel, or receipt of stolen goods, because the company had knowingly imported timber from Liberia during the war between 2000–2003.

In another example, the Dutch Federal Court convicted Guus Kouwenhoven, a Dutch citizen who operated the Oriental Timber Corporation (OTC) in Liberia during Taylor's regime, for arms trafficking in contravention of the UN arms ban

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[17] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 I.C.J. 168 (Dec. 19) (General List No. 116). www.icj-cij.org/docket/files/116/10455.pdf.

and African arms conventions.[18] He was also charged with participation in war crimes in Guinea and Liberia committed by Liberian militias employed and supplied by OTC between 2000 and 2002. According to a 2007 report from the UN Panel of Experts on Liberia, there is forensic evidence and admission by the accused that on one occasion he deposited US$2 million into Taylor's personal account (for which he received a tax receipt) (UNSC 2007a). However, Kouwenhoven maintained his innocence of wrongdoing, arguing that such exchanges and engagement with armed militia were simply the way one had to do business in Liberia under Taylor (*Vrij Nederland* 2007). Likewise, Taylor admitted under cross-examination in the Special Court for Sierra Leone that payments to his covert personal accounts were common in order to buy munitions for the war (Taylor 2009).

Kouwenhoven's conviction was overturned on appeal due to mishandling of the prosecution and inconsistencies in the statements of witnesses,[19] some of whom the appeals court found had questionable credibility. The judges further noted that the most compelling piece of evidence, in their opinion, was inexplicably never presented in court.[20] The evidence demonstrated the purchase of an Mi-2 helicopter by the accused for Taylor from notorious arms dealer Sanjivan Ruprah (UNSC 2008) in apparent contravention of UN sanctions and a regional arms moratorium against trade of military materiel (UNSC 1992; ECOWAS 1998).

These cases indicate that although there are legal tools available for prosecuting crimes associated with natural resources, there are also significant obstacles to evidence gathering (especially in foreign countries), limitations of prosecutorial knowledge regarding existing statutes for bringing cases and winning convictions, and—most problematic—often a lack of political will. These challenges will be elaborated on later in this chapter.

### *Other legal instruments*

Although a far less developed area of legal accountability, emerging legal remedies are available for the more protracted problem of predatory states that

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[18] For example, the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Matters. For text of the convention, adopted on June 14, 2006, see http://documentation.ecowas.int/download/en/legal_documents/protocols/Convention%20on%20Small%20Arms%20and%20Light%20Weapons,%20their%20Ammunitions%20and%20other%20Related%20Matters.pdf.

[19] Guus Kouwenhoven Case, Judgment Court of Appeal in The Hague, Cause-list No. 22-004337-06, Public Prosecutor's Office No. 09-750001-05 (June 7, 2006), Judgment March 10, 2008. The prosecution appealed this decision to the Supreme Court, which on April 20, 2010, ruled to uphold this request and return the acquittal for appeal. As of this writing, the trial is still ongoing (Global Witness 2011; Trial Watch n.d.).

[20] Judgment Court of Appeal, Public Prosecutor's Office No. 99-750001-05, March 10, 2008.

pillage their own country's natural assets (either directly or through corporate partnerships) and impoverish their own people. One such mechanism for accountability is the use of civil charges and asset recovery that could benefit victims. Although many of these cases do not directly involve natural resources, they offer a promising model for advocates seeking to hold the elite accountable for pillage of national assets.

Domestic criminal charges under money laundering and racketeering laws have recently increased. Leveling charges in domestic courts requires political will that can be hard to come by, but the new Stolen Assets Recovery unit of the United Nations Convention Against Corruption (UNCAC) has already, with international assistance in forensic accounting, helped track and repatriate over US$2 billion of assets stolen by now-deceased Nigerian dictator Sani Abacha. Parties to the convention are enjoined to enact banking reforms and anticorruption legislation, including "know your customer" rules, with enhanced oversight of suspicious transactions for those holding public office and their families (that is, politically exposed persons) (Daniel 2004). However, a March 2008 *New York Times* article reported forensic evidence that showed that over a six-year period, some US$1 billion was moved through a U.S. bank account for which former Liberian president Taylor had signing authority—exceeding the entire GDP of Liberia over that time (*New York Times* 2008). This evidence demonstrates that existing banking rules to identify customers, monitor suspicious transactions, and apply anti–money laundering measures often remain unenforced.

Special commissions of inquiry are another possible means to pursue accountability. When political will and prosecutorial capacity are limited, special commissions (for example, anticorruption commissions, or those specific to a particular issue or sector), which can be staffed by domestic or international experts, are often able to serve as an intermediate measure between truth seeking and accountability. Although often without sentencing authority, they usually have subpoena power and provide information that can generate public awareness and evidence to facilitate prosecutions and revocation of concession licenses.

Recent examples of such domestic inquiries are the successive Lutundula Parliamentary Commission and the Inter-Ministerial Commission in the DRC (National Assembly 2005; MOM 2007). The latter reviewed the legality of sixty-one mining concessions issued during the war and recommended that every one of them either be renegotiated or canceled (IPIS 2008). In a similar example, as mentioned above, the Porter Commission examined involvement by the Ugandan military in the extraction of mineral resources and attendant violence against civilians in the Ituri mining region of the DRC.[21] Stephanie L. Altman, Sandra S. Nichols, and John T. Woods highlight the experience of the Liberian Forest Concession Review, which received a writ of search and seizure to examine financial records of Liberia's Central Bank and other private banks (Altman,

[21] However, the independence of the commission has since been questioned. See Tangri and Mwenda (2006).

Nichols, and Woods 2012). These records revealed that at most only 14 percent of taxes were paid, with more than US$64 million in arrears. Furthermore, of the seventy contracts claimed at the time, not one company could meet the minimum legal requirements to operate, even for a single year. Consequently, the first executive order of President Ellen Johnson Sirleaf was to declare all claims to logging contracts null and void.[22]

These three special investigations helped build momentum for other forms of legal accountability and reform, and might have benefited from TJ expertise regarding investigations and evidence gathering. In particular, Liberia's concession review had significant overlap with TJ concerns, but engagement was conducted in an ad hoc fashion and with insufficient follow-up. For example, investigations and evidence of financial transactions in Liberian and U.S. banks collected by the concession review could have been used by the Special Court for Sierra Leone prosecution of Taylor to assist in the investigations to trace his stolen assets (and his claims of indigence, which entitle him to aid for his own defense). These only came to light in 2008, however, a year after the start of his trial.

Additionally, human rights advocates who sat on Liberia's Forest Concession Review Committee went out to communities in the concession areas and collected statements regarding the abuses that the communities suffered at the hands of logging companies and their security forces. The committee's findings contributed to the decision to establish a policy for vetting concession bidders, and debarring those who committed abuses. The Liberian Truth and Reconciliation Commission (TRC), whose mandate includes investigations of economic crimes, failed to contribute to the momentum of this process by conducting their own investigation of these claims of abuse (although the TRC did hold public hearings on economic crimes). In the opinion of Naomi Roht-Arriaza and Katharine Orlovsky, TRC findings could have generated momentum to implement the debarment policy, support security sector reform and prosecutions, and help to target reparations for victims (Roht-Arriaza and Orlovsky 2009).

More positively, TJ played a role in Liberia's forestry reform process, as all those seeking to prequalify to bid on concessions were required to offer statements to the TRC about their activities during the civil war. The goals of this vetting were both to support truth seeking about the nature of the timber sector's role in the conflict and its impacts on victims, as well as to hold the perpetrators accountable by gathering information that could be shared with the government for the debarment of those who committed human rights abuses. Unfortunately, as the Security Council discovered, there are strong indications that these statements were more or less pro forma, and not verified to ensure concessionaires were telling the whole truth (UNSC 2008).

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[22] Executive Order No. 1: GOL Forest Sector Reform. For the text of this order, see www.emansion.gov.lr/doc/EXECUTIVE%20ORDER%20_%201%20-%20Forest%20Sector%20Reform.pdf.

## Challenges in pursuing legal accountability and lessons learned

The promise of these legal tools notwithstanding, many of the above cases illustrate the challenges to the notion of using legal accountability—for natural resource crimes in particular—as a means to promote post-conflict transition. One argument against pursuing legal accountability for natural resource crimes is that prosecutors have (so far) only rarely used these tools, whether for reasons of lack of familiarity with the necessary elements or for lack of political will. As a result, advocates for such cases face resistance from some prosecutors and judges who are less familiar with the standards. The underdeveloped arena of pillage, in particular, merits further legal analysis to determine its viability as a TJ strategy and the most productive contexts in which to pursue this avenue of remedy.

Some researchers have also argued that the nature of evidence collection and witness cooperation for economic crimes might be beyond the capacity of courts and TJ experts (Hayner and Bosire 2003; Duthie and de Greiff 2007). Certainly these issues pose serious obstacles in post-conflict environments. The Special Court for Sierra Leone and the Kouwenhoven case demonstrate the significant logistical challenges to the investigators, including evidence being physically located far from the court; witnesses who are impossible to protect adequately and who have good reason to fear retaliation; and circumstances of widespread criminality that make the credibility of most witnesses impeachable by the opposing counsel. However, dealing with such difficulties is beyond the capacity of the courts and TJ experts only if the uniqueness of the cases is not taken seriously and planned for in advance. Indeed, these challenges are common to most human rights cases. For international courts, more effort and resources should be directed toward in-country investigations and evidence collection, implementation of effective witness protection measures, coordination between prosecutors and investigators, and collaboration with other extrajudicial investigations, such as those conducted by TRCs and other NGOs (Harwell and Blundell 2010).

On the question of the charges being rarely used by prosecutors, some have argued that this is due to a cultural acceptance of economic crime and a leniency toward white-collar criminality (Hagan and Parker 1985; Schlegel and Weisburd 1992; Duthie and de Greiff 2007). Certainly, cynicism and inaction are common obstacles to reform in countries suffering widespread corruption and economic predation, yet these seem surprisingly defeatist and overly relativistic arguments against pursuing legal accountability. Abhorrent practices are often protected under the guise of "cultural acceptance" when in fact they are "accepted" only by the status quo and forced upon people who are powerless to resist (Hagan and Parker 1985; Schlegel and Weisburd 1992; Marcus 2003). In fact, no one would credibly argue that the unabashed theft of public assets to the impoverishment of millions is acceptable, but only that such violations are commonplace, which is hardly a reason to further delay accountability.

It is most likely that the dearth in prosecution is due to the most formidable and ineluctable of all policy challenges: lack of political will. Given the resources available, not all crimes for which there is a legal basis for prosecution will be brought to trial. Prosecutors make strategic choices about what cases they can win and what the overall benefit will be. Choosing to prosecute economic crimes that are often widespread and systematic may be (or decried as) political score settling, thereby generating cynicism rather than civic trust and reconciliation. Further, there is the question of whether it is politically less feasible to prosecute economic crimes than grave human rights crimes. The convictions of Chile's Augusto Pinochet and Indonesia's Suharto for economic crimes while they remained unaccountable for their involvement in widespread human rights violations suggest that in some cases it might actually be *more* feasible.

On the other hand, Madalene O'Donnell has argued that in other contexts, powerful interests disenchanted with the brutality of the old regime might be allies for a post-conflict reform but might block it if they feel the transition will bring prosecution of economic crimes in which they might be implicated (O'Donnell 2007). Such actors, if they believe their economic interests are at stake, may undermine efforts for legal accountability around natural resource crimes and thereby undercut these initiatives for other types of abuse. In short, political will is highly contextual and dynamic and must be weighed empirically.

A more general challenge to legal accountability as a means to TJ and post-conflict development is that outcomes from trials are inherently uncertain, making them a risky vessel in which to house too much hope for transition. They are, at best, only partial solutions that leave untouched many actors who in some way participated in the crimes, including the international actors who facilitated, if not directly aided and abetted, crimes and the larger community of bystanders who did nothing to intervene. Indeed, trials are not intended to deal with these communities of wrongdoers, and thus problems of violence and criminality continue. But painting a more positive picture, Laurel E. Fletcher and Harvey M. Weinstein argue that there are other, often more useful, tools at hand, such as TRCs (discussed below), which can provide a more complete view of criminality, harm, and the way forward (Fletcher and Weinstein 2002).

Although legal accountability may be but one hammer in the toolbox, it is an essential tool. Victims and perpetrators themselves have often commented that truth-seeking and reconciliation measures without accountability are unsatisfying. In fact, the failure to bring the most responsible to trial, or in the words of Piers Pigou, allowing "the big fish" to remain free, can undermine the progress of these measures by breeding resentment among those who participate (Pigou 2004). While bearing in mind the need for using other measures in concert, careful selection of a few key cases can help generate momentum by fueling public debate and awareness of how these different arenas connect and of the direction that reforms should take.

## Truth and reconciliation commissions

TRCs have an advantage over judicial procedures in their ability to focus both on individual responsibility and on broader institutional or structural injustices at the root of abuses and violence. Truth commissions can ask broader questions of how and why abuses occurred, while trials ask only if individual charges have been adequately proven. As such, within the broad arena of "truth recovery," TRCs provide a useful opportunity for exploring the multifaceted role of natural resources in conflict. Such a focus can help address questions of why particular people were targeted and what circumstances enabled the violence to take place. TRCs can be an avenue for revealing the natural resource and economic dimensions of the abuses that people suffered (for example, loss of livelihoods when people were displaced or natural resources were depleted or degraded, conscription as forced labor to extract natural resources, the dangerous labor and housing conditions, meager earnings, and lost education opportunities suffered when children are forced to work in natural resource sectors). TRCs can also shed light on how the mismanagement and destruction of natural resources and the unequal distribution of benefits from their extraction endangered livelihoods and disempowered people, who then become targets for other kinds of abuses (unlawful arrest, intimidation, and physical violence) because they resist or because they are voiceless.

However, this rich vein of insight into contexts of vulnerability and power has most often been underutilized by truth commissions, which have generally focused their investigations narrowly on violations of civil and political rights. With a few exceptions—most notably in Timor-Leste, Liberia, and Sierra Leone—TRCs have not conducted primary investigations of the role of natural resources in violence and the targeting of victims for abuse. Moreover, TRCs have only rarely (with the exceptions of the three noted above and in South Africa) engaged with violations of economic, social, and cultural rights that stem from natural resource–related linkages, including rights to control one's own resources and to adequate livelihoods, food, housing (that is, protection from displacement from extraction areas), health (protection from squalid conditions of labor camps), and education (protection from coerced extractive labor, especially of school-age children). Nor have TRCs (with the exception of those in Liberia and Sierra Leone) tended to make recommendations for reform of institutions that manage natural resources in order to prevent such abuses.

There are several possible reasons for this inattention. First, the mandate of many truth commissions limits them to investigating gross civil and political abuses. This narrow focus can be the result of a desire to limit the scope of inquiry given limitations foreseen in budget, time, and staff that would preclude detailed investigation into such seemingly prosaic matters as illegal logging and diamond smuggling. In the wake of physical brutality against civilians, truth recovery regarding grave abuses (particularly the lingering uncertainty of forced disappearances) is often seen by TRC founders as the most urgent need for reconciliation. Additionally, many view TRCs, along with the other traditional

TJ measures to address past harms—criminal trials, victim reparation, and security sector reform—as being inappropriate to the problem of injustices related to natural resources. However, even a mandate that limits TRCs to civil and political violations does not preclude investigation of the context of these violations, which can include structural inequities and violations of economic, social, and cultural rights. Some TRCs have indeed explored this arena (for example, those in Guatemala and Peru), although they have left natural resources underexamined despite the close link between economic and social rights violations and natural resources in agrarian societies.

Finally, no two conflicts are the same, and the role of natural resources in violent oppression is not always a prominent one. In some countries (such as in Argentina and Northern Ireland), the context of victimization was primarily political and a substantive investigation of natural resources would be largely missing the point. But in other contexts (for example, in Guatemala, Peru, South Africa, and Sudan), victimization was intimately linked to social and economic marginalization of certain segments of the population, particularly through lack of access to natural resources with which to make their livelihoods. In still other contexts (as in the DRC, Liberia, Sierra Leone, and Timor-Leste), the conflict itself was fueled by economic inequities and political and economic competition for lucrative natural resources. In the latter two contexts, natural resources provide fertile ground for a truth commission investigation of marginalization and victimization.

The Sierra Leone TRC was exemplary in its incorporation within its mandate to investigate the conflict a consideration of the political economy of natural resource extraction, including its contexts, how and why it unfolded, and who suffered most from it. As argued in the final report of the TRC of Sierra Leone, the misuse of diamond resources in "an essentially single-product economy like Sierra Leone's has created huge disparities in socio-economic conditions" (TRC of Sierra Leone 2004b, 3). Revenue from diamond production allowed armed belligerents to buy weapons, which in turn allowed them to capture more territory that they could convert into diamond-mining fields. The report concluded that this use of diamonds to expand economic, military, and geographic control gradually became the main motivating factor for all armed groups and many local commanders, thus triggering further conflict. Crucially, the report found that diamonds and their particular form of extraction were important in developing profiles of victims of violence. Communities in diamond-mining areas became targets of violence and displacement as different forces struggled to control the mines, plundered the financial resources of the diggers, forcibly recruited labor for digging, and harvested coffee and cocoa to further fund the conflict and enrich commanders.

Building on these findings, the final report recommended detailed reforms in the mining sector, including revenue transparency, anticorruption measures, a rough diamond chain-of-custody system to certify point of origin (which became the internationally implemented Kimberley Process), and earmarking of diamond revenues for rural social spending (TRC of Sierra Leone 2004a; Grant 2012). By the time these recommendations were made, most were already in place or in

the making, thereby contributing to momentum for implementing such reforms. By 2001, the government of Sierra Leone had established the first diamond certification scheme in the world, and a tax revenue–distribution scheme for mining areas (the Diamond Area Community Development Fund) was set up for community interest projects, although it was initially characterized by misspending and embezzlement (Kawamoto 2012; Maconachie 2012).

Liberia's most recent TRC had a specific mandate to investigate economic crimes. The TRC included a fifty-seven-page chapter on economic crimes, drawn primarily from open source materials, especially sanctions monitoring reports by the UN Panel of Experts on Liberia, as well as reports by Global Witness and the local NGO Save My Future Foundation, published research by Douglas Farah and William Reno, and the government of Liberia's forestry concession review.[23] The TRC's final report found that extraction of timber, diamonds, minerals, and rubber by belligerents generated revenue to fund hostilities, facilitated the procurement and distribution of weapons, enabled both domestic and regional conflict, and made Liberia a safe haven for economic criminals such as warlords, money launderers, terrorist groups, corrupt officials, tax evaders, and unscrupulous corporations (TRC of Liberia 2009b). The use of natural resource concessions for patronage by successive governments, in particular the Taylor government, was found to have resulted in concessions being unlawfully granted in an anti-competitive process in exchange for loyalty and corrupt payments. In its final report, the commission found that the "appalling number and scale of economic crimes in Liberia has grossly deprived Liberia and [its] citizens of their economic rights and obstructed the economic development and policy of the state" (TRC of Liberia 2009b, 39).

The Liberian TRC further made recommendations to remedy these issues including:

- Freezing assets of twenty-one persons deemed complicit in economic crimes, civil and criminal prosecutions of these persons, and exploring the possibility of international prosecutions for the crime of pillaging natural resources.[24]
- Using recovered stolen assets and other donations to create the Reparation Trust Fund.
- Comprehensively reviewing mining concessions modeled on the forest concession review.
- Enforcing legislation in the international community to prevent money laundering, foreign corrupt practices, and arms smuggling, and to combat obstacles such as bank secrecy (TRC of Liberia 2009a, 2009b).

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[23] See (UNSC 2003b, 2004, 2007a); Global Witness (2001, 2003a, 2003b); SAMFU (2002); Farah (2002, 2004, 2006); Reno (1999); and FCRC (2005).

[24] Some of these recommendations were problematic as the report did not present evidence against all implicated persons, and the statute of limitations had already run out on some of the proposed criminal charges (although the commission noted that the judge has leeway in waiving these limitations).

Sadly, the commission's findings on the key role of natural resources notwithstanding, there is little evidence that sufficient political will exists to implement this comprehensive slate of recommendations.

In another example, the mandate of the South African TRC to examine gross human rights violations during apartheid was interpreted by commissioners to preclude in-depth investigation of abuses around the extraction of natural resources that led to the victimization and impoverishment of the black underclass. However, under pressure from victims' rights groups, the commission's final report included a chapter on business and labor that compiled information from public hearings to examine issues of culpability, collaboration, and involvement of state and private institutions in accruing financial benefits from apartheid (TRC of South Africa, 2003). Further, the chapter on reparations addressed this complicity by arguing that businesses should pay communal reparations due to their responsibility for and direct benefit from dispossession of people from their land, exploitive labor practices, and impoverishment of miners.[25]

Similarly, in Timor-Leste, natural resources were not part of the original mandate or research of the Commission for Reception, Truth, and Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste, or CAVR), but in the course of the commission's work, natural resources were revealed to be important. One of the commission's findings was that the illegal extraction of lucrative natural resources and the monopoly control of key commodity markets by the Indonesian military and civilian state not only violated Indonesia's obligations as an occupying state but amounted to the war crime of pillage. Specifically, the commission found that companies with direct links to the Indonesian military and government deliberately and systematically underpaid coffee smallholders, "thereby abridging their right to an adequate livelihood" (CAVR 2005, chap. 7.9, 47). One key finding was that Indonesian-Chinese businessman Robbie Sumampouw, like Kouwenhoven during the Liberian civil war, provided transport for food and materiel for the war effort in exchange for access to natural resources. Sumampouw, who transported military materiel because "we just want[ed] to do something for the government" (CAVR 2005, 13), was rewarded with exclusive access to the Timor-Leste coffee supply, which he later expanded into a monopoly on sandalwood oil and lucrative construction contracts.

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[25] Approximately 3.5 million people were forcibly displaced between 1960 and 1982 to "homeland" reserves and subjected to strict controls of movement in order to provide cheap labor for mines (TRC of South Africa 1998). Mine workers were housed in squalid, single-sex hostels that separated families and spread disease, especially human immunodeficiency virus (HIV). Imposition of taxes that had to be paid in cash forced subsistence farmers into mining to obtain cash. Suppression of unions and promulgation of laws, such as the Masters and Servants Act, allowed for strict penalties for miners breaking their "contract" and "deserting" mines, and created a captive pool of cheap labor. The economic benefits of these repressive policies went to the largely white elite.

Although the CAVR presented specific findings regarding the abuses related to the occupation government's misappropriations of natural resources, it did not recommend natural resource–management reforms or prosecutions for natural resource crimes. Indeed, recommendations for prosecutions would undoubtedly have found little traction, given the lack of political will both domestically and internationally.[26]

## Challenges for truth and reconciliation commissions and lessons learned

Overall, with only a few exceptions, the role of natural resources in the character of the conflicts and profile of victims has received little attention in TRC analyses, and only the commissions in Liberia and Sierra Leone made any significant recommendations related to reforms in the management of natural resources. It is interesting to note that two of the four TRCs (that is, South Africa and Timor-Leste) that did engage with the issue of natural resources and their role in rights violations, particularly of social and economic rights, had no mandate to deal with natural resources, yet discovered organically through the course of their work that the topic could not be ignored. Some argue that making recommendations for reforms in the extractive industries sector, especially if a TRC is not specifically mandated to do so, would be seen as overreaching (UNOHCHR 2006; Duthie n.d.). This critique might be accurate when recommendations are perhaps too utopian or broad and when the need to empanel the expertise to conduct investigations is not taken seriously from the outset. However, if natural resource–related recommendations are kept specific and flowing directly from the analyses and findings, the potential for overreaching can be minimized. As is true for all recommendations, the ones with the best chance for success are those that build on momentum from popular support and other efforts for reform.

Many experts, such as Roger Duthie and Pablo de Greiff, argue that expanding the mandate of truth commissions to include an investigation of natural resource or economic crimes could overstretch scarce financial and technical resources and risk producing watered-down findings due to a lack of analytical

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[26] The sheer number of crimes and the devastation of infrastructure and institutional capacity caused by the violence and the flight of Indonesian personnel following Timor-Leste's 1999 independence referendum left the Timorese judicial system overwhelmed. More critically, neither Timorese nor Indonesian administrations wished to pursue criminal cases after the conclusion of the Indonesian Ad Hoc Human Rights Court, which was judged by the UN to be manifestly inadequate, issuing indictments for none of the top Indonesian commanders, acquitting all the Indonesian defendants, and eventually overturning all convictions. Although the foreign-supported Timor-Leste Serious Crimes Unit issued further indictments, Indonesia has refused extradition of the accused, and in the absence of Timorese pressure, the UN is unwilling to call for an international tribunal.

depth (Duthie and de Greiff 2007). Indeed, in practice thus far, there appear to be real reasons for concern about the limits to TRCs' capacities. One such concern is the possibility that a focus on natural resource crimes might spark resistance to the TRC from those who continue to have economic interests. This is a particular worry in contexts where the TRC is mandated to make recommendations for prosecutions and where such prosecutions might actually materialize. Those who may be prosecuted are likely to wield considerable influence, even under the new government, and could take steps to undermine the commission's work. At the same time, for example, as in Liberia, such situations help propel the desired actions needed to see these crimes addressed. Thus, there is a delicate balance between not giving in to political bullying and weighing the timing of truth commissions for maximum momentum and effectiveness. The context-specific nature of this calculus and its possible unintended consequences should be taken seriously by TJ advocates, for both investigations of widespread human rights abuses and natural resource crimes. Advocates, including development workers, should seek to avoid one-size-fits-all solutions.

These political obstacles notwithstanding, investigation of natural resource crimes is not beyond the inherent capacity of TRCs, which are by definition ephemeral, formed and staffed explicitly for the purpose of carrying out their mandate. Trouble arises when natural resources are not included in the vision from the outset, and their consideration is instead squeezed into the research agenda with existing staff and deadlines. This is a recipe for mediocrity. However, as witnessed in Sierra Leone, when investigations are conducted in a proactive manner from the outset, ensuring adequate coverage is possible and success can be achieved.

Interestingly, Priscilla Hayner and Lydiah Bosire have argued for a separate chamber within TRCs, or even a separate commission to deal exclusively with economic crimes, in order to avoid overtaxing the traditional human rights focus (Hayner and Bosire 2003). While this may seem an expedient solution, such a proposal does not inherently address the alleged problem of insufficient resources to investigate economic crimes as well as civil and political crimes; additionally, it would only further solidify the artificial separation between civil and political rights violations, and the patterns of natural resource criminality and kleptocracy that characterize the regimes under investigation.

The discussion of financial resources for investigation aside, perhaps the most serious challenge for TRCs is the problem of political will. Public acknowledgement of crimes and harms suffered is one of the goals of TRC investigations, but if recommendations are dismissed or ignored, victims may feel that the commission has done little more than repeat what is already well known. However, reform of the revenue streams that financed the conflict threatens the economic interests of the ruling elite, and such recommendations often meet with considerable political resistance. Therefore, natural resource reform requires considerable popular pressure, effective international expertise, and oversight. The policy

leverage or momentum provided by UN commodity sanctions has proven to be an effective way of applying pressure for institutional reform, as evidenced by the forest and diamond sector reforms in Liberia and Sierra Leone.[27] However, even in circumstances where sanctions are not present, TRCs should spend time building solid relationships with outside groups—both local and international—in order to promote key recommendations and build momentum to carry them forward after the close of the TRC mandate.

## Reparations

The final reports of the Sierra Leonean and South African TRCs specifically addressed the question of structural inequities as a direct result of crimes committed in association with natural resource extraction and how reparations might be used to address development deficits among victim communities.[28] The final report of the TRC of Sierra Leone proposed that income from the mining sector and assets seized from convicted persons "who profited from the conflict" be used for reparations (TRC of Sierra Leone 2004a, 269). The South African TRC suggested that businesses that benefited from apartheid, including those in the mining sector, contribute (through taxes) to reparations (TRC of South Africa 2003). Although the proposals for corporate taxes found little political traction, these analyses increased awareness of the issues and paved the way for further investigation that was later undertaken in preparation for mining reforms and the establishment of the Diamond Area Community Development Fund in Sierra Leone and by the National Anti-Corruption Forum in South Africa (van Vuuren 2006). These initiatives may yet generate civil suits that could produce damages for reparations.

As noted previously, return of misappropriated assets through natural resource crime trials or the UNCAC might be used to support frequently underfunded reparations programs. Cases resulting in judgments to return stolen assets include those of Augusto Pinochet (US$9 million) and Ferdinand Marcos (US$2 billion) (O'Hara 2005). The fledgling International Criminal Court's Trust Fund for Victims may also prove to be a useful mechanism. The attention to asset recovery and money laundering is growing, particularly in the United States in association with the increasing number of cases brought under the USA PATRIOT Act.[29]

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[27] See Beevers (2012), Kawamoto (2012), Maconachie (2012), Rich and Warner (2012), and Altman, Nichols, and Woods (2012).

[28] Guatemalan, Moroccan, and Peruvian TRC reports addressed the problem of structural inequities more generally, but did not specifically address the role of natural resources in this marginalization.

[29] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, enacted on October 26, 2001. For the text of the USA PATRIOT Act, see www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf.

However, to date, the actual record on recovery of stolen assets from natural resource crime is poor.[30] This raises again the persistent challenge of insufficient political will to alter economic conditions favoring the political elite and the question of leniency toward these types of crimes. However, as suggested by Ruben Carranza, TJ could aid this recovery through an incentive-based truth commission process (similar to the Philippine Presidential Commission on Good Government) whereby perpetrators of less serious natural resource crimes offer evidence leading to the recovery of stolen assets from the worst offenders in exchange for criminal amnesty (although not obviating the need to repay their own fiscal arrears) (Carranza 2008). In addition, although asset recovery has thus far proved difficult to enforce, Carranza has noted that legal proceedings have the added benefit of aiding truth seeking by raising awareness and revealing evidence of abuses in the trial process, as well as adding momentum behind a formal TRC.[31]

Another reason to remain cautious about the potential of returned stolen assets from natural resource crimes is the low likelihood that such assistance could produce significant development effects. In part, this is because returned assets are not often specifically earmarked for reparations or development spending.[32] For example, according to articles 60.2 and 62.2 of the UNCAC,[33] mechanisms for international technical assistance in the recovery of stolen assets are conditional on both the level of development of the victim country and on the lack of earmarking for returned funds.[34] Likewise, the statute for the Special Court for Sierra Leone stipulates that seized assets are to be returned to the rightful owners or to the government of Sierra Leone, without specification as to the final use of the funds (Carranza 2008). Funds recovered from Alberto Fujimori (US$97.2 million) were reportedly used for police uniforms and other government administrative uses (Calderón-Navarro 2006).[35]

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30 No payment has yet been made on the ICJ case of Democratic Republic of the Congo v. Uganda, Judgment, 2005 I.C.J. 168 (Dec. 19) or the Marcos case (Republic of the Philippines v. Estate of Ferdinand Marcos, G.R. No. 152154 [S.C. July 15, 2003]).

31 Carranza has observed that after a failed truth-seeking process, the attempts to recover Marcos's assets have revitalized the idea of a TRC in order to "ensure that the truth behind all human rights violations is thoroughly documented" (Human Rights Compensation Act of 2004, Thirteenth Congress of the Republic of the Philippines, HB No. 3315, CR No. 117, sec. 8(B)(4)); see also Carranza 2008.

32 An in-depth discussion of the need to distinguish between development projects and reparations can be found in Roht-Arriaza and Orlovsky (2009).

33 For the complete text of the UNCAC, adopted by the United Nations General Assembly on October 31, 2003, see www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf.

34 Sources close to the process of negotiating the convention reported that these conditions were based on the view of many developing countries that earmarks were a violation of their sovereignty (Columbia University 2008).

35 The Peruvian Special Fund for the Administration of Funds Illegally Obtained within State Jurisdiction was established to manage the seized stolen assets from accounts of former President Fujimori and his close associates, to be used to fund TRCs and reparations (Decree of Urgency No. 122-2001, October 27, 2001). The fund has received US$77 million in confiscated assets from Swiss banks and US$20.2 million from U.S. banks.

Further, any funds recovered are likely to be modest even if the designated recipients are the more limited pool of victims of gross human rights violations rather than the much larger group of people—likely the entire population of the transitional country—who suffered economic and social rights violations (such as rights to housing, livelihood, education, and health). Despite this insufficiency for the magnitude of the task, reparations are significant because they bring recognition of harm as opposed to merely the material repair for wrongs committed.

### Security sector reform

Engagement of TJ in institutional reform has traditionally been in the field of security sector reform, involving vetting of human rights abusers and reforms to make law enforcement and armed forces more responsive and accountable to the citizenry. In the realm of natural resources, these measures can also be positive steps toward restoring rule of law for enforcement of sound and equitable natural resource management, as well as the legitimacy of state control of natural resources.

In addition to being some of the primary beneficiaries of (often criminal) natural resource extraction, police and military personnel are often engaged as security for extraction operations, and they often commit serious rights abuses while serving in this capacity. For example, during the Taylor regime, the forests of Liberia were carved up between four different logging companies, each employing one of Taylor's generals as "security." One of these companies was Maryland Wood Processing Industries, which engaged Gen. William Sumo and his troops as company security. The report of the UN Panel of Experts for Liberia documented that while in this capacity General Sumo's troops committed grave human rights abuses, including the massacre of approximately 300 people in the community of Youghbor, near Fish Town (UNSC 2004). TJ measures for vetting could be extended to ensure that the companies that win concessions do not have partnership agreements with, or employ as security personnel, those who have credible allegations of rights abuses.

Some researchers, such as Alexander Mayer-Rieckh and de Greiff, argue that vetting can actually compromise institutional capacity by removing trained and experienced officials (Mayer-Rieckh and de Greiff 2007). This is undoubtedly true for indiscriminate purging of entire government institutions, such as the de-Baathification of the post–Sadaam Hussein Iraqi government, which as a form of collective punishment had the additional negative effect of generating more grievances. However, if vetting for the most egregious natural resource crimes (rather than widespread petty corruption) is used against those most responsible, those affected tend to be top political appointees with little legitimate operational or technical expertise. The use of targeted vetting facilitated by TJ investigations, along with the implementation of oversight and accountability mechanisms crafted by development programs (discussed below), will help both preserve capacity and prevent criminality.

## LINKING DEVELOPMENT AND TRANSITIONAL JUSTICE THROUGH A FOCUS ON NATURAL RESOURCES

Development and TJ can be coordinated on key natural resource issues to improve progress toward the common goals of preventing conflict and gross rights abuses (reducing physical vulnerability), building democratization (reducing political vulnerability), building civic trust and reconciliation (reducing social vulnerability), and improving efficiency and equity in the distribution of benefits from natural resource extraction (reducing economic vulnerability). In this section, a broad outline is offered for improving that coordination.

In order to better coordinate among peacebuilding programs and between peacebuilding and TJ, attention should be paid to the concepts of coherence and momentum. One of the lessons of this review has been the overarching problem of insufficient political will. There is, therefore, an urgent need to be strategic, given the breadth of problems to be addressed in brief time frames and the entrenched political and economic interests at play. Actors from both arenas should build off each other's efforts in ways that help raise awareness within constituencies that can use their networks and social capital to push for reform.

### Build consensus, not cookie-cutter programs

Frequent and varied public consultations can help build consensus around goals and priorities for natural resource management in order to avoid arbitrary decision making that enables corruption. Reforms of the natural resource sector must be designed to disrupt financial flows to armed parties, which makes the reforms inherently political; this is particularly true for reforms related to redistribution (such as land tenure laws and reviews of extraction concessions) and accountability (such as prosecutions or vetting of war profiteers). If not undertaken in a principled way, these reforms will be seen as political collective punishment by the conflict's "winners" of the "losers."

As demonstrated by the Liberian forest reforms (Altman, Nichols, and Woods 2012), an assessment of management options that seeks to address the political vulnerability of the voiceless should seek broad participation in clarifying objectives and developing principled and transparent processes for natural resource allocation to maximize effectiveness, equity, and broad developmental benefits. Assessments and policies should focus on building structures and processes for revenue transparency and accountability.

TJ measures—in particular truth seeking and legal accountability—can catalyze investigations into and increase awareness around the role of natural resources in facilitating violence and targeting of victims so that policies can be fine-tuned to those most in need, rather than used in a standardized approach. Post-conflict programs should help build locally specific knowledge, perhaps facilitated by TJ experts, as a required part of their programming so that actors

better understand the context in which they work and what reforms will be most effective. However, as noted above, TJ advocates should also take seriously the importance of context and timing in considering the potential unintended consequences of TRCs, prosecutions, and vetting.

## Do no harm

As echoed by Mary B. Anderson, post-conflict workers have an ethical obligation to ensure that they are not part of the problem—that is, they must minimize their own negative impacts on transitional countries (Anderson 1999). Without diluting the attention to poor governance and responsibility of individual nationals for criminal behavior, post-conflict development programs should also focus on the role the international community had in the conflict through markets and the contribution of donor money. In particular, what were the roles of international buyers of natural resources and the foreign corporations involved in extraction or financing as drivers of demand? This approach has the added strategic advantage of building momentum by drawing in international interests. Post-conflict development workers should seek coherence of reform by encouraging buyers and financiers to use their influence to push for reforms that promote human security and conflict prevention through sound management, equity, and transparency of revenue flows from the extractive industries.

The Kimberley Process for the certification of origin for rough diamonds is an example of an initiative that came from this international focus and the coordination of human rights and development concerns around a natural resource that was central to funding several African conflicts. Investigations and advocacy campaigns by human rights groups, such as Global Witness, contributed to increased awareness worldwide and this awareness resulted in UN sanctions on the trade of conflict diamonds from Angola, Liberia, and Sierra Leone.[36] Diamond marketers such as DeBeers panicked about the potential decline in sales, and diamond-producing countries worried that their income would dry up if consumers became reluctant to buy "blood diamonds" when their origin could not be traced. Consequently, diamond-producing countries and marketers joined forces, and with participation from human rights advocates, produced the Kimberley Process Certification Scheme (Grant 2012; Wright 2012; Bone 2012). Unfortunately, the Kimberley Process is not foolproof. Partnership Africa Canada reported that diamonds still find their way into the international market with missing or falsified certificates (PAC 2006). Insiders report that members are often unwilling to take strong steps to sanction violators (Mitchell 2012).

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[36] For a discussion of UN commodity sanctions, see Mark B. Taylor and Mike Davis, "Taking the Gun out of Extraction: UN Responses to the Role of Natural Resources in Conflicts," in this book.

### Don't sacrifice good governance and human security for quick economic recovery

As mentioned previously, the frequent duality of development priorities means that macroeconomic priorities often trump measures to protect human security in the name of economic expediency (Ballentine and Nitzschke 2005; Bannon and Collier 2003; Le Billon 2008a). But the urgency to facilitate quick macroeconomic recovery should not be blind to possible unintended consequences. For example, entitlements over natural resources are often redefined during conflicts as people are displaced and new concessions issued, often on top of old ones. The rush on natural resources under the guise of economic rehabilitation—at times facilitated by development experts—further puts at a disadvantage the politically voiceless whose natural resource rights are overlooked. Under ephemeral transitional governments, there are considerable incentives for corruption by those able to secure access to land and other natural resources.

Likewise, transitional governments often neglect accountability for crimes committed under the past regime for the sake of political stability, again often under the advice of international experts. Controversial initiatives such as concession reviews and land reforms are avoided or delayed until after the most lucrative natural resource rights are issued to powerful players. As this chapter has shown, given the proven role of resources in funding conflict, this pragmatic approach of avoiding accountability is not a conflict-prevention strategy, but is instead a conflict-creation strategy. Indeed, as Jean-Paul Azam, Paul Collier, and Anke Hoeffler have noted, studies by the World Bank found that one-half of post-conflict countries resume civil war within a decade, often because the misappropriation of revenue from natural resources allows belligerents to fund the resumption of fighting (Azam, Collier, and Hoeffler 2001).

## CONCLUSION: RETHINKING NOTIONS OF VULNERABILITY, ACCOUNTABILITY, AND JUSTICE

Natural resources are central to both national development and local livelihoods in many conflict-affected countries. If mismanaged, they can undermine good governance and fund armed violence as well as contribute to entrenched poverty and deprivation. Natural resources can therefore be both the catalyst for development and the facilitator of rights abuse. In many cases, then, natural resources are a logical focus and a convenient leverage point for coherent programs concerned with development and justice, as well as prevention of conflict that further victimizes the poor.

In contexts where natural resource extraction plays a key role, legal accountability for pillage as a war crime is an underused tool. The recent ICJ judgment against Uganda, even without a systematic state strategy of plunder, for the rapacious and brutal exploitation of the DRC's embattled Ituri region is a positive sign that the legal charge of pillage as a war crime may be increasingly

used to bring war profiteers to account and foster a climate that respects rule of law in which natural resources are not viewed as booty for the taking. Nevertheless, sufficient political will to use the courts to seek relief cannot be assumed, as the overlap between economic and political interests undermine successful convictions.

Because of the scope of the research and expertise that well-funded TRCs can marshal, truth recovery can be perhaps the most useful way to publicly reveal the linkages between natural resources and abuses and to generate momentum (especially public support) for reform and even legal action. TRCs with a mandate to focus on natural resource crimes as well as on civil and political violations allow a fuller understanding of how abuse happens and how to avoid it in the future. TJ can make additional concrete contributions to development through investigations that help target aid toward victims, and contribute to momentum for institutional reforms that foster accountability and the capacity of law enforcement. In turn, development can contribute to TJ by undertaking reforms that capitalize on the information gathered (by TRCs, for example) to help prevent future abuse and violence, and to promote equity and transparency in the benefits derived from natural resources. These steps build civic trust, help restore legitimacy and capacity of government, and work toward reconciliation.

Where relevant and where the political climate permits, advocacy for a modest expansion of the TJ mandate should include rigorous and proactive truth-seeking investigation into the role that natural resources played in facilitating the conflict and in the targeting of victims, the linkages between natural resource crimes and human rights abuses, and specific institutional weaknesses that enabled this form of economic criminality. Moreover, TJ efforts should pursue key prosecutions of those most responsible for crimes associated with natural resource extraction activities closely linked to gross human rights abuses.

Although attention to political realities is important in weighing what measures will be effective, without external pressure the power of the status quo is likely to prevent meaningful change. When TJ and development advocates pay attention to building momentum, they can help bring about the political climate for change rather than simply waiting for it to occur. TJ advocates should contribute to this momentum by building external and internal coherence through coordination with development workers, using information derived from truth seeking and trials. Working together, they could more effectively reform natural resource and fiscal institutions to prevent armed conflict and improve equity and sustainability of natural resource management. They could also coordinate security sector reform and institutional vetting to exclude both human rights abusers and the worst perpetrators of natural resource crimes from politically exposed positions.[37] Finally, a united front would lend more force to efforts encouraging the use of seized assets from natural resource crimes for reparations.

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[37] The vetting process includes not only the examination of the individuals who are to hold political positions but also their relatives and business partners.

In addition to coordinating with TJ actors, post-conflict development workers should build internal coherence by working among themselves toward the goals they share with TJ actors. These include responding to the local situation rather than relying on cookie-cutter solutions, recognizing and minimizing their own potential to negatively impact transitions, and not sacrificing good governance for what may appear to be the conditions for a speedy economic recovery.

A coordinated TJ program that takes into account institutional reform of the management of natural resources also acquires an enriched understanding of the vulnerability of victims, and expands accountability and reconciliation beyond immediate individual perpetrators to institutions. A coordinated approach to institutional reform that promotes transparent, accountable, and equitable management of natural resources as part of post-conflict development programming contributes to the repair and recovery of conflict-affected societies through the promotion of good governance, the rule of law, democratization, citizenship, social inclusion, social capital, the fight against impunity, and respect for human rights—the whole range of civil, political, economic, and social rights.

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