



## THEMATIC PAPER:

# PEACEBUILDING, SUSTAINING PEACE AND TRANSITIONAL JUSTICE

In the 2016 resolutions (S/RES/2282 and A/RES/70/262), the Security Council and the General Assembly advanced a comprehensive approach to sustaining peace that encompasses interventions along the peace-conflict continuum. Transitional justice was considered critical to the consolidation of peace and stability – alongside promoting poverty reduction, rule of law, access to justice and good governance, further extending legitimate state authority, and preventing countries from lapsing or relapsing into conflict. The Human Rights Council (HRC) similarly affirmed in its **resolution 42/17 of September 2019** that combatting impunity and the implementation of transitional justice processes can prevent the recurrence of human rights violations and abuses, and contribute to sustainable peace and development. The HRC requested OHCHR to further examine how addressing a legacy of gross violations and abuses of human rights and serious violations of international humanitarian law through transitional justice measures can contribute to sustaining peace and the realization of SDG16; a report will be presented to the HRC for consideration in March 2021. The preparation of this report will allow the UN system to explore these issues further. The present paper provides some initial thoughts.

# 1. TRANSITIONAL JUSTICE INCREASES THE POTENTIAL FOR SUSTAINING PEACE

In a **briefing to the Security Council** on 13 February 2020, the High Commissioner for Human Rights underscored how accountability for serious human rights violations, including through transitional justice initiatives, is not a backward-looking exercise for the sake of history or settling accounts. It is about securing peace and stability in the future, through the reaffirmation of and adherence to fundamental values and norms and the pursuit of prevention, protection, transformation, healing and reconciliation that a divided society needs to rebuild to move forward. In the aftermath of massive or serious human rights violations, sustainable peace can only be achieved if societies pursue comprehensive reform paths – addressing root causes and drivers of human rights abuses – that also render justice for past violations. When victims and communities are marginalized and their grievances left unaddressed, bitter divisions risk deepening further, spoiling the formation of a shared vision for the future and undermining the prospects for sustaining peace.

Transitional justice – with its interrelated pillars of truth, justice, reparation and guarantees of non-recurrence – makes an essential contribution in navigating complex spaces of transition, marked by rapid change, competing interests, pain and simmering grievances, and where narratives and memories are at risk of extreme polarization and instrumentalization. Transitional justice processes, when they are context-specific, nationally-owned and focused on the needs of victims, can connect, empower and transform societies. Through dialogue and confrontation of ideas and experiences, transitional justice seeks to make connections between victims and perpetrators, political factions, communities, and across generations. Truth-seeking initiatives, for example, can provide a platform for identifying commonalities in experience, acknowledging multiple narratives about what occurred, and formulating recommendations for redress and reform. Inclusive transitional justice processes that are participatory and seek broad societal ownership can be deeply empowering for victims, particularly marginalized groups – giving them voice and agency to shape their own future as rights-holders. Finally, through reparations and guarantees of non-recurrence, transitional justice has the ability to transform societies and set them on a new path for the future (see below).

The democratic transition in **Tunisia** after the 2011 revolution is considered “*a model for other countries to follow*,” as highlighted by the High Commissioner during her official visit in June 2019. Tunisia stands out in the region for its peaceful transition and commitment to human rights and a lasting peace. It engaged in a transitional justice process, which sought to address the legacy of mass human rights abuses, corruption and misuse of public funds, and thereby to ensure accountability, prevent future human rights violations, and ensure individual and regional equality and reconciliation. The Truth and Dignity Commission (TDC) has registered more than 62,000 cases of gross or systematic violations of human rights, conducted nearly 50,000 individual private hearings, 14 public hearings and issued more than 30,000 decisions on reparations for victims. The TDC has also filed hundreds of cases of gross human rights violations, mainly committed by security officials of former regimes, for adjudication by the Specialized Criminal Chambers created within the national judicial system. In its final report, the TDC recommended institutional reforms designed to consolidate democracy, uphold human rights, prevent future violations, including reforms of the security and judicial sectors, and pave the way towards national reconciliation. Notwithstanding serious challenges, these measures are a crucial part of Tunisia’s efforts to build and strengthen sound institutions that respect, protect and realize human rights, thereby contributing to lasting peace and stability.

The report “**On Solid Grounds: Building Sustainable Peace and Development After Massive Human Rights Violations**”, by the Working Group on Transitional Justice and SDG16+,<sup>1</sup> asserts that in contexts of serious and massive human rights violations, sustainable peace and development will be more attainable if societies effectively pursue justice for those violations.

Transitional justice provides an analytical framework and the operational tools for sustaining peace endeavours by addressing the needs of victims; reducing the “justice gap” in extraordinary circumstances; trust-building in institutions and among people and groups; strengthening the rule of law and access to justice; helping to transform gender inequalities; and reducing inequality, marginalization, and corruption as pre-requisites for sustainable peace.

## 2. THE TRANSFORMATIVE POWER OF “GUARANTEES OF NON-RECURRENCE”

The pursuit of reparations and guarantees of non-recurrence - the package of measures intended to prevent the recurrence of conflict and human rights abuses – can be transformative. Designing measures to prevent such recurrence presupposes an understanding of the extent and nature of the human rights violations as well as their root causes, such as inequalities, systemic discrimination and exclusion, institutional deficiencies, power imbalances and corruption, and structural impunity.

Traditionally, such measures have focused on institutional reforms (legal and judicial) and measures aimed at disabling abusive capacity and increasing the integrity of the security sector (e.g. disbanding abusive groups; disarmament, demobilization and reintegration (DDR); reinforcing internal accountability; building external oversight, etc.).<sup>2</sup> The UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence has, however, advocated for a broader understanding to also include interventions in the societal, cultural and personal spheres (empowerment of civil society; education; trauma counselling; etc.) for lasting societal transformations.<sup>3</sup>

In **Colombia**, the community-level “non-repetition dialogues” held by the Commission for the Clarification of Truth, Coexistence, and Non-Repetition has resulted in hundreds of testimonies from victims and members of State and military institutions. These testimonies have clarified the root causes of conflict and identified areas for intervention in order to prevent recurrence. Other measures, including mechanisms to trace missing persons in the context of the long-running conflict, and the 2011 Victims Law, have led to individual and collective reparations, including land restitution measures. These and other instruments which recognize victims’ rights, tackle root causes of the conflict and its consequences, and promote positive social, economic and political transformation, constitute the pillars for a culture of non-repetition in Colombia.

## 3. REFORMING THE SECURITY SECTOR: TRANSITIONAL JUSTICE INCREASES THE POTENTIAL FOR SUSTAINING PEACE

Security sector reform has often been considered as a development concept with a predominantly future-oriented focus. However, sustaining peace cannot be achieved by merely strengthening structures for future accountability. Seeking truth and accountability for past human rights can reveal patterns, chain of command issues, and systemic deficits within the security structures, including lack of effective oversight, that may have barred victims from seeking justice and obtaining redress, entrenching impunity. Failing to provide accountability for past gross violations may further discredit security and other institutions that are seen to have been involved in or contributed to past atrocities. It continues to undermine the population’s trust in these institutions and their ability

1 A group convened in the context of the work of the Pathfinders for Peaceful, Just and Inclusive Societies. OHCHR, UNDP and UN Women participated in the group.

2 See A. Mayer-Rieckh, “Guarantees of Non-Recurrence: An Approximation”, *Human Rights Quarterly* 39 (2017) 416–448.

3 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/30/42, 7 September 2015: <https://www.ohchr.org/Documents/Issues/Truth/A-HRC-30-42.pdf>

to protect them in a human rights-compliant manner. As it is unlikely that most or all who are responsible for gross violations will face criminal punishment, security sector reform can contribute to addressing this “impunity gap” in a preventive manner by, for example, vetting security sector personnel and removing those responsible for such violations. Publicly available information from transitional justice processes, such as national consultations, truth commissions and others, provides crucial insight so that effective safeguards against future violations can be put in place. Such information should therefore be factored into reform efforts in the security and judicial sectors as early as possible, particularly in the design of new structures.

The **Gambia’s** 2018 national strategy on transitional justice provides for the implementation of reforms aimed at ensuring the non-recurrence of rights violations and abuses, which includes security sector reform and strengthening the independence of the judiciary. While the Truth, Reconciliation and Reparation Commission is expected to make its final recommendations on institutional reform in December 2020, a recent UN Inter-Agency Mission recommended that the Office of National Security take into account information from the Commission’s public hearings and put in place measures to enhance public trust in security sector institutions, including procedures for human rights vetting and suspension of security officials alleged to have committed gross human rights until final decisions are rendered by the courts.

#### 4. THE ROLE OF DDR: TRANSITIONAL JUSTICE AS A VEHICLE FOR INCLUSIVITY IN EARLY POST-CONFLICT REFORM EFFORTS

Similarly, transitional justice efforts can significantly contribute to broader, long-term political processes in post-conflict situations that focus on violence reduction and increased security, such as DDR initiatives. In emphasizing the need to address the root causes of violations, community reintegration efforts<sup>4</sup> can, for example, benefit from an approach that is informed and driven by affected communities themselves, including victims, through dedicated consultations.

In the **Democratic Republic of Congo**,<sup>5</sup> Peacebuilding Fund projects supporting spontaneous demobilisations in the *Kasaï*, *Kasaï* Central and Tanganyika provinces linked the design and implementation of community reintegration efforts with a consultation process that elicited the views of victims and communities on their needs, including with respect to reparations.

## CONCLUSION

Transitions from authoritarianism or violent conflict to a peaceful democracy can only succeed if the legacy of the past, in particular serious or massive human rights violations, is addressed. Transitional justice is vital in helping societies and governments to appropriately address the past. It helps in rebuilding fragmented relationships, transforming and empowering affected societies, and thereby preventing the recurrence of violations. In doing so, it is essential to ensuring sustainable peace.

<sup>4</sup> Which differ from the methodology of reintegration processes of recognized former combatants into the armed and security forces.

<sup>5</sup> PBF/COD/B-7: Appui aux ex-combattants et communautés dans le cadre des démobilisations spontanées par des initiatives de réinsertion socio-économique et de justice transitionnelle au Kasaï et dans le Tanganyika en RDC.