“UN Approach to Transitional Justice”

Dialogue with Member States on rule of law at the international level organized by the Rule of Law Unit

Address by

Ms. Navanethem Pillay
United Nations High Commissioner for Human Rights

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Excellencies,
Ladies and Gentlemen,

I welcome this opportunity to address you. In the last three decades, transitional justice has become a prominent and well-established feature of human rights law and practice.

It is now widely accepted that transitional justice mechanisms help to ensure redress for victims of massive violations of human rights in certain exceptional circumstances.

While the conceptual contours of transitional justice and its advantages are largely defined, the real challenges lie in the practical sphere of implementation.

My office is responsible for leading the work of the United Nations in this key area. Today, I will discuss key principles that guide our work in this field. I will also suggest ways forward to strengthen and develop our approaches.

At the outset, let me clarify that transitional justice is not a particular conception of justice, such as distributive or retributive justice. It is rather a technical approach to
exceptional challenges, such as dealing with massive human rights abuses committed in the course of armed conflict or by repressive regimes, in circumstances of scarce resources, urgently competing demands and frequent institutional breakdown.

It is vitally important that we recognise the exceptional nature and limited duration of transitional justice processes. States that are not facing the genuine challenges of transitional justice circumstances must not be allowed to evade their obligations under international law by expanding the field to dilute or avoid the implementation of real human rights protection to victims of violations.

At its heart, transitional justice seeks to achieve two goals: first, it seeks to restore and protect the dignity of individuals as bearers of fundamental human rights and freedoms. Second, it aims at mending the trust between individuals and the State, especially through the respect for the rule of law which is essential for the functioning of a rights-respecting society.

In practical terms, transitional justice mechanisms embrace criminal justice, truth seeking, reparations and institutional reform. Of course, how states deal with the legacy of past abuses
goes beyond these particular mechanisms. For example, peace agreements and constitutions are epoch-making opportunities to address the root causes of strife and to limit its reoccurrence in the future.

Ladies and Gentlemen,

Allow me now to offer you some details of OHCHR’s work in this field. My Office supports transitional justice programmes in more than twenty countries. We do so through dedicated programmes developed and carried out both at headquarters and by field staff in stand alone offices and in UN peace operations. Our work includes assisting in the development of standards, building on lessons learned and gathering best practices for the design and implementation of transitional justice mechanisms. I would like to draw your attention to our series of Rule of Law Tools which provide practical guidance in various areas of transitional justice.

My office also plays a crucial role in advocating for human rights and relevant transitional justice considerations to be reflected in negotiations for peace agreements. OHCHR is dedicated to supporting societies emerging from conflict and from repressive rule. We seek to provide advice on processes
available to them to ensure accountability, justice and reconciliation during the transition period and beyond.

Let me now turn to highlight a number of the guiding principles that inform our approach to transitional justice.

Firstly, our work must be guided by and in compliance with international law. The UN Charter, together with international human rights law, international humanitarian law, international criminal law and international refugee law provide the normative basis to frame transitional justice initiatives.

The rules enshrined there include the duty to undertake effective investigations and prosecutions of gross violations of human rights and serious violations of international humanitarian law which constitute crimes under international law. International law also recognizes the right of victims to reparations, and their right to know the truth about violations, as well as guarantees of non-recurrence of violations. These international standards set the normative boundaries of UN engagement.

OHCHR supports coherent and comprehensive approaches to transitional justice, comprising a broad range of both judicial and non-judicial processes, whatever combination of transitional
justice mechanism is chosen must be in conformity with international legal standards and obligations.

A second guiding principle is the centrality of victims. As I stated before, the fundamental aim of transitional justice is to protect and restore the dignity of the large numbers of individuals whose rights have been seriously violated. The UN must therefore respect and advocate for the interest and inclusion of victims where transitional justice processes are under consideration. National consultations, conducted with the inclusion of victims and other traditionally excluded groups are particularly effective in allowing them to share their priorities for achieving sustainable peace and accountability.

Thirdly, experience shows that in most transitional justice scenarios there is a chronic problem of gender inequality and systemic discrimination against women. We seek to ensure that transitional justice mechanisms address such imbalances at the very beginning of a reconstruction process. A gender and women’s human rights perspectives are vindicated when perpetrators of sexual violence are brought to account. Of crucial importance is consulting women to determine their priorities for transitional justice initiatives. Such consultations can help ensure that transitional justice initiatives appropriately
address the rights and perspectives of women and prevent oppression or maltreatment.

Similarly, the UN approach to transitional justice should recognize that child-friendly policies and procedures must be put in place to protect rights of child victims and witnesses of crimes involved. Children have the right to express their views in matters and proceedings affecting them, in accordance with their evolving capacities.

A fourth guiding principle is the need, when designing and implementing transitional justice mechanisms, for the UN to take into account the particular context of the country situation. Guided by relevant international laws and standards, the nature and timing of transitional justice mechanisms should take due account of the national context and the views of national stakeholders, particularly victims. There is not a one-size-fits all approach to transitional justice initiatives. The UN must also ensure that transitional justice programmes are coordinated and positively reinforce the broader rule of law initiatives so as to strengthen the entire rule of law architecture of the country, particularly the criminal justice system.

Ladies and Gentlemen,
Let me offer some thoughts on ways in which transitional justice should develop, and on some of the key areas that should underpin that development.

Firstly, we must all recognize that, when properly used, peace and justice promote and sustain each other. Peace and justice are increasingly—and rightly—seen as inter-dependent and mutually reinforcing.

This is reflected in international law and current UN policy on amnesties. For example, amnesties are deemed impermissible if they prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity, and gross violations of human rights. Our work in this area aims at safeguarding a space for justice both during and after peace processes.

Experience has shown that accountability is an important ingredient to ending violence. Some States that brought those accused of human rights violations to trial have subsequently prevented or reduced the recurrence of such violations.
Recent peace agreements reflect developments in international law with respect to amnesties and accountability. As a 2009 OHCHR study on human rights and transitional justice demonstrates, blanket amnesties have been less pervasive in recent years, and a growing number of agreements now contain provisions for transitional justice.

It is crucial, therefore, that mediators continue to support the inclusion of commitments to combat impunity and to uphold the protection of human rights in peace agreements. To do so effectively and persuasively, mediators must be equipped with relevant human rights knowledge during peace negotiations. Equally important are the presence and participation of human rights experts in the negotiating process.

As we move forward, a second key area that requires development is the need to address the violation of social and economic rights through transitional justice mechanisms. Historically transitional justice processes often neglect to address such violations that occurred during the conflict and that are often at the very roots of violent strife.

OHCHR has been exploring ways in which transitional justice mechanisms can more comprehensively examine violations of economic, social and cultural rights, as well as civil
and political rights. Truth commissions can play an invaluable role in this regard, whenever appropriate. Case law of international, regional and national courts has helped to clarify the nature of State’s obligations to combat impunity for serious violations of economic, social and cultural rights and point towards an increasing acceptance of their justiciability. Reparations programmes also provide opportunities for redressing the needs of victims in the areas of health, education and economic welfare.

There is also a need to develop a greater understanding of the synergies in different mechanisms to support the pursuit of justice and the prevention of future crimes. Effective and accountable disarmament, demobilization and reintegration (DDR) processes that take weapons out of circulation and integrate former combatants into society present massive challenges but are essential. The Department of Peacekeeping Operations and my Office have been exploring ways to make DDR programmes and transitional justice initiatives more effective and better coordinated so they can positively reinforce each other.

DDR programmes are often one of the first security measures that are implemented in post-conflict situations. Their success provides the foundation for long-term reform of
the security sector and other institutions. It is thus crucial that in coordinating DDR and vetting processes, ex-combatants who have committed or are suspected of committing serious crimes are not reintegrated into national police or military structures. This may prevent additional human rights abuses from occurring. A failure to exclude abusers from police and military ranks may also undermine public trust in government institutions.

While police, security and military officials who are responsible for gross violations of human rights should not serve in State institutions, their removal must in all circumstances comply with due process requirements and the principle of non-discrimination.

In conclusion, a human rights approach is vital to securing a sustainable peace. Such peace is not simply the absence of war, but the reconstitution of a society built on the respect for the rule of law, that takes the dignity of its citizens seriously and demonstrates its commitment to those values by ensuring justice is done.

The challenges in doing so are very real, but States should make full use of the expertise that now exists in making that aspiration a practical reality. Our engagement will continue
to draw lessons and apply best practices. I very much look forward to our discussion on our joint challenges.

Thank you.