A vertical column of six circular icons on the left side of the page. From top to bottom: a house, a scale of justice, a cross, two hands shaking, a shield with a checkmark, and a speech bubble.

From Justice for the Past to Peace and Inclusion for the Future

A Development
Approach
to Transitional
Justice

**Lessons Learned from
UNDP Policy and Practice**

The United Nations Development Programme (UNDP) is the leading United Nations organization fighting to end the injustice of poverty, inequality, and climate change. Working with our broad network of experts and partners in 170 countries, we help nations to build integrated, lasting solutions for people and planet. Learn more at undp.org or follow at [@UNDP](https://twitter.com/UNDP).

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November 2020

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Foreword

The current COVID-19 pandemic is recognized not only as a public health emergency, but also a socio-economic and human rights crisis. As of February 2021, over 2,400,000 people died from COVID-19, and the world is experiencing the largest economic shock in decades. The pandemic is also unveiling unaddressed injustices and exacerbating existing inequalities. Some state responses to the pandemic are also piling on human rights violations and new risks are posed through efforts to curb the spread of the virus, such as rapid digitalization and social isolation.

A historic movement against systemic racism is also sweeping the globe through the Black Lives Matter (BLM) movement. This was created in protest to incidents and racially motivated violence towards black people and has resonated with communities supporting the eradication of discrimination around the world. Similarly, over the past year, people joined social movements – many of them led by women and young people – and filled the streets with demands for equal rights, democracy and climate action – in countries including Algeria, Chile, Colombia, Haiti, Iraq, Lebanon and Sudan. Public demand for accountability is at an all-time high, as the daily decisions that states make have near immediate life or death consequences, particularly for people from marginalized communities.

This current context also closed many windows of opportunity for transitional justice processes as states focus their efforts on other urgent priorities and put in place measures to curb the spread of the virus, making transitional justice efforts more important than ever.

The commitment of governments to leave no one behind in the 2030 Agenda for Sustainable Development is being put to the test as the devastating effects of inequalities manifest in real time. It is painfully apparent that without justice for all there can be no peace, and that truth and reconciliation, must be at the forefront of states efforts for sustaining peace and development.

This provides a heightened context for the United Nations Development Programme's (UNDP) efforts to end the injustice of poverty, inequality and climate change. It is more important now than ever before that our efforts are rights-based and multidisciplinary to support Member States create peaceful, just and inclusive societies. UNDP's COVID-19 response offer *Beyond Recovery: Towards 2030* is a strategy to support national partners not only address

immediate health and socio-economic needs, but also to promote the rule of law, security, human rights, governance and conflict prevention measures needed to manage the pandemic and build resilience to future shocks. Support to transitional justice processes is essential for securing the rights of the most vulnerable, ensuring accountability and fostering social cohesion during this unprecedented time.

For over a decade, UNDP has supported transitional justice processes through a development lens – focusing on building national capacities and transforming systems to sustain and integrate progress achieved through transitional justice mechanisms. These issues are more relevant than ever and reaffirm the importance of UNDP support to transitional justice, to create more peaceful, just and inclusive societies. We need to focus not in getting back to the “normal” after the pandemic, but to implement a transformative recovery that builds a “better normal”, one that does not separate health from efforts to address systemic racism, or collective reparations from access to justice for all.

UNDP remains committed to supporting transitional justice processes around the world and partnering with other UN agencies and international organizations to take forward these important areas of work. This paper analyzes UNDP's experiences supporting transitional justice processes around the world with a view to contribute to broader international reflection on challenges and successes in the field. The experiences, lessons and recommendations outlined throughout this paper will be used to inform UNDP's transitional justice programming in the future so that we can better contribute to sustainable outcomes for victims, communities and countries/territories. A key part of this will be our ability to draw on all the tools at our disposal to adapt transitional justice processes to new realities and address interconnected challenges. We hope that the findings of this paper are also useful for our partners supporting transitional justice processes as we are committed to acting as one United Nations.

Asako Okai
Assistant Secretary-General
Assistant Administrator and Director
Crisis Bureau

Table of Contents

Foreword	5
Executive Summary	9
Introduction	11
What is transitional justice?	12
The origins and evolution of transitional justice	13
The UN framework for transitional justice	14
Key challenges for transitional justice	14
Transitional justice and the humanitarian-development-peace nexus	15
UNDP’s development approach to transitional justice	16
Main Areas of Work	19
Victim engagement	20
Identifying victims and ensuring representation	21
Victim participation	23
Victim- and people-centred support	25
Participatory processes and ownership	29
Approaches for broader participation	30
Building stakeholder capacity	32
Adequate conditions for participants security.....	33
Civil society engagement	34
Truth telling processes	35
Promoting inclusive processes	36
Seizing windows of opportunity	36
Building a victim-centric evidence base.....	36
Implementing recommendations	37
Institution building to promote accountability	38
Justice sector capacity building	39
The establishment of special courts	40
Security sector reforms	41
Politically smart programming.....	41
Reparations and development assistance	42
Objectives of reparations	43
State obligations and inherent challenges	44
Individual and collective reparations	45
Strengthening the rule of law and human rights to support guarantees of non-repetition	46
Transitional justice efforts in support of non-repetition	47
Development interventions in support of non-repetition.....	48
Linking Transitional Justice and Disarmament, Demobilization and Reintegration	53
DDR as guarantees of non-repetition	54
Vetting of members of armed forces and groups	54
Community-based reintegration as reparations	55
Conflict prevention and sustaining peace	56
The conflict prevention and sustaining peace paradigms.....	57
Addressing the root causes of conflict	57
Strategies for resilience-building.....	58
Key Lessons and Recommendations	59
Way Forward	62

Acronyms

BiH	Bosnia and Herzegovina
CAR	Central African Republic
COVID-19	Corona Virus Disease 19
CSO	Civil Society Organization
DDR	Disarmament, Demobilization, and Reintegration
DRC	Democratic Republic of the Congo
LGBTIQ+	Lesbian, Gay, Bisexual, Trans, Intersex and Queer
MINUSCA	Multidimensional Integrated Stabilization Mission in the Central African Republic
NHRIs	National Human Rights Institutions
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDG	Sustainable Development Goal
SSR	Security Sector Reform
SGBV	Sexual and Gender-Based Violence
UN	United Nations
UNDP	United Nations Development Programme
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

Executive Summary

The 2030 Agenda for Sustainable Development embraces a holistic concept of development – one that recognizes the interlinkages across peace and prosperity and that for both there needs to be respect for human rights. The discipline of transitional justice is rooted in this same paradigm, working at the nexus of human rights, development, and peace and security to address legacies of mass human rights violations and build resilient communities.

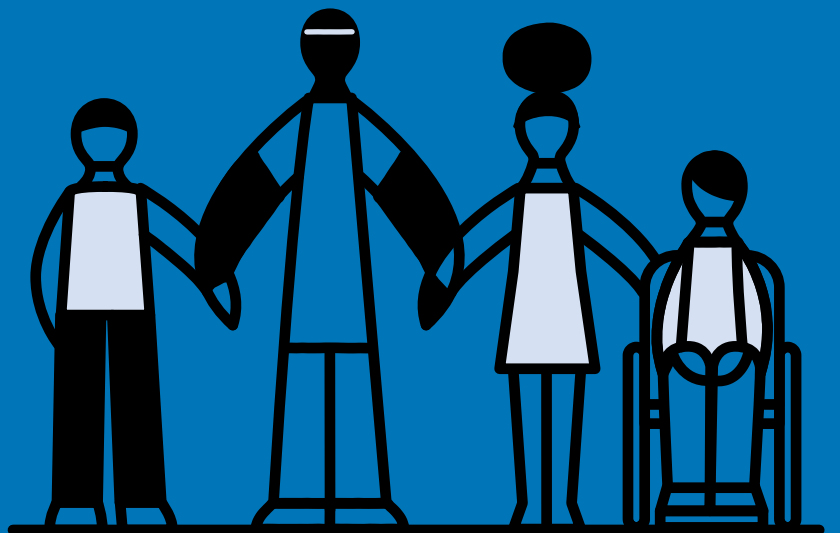
For societies emerging out of conflict or repressive regimes, putting in place transitional justice measures is necessary to a) uphold accountability for past violations and ensure redress and reparations for the damages that have been done to victims of gross human rights violations, b) recognize the toll the violations have had on societies and communities - unravelling trust and contributing to polarization, c) begin to develop a joint understanding of the root causes that led to violence and repression, including systemic inequalities, and build a common narrative of the past based on the truth, and d) look to the future to build resilient systems and communities to prevent a recurrence of violence and abuses.

UNDP has supported transitional justice processes around the world for over a decade, recognizing the value of a development-oriented approach to transitional justice that looks not only at what is needed to address the past and its consequences on the present but also what is needed to set up victims, communities, and states for a peaceful and sustainable future. In every step of the

transitional justice process, we work towards expanding people's choices. We are committed to upholding victim agency and human dignity and ensuring meaningful participation. UNDP also embeds our support to transitional justice processes within broader investments in inclusive and accountable institutions to promote and protect human rights and establish a lasting rule of law culture.

This publication seeks to contribute to international discourse on transitional justice by sharing lessons learned from UNDP's transitional justice programmes. It will also serve as a contribution to the revision of the Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice. Noting that each context is unique, main areas of work for development practitioners supporting transitional justice processes are identified. In addition, many challenges associated with translating the aspirations of truth, justice, and reconciliation into a reality for victims of atrocities are articulated as well as successful examples of building partnerships and coalitions to achieve more inclusive transitional justice processes from all regions. Lastly, key lessons and recommendations are outlined for practitioners to consider when designing and implementing transitional justice programmes and to draw out key findings and recommendations as well as identifies opportunities for more investment in transitional justice moving forward. The paper emphasizes that transitional justice is not a linear process and that practitioners must take a long-term view while remaining vigilant to rapid changes in the local context that can present windows of opportunity for transformative change.

Introduction



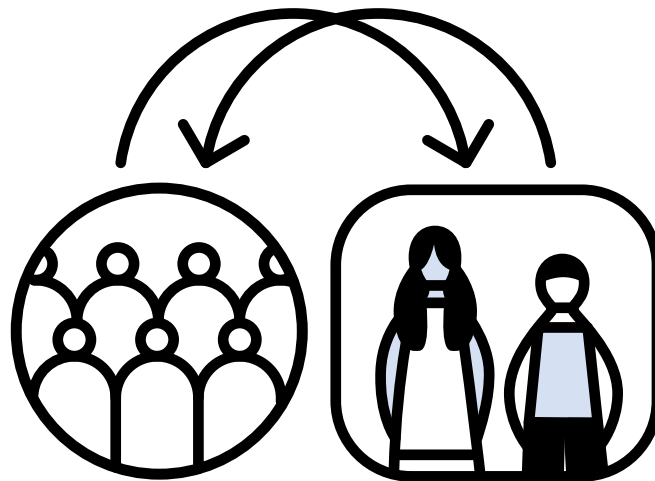
What is transitional justice?

The aspirations of securing justice, advancing peace, and achieving sustainable development are often at the forefront of a society emerging out of conflict or a repressive regime and are typically embedded in a political settlement. Meeting expectations of justice, peace and development can be complex, with multiple, potentially competing interests. In such dynamic contexts, transitional justice measures provide a set of adaptive tools that can be tailored to support societies to move forward in dealing with legacies of mass human rights violations and rebuilding resilient communities. In many cases, this includes addressing impunity and redress for past abuses, putting in place building blocks to strengthen trust between the people and the state, addressing social injustices including gender inequality and fostering tolerance and co-existence. While dealing with the past, transitional justice also provides tools to put in place measures to prevent future recurrence of human rights violations and adopt a longer-term approach that looks toward shaping a more peaceful, just, and inclusive future.

The concept of transitional justice rests on the belief that societies that are able to adequately face their history of collective violence will be better equipped to avoid its repetition in the future. The success of transitional justice is not only measured by redress for victims, but by accountable and inclusive institutions, peaceful coexistence, reconciliation, and civic resilience to recurrence of systematic abuses. This requires that transitional justice measures are a part of broader efforts to foster political, social, and economic transformation and advance gender equality. Thus, transitional justice focuses on both the individual and society as a whole, with two distinct objectives: (1) achieving justice for victims and (2) creating just, inclusive, and peaceful societies.¹

“

The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, secure justice, and achieve reconciliation ”



The origins and evolution of transitional justice

The term ‘transitional justice’ first came to prominence in the early 1990s in reference to a number of Latin American processes instituted in the 1980s.² It referred to fact-finding and justice-related measures in response to gross human rights violations adopted during periods of political transition from authoritarian to democratic government.³ The Latin American model was absorbed and adapted to address apartheid in South Africa’s 1995 Truth and Reconciliation Commission, which, at the time, received high visibility and recognition. Since then, quasi-judicial truth-telling bodies with varied success have become a widespread practice resulting in over forty national truth commissions and numerous other location-specific, event-specific, or violation-specific commissions to investigate past abuses. However, applying the transitional justice approaches drawn from the experiences from Latin America was not a straightforward process in countries that sought remedy for conflict-related mass human rights abuses.

The second generation of international war crimes tribunals also emerged in the 1990s with calls by the United Nations (UN) General Assembly for the establishment of an international criminal court to enforce a code of crimes against the peace and security of mankind.⁴ Subsequently, the International Criminal Tribunal for the former Yugoslavia was established in 1992 followed by the International Criminal Tribunal for Rwanda in 1993. The two ad hoc tribunals provided a new impetus for criminal justice responses to conflict-related crimes. This development further instigated creation of a number of internationalized or “hybrid courts” staffed by both national and international judges and prosecutors in a number of contexts, including Cambodia, Kosovo⁵, BiH for one period, Sierra Leone, and Timor Leste. Within a decade, international criminal justice gained great momentum culminating with the signing of the 1998 Rome Statute, which enabled the establishment of the International Criminal Court in 2002. This in turn greatly influenced the pursuit of accountability within transitional justice processes as we see it today, which focuses on supporting national processes for accountability, in complementarity with the International Criminal Court.

The UN framework for transitional justice

In 2004, the *UN Secretary-General's report* articulated the UN's position on transitional justice, referring to it as “the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, secure justice, and achieve reconciliation.”⁶ The report articulates the main pillars of transitional justice as criminal justice, truth telling, reparations, and institutional reforms, noting that these components should not be viewed in isolation. Furthermore, the UN approach to Transitional Justice was then consolidated in the Guidance Note of the Secretary-General on the topic.⁷

However, in practice, the majority of transitional justice support provided from the UN has focused on the mechanisms more than on the processes. Putting mechanisms in place for each of the four different pillars has led to disjointed efforts and unsustainable outcomes. While the pillars are useful in framing the objectives of transitional justice processes, practitioners have begun to move away from strict implementation of the pillars in favor of comprehensive and context-specific approaches that can bring about transformative change both in the short- and long-term for individuals and societies. Key to this is establishing a set of common and overlapping objectives amongst the different transitional justice processes. These often include addressing exclusion and the root causes of conflict as well as investing in institutional capacities to sustain progress. Taking into consideration the new global challenges, such as massive irregular migration flows, health pandemics, polarization and social movements in all regions.

Key challenges for transitional justice

In the majority of contexts where transitional justice processes have been undertaken, the lack of political will remains the most fundamental of challenges. In other instances, processes are highly politicized resulting in a negative view of transitional justice by key stakeholders or segments of the population. These situations can lead to public frustration in situations where there is already a lack of trust in the state. In contexts where governments are open to transitional justice processes, countries are often riddled with other challenges that inhibit progress, such as poverty, weak institutions, systemic discrimination and gender inequality. This can lead to resource allocation issues and arguments calling for the prioritization of development, based on the misconception that transitional justice is stuck in the past while development is forward looking.

The transformative objectives of transitional justice require multidisciplinary approaches sustained over a prolonged period of time. Progress is non-linear and often not evident for generations. For victims and their families - whose quality of life urgently depends on the outcomes of transitional justice processes - this can feel like unmet promises. In addition, coordination and collaboration across sectors is easier said than done, but the success of transitional justice relies upon it. Further challenges are identified throughout this paper.

Transitional justice and the humanitarian-development-peace nexus

The field of transitional justice sits at the nexus of several different areas of work – from development to peacebuilding and humanitarian – and contributes towards their different and complementary objectives. Recently, there has been concerted effort by humanitarian, development, and peacebuilding partners to work together to overcome complex challenges. Three recent developments – each with their own links to transitional justice – have led to more cohesive efforts across the UN system: the 2030 Agenda for Sustainable Development, the twin resolutions on sustaining peace, and the New Way of Working.

The *2030 Agenda for Sustainable Development* adopted by the UN General Assembly in 2015 articulates a comprehensive approach to development with 17 goals for people, planet, and prosperity. Sustainable Development Goal (SDG) 16 offers a framework for aligning efforts for access to justice with inclusion, human rights, peacebuilding, and conflict prevention, in support of nationally led processes that ensure redress for victims of gross human rights violations and preventing repetition through public processes of reckoning with the past.⁸ In addition, SDG 5 on gender equality, SDG 10 on inequality, and SDG 4 on education all have important connections to transitional justice, including for the prevention of new grievances and in the provision of reparations. SDG 17 on partnerships is also key to establishing multi-stakeholder and multi-disciplinary approaches to transitional justice. The principle of leaving no one behind also resonates with the focus of transitional justice on uplifting victims who are often among the most vulnerable.

In 2016, Member States passed two resolutions in the UN General Assembly and Security Council on sustaining peace.⁹ Most notably, the concept of sustaining peace releases peacebuilding from the confines of post-conflict situations and is universally applicable, as it is not only

associated with fragile states. Sustaining peace places emphasis on addressing the root causes of conflict and undertaking broad-based prevention of environmental, economic, and humanitarian shocks. The General Assembly and Security Council also emphasized the importance of inclusion for sustaining peace, calling specifically for the meaningful participation and leadership of women and youth in peacebuilding efforts. The two resolutions are also clear that efforts for sustaining peace should involve all actors across the pillars of the UN, rather than solely peacebuilding practitioners. This broader and non-linear understanding of what is needed for people to experience peace is consistent with transitional justice's approach to promote truth, accountability, and non-recurrence.

The *New Way of Working* agreed at the 2016 World Humanitarian Summit established that various actors are expected to work towards “collective outcomes” that reduce risk and vulnerability and serve as instalments towards the achievement of the 2030 Agenda. These collective outcomes are to be jointly defined, context-specific, and based on the comparative advantage of different partners. An emphasis is placed on conducting joint analysis and strengthening national and local capacities. The *New Way of Working* reiterates the importance of principled humanitarian action and at the same time stresses that this should not impede collaboration. For transitional justice, the principle of “do no harm” that requires international actors to prevent and mitigate any negative impact of their actions and the commitment to employ rights-based, community-based, and survivor-centered approaches are essential – just as they are to humanitarian interventions. In addition, with protracted crises becoming more prevalent – humanitarian and transitional justice actors may find themselves working in the same contexts more often, where making the link between immediate relief and longer-term reparations and sector-wide reforms is critical.

UNDP's development approach to transitional justice



“

Human development is a process of enlarging people’s choices. The most critical ones are to lead a long and healthy life, to be educated and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights, and self-respect. ”

– Human Development Report, UNDP, 1990¹⁰

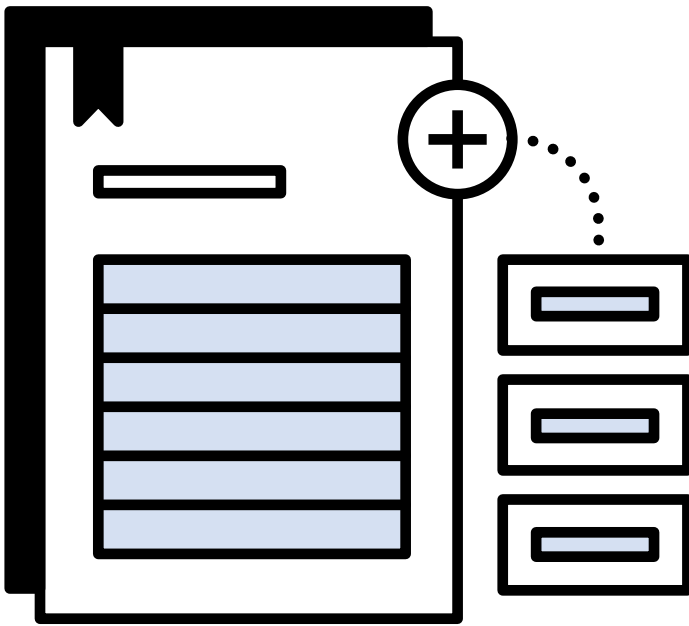
Grounded in the concept of human development and guided by the 2030 Agenda for Sustainable Development, the twin resolutions for sustaining peace, and the New Way of Working, UNDP’s development approach to transitional justice seeks to not only address grievances from the past but also to lay the foundation for a peaceful and sustainable future.

A key aspect of this approach is connecting special and ad hoc transitional justice mechanisms with more permanent state institutions and reform efforts to build local capacities and create an enabling environment for transformative change. UNDP puts people and their unique needs, barriers, and strengths at the center of our thinking - so that we do not miss important opportunities to address inequalities and help build more peaceful, just, and inclusive societies through our transitional justice programmes. Employing rights-based approaches to transitional justice that are gender, age, and conflict sensitive is essential to meeting these broader objectives.

UNDP is also committed to working as one with our UN partners and forging partnerships with local stakeholders to deliver transitional justice support. Victims groups and civil society organizations (CSOs) are of particular importance to ensuring that our assistance is victim-centered, recognizing that victims are not one monolithic group and have varied experiences, perceptions, and needs.

Alongside transitional justice programmes, UNDP provides broader development support to reduce inequalities, protect human rights, and build inclusive governance so that countries can sustain progress and deliver on the promises of non-recurrence after the transitional justice processes has come to an end. Some key areas of programming include political engagement, institution building, community security, human rights systems, access to justice, and gender justice.

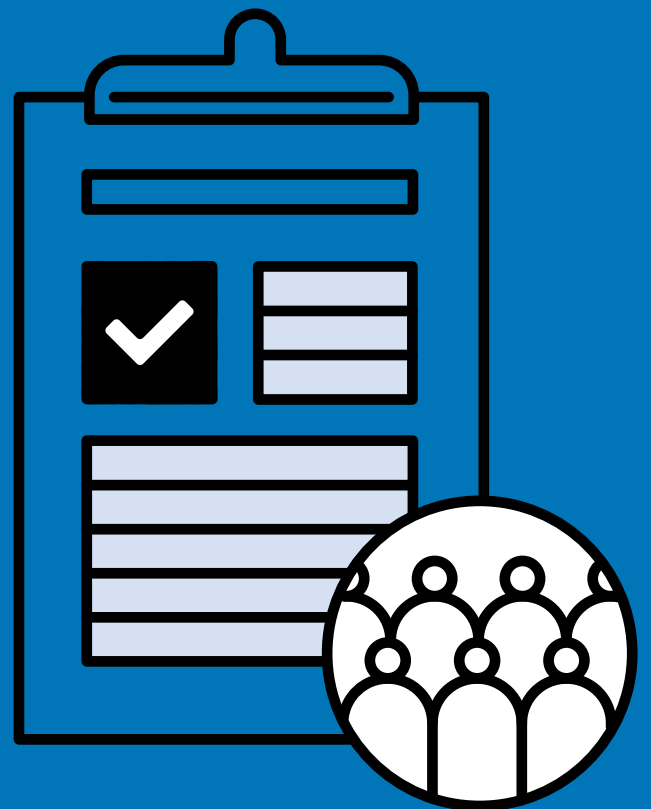
With a long-standing presence in over 150 countries and territories, UNDP provides with a unique understanding of local context, including the capacity of institutions and knowledge of key actors and stakeholders. Where conflict or crisis erupts, UNDP is often already on the ground providing assistance and maintains its support well after it subsides. This in-country experience enables UNDP to provide informed and sustainable support to transitional justice processes. Additionally, UNDP regularly provides technical assistance for the establishment of national development plans and other long-term strategic frameworks and reviews (Sustainable Development Goals, Poverty Reduction Strategy Papers, Universal Periodic Reviews, etc.). Where relevant, UNDP can also facilitate integration of transitional justice measures into these frameworks, which can strengthen buy-in, coherence, and coordination across sectors and streamline resources from the national budget.



This paper further elaborates on UNDP’s development approach to transitional justice, highlighting challenges and achievements in operationalizing support to transitional justice processes in complex contexts to support peacebuilding, human rights, and development outcomes. While not exhaustive, this paper aims to highlight the different type of supports UNDP has been giving in the different areas that re mentioned below, as well as to identify some practices and lessons learned that may be useful to consider as practitioners seek to adapt and advance transitional justice processes within their different local contexts.

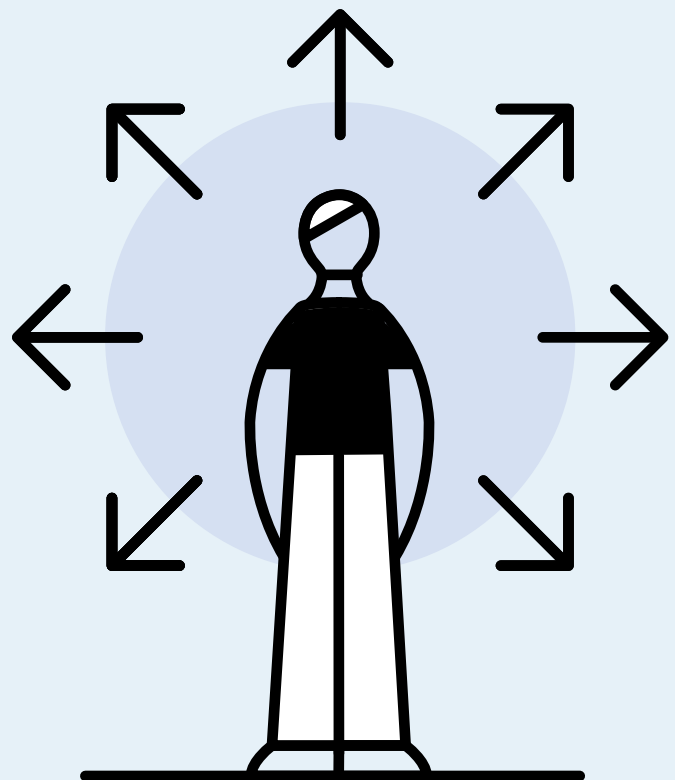
The paper takes stock of UNDP’s challenges, successes, and lessons learned in eight main areas of work in transitional justice processes: victim engagement, participatory processes and ownership; truth telling processes, institution building to promote accountability, reparations programmes, strengthening the rule of law and human rights to support guarantees of non-repetition; linking Transitional Justice and Disarmament, demobilization and reintegration and conflict prevention and sustaining peace. Examples from different countries and territories are highlighted throughout the paper, illustrating the unique needs and approaches for transitional justice in each context.¹¹ .

Main Areas of Work



AREA OF WORK 1

Victim engagement



Victims have long played a critical role in transitional justice processes. As *argued* by Juan Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, “Victims and survivors were, of course, present and active at the outset of this remarkable movement.” They “became prominent protagonists” and thus today must participate “in the design and execution of all programmes.” Victim participation is “a well-established norm,” and a “measuring stick” for the effectiveness and success of transitional justice programmes.¹² The *2010 Guidance Note of the Secretary-General on the UN Approach to Transitional Justice* also confirms the need to ensure the centrality of victims in

the design and implementation of transitional justice processes and mechanisms, including survivors of sexual and gender-based violence (SGBV).¹³ In every endeavor, the dignity of victims must be upheld, including through ensuring victim recognition, individual and collective reparations, psychosocial support, legal assistance, and support to the grass-roots organizations that provide information, orientation, and accompaniment to victims. In addition to ensuring meaningful engagement of victims in all phases of a transitional justice process, UNDP takes a people-centered approach to support victims’ families and communities that have been indirectly impacted by the violations.

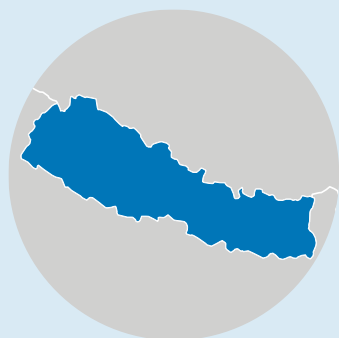
Identifying victims and ensuring representation

Critical first questions relating to the provision of support to victims relate to the capacity and competence to determine who the victims are.¹⁴ Particularly in situations of armed conflict, ambiguities, hierarchies, and the consequences of long periods of victimization can serve to realize, impede, or co-opt victims' voice and agency in ways that deepen societal divisions and can increase victim vulnerability¹⁵. Victims themselves can also retain variant self-perceptions of victimhood, including the rejection of victim status and the embrace of self-identification as survivors or other societal statuses. Alternatively, victims may not want to be identified in any particular way in order to be treated equally as other citizens, requesting first and foremost rehabilitation and reinstatement of their citizens' rights. Further, the most visible or vocal victims may not necessarily be the most in need.

A coordinated approach to transitional justice requires an analysis of which groups of victims are already being supported by various interventions and which groups of victims might be missing. Examples of such missing groups might include victims of sexual and gender-based violence (SGBV), including men and boys; persons with disabilities; child victims; members of indigenous groups; and lesbian, gay, bisexual, transgender, and intersex (LGBTIQ+) individuals. In some contexts, it can also be more difficult to identify and include those who have experienced economic, social and cultural rights violations – such as violations of the right to health or education – versus civil and political violations, often with consequences for the participation of women, youth and children in transitional justice processes. Even for “bottom-up” approaches, where victims provide the starting point for determining victimization, and types of victims, determining the representativeness of victims claiming victimhood must also occur. This process is complex, and many different approaches have been used.

“

A coordinated approach to transitional justice requires an analysis of which groups of victims are already being supported by various interventions and which groups of victims might be missing ”



Nepal

An innovative approach for inclusive victims reparations processes

When considering disappearances in Nepal, Simon Robins sought to reduce biased representation enabled by the self-selecting nature of inviting victims to a meeting¹⁶ by employing the most complete and viable data and sample frame available in that context, which was a recently published International Committee of the Red Cross list of 1,227 persons reported as disappeared by their families. He then selected reporting families to participate, controlling for geography, ethnicity, and perpetrating group. Other non-governmental and international organizations, such as Human Rights Watch and Amnesty International engage in conflict and victim mapping processes that document international crimes and violations.

The UN has also employed this approach in many contexts, including in the Central African Republic (CAR) in 2017 – where the Office of the United Nations High Commissioner for Human Rights (OHCHR), UNDP, and the

Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) conducted a human rights mapping, which documented 620 human rights violations during 13 years of conflict and informed the Special Criminal Courts' prosecution strategy.¹⁷

Comprehensive lists of violations during an armed conflict are scarce and recording of causes of death alongside census data varies amongst countries and is particularly poor in the least developed countries that disproportionately experience armed conflict.¹⁸ Frequently, 'convenience samples' identified through personal networks, existing institutions, or respondents that may self-select are used. In such situations, the use of Multiple Systems Estimation is an alternative approach that enhances randomness and representativeness by triangulating multiple data sets, thereby controlling convenience samples.¹⁹

In Guatemala, UNDP's Transitional Justice Accompaniment Program (PAJUST-Programa de Acompañamiento a la Justicia de Transición) supported the process of recovery and preservation of million documents from the Historical Archive of the National Police (AHPN), under the tutelage of the General Archive of Central America (AGCA) from the Ministry of Culture (MICUDE). Based on international standards, UNDP has contributed for more than 13 years to the recovery and digitalization of 25 million pages of documents from the AHPN. In 2005, this archive was fortuitously located on packages piled along the hallways of an abandoned police facility. Nowadays, it is the greatest archive in its class in Latin America and represents a decisive documental resource to learn the truth, preserve the historical memory, and progress of justice.

The information is accessible to the public and has proved of great interest to victims and victims' families, prosecutors, CSOs, national and international academic and research institutions, among others.

Each transitional justice process and country context requires adaptation and selection of the tools available that will ensure victim representation as much as possible, and specific attention to gender- and age-sensitivity. Development actors can strengthen and coordinate these efforts, provide access to resources, build capacity of local human rights observers to collect credible data, which is representative of the entire population and universe of victims, for use in transitional justice processes.²⁰



Colombia

Supporting victims representation under Special Jurisdiction for Peace

UNDP has supported the individual and collective judicial representation of victims in all macro-cases opened by the Special Jurisdiction for Peace, including cases concerning kidnappings, forced recruitment of child soldiers, extrajudicial killings, and other grave human rights violations.

Assistance has also been provided for the implementation of individual and collective protection measures for participants in the SJP (victims, witnesses, and defendants) in order to provide security safeguards in a context of ongoing threats.

UNDP's support to the Truth Commission enabled the core technical team to be deployed six months in advance of the official launching in November 2018 allowing for strategic planning, development of methodological and operational guidelines, and execution of over 40

events throughout the country to raise awareness of the Commission's mandate and services. Assistance was also provided to victims of the conflict for their participation in hearings and documenting their testimonies for the final report of the Truth Commission.

UNDP also supported the creation of the Search for Missing Persons Unit, that will carry out the humanitarian search, location, identification and dignified delivery of bodies. This includes technical assistance to the elaboration of its statutory decree, support to governance schemes that allow victims to be involved in the identification and search process, and support to the territorial deployment of the Unit, instrumental for providing counselling and other support to over 12,400 people in Colombia.

Victim participation

Despite the growing importance given to the idea of the centrality of victims within transitional justice processes, the term 'victim' can still carry passive connotations that impact the effectiveness of transitional justice processes. Therefore, it is imperative to expressly recognize the agency of victims and engage victims as active participants in transitional justice processes.

Victim engagement processes must also invest in social integration efforts working to address historical inequalities, including gender inequality, and promote inclusive development, peace, and security. Victims' isolation from their community, the state, and other victims – which can be particularly profound for victims of violations associated with social stigma, such as sexual violence – greatly diminishes their capacity to advocate for their rights and perspectives on how society is organized, including on

how society might transition from episodes of core international crimes. Enabling distinct victim groups to constructively interact, network, mutually self-identify, and find solidarity across conflict fault lines based on fulfilment of victims' rights can contribute to social cohesion, peaceful coexistence, and intercommunity reconciliation. This may also assist the objective at the core of UN peacebuilding initiatives: enabling equitable and inclusive political settlement to resolve, recover from, and prevent new conflict.²¹

Victim aspirations and demands are difficult to determine at a macro level. They are inherently subjective and are likely to vary across and within victim groups, with differences across political, ethnic, racial, religious and gender lines. Victim participation is therefore imperative to understanding the nature of victims' needs and demands as well as in designing the research methods for engaging with victims to determine their preferences.²²

In this regard, the Report²³ of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, brings important arguments to consider the participation of victims, beyond the value they imply in terms of contributing information, but considering their participation as a measure of recognition and empowerment of victims, contribute to making victims an active part of the public sphere, and allowing the identification of experiences, values and common principles among the different types of victims. However, preparation to sustain victim participation is essential as victim participation is a process not an event. Development actors can support this through capacity building, sensitization, and the creation of safe spaces, particularly for women, youth, and marginalized groups, for dialogue and discussion.

In addition, transitional justice processes need to acknowledge that participation requires time that victims could otherwise use for work or fulfilling other responsibilities, including unpaid care work. As such, logistical arrangements, including transportation and childcare, need to be taken into account. In addition, financial and other support for participation, which can be a sensitive subject, need to be considered and addressed in a manner that is appropriate within the local culture and context.

Security and psychosocial needs are also extremely important considerations for victim participation and care should be taken to ensure that services provided are gender-sensitive. For example, in Sri Lanka during a nationwide consultation process that was undertaken in 2016 to gather inputs into the design of the country's transitional justice process, the National Human Rights Commission offered protection to participants.

Counselling support was made available at the meetings as well as information about support services that could be accessed elsewhere, including referral pathways. However, these types of measures may not be adequate in some contexts. Where the risks for victim participation are great, space for anonymous participation should be created.

Another perceived challenge with victim participation is with regard to building consensus. However, it can be both unrealistic and paternalistic to have this as a goal; victims are not a monolithic group, and they should not be expected to speak in a unified voice. While common agendas can be promoted, and may be needed due to limited resources, transparency about discrepancies in victim groups' viewpoints is highly important.

Victim- and people-centred support

Victims and their families tend to belong to the most disadvantaged of communities and face continued marginalization due to unaddressed systemic issues. As such, redress for victims needs to be accompanied by efforts to empower victims and address their wellbeing and basic needs. In addition, their families (often, women heads of household) and communities that have suffered direct and indirect consequences

from the violations need to be supported to achieve what they would have been able to if the conflict had not taken place – or better yet, to be moved into a position of greater equality so as to guarantee non-repetition of the violations experienced. The following are examples of the types of support offered to advance victims’ rights and access to justice, truth, and reparations as well as to uplift the lives of their families and communities.

PSYCHOSOCIAL SUPPORT



Too often, psycho-social support has been an after-thought in encouraging victim participation in transitional justice processes, but important experiences from, Bosnia and Herzegovina (BiH), Colombia, Sierra Leone, Croatia, Guatemala, and the Democratic Republic of the Congo (DRC), point to the need to directly incorporate psychosocial support in transitional justice processes, particularly in efforts to address the most highly-stigmatized crimes, such as SGBV. Personnel of transitional justice mechanisms must be trained to be psycho-socially sensitive, particularly wherever potential risk of re-traumatization is high as well as on gender and age-sensitive approaches. Meeting times and locations should be sensitive to victims’ psychosocial and physical security. Trusted persons should be designated as intermediaries. Because of the need for local, indigenous knowledge and grassroots engagement in addition to the issue of trust, civil society actors are more suited as intermediaries than government actors. In addition, psychosocial support can also be provided at the community level as a form of community healing and empowerment. Peer support and community building is a vital part of healing. Linking mental health care providers with psychosocial support networks can also ensure that negative coping strategies are addressed. The *International consensus on minimum standards for psychosocial work in search processes and forensic investigations of cases of enforced disappearance, arbitrary or extrajudicial executions* is a key resource for practitioners.²⁴ UNDP has

supported comprehensive care for victims of SGBV in the DRC through “One-Stop Centres” including medical and psychosocial care, and legal aid clinics in the CAR which include lawyers, paralegals and psychosocial assistance. The centres also serve as a key referrals and follow-up mechanism to the courts.

VICTIMS SUPPORT AND WITNESS PROTECTION



The threats to victims and witnesses participating in transitional justice processes, including those perceived to be participating, is often high in fragile transitional environments.²⁵ Building institutional capacity to adequately protect witnesses and victims in a gender- and age-sensitive manner, can play a powerful role in building trust in the state.²⁶ Investigative capacity and competence to undertake discrete investigation is important. This requires personnel trained in and familiar with the culture and language of the environment in which they operate, as well as the sensitivities of investigating SGBV. Personnel should be able to initiate and maintain contact with victims in a way that establishes and maintains their anonymity. UNDP has supported witness support measures for trials including cases before war crimes courts in BiH, Croatia, and Serbia.²⁷ In Sri Lanka, UNDP also have provided technical support to the Victim and Witness Protection Authority established in 2016.

EXPANDING ACCESS TO JUSTICE



Justice for victims is a common complementary aim of transitional justice processes and is essential for achieving long-term development and peacebuilding objectives. Victims are almost always disproportionately represented in vulnerable groups and therefore require “a holistic approach to access to justice that addresses physical, psychological, and wider socio-economic consequences of violations.”²⁸ It’s important to note that the impacts of conflict and continued marginalization do not affect only victims of core international crimes and that support to victims should be connected to broader access to justice programmes particularly for the communities in which they reside. Women face unique obstacles in accessing justice which require a tailored response. For example, in the CAR, UNDP’s joint efforts with MINUSCA and the Team of Experts to support victims of conflict-related sexual violence are closely coordinated with the broader programme on the rule of law and justice and security sector reform, and specifically to prevent and respond to SGBV through the Mixed Unit for Rapid Intervention and Suppression of Sexual Violence against Women and Children (UMIRR) established in 2017²⁹.

In many countries that suffer an acute lack of resources, access to justice is uneven and victims in remote areas are unable to claim their rights. UNDP programming supports various approaches to expand the reach of justice services, including through mobile interventions (e.g. mobile legal clinics, mobile investigations, mobile courts), making resources and services available in local languages, the construction of new courts and justice institutions and training of personnel, and strengthening connections between the informal and formal justice systems. In places where new institutions are built, it is important to involve the population in the process and them for the changes they are about to experience. In Darfur, UNDP and The African Union-United Nations Hybrid Operation in Darfur through the Global Focal Point for Rule of Law have focused building a common understanding of the justice chain (informal and formal) and their respective roles amongst national partners. And in 2018, traditional rural courts were re-established as the fastest and most effective way to expand access to justice across Darfur.

LEGAL AID AND LEGAL AWARENESS



Legal aid for victims can take many forms, including legal counselling, strategic litigation, filing complaints, or participating as civil parties, training, and provision of paralegal assistance, or legal representation. Awareness raising efforts on basic rights and legal remedies available to victims is also often needed and can lead to an increase in reporting of violations, contributing to a rule of law culture. Creating awareness and organizing information sessions for women as well as for community leaders and local chiefs to change behaviour has enabled victims of sexual crimes to be reintegrated in a community that traditionally rejects them, as proved the Muganga legal clinic, in DRC³⁰.

ECONOMIC ASSISTANCE



Economic assistance is important for ensuring that victims and their families are able to be self-sufficient as part of wider efforts to address historic economic inequalities. This is an especially important way to support access to justice for those who are excluded from the labour market, including women. This can include livelihood support, including targeted microfinance or economic regeneration programming, which as has been supported by UNDP and UN Women in eastern DRC³¹ among other countries. At the same time, a more systemic economic transformation is often needed to ensure countries in transition are able to maintain progress once foreign assistance diminishes.

HOUSING



Everyone has the right to adequate housing. Various circumstances and policies have often excluded victims from housing opportunities available to other people, further disadvantaging victims, their family members, and future generations.

In countries where women are not able to hold property rights, this is a particular challenge for women who become heads of household as a result of a human rights violation. Victims may have particular needs related to safety, restitution, and reintegration that can be supported by housing programmes.



Peru

Reparation with a centred people approach

When the Comprehensive Reparations Plan for Peru was passed into law in 2005 it included a special programme to provide support for reconstruction of rural housing; support for the regulation of property rights; assistance in the resettlement of displaced persons and their preferential inclusion in public housing programs; and technical and financial assistance to displaced people living in provisional or precarious dwellings for self-construction of housing.³²

Up to date 4,095 registered victims have been awarded around 31 million dollars by the *Own Roof Program* of the Ministry of Housing, Construction and Sanitation³³ as part of the implementation of the Multiannual Plan of the Promotion and Facilitation of Housing Access Program by 2021³⁴. Development assistance can help to ensure that recommendations are seen through to implementation.

EDUCATION



The experience of victims often precludes them from gaining education. For example, children who have been displaced, participated in hostilities, suffered pregnancy or other SGBV, or have resulting disabilities have not benefitted from consistent schooling. Opportunities for victims to catch up on their schooling can be provided as well as assistance to schools to better support trauma-affected students. In addition, education

has often been used as a tool to preserve inequality and division. Transitional justice can help to contextualize education, documenting the history of past abuses and promoting peaceful coexistence to support non-recurrence. The United Nations Educational, Scientific and Cultural Organization (UNESCO), for example, supported curriculum reform to implement Peace, Human Rights and Citizenship Education in the Liberian School system following the civil war.

HEALTH AND MEDICAL NEEDS



Victims often have health and medical needs related to the violations they have endured. Individualized support should be provided to meet these unmet needs. For example, specialized surgery for victims of SGBV, reconstructive/plastic surgery, prosthetics, emergency post-rape clinical care including post-exposure prophylaxis kits and emergency contraception, and anti-retroviral medication for SGBV victims who contracted the human immunodeficiency virus can all be provided. Health care professionals may have also been a part of the violent regime and systems used to target victims of a particular community. A culture of accountability is also a driver of health equity. Transitional justice processes should examine the needs of the health care system following the conflict as well as the potential role the health sector has played in the conflict.

In Sierra Leone, the provision of healthcare to victims as part of the reparations programme was recommended by the Truth and Reconciliation Commission³⁵. War victims, including those with chronic medical ailment and or severely war-wounded women received medical support as part of the *'Enhancing social protection and rehabilitation of war victims through reparations'*.³⁶ About 200 victims of sexual violence received medical assistance including fistula surgery³⁷ However, the negative effects of under investment in a nationally owned healthcare system after the civil war were seen in the countries fight against the Ebola outbreak in 2013.³⁸ This reinforces the need for development assistance to focus on building national capacities.

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Transitional justice processes should examine the needs of the health care system following the conflict as well as the potential role the health sector has played in the conflict ”

AREA OF WORK 2

Participatory processes and ownership



Victim-centred transitional justice processes depend upon meaningful participation. However, participation can be particularly challenging in situations of delayed justice, where there is minimal trust between government, victims, and civil society. In addition, it can be difficult to manage expectations during and following participatory processes. Experience from development practice, particularly in relation to the “do no harm” principle, shows that participatory planning, together with building and sustaining information sharing and feedback loops/platforms can serve to maximize transparency, rebuild trust, and build local ownership of the process.



Approaches for broader participation

The multiplicity of actors across the political, security, justice, and human rights sectors as well as in media, civil society including women- and youth-led organizations, and victims groups must be represented in multi-stakeholder processes of participation for transitional justice in order to equitably reflect the breadth of interests.³⁹ Care must be taken for participation to not become a box ticking exercise, as the risks of this are particularly poignant for transitional justice. The efficacy of various approaches to participation should be considered carefully, including by victims and civil society themselves, in order to identify the best fit method for the context.

Participation in transitional justice processes needs to be secured throughout the design, implementation, and monitoring phases. Failing to use rigorous context analysis to identify and include important stakeholders in all of these phases is a common downfall of transitional justice processes. It is also not an easy task, as the selection of those who should participate is complex and fraught with risk to the perceived legitimacy of a transitional justice process and to the security of its participants (both real and perceived).

The United Nations Department of Economic and Social Affairs report, *“Participatory Dialogue: Towards a Stable, Safe, and Just Society for All”*, prescribes taking a diagonal representation of groups to ensure representation at different levels within a group – i.e. to include different demographics and representation from actors with different levels of political and economic power from within various groups, rather than including only their political leadership.⁴⁰ This approach provides a full representation of interests and perspectives that is critical in transitional situations, where political leadership may be vulnerable to co-option.

Consultation, at group and/or individual levels, can be a key tool for effective participation if designed and implemented appropriately⁴¹. Increasingly, national consultations are undertaken prior to the design and roll out of transitional justice processes. Methods for securing broad-based participation need to be identified from the outset of a transitional justice process with particular attention to reducing barriers to participation for key stakeholders, including women, youth and marginalized groups. In Sierra Leone for example, in 1999, the United Nations supported national human rights organizations’ consultative

process on the forms of transitional justice mechanism to be implemented and considered such consultations necessary, although it was acknowledged that the prevailing circumstances precluded a major national consultations⁴². However, there have been instances where a government-induced process that is set up with exclusionary features is amended down the line by an organic process instigated by the community. For example, exclusion of women from the 2006 Juba peace talks between the Ugandan government and the Lord’s Resistance Army caused women to ask, ‘Does it have to be only one peace forum?’⁴³ Women leaders thus organized women’s peace tables at the village and district level to feed into the Juba process and the subsequent national recovery and development plan. By establishing local peace tables, women developed a grassroots network that enabled civic monitoring of government commitment to implementation and advanced women’s representation in local and parliamentary politics.⁴⁴

Another key factor that can enable or constrain participation is time. For example, victim and civil society participation in implementation of the Justice and Peace law of 2005 and Victims’ Law of 2011 in Colombia increased over time⁴⁵. The significant length of the peace process and opportunities for participation (of over a decade) allowed civic and victim capacity to grow and their initial symbolic role in shaping policies to become more significant and substantive, including as advocates for treating parties equally and according to conduct.⁴⁶ More than ten different government agencies were part of the consultative process that UNDP coordinated under two trust funds: Justicia and Convivencia. They developed pockets of vested government interest in participatory processes, often drawing on support from actors in government that were formerly part of CSOs and retained normative interests in inclusive approaches. Those actors were galvanized in a process that locked-in stakeholder (particularly victim) participation in policy design of transitional justice issues. Personnel moving between CSOs, victims’ groups, and government agencies, developed intra-stakeholder shared narratives and interests, further reinforcing this.



Uganda

Transitional justice and women as peacebuilders

In 2006, as a response for the underrepresentation of women in the peace negotiations, the *Women's Peace Coalition* formed the *Women's Peace Caravan* movement that took the UNIFEM (now UN WOMEN) women's peace torch from Kampala through Uganda all the way to the site of the peace talks, in Juba, Sudan, as a social protest.

This event finally resulted into the "*Women's Recommendations on Demobilization*," which included, inter-alia, the following recommendations:

- Recruit female military observers to oversee the screening process for women associated armed forces and groups.
- Ensure that cantonment sites are women-friendly—that they are safe and provide healthcare, childcare, and training.
- Establish secure centers for women and provide health services and access to education on sites.
- Allow women combatants to report to women field workers and train support workers to recognize and address women's needs.
- Give women the option of registering separately and obtaining separate ID cards.
- Utilize gender-disaggregated data to identify the socio-economic profile of groups.
- Allocate special funds for women and provide financial assistance to women combatants and associates separately from their male family members.
- Inform women of benefits available to them and their legal rights.
- Protect women from gender-based violence within sites and during transport home.
- Recruit and train women ex-combatants for positions in the police and security forces."

This case, represents a good example of women participation at national level⁴⁷.

Building stakeholder capacity

National and local capacity to undertake a transitional justice process is essential for fostering full and inclusive ownership of the process and outcomes by the population⁴⁸. Because of this, capacity building efforts for victims, CSOs, and government actors are often the first interventions made by development actors.

Building stakeholder capacity requires building understanding of the transitional justice principles and procedures. Victims often hold the weakest self-understanding as rights-holders and as such, special attention needs to be paid to stakeholder knowledge-sharing and broad and inclusive distribution of information.

The Special Rapporteur⁴⁹ on the promotion of truth, justice, reparation and guarantees of non-recurrence recognizes different types of strategies that have been used to mitigate the challenges of knowledge disparity between victims and other stakeholders with professional backgrounds: 1) representation of victims by CSOs and 2) capacity development of victim representatives on issues. Nevertheless, another line of support must focus on 3) broad-based outreach programmes for victim populations on general goals and standard procedures of transitional justice measures. Outreach programmes for community consultations should specifically target victims in remote areas to foster inclusivity and more effective participation.⁵⁰ Since tapping into the potential for empowerment is also one of the goals of victim participation, outreach and capacity development should be particularly directed to those who are disadvantaged even within victim communities. These efforts help victims to develop an ability to feed into expert consultations and enable their voices to be reflected in decision-making processes.

Where there are insurmountable limitations to victims' capacity and their potential to advance their knowledge within a set process timeline, CSOs can play a key role in bridging the gap. Because of the need for understanding of local conditions and trust between groups, CSOs with strong grassroots ties are best suited as intermediaries between victim communities and processes of government-induced participation. CSOs as victim representatives, need to be present at all stages to provide crucial information about the lives and needs of victims to inform the transitional justice process and to provide regular updates back to victims' groups on policy development.⁵¹

The success of CSOs as victim representatives depends on the strength of the relationships. For example, CSOs may face challenges in ensuring that their communication with victim groups is effective. This is a crucial aspect considering that the objectives of CSOs must engage with the priorities and main challenges the victims are facing in order to prevent revictimization. Other challenge is that CSOs taking on the representation of victims may delay empowerment of the victim communities to coordinate and speak for themselves.

In order to mitigate some of these risks, CSOs should exercise downward accountability towards the relevant victim constituencies. The victims' groups that CSOs are representing should be treated as primary stakeholders of their programmes, with designated monitoring, oversight, and other roles. CSOs should also play a role in technical and operational capacity development of victims' groups and have sustainability plans in place for the gradual transfer of responsibilities to them.

Training exercises for capacity development should be adjusted to the local context and specific circumstances. Training providers should resist delivering generic modules without thorough knowledge of the local circumstances and victims' needs. Some modalities of South-South and triangular cooperation can be helpful in bringing relevant knowledge and experience for victims' direct involvement. Victims from similar country or cultural contexts,

with a long-standing record in promoting their rights and who passed through a similar learning trajectory in their own communities, could act as role models, mentors and trainers. This can promote international solidarity on victims' rights and the creation of networks for transnational knowledge exchange between victims' groups and communities. Such an opportunity was organized by UNDP for victims from Nepal to meet with victims from the Balkans.

Adequate conditions for participants security

Protection of participants and human rights defenders is critical throughout a transitional justice process, including during consultations, victim and public mobilization efforts, and truth and justice proceedings. The level of threat to participants' physical and psychological security should inform the timing, selection, design, and implementation of the various processes. CSOs can play a key role in evaluating the dynamics and threats posed to participants. They can also help initiate public discourse about potential threats and sensitize prospective participants. Development actors that have been present in the context for a significant amount

of time can also assist CSOs in determining the level of threat and enhancing the capacity of CSOs to manage and mitigate it.

If there are high risks for the safety and security of participants, the most financially prudent and least disruptive approach to enabling civic participation is to retain participants' anonymity. Where this is the case, the capacity of the organizers to protect participant identities should be analyzed and then communicated to potential participants. This will help to increase transparency as well as develop and sustain participation.

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Building stakeholder capacity requires building understanding of the transitional justice principles and procedures ”

Civil society engagement

As mentioned in the previous sections, civil society engagement goes hand-in-hand with victim engagement and participatory processes. It also can take on different characteristics depending on the capacities of civil society in each country context. Support can be provided to larger national CSOs and think tanks to carry out key research or provide technical capacity, including for conflict and victim mapping and forensic processes. Women-led organizations can advise on how to ensure women's meaningful participation in transitional justice processes. CSOs can also help sustain discourse on transitional justice.

CSOs can also help sustain discourse on transitional justice. Smaller more grass-roots level organizations, including victim groups and networks can be created and/or strengthened to raise awareness, empower and accompany victims as well as to advocate for and build or strengthen victim constituencies. CSOs can also be engaged in the provision of victim support, including legal aid and psychosocial support, as well as perform monitoring functions.

To overcome the challenges associated with directly administering grants to small-scale groups, larger organizations can partner with them and oversee implementation. For example, UNDP supported a grants programme in Sri Lanka in 2017 where joint proposals for support from larger CSOs working with smaller victim groups were encouraged. Further, supporting forums for joint advocacy and networking such as the Conflict Victim's Common Platform, which was established in 2014 in Nepal, may be a modest but an important way to support the assertion of rights to redress. Where victims' groups do not yet exist, development assistance may facilitate networking between victim communities or provide support to CSOs for outreach with victims and advocating with government interlocutors.

In Guatemala, some of the most significant work to enable and sustain victim-centred efforts is carried out through victim networks and civil society. Since 2010, UNDP has helped to establish victim and civil society networks and stimulates regular communication and coordination between civil society and State's institutions such as General Prosecutor's Office.⁵² The networks provide important updates to other victims and civil society actors on the alleged facts in specific cases, the avenues

pursued to seek redress, and the outcomes of processes. Within the context of the 20th anniversary of the Peace Accords in Guatemala, UNDP, with OHCHR, supported various victim's organizations to lead five regional grassroots consultations and evaluate the degree of the state's fulfillment of the agreements.

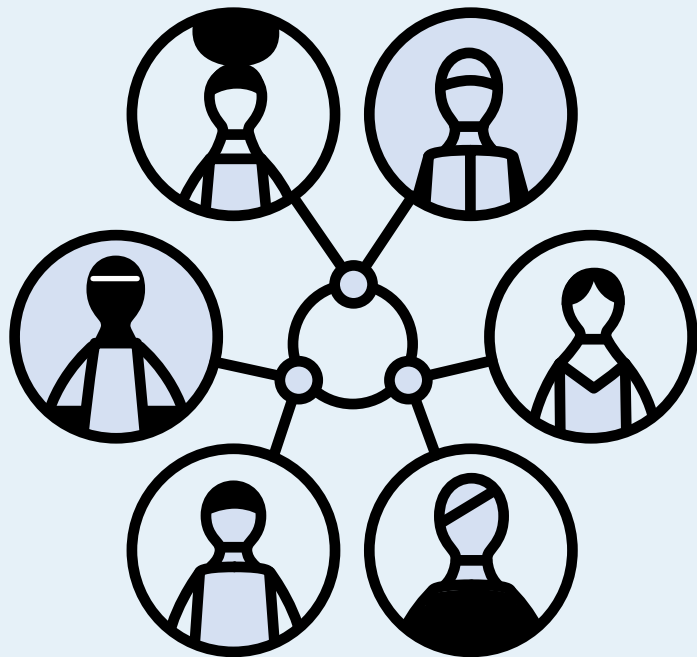
In contexts with histories of identity-based conflict, the risk of competing groups of victims can be high and working in polarized communities requires careful navigation. This is particularly the case when certain groups claim to represent all victims' interests. Inter-communal violence can also blur the lines between perpetrators and victims. In such settings, there is a real risk of victims being co-opted by elites for political ends. Engagement with victims' associations at a grass-roots level is essential for mitigating this as well as efforts to build solidarity across victim groups.

Civil society engagement is also increasingly vital in conditions where political will to sustain transitional justice processes is weak or diminishing. Strong civil society institutions and networks can advocate for implementation of transitional processes at national as well as international levels. They can also help sustain the discourse on transitional justice and the visibility of key issues. For example, in Sri Lanka, UNDP supported civil society groups to mobilize families of the disappeared from across victim groups and ethnicities to advocate for the speedy operationalization of the Office on Missing Persons in 2018 amidst rapidly declining political will to implement commitments.⁵³

Certain transitional justice processes, particularly memorialization, healing, and community truth seeking, can also be driven by civil society and victim groups and networks. Development assistance, including capacity building and institutional sustenance, is vital in these circumstances.

AREA OF WORK 3

Truth telling processes



The idea of transitional justice first came about as a result of truth seeking and telling processes in Latin America and later in South Africa. As such, they are frequently used as synonymous with transitional justice and appear in some form in most contexts where a transitional justice process is being undertaken.

There is growing research and debate on what constitutes a truth commission: what their functions are and whether they are focused primarily on past violations or also include on-going and systemic violations. In addition, there are larger questions on if they effectively contribute to achieving justice for victims as well as the broader goals of peace and development. There are also discussions on the role that truth commissions are displaying

even regarding the field of action of other transformative processes such as development and institutional reforms, and the consequences that this could have in terms of resources and national capacities. In depth analysis of these arguments and the experiences they are based upon is needed to improve truth telling processes in the future.

Despite the challenges, UNDP has supported the setting up and carrying out of truth commissions in a number of country contexts through promoting participatory processes, seizing windows of opportunity, building a victim-centric evidence base, and ensuring the implementation of the recommendations.

Promoting inclusive processes

Truth commissions are frequently formal state sanctioned institutions. They have the potential to promote healing, identify systemic inequalities, bridge societal fissures, and provide the moral base for calls of social transformation if they promote meaningful participation. They also can contribute to creating an authoritative record of the past,⁵⁴ which when developed through participatory processes can foster

community-level ownership. Ensuring a commission's mandate enjoys jurisdiction over all parties to a conflict is a critical pre-requisite for ensuring the legitimacy of truth-seeking processes.⁵⁵ UNDP has supported significant public and victim consultations prior to the setting up of institutions/commissions including in Tunisia in 2013 and the Gambia in 2017.

Seizing windows of opportunity

The timing of undertaking truth telling processes is very important as there needs to be a high-level of political will to admit wrong doings and validate victim experiences with a view of non-repetition. In Zimbabwe for example, UNDP was able to help the country seize a window of opportunity immediately following the political transition in 2017 to begin a truth telling process. UNDP's in country presence helped to ensure the

National Peace and Reconciliation Commission could meet local expectations and international standards and principles. While UNDP's proactive approach may have been prudent in Zimbabwe, each context is different, and development partners may need to wait longer for things to unfold before engaging to be most effective in other circumstances.

Building a victim-centric evidence base

Truth commissions can provide an evidence base of integrity and broad social group buy-in to justify prosecutions or reparations. In Peru for example, UNDP supported the truth and reconciliation commission⁵⁶ to investigate human rights abuses committed between 1980 and 2000 by the state and 'terrorist' organizations. Peru's commission held Latin America's first public hearings, organized throughout the country, which helped to raise victims' profiles and centrality. Hearings were convened to focus on specific incidents, thematic issues, regional events, and political and institutional responsibilities.⁵⁷ Victim testimony established and acknowledged facts and victims' suffering.⁵⁸ This victim-centric evidence base, constituted the demand for rigorous consideration

of how and why the conduct occurred, and consequently, the most appropriate response to it. Because evidence and data collected by a truth commission may be used and built upon other transitional justice processes, it is especially important that the sample of victims participating in a truth commission be representative of the universe of cases, including women, youth and marginalized groups who may face obstacles in accessing a truth commission.

Implementing recommendations

It is essential that momentum is not lost between truth telling processes and implementing recommendations as the population needs to see visible indicators of change to have trust in the state and the legitimacy of

the transitional justice process. In many contexts, UNDP plays a key role in supporting not only the truth commission but also the implementation of the recommendations.



Tunisia

Supporting the reparation process

In Tunisia UNDP in a jointly collaboration with OHCHR, since 2012 supported a long, participatory process of national dialogue⁵⁹. This dialogue contributed instrumentally to the drafting of the transitional justice law, ensuring that victims' voices were heard and civil society's expectations concerns were incorporated.

As a result of this process, the Truth and Dignity Commission was established, and a number of judicial and non-judicial mechanisms participated to investigate gross human rights violations that were committed in Tunisia since its independence, in order to provide compensation and rehabilitation to victims.

In 2018, the commission completed its mandate by launching the judicial mechanism that will allow the prosecution of alleged perpetrators of past grave human rights violations.

UNDP supported the creation and operationalization of the Truth and Dignity Commission and reinforced its technical capacities in investigating gross human rights violations, preparing a reparation plan to provide compensation and rehabilitation to victims, and drafting recommendations on guarantees of non-recurrence for the past four years⁶⁰.

Throughout the year with support from UNDP, the commission transferred 34 cases to the 13 specialized chambers, created to try serious crimes and submitted its final report to the President of the Republic.

AREA OF WORK 4

Institution building to promote accountability



Building the capacity and independence of national justice sector actors and institutions is crucial for creating a call for accountability from within fostering trust in state institutions and guaranteeing non-repetition of rights violations. UNDP is uniquely placed to support this work as the organization is often already working with the host governments at the time when national prosecutions of core

international crimes are considered. For example, UNDP's rule of law engagement grew to include support to prosecutions of international crimes in BiH, CAR, Cote d'Ivoire, DRC, Serbia, Tunisia, and Kosovo⁶¹, among others, at the request of national partners.

Justice sector capacity building

U NDP focuses on building national capacities to undertake transitional justice processes. Civil society participation and support for victims are considered critical prerequisites to ensuring that institutional capacity building in the formal and informal justice sectors respond to victims' and marginalized groups' grievances. Further, a thorough understanding of the enabling environment, i.e. the political, social, and economic conditions and the level of political commitment of both external actors and national counterparts needs

to be integrated into the assessment and design of any development programme focusing on institutional capacity building and justice sector reforms leading up to accountability processes. This should involve in-depth analyses of the political situation, and of capacities and needs of the various stakeholders (e.g. the ministries and government agencies, parliamentarians, civil society, the judiciary, the media, etc.) and the risks related to engagement or a failure to engage on such critical issues.

Regional cooperation in Western Balkans to strengthen justice responses

In Bosnia and Herzegovina, Serbia, Croatia, and Montenegro, UNDP has supported, since 2017, cross-border co-operation between national prosecution offices as a part of its ongoing Regional War Crimes project. This is critical for war crimes trials in each of the countries since large number of cases involve suspects, witnesses and evidence that are located across the region.

Through its facilitation of bilateral and multilateral meetings of these countries' prosecution offices, and in partnership with the Office of the Prosecutor of the UN International Residual Mechanism for Criminal Tribunals, UNDP helps improve their cross-border co-operation and mutual trust building and increase evidence and information sharing, case transfers, and co-ordination of war crimes investigations between them.

UNDP works also on enhancing mutual co-operation between Bosnia and Herzegovina, Serbia, Croatia and Montenegro through judicial victim and witness support services, including through development of model protocols for their cross-border co-operation in war crimes

cases, so that victims and witnesses are more encouraged to testify in investigations and trials and participate in the justice process with their rights and wellbeing safeguarded.

Through this project, in Bosnia and Herzegovina, UNDP has improved inter-sectoral co-operation between prosecution of war crimes and search for missing persons by, for example, joint training on analytical approach in discovering clandestine mass graves and conducting exhumations for prosecutors, police, and national institutions in charge of search for missing persons, or by supporting their community outreach to the families of missing persons.

Also in Serbia, UNDP has bridged an institutional resource gap by providing to the Serbian Government's Missing Persons Commission equipment for detection and excavation of potential mass graves; at the same time, UNDP works on enhancing public advocacy and resource mobilization skills and capacities of local associations of missing persons families.

The establishment of special courts

U NDP also provides direct technical and operational assistance to specialized mechanisms established to prosecute international crimes, in close collaboration with other UN entities.

A recent example of this is in CAR, where UNDP and MINUSCA supported the set-up and operationalization of the Special Criminal Court. In 2015, a law was passed to create the Special Criminal Court to prosecute and adjudicate gross human rights violations from 2005 - 2013. Support was offered to produce a security plan for personnel of the court and a protection strategy for witnesses and victims, establishing a transparent and competitive process for the selection of national magistrates, and taking necessary steps to allow for the arrival of the seconded international magistrates. The Special Criminal Court became operational as of 2017 and was prepared to investigate, with the appointment of the Special Prosecutor and international and national magistrates and judicial personnel. As of September 2020, the Special Criminal Court has opened 10 preliminary investigations, 6 of which are in the judicial investigation phase and 4 have been referred to ordinary courts.⁶²

One of the challenges following the establishment of special accountability mechanisms is the trend for international support to be redirected to these institutions due to their special nature and significance for international criminal law. These special courts can be some of the most expensive elements of transitional justice processes and specific studies are needed regarding the cost-benefit tests vis-à-vis funds allocated for special courts in comparison with other transitional justice processes such as reparations, as well as broader, longer term reforms that may benefit both victims as well as societies more. However, there is no empirical evidence to suggest that the monies used by special courts, would otherwise be directed towards well-being initiatives or justice sector reforms that could benefit countries more in the long run. On the other hand, there is a growing but still insufficient body of empirical data to support the claim that prosecution of international crimes through special mechanisms, even if hybrid, necessarily results in a more empowered/capacitated justice sector and/or improved rule of law environment, or that it is the most effective instrument for prevention. As such, it is vital for development actors to continue to support national justice systems and enhance access to justice in parallel to supporting special mechanisms.

Security sector reforms

Security forces often play a role in violations during conflict or under repressive regimes, which is why Security Sector Reform (SSR) is considered a priority in institution building. Development support to SSR varies by country context, but often includes technical support to the government, human rights trainings for security officers, and facilitation of dialogue with the military to foster support for SSR from within the ranks. In societies emerging out of conflict, SSR contributes to demilitarizing, rationalizing forces, vetting members and eliminating special privileges. SSR must also define more clearly the roles of the military and police to support the

transition, sustain peace and preserve the rule of law. Many of these processes are part of transitional justice efforts, in particular the vetting of members of the security and defense forces to ensure non-recurrence and play a role in the wider prevention of human rights abuses. In Burkina Faso UNDP provided specialized training to gendarmes and police officers in 2018. UNDP also helped to improve the relationship between people and security forces by building the capacity of the Community Policing Department and local authorities to involve community members in preventing conflict and fighting impunity.

Politically smart programming

While criminal accountability is at the heart of transitional justice, it is also becoming increasingly difficult to achieve in a majority of contexts. For example, there is a significant challenge in preventing supporting selective and politically motivated prosecution of international crimes that could cause a deepening of societal grievances rather than an enabling of social cohesion, potentially serving as a driver rather than a preventive measure for recurrence of mass crimes.⁶³ Assessing independence and impartiality of local courts is therefore a prerequisite of engagement and assistance to those institutions. Many domestic courts have faced the challenge of limiting the prosecutions to a single party or members of ethnic or political groups based on the political context, undermining the broader impact of these complex judicial processes.

It is important to ensure that a criminal justice process treats equitably all victims and accused instead of instrumentalizing victimhood or settling conflict-related scores. UNDP's approach to support criminal justice processes and building of technical and operational capacity amongst civil society and victims' groups is informed by an understanding of these dynamics at the local level.

For example, since 2015, in line with the municipal-level political dialogue process led by the UN, UNDP and the United Nations Support Mission in Libya jointly developed a programme on transitional justice and reconciliation at the local level to facilitate the implementation of the local peace agreement from the Misrata/Tawergha dialogue process including recommendations related to reparations and return to Tawergha. Responding to the roadmap developed by the Misrata and Tawergha Joint Committee that seeks to address some of the fundamental causes of the conflict between the communities, the joint transitional justice programme seeks to facilitate dialogue and raise awareness on transitional justice processes.

AREA OF WORK 5

Reparations and development assistance



In 2005, the United Nations General Assembly adopted by consensus the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁶⁴, provided by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. The guidelines set out a broad scope for the form reparations may take including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁶⁵

In 2014, the Secretary-General published guidance on reparations for conflict-related sexual violence,⁶⁶ recognizing the need for approaches to reparation that are

specifically tailored to the consequences, sensitivity and stigmas attached to these harms in societies globally, and to the specific needs of sexual and gender-based violence survivors.

An important characteristic of reparations is the emphasis on the empowerment and transformation of victims and affected communities. The ability to do so through the provision of tangible forms of redress resonates strongly with people and lends itself well to bottom-up approaches most familiar to development actors. For this reason, reparations are also often cited as providing the clearest link between transitional justice and development.

Objectives of reparations

While human rights treaties importantly respond to violations on an individual basis, reparation programmes are able to include a much wider and more complex universe of victims. The objectives of reparations programmes must include broader inclusive, political, and societal considerations alongside those related to the individual.⁶⁷ In the *2014 report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Pablo de Greiff stresses that to meet these objectives, we must move past the idea that individual compensation needs to be proportionate to harm determined via judicial processes. This understanding is also critical to countering potential efforts by the state - using questionable economic arguments - to exclude entire victim categories for political ends.⁶⁸

Reparations, as a political project, should seek to advance the goals of 'recognition', 'civic trust', and 'social solidarity' via the distribution of direct benefits to victims.⁶⁹ Recognition, civic trust, and social solidarity are all only possible, when victims are engaged proportionately, transparently, and representatively, so that empathy is based on mutual victimhood and not diluted by inter-group distrust. Reparations should strive to have a transformative effect on social inequalities, rather than reinstate or reinforce the structural conditions which made such violations possible. Reparations have the potential to trigger important changes, even if they alone cannot transform the root causes of violations.⁷⁰

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State obligations and inherent challenges

In conflict and crisis-affected situations, where state resources are often scarce, providing full compensation, restitution, and damages to high numbers of victims may not be entirely feasible even if there is political will.⁷¹ This is particularly pertinent in the context of other legitimate state obligations in a post-conflict environment. Pursuing individualized judicially determined reparations under such circumstances tends to enable a first-come best-served scenario, where those with greatest access derive the most. For example, in Colombia, the government allocated one-time payments to families of disappeared corresponding to 40 minimum monthly salaries⁷²; selection of payment was largely informed by feasibility rather than principle.⁷³

Besides cost, governments may have other reasons for refraining from recognizing cases for reparation, accepting responsibility for violations, and/or accepting that violations warrant reparation. States may also design their reparations programmes to exclude certain victims' groups by determining what conduct is included, when and where it had to occur, and to what groups (or by what group) the conduct was perpetrated.⁷⁴ In such cases, development support to victims can be leveraged to drive civic pressure for government acknowledgement and engagement in reparations. Further, the inclusion of a marginalized group in the economy also demonstrates the economic power of inclusive growth, and the transformative power of reparations.

Development assistance is never an acceptable replacement for reparations, but maintaining a distinction is not always easy. Development focuses on meeting people's needs and reparations focuses on addressing victims' harms. Often, victims' harms and needs stem from the same wrongful acts,⁷⁵ e.g. the disappearance of a family's primary breadwinner has both harmed the victim's family and resulted in an acute livelihood need.

Further, the distinction between reparations and development may also not be clear or important to some victims. Victims facing the limitations of time and resources often prioritize their efforts on meeting their basic needs and those of their children over receiving reparations.⁷⁶ There may also be situations where victims specifically identify development assistance as the remedy for the crime committed against them. Additionally, the aims of transitional justice processes sometimes include the righting of socio-economic violations. Given the potential points of conflation between development assistance and reparations, representative victim participation in identifying the desired forms of reparations is crucial in distinguishing and/or authenticating complementary processes. Victim participation is also essential in guiding implementation in a manner that is beneficial to individual victims as well as societies in transition as a whole.

Development actors can act as an intermediary between victims and governments in weighing the efficacy of reparations approaches. A development approach to reparations can help ensure that the state does not buy victims' silence through material means, but instead, actively builds civic trust, enhancing its relationship with its people and contributing to longer-term peacebuilding and sustainable development goals.

Individual and collective reparations

Conventional approaches to reparations include limited individual compensation and symbolic measures. Limited compensation ordinarily only addresses immediate needs or past debts for victims. Recipients are then left to finance and manage the longer-term physical, mental, or material consequences of harm themselves. This also leaves the inequalities that caused the harm and inform the impact unaddressed.⁷⁷ Development actors can assist the state to fill some of these gaps through administrative processes that ensure accurate victim identification and that proportionate and victim-informed selection, design, and provision of reparations is undertaken. However, the international community has traditionally been reluctant to fund reparations programmes, in part due to the state responsibility attached to it. In general, collective forms of reparations with broader objectives of building and sustaining peace and development, which can be effectively linked to the realization of the SDGs are better suited for development assistance than individual reparations sought and obtained through judicial processes.

For example, since 2017 UNDP has worked together with the Colombian Victims Unit in the implementation of its Collective Reparations Program⁷⁸. Through this joint effort, *The Victims Committee* became active agents of collective reparations through a variety of measures in the areas of education, psychosocial care, economic empowerment and livelihoods, community infrastructure, and preservation of ancestral cultural practices, among others. The programme enables a concrete connection between sustaining peace and working towards achieving the SDGs, including SDG 16, SDG 1, SDG 4, and SDG 5.⁷⁹ As of December 2019, the Victims Unit had recorded more than 730 collective reparations between groups, communities, organizations, movements, and ethnic communities. At the beginning of 2020, the institution ended the Integral Action Plans and measures of 22 collective subjects.

Collective reparations programmes, unbound by the constraint of merit-based assessment of individual cases, can respond to a broader victim community and enable a new political community based on victim solidarity.⁸⁰ Collective reparations are also designed to appropriately respond to mass crimes and systematic violations, rather than exceptional and individual norm-breaching behavior as envisaged by international human rights law. One approach to collective reparations is to group victims based on a common identity or common victimhood from a specific violation. However, this may foster discontent amongst victims who suffered an elevated gravity of harm in comparison to others; this is a consideration that individual reparations better account for. A second approach to collective reparations seeks to alleviate potential grievances based on discrepancy between different victim classes by providing reparations based on the crimes' impact, common location, victim demography, or victims as a single collective.

Collective forms of reparations also enable both material and symbolic approaches to reparations. Material reparations constitute compensation, in the form of cash, other payments, or packages of services, including education, health, housing, or other forms of economic development. Many of these programmes are usually already provided by development agencies in countries pursuing transitional justice processes and can be tailored to assist victims' needs and serve reparatory objectives. Clarity and specificity of reparatory purpose is essential for land, health, education, and dispute resolution forms of reparations as equal access to land, government services, and justice are critical for non-repetition.⁸¹ Development actors can also support symbolic measures, such as community-based memorialization and healing programmes, which build resilience and solidarity within communities.

AREA OF WORK 6

Strengthening the rule of law and human rights to support guarantees of non-repetition

UNDP's transitional justice assistance, particularly in post-conflict environments, is situated within broader rule of law and human rights support, including for institutional reforms, disarmament, demobilization, and reintegration, anti-corruption, etc. UNDP's trusting relationships with national actors across sectors enables a whole-of-government approach to strengthen the rule of law and human rights to improve guarantees of non-repetition. UNDP also draws on long-standing partnerships with civil society to engage rights-holders.



Transitional justice efforts in support of non-repetition

One of the main objectives of transitional justice processes is to support non-repetition. Special mechanisms set up as part of transitional justice processes can promote certain aspirational qualities, thereby modelling the desired reform. They can also actively advocate for certain types of reforms as key to non-repetition. For example, truth commissions, in Guatemala, Kenya, Liberia, Peru, and Sierra Leone have all worked to address institutional problems and have recommended reforms.

In Colombia, transitional justice is a major focus for UNDP. Born out of the Peace Accords between the Government and FARC, the Integral System of Truth Justice Reparation and Non-Repetition is a centerpiece in the pursuit of sustainable peace and justice. A major contribution by UNDP, with MPTF funds, was the early setting up (operational readiness and bases for their strategic plans) of the three components of the system before they were officially institutionalized as autonomous state entities: The Truth Commission, the Special Jurisdiction for Peace, and the Search for Missing Persons Unit.

Similarly, reparations programmes can also be designed to enable structural socio-economic change and include for example, institutional reform that more equitably distributes state resources. Where the structures of state and non-state institutions enable the provision of arbitrary discretion to unaccountable actors, nepotism, ethno-regional discrimination, and other forms of exclusionary and discriminatory forms of governance thrive. Institutional reforms as part of reparations should be considered to confront discriminatory governance across spheres, enabling equitable and inclusive distribution of social justice and development opportunities and addressing drivers of conflict. Such reforms can advance transformative initiatives that mitigate gender, ethnic, religious, racial, and other social cleavages, advancing social cohesion and enhancing economic performance.

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Development interventions in support of non-repetition

In addition to special mechanisms, reparations programmes, and building the capacity of justice sector institutions outlined in the previous section, broad interventions in relation to governance, oversight, security, education, and media, among others, are needed to support non-repetition. Some common development entry points to strengthen the rule of law and human rights in conjunction with transitional justice processes with an aim of non-repetition are as follows:

VICTIM-FOCUSED INSTITUTION BUILDING



Specific institution building measures, including: the creation of government agencies specifically mandated to support victims' access to redress for serious violations; the training of victim liaison officers in courts and the police force; victim-focused outreach; legal and medical awareness programmes; the building of separate, sound-proof interview rooms or waiting areas in police stations and court rooms, etc. can help to maintain a focus on victims throughout transitional justice processes and support non-repetition. For example, in BiH, from 2010 to 2016 UNDP supported the establishment of seventeen victims and witness support offices that are fully integrated into the courts and prosecution offices across the country. The centres have increased the efficiency of proceedings, as well as the number of victims and witnesses who received adequate emotional, legal, physiological, and logistical support before, during and after court proceedings.⁸²

VICTIM PARTICIPATION AND OVERSIGHT



In addition to the design of explicitly victim-focused transitional justice processes, such as reparations programmes, victims' views should be incorporated as much as possible. For example, victims' representatives should be sought for oversight or review bodies involved in vetting processes or the design of other reforms as part of guarantees of non-repetition, as well as in local and national political bodies and processes. Development actors should also promote more inclusive development planning processes that specifically include victims and other affected communities as well as marginalised groups and persons with disabilities. This helps to ensure that specific needs are factored into plans and are discernible in budgetary allocations. For example, in 2017, UNDP supported the establishment of two victim's groups within Protection of Civilian sites in South Sudan, composed of 79 men and 351 women. The groups provide psychosocial support to victims of the conflict and facilitate entry points for victims to access transitional justice mechanisms, including reparations and accountability processes. The groups also provided a platform for victims needs to be heard within national dialogues, including with members of parliament.

ADDRESSING GENDER INEQUALITIES



Women and girls are often disproportionately affected as survivors of individual violations and structural discrimination. There is also considerable data to support the assertion that there is a direct relationship between gender equality and resilience to and prevention of conflict.⁸⁴

Guarantees of non-repetition have an important potential for being transformative for gender equality, in that they imply the need for structural and institutional reforms.⁸⁵ To capture this transformative potential, reforms need to take deliberate steps to dismantle unequal power structures and protect women's rights, which in turn can create a culture of equality and contribute to changing structural

discrimination and patriarchal gender narratives. Some examples of actions that could be taken to advance gender equality as part of transitional justice processes include: ensuring quotas for women's representation in leadership roles and political processes; genuine and regular consultations with women and women's civil society organizations during design, implementation, and monitoring; instituting policies and procedures for protecting the security and dignity of women victims and witnesses; and compensation for costs related to participation such as travel and childcare. Development actors also need to work closely with women's organisations and support them to lead participatory transitional justice processes as well as provide support to address SGBV and equal access to resources and opportunities

PAJUST and support to the Sepur Zarco historic case

In Guatemala for example, UNDP's Transitional Justice Accompaniment Program (PAJUST-Programa de Acompañamiento a la Justicia de Transición) supported to the continuing progress of the Sepur Zarco case and to survivor's empowerment through the promotion of a model based on comprehensive assistance — legal and psychosocial support—, to achieve women's empowerment so they can be confident and talk openly about the events, seek for justice, and inspire other survivors to break the silence. This was made jointly with The Alliance Breaking Silence and Impunity which is made up by Women Transforming the World (MTM), National Union of Guatemalan Women (UNAMG), and the Community Studies and Psychosocial Action Team (ECAP), who supporting the women survivors in their pursuit of truth, justice and reparation.

The methodology used included individual and collective work, support groups and self-help techniques. This work was carried out from the cultural context, language and values of women as part of the Maya Q'eqch'í community. In recognition of the risks that breaking the silence could pose, support was provided for the safety of Sepur Zarco women.

This has been complemented with support for obtaining expert opinions in various disciplines: medical, cultural, linguistic, military, historical, sociological, psychological, anthropological-forensic, among others. Through this multidisciplinary approach, the political-military, social and cultural context in which the crimes occurred was documented in court.

Likewise, PAJUST has strengthened capacities of the General Prosecutor's Office by providing technical assistance to carry out strong investigations on sexual violence from a gender perspective. As part of this support, a guideline on investigation and creation of legal strategies was designed to support crime proceedings for sexual violence events committed during the internal armed conflict, and the methodology for a participating development of proposals regarding the dignified and transforming reparation on survivors' assistance⁸³.

LEGISLATIVE REFORM



Legislative reforms may be needed in both substantive and procedural laws to recognize victims' rights, as well as substantive laws to ensure that human rights violations are criminalized. Reform of laws which discriminate against women is also an important guarantee of non-repetition for women's rights violations. Development support for legislative reforms may also include education and advocacy on the changes as well as drafting assistance. For example, UNDP supported legislative reform in relation to access to land and property rights -in Afghanistan and Sierra Leone- and legal documentation efforts in Sri Lanka.

CONSTITUTIONAL REFORMS



Constitutional reforms can range from repealing discriminatory provisions and adopting mechanisms of inclusion to strengthening the separation of powers or redistributing power. Other related reforms include incorporating a Bill of Rights or establishment of a constitutional court. The most ambitious aim would be the adoption of a new constitution; however, this may result in some instability and transitional periods may not be the most opportune time to pursue such drastic reforms. These risks need to be weighed against the opportunities for the particular context. In most cases where constitutional reforms are intrinsic to addressing the root causes of the conflict, a gradual approach should be adopted. As constitutional reforms processes are extremely sensitive, support provided by an external actor should not be too visible and undertaken in a nuanced and non-prescriptive manner. For example, in 2018 the UN helped to strengthen coordination and communication between Truth, Reconciliation, and Reparations Commission in The Gambia and the Constitution Review Commission, to maximize impact in the years to come.⁸⁶

STRENGTHENING NATIONAL HUMAN RIGHTS INSTITUTIONS



National human rights institutions (NHRIs) are permanent structures capable of sustaining some of the work undertaken by transitional justice mechanisms. As such, effective reform and transitional justice strategies include supporting NHRIs to become stronger, more independent, and more engaged institutions. Continued resources and technical support are vital for this, and care must be exercised to ensure NHRIs do not have to compete for support with newly established transitional justice mechanisms. For example, in 2020 the Rule of Law, Security and Human Rights Global Programme and the Tripartite Partnership with UNDP-OHCHR -GANHRI project in The Gambia, are providing joint support to strengthen the capacities of the National Human Rights Commission of The Gambia to fulfil their mandate and to enhance their coordination with the Truth Commission⁸⁷.

ADDRESSING CORRUPTION



There is growing interest in linking anti-corruption work with transitional justice. One of the reasons for this is that corrupt individuals are also often those linked to human rights violations. As such, holding these individuals accountable for their actions, together with broader programmes of lustration within government structures, can not only support institutional reforms, but also help to address impunity as a whole. In addition, addressing corruption concurrently with pursuing transitional justice can also support the recovery of misappropriated assets. In Guatemala for example, in response to the demands from civil society, the International Commission Against Impunity in Guatemala was formed to address high-level corruption and organized crime. Given the close connection between corruption and crime, International Commission Against Impunity in Guatemala's work from 2007 to 2019 contributed to the fight against impunity for past human rights violations.

WORKING WITH THE MEDIA



The role of media in conflict and post-conflict settings received attention in the aftermath of the Rwandan genocide and war in the Balkans. Since then, there has also been a focus on reforms that seek to prevent the media from provoking conflict as well as its potential to promote peace. Development actors have supported these efforts by strengthening regulatory frameworks and fact checking systems, improving strategies and platforms to give as many people as possible a voice particularly victims and marginalised communities, and prompting a greater role for media in early warning systems. There are a number of challenges that the media face in carrying out their roles, particularly with the growth of social media. This further reinforces the imperative for continued support to strengthen independent and autonomous media. For example, UNDP and the United Nations Department of Political and Peacebuilding Affairs supported the Peace Caravan initiative⁸⁸ in Zimbabwe to mobilize citizens to support the peace efforts in the country in the build-up to the elections and beyond.

They worked with a multi-media company to design key messages and outreach material for the public engagement which reached over 17,000 citizens directly. In addition, in Tunisia, UNDP worked to ensure wide media coverage of the public hearings, which helped raising awareness of the human rights abuses committed from 1955 to 2011 and put pressure on the state to recognize the violations that took place. Between November 17th, 2016 and December 15th, 2018, 14 public hearings were organized with the participation of 57 victims (including 22 women). The seventh was focus on human rights violations against women. Also in BiH, Croatia, Montenegro, and Serbia UNDP started, in 2019, a series of training of journalists on reporting on trials, reparation and other transitional justice issues.

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Institutional reforms as part of reparations should be considered to confront discriminatory governance across spheres, enabling equitable and inclusive distribution of social justice and development opportunities and addressing drivers of conflict ”

EDUCATIONAL REFORMS



Most educational reforms following conflict or authoritarianism have adopted development and peacebuilding perspectives. However, there is a growing call for more analysis on the direct links between education and transitional justice processes in connection with development and peacebuilding. Truth commissions in a number of contexts have made recommendations with regard to educational reforms on physical aspects, such as addressing segregation, and increasingly on curriculum reforms and skills-building for teachers to be able to inform children about the conflict and its impact, issues of exclusion and discrimination, and

respect for human rights. Educational reforms have also included removing structural and material barriers to accessing education. Education has also been provided as a form of reparations to communities who may have been actively denied such opportunity. There have also been several examples of child-friendly versions of truth commission reports supported by development actors. For example, the United Nations Children's Fund supported the child-friendly version of the Sierra Leone Truth and Reconciliation Commission Report in 2003. In addition, the International Center for Transitional Justice produced an educational handbook in 2015 to help young Kenyans discuss and learn about their country's past. Likewise, UNDP Guatemala have a good experience on a educational plan on historical memory.



Guatemala

Memory building for peace

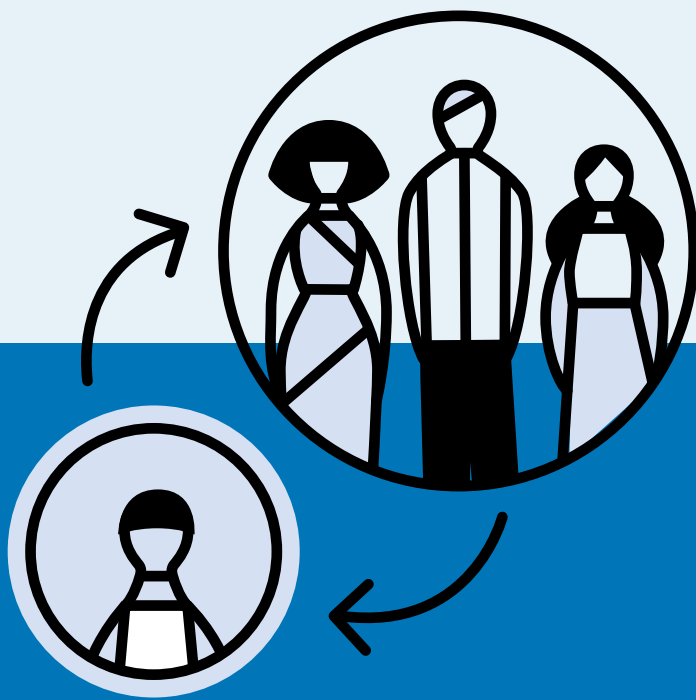
In 2017, Guatemala UNDP PAJUST-project, through the alliance with Ministry of Education, Technical Taskforce on Education for Peace, UNESCO and OHCHR, contributed to implement a new citizenship education pilot plan. More than 600 teachers from 90 educational centers, in 7 departments of the country were part of the initiative, and 15,700 students at public and private schools at all education levels were benefited.

As a result of the satisfactory implementation of this process, the Ministry of Education institutionalized this National Citizenship Training Strategy (Estrategia Nacional de Formación Ciudadana), complying one of the (36) recommendations made by the Commission for Historical Clarification (CEH) regarding the education and awareness of the new generations on the events that occurred during the war.

Furthermore, this strategy has largely contributed to improve the quality of citizenship education in schools by using innovative methodologies, for teachers and students in order to develop competences in fields regarding historical memory, human rights, democracy, education for peace and diversity, and interculturality, as well as methodology guidelines designed for each education level with updated information⁸⁹.

AREA OF WORK 7

Linking Transitional Justice and Disarmament, Demobilization and Reintegration



Closely coordinating transitional justice and disarmament, demobilization and reintegration (DDR) processes has for a long time been considered as one of the key challenges of peace efforts in societies emerging from conflict.⁹⁰ DDR programmes are at times perceived by communities as prioritizing perpetrators of violence over victims' right to justice, leading to the 'peace vs. justice' dilemma among the peacebuilding and development communities. Yet, if properly sequenced and well-coordinated, Transitional Justice and DDR can create synergies during a peace process that will increase the chances for more sustainable peacebuilding and development. Three main issues can be singled out, that need to be adapted to the changing environment of conflicts and local realities, and require closer the coordination of Transitional Justice with DDR:

DDR as guarantees of non-repetition

For Transitional Justice, DDR is often considered as a guarantee of non-repetition. The underlying logic is that successfully reintegrating combatants and persons associated with armed groups into civilian life by removing weapons and incentives to fight presents a way of ensuring that these individuals no longer pose a security threat to their communities. Today, however, the reality in contexts where armed groups operate is generally more complex. DDR may be included in peace agreements that offer no other incentives to armed groups to disarm. Or a peace process may not include all armed groups meaning that even those who are willing to sign an agreement become reluctant to do so, as they feel threatened by groups outside the process. Or simply the community-based armed groups that lack command and control structures may not be cohesive enough to engage in higher level peace negotiations.

In response to these challenging dynamics, new types of interventions such as combined community violence reduction and reintegration initiatives have emerged to reduce violence at the community level, without proceeding with a formal disarmament and demobilization of members of armed groups. It is therefore more crucial than ever before that DDR programmes and new types of interventions addressing exits from armed groups closely coordinate with transitional justice processes to counter a culture of impunity, take advantage of opportunities for truth-telling and reparations at national and community level, and foster communal support for the reintegration of ex-combatants and persons formerly associated with groups to realize the potential of DDR and new interventions supporting exits from armed groups as a guarantee of non-repetition.

Vetting of members of armed forces and groups

This is the intersection of Transitional Justice and DDR most commonly discussed by practitioners. Where a DDR programme is in place, any potential participant needs to undergo screening for commission of serious crimes in accordance with human rights due diligence. The current SG Guidance on Transitional Justice therefore requests that ‘ex-combatants who have committed or against whom the indictments, judicial investigations or credible allegations of perpetrating serious crimes are pending’ are to be excluded from reintegration.⁹¹ The aim is to avoid that perpetrators of crimes are ‘rewarded’ by the DDR programme and return to their communities. This may lead to tension that could end up escalating the conflict or lead to other delays in a communities’ development process as they are grappling with the past.

The same applies to the vetting of members of the security forces or of members of armed groups who are considered for integration into security forces. Where these forces were involved in active fighting with armed groups and are reported to have committed serious crimes, they need to be vetted and screened by a third party according to international human rights standards. Members of armed groups should also be vetted prior to integrating security forces. As both processes are frequently criticized for only screening out a very low number of combatants, the engagement of all key partners including UNDP in reviewing these processes is crucial.

Community-based reintegration as reparations

UNDP is at the forefront of designing new types of programmes that are adapted to the specific conditions found in a single community, by taking that community's needs for justice into account. In the Kasai region of the DRC, members of an armed group voluntarily disarmed and demobilized, and expressed their intention to return to their community. Transitional Justice efforts in the same region were ongoing and supported by OHCHR and other partners. In order to

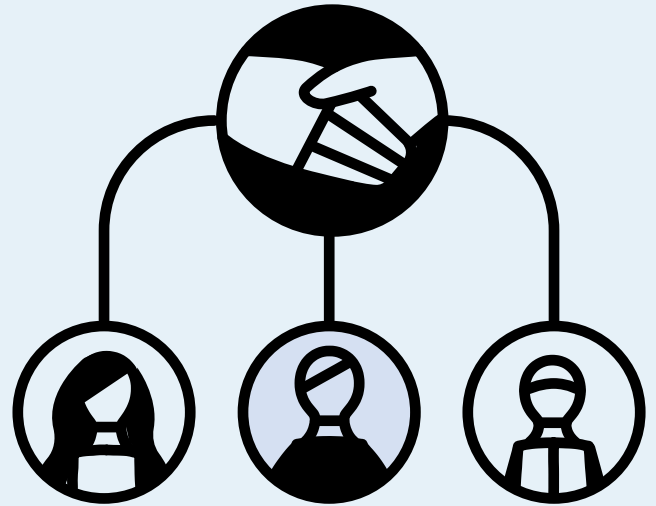
avoid that tension would arise in the community once the ex-combatants would return, UNDP launched a project in December 2019, jointly with OHCHR and IOM, combining community-based reintegration with Transitional Justice, by engaging former combatants in labour-intensive work consisting of rehabilitating infrastructure as a means of providing collective reparations to communities.

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(...) successfully reintegrating combatants and persons associated with armed groups into civilian life by removing weapons and incentives to fight presents a way of ensuring that these individuals no longer pose a security threat to their communities (..) ”

AREA OF WORK 8

Conflict prevention and sustaining peace



In matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure. Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between states, can be addressed in a legitimate and fair manner. Viewed this way, prevention is the first imperative of justice. 99

– Former UN Secretary-General Kofi Anan⁹²

The conflict prevention and sustaining peace paradigms

In his *2004 report*, former UN Secretary-General Kofi Anan provided an early recognition that transitional justice and rule of law both need to look at prevention as a policy orientation and their genuine order of business.⁹³ In 2015, the *2030 Agenda for Sustainable Development* explicitly recognized development's role in building and sustaining peace.⁹⁴ Since then, the emphasis on prevention in all facets of the UN has only deepened, with the UN Secretary-General António Guterres, *statement in 2017* that “prevention is not merely a priority, but the priority...”⁹⁵ Further, independent UN reviews of the *peacebuilding architecture* and *peace operations* as well as twin resolutions passed in the *UN General Assembly* and *Security Council*⁹⁶ called for expanding the prevention timeline, range of actors, and spectrum of preventive measures. The concept of sustaining peace has thus come to encompass a new approach to prevention aimed at supporting the 2030 Agenda and SDG 16 in particular. By extension, transitional justice approaches in addressing violations and preventing repetition feature strongly within this framework. There are also indications that in general the conditions on the ground in countries (i.e. normative frameworks, evidence-based and practice-induced knowledge, as well as resulting incentives) are changing in favor of more active engagement and investment in prevention.⁹⁷

Despite the primacy of prevention, there is still a challenge in transitional justice processes to effectively address the drivers of conflict identified in its analysis of historic systematic violations. Several reasons for this have been recognized. Firstly, the fulfilment of the rights of direct victims - and the need to overcome tremendous perils to achieve this - often outweighs the needs of more abstract beneficiaries further down the line. Secondly, at times redress mechanisms are considered to already play a preventive role without the need to introduce additional measures for conflict prevention specifically. Thirdly, the empirical evidence is still inconclusive on the causal relation between individual measures and ability to prevent recurrence.⁹⁸ Fourthly, prevention in the sense of sustaining peace⁹⁹ also entails sustainability of engagement that requires a multi-generational commitment and investment in institutions and civil society, which has proved to be difficult to maintain in both local and international political environments. Finally, the measures intended to guarantee non-recurrence are yet to be fully situated within the broader sustaining peace architecture.

Addressing the root causes of conflict

Addressing the root causes of conflict is the connecting factor between the dealing-with-the-past paradigm and the prevention paradigm and where the field of transitional justice is positioned. Grievances derived from real and perceived political, economic, and social exclusions of groups, along with gender inequality, are increasingly considered as constituting some of the underlying drivers of violent conflict. Thus, addressing exclusions becomes the primary task of sustaining peace and ensuring short- and long-term prevention.

Transitional justice provides a process that allows for learning from past incidents of violence to prevent similar events in the future. Truth-seeking mechanisms for example, can provide a roadmap for addressing political, social, and economic conditions that have instigated conflict outbreak and contributed to human rights violations. The establishment of these types of mechanisms can also signal the political commitment to long-term transformational remedies for those that have been subject to violence, discrimination, and marginalization to benefit society as a whole. These efforts must be sustained through national electoral cycles and leverage other mechanisms and resources for societal change.¹⁰⁰

Transitional justice mechanisms alone will never be effective in building confidence in the state if impunity persists and victims fail to receive adequate reparations for the harm suffered. Issues of accountability and reparations for victims need to be equally attentive to conflict drivers and the do not harm approach. As such, transitional justice processes need to be particularly cognizant of not instituting justice processes that focus on certain groups over others. This requires a methodology that is attentive to effective inclusion of key constituencies and all parties to the conflict.

One concern related to the imperative to sustain peace is that this can be misconstrued to mean maintaining an absence of violent conflict (negative peace) and result in efforts for security being focused over the attitudes, institutions and structures which create and sustain peaceful societies (positive peace)¹⁰¹. This is counter-productive to conflict prevention in the long run and the true objectives of sustaining peace. It's important to recognize that addressing issues of accountability and instituting reforms can cause some degree of instability and even conflict; these tensions need to be actively addressed and the impacts thereof mitigated, whilst also building community resilience.

Strategies for resilience-building

Strategies to build resilience through transitional justice processes need to focus both on upstream and downstream prevention. On the upstream side,¹⁰² efforts to develop approaches, tools, and incentives for transitional justice need to gradually shift some of the emphasis on recovery to prevention of the conflict. In terms of downstream prevention, the importance of a number of lessons highlighted in the sections above are heightened, particularly the need for participatory approaches to transitional justice and a focus on consultations and outreach. Further, the task of prevention needs to be framed beyond response to violence and towards preparedness of all societies to tackle conflict risks. Points raised throughout this report in relation to non-repetition endeavors focusing not only on reform but also institution-building are also particularly relevant. Further, the role of civil society, especially that of women's groups and youth collectives, also needs to be actively enhanced.

Identifying risks in a timely manner and devising a coherent strategy for action between peace and security, development, and human rights organizations will also be critical. The Human Rights Up-Front initiative, established in the UN Secretary-General's office, assists with identifying early risks of atrocities and violent conflict escalation to better position UN interventions for prevention.¹⁰³

The ultimate form of prevention lies in creating a resilient political culture and civic outlook that promotes inclusive and peaceful resolution of conflict. Given the long-term commitment needed to improve human conditions, development actors have an essential role to play in the task of sustaining peace, including through supporting transitional justice processes. However, it is truly a whole-of-society effort at both local and international levels, where everyone's contributions are needed to realize sustainable peace and development.

Key Lessons and Recommendations



Many lessons learned and recommendations on pursuing a development approach to transitional justice have been documented throughout this paper. The below points represent key lessons from each of the main work areas discussed.

1. Victims are not one group, and do not all seek justice in the same way. The complexity of this needs to be embraced in a transitional justice process and navigated jointly with partners. A coordinated approach must be used to identify victims and their needs, source credible data, and ensure adequate representation and support.
2. The participation of victims is necessary to understand the needs and demands of the victims, and to be able to repair their rights and dignity. It is essential to understand that the participation of victims is a process and not an event. Therefore, preparation to maintain the participation of victims is essential, as well as the support of development actors through capacity building, awareness-raising, and the creation of safe spaces for dialogue and discussion.
3. The creation of broad government and civil society coalitions and platforms for transitional justice is essential for comprehensive and sustainable outcomes. Participatory processes are effective at building trust and fostering national and local ownership. Effective inclusion of key constituencies and all parties to the conflict is crucial to ensure that transitional justice processes contribute to social cohesion rather than further division. Women's and youth groups need to be actively engaged – as they are often disproportionately affected by conflict and have significant potential to bring about social transformation.
4. Continued and sustained outreach is key to a successful transitional justice process and civil society plays an important role in this. Public support and civic space for the telling of multiple narratives needs to be cultivated as well as empathy and social solidarity with victims. Misinformation needs to be fought with consistent messaging promoted through multiple channels of communication.
5. Truth telling processes that are carried out in a participatory manner and at the right time have the ability to promote healing, bridge societal fissures, and provide the moral base for calls of social transformation. It is important that truth telling processes are seen through to implementation of recommendations and do not end after the documentation of abuses is complete.
6. While the provision of reparations is the responsibility of the state, development assistance can help to ensure that reparations programmes actively build civic trust and contribute to longer-term peacebuilding and sustainable development goals. The form of reparations programmes should be identified by victims and tailored to fit the context.
7. The goals of supporting prosecutions to bring about an end to impunity and strengthening of national justice system are interdependent and mutually re-enforcing. Specialized mechanisms to prosecute international crimes should be supported in parallel to efforts that strengthen national systems and enhance access to justice in order to promote accountability and sustainability of progress. An understanding of socio-political dynamics at the local level must underscore support to state institutions in order to not deepen community grievances.

8. To support guarantees of non-repetition, transitional justice programmes must be complemented by broader efforts to strengthen the rule of law and human rights. In most cases, reform efforts across many sectors – from justice and security to education, housing, others – are needed to remove discriminatory practices, address power imbalances, and protect human rights.
9. Transitional justice's linkages with DDR deserve special consideration as a means of screening out perpetrators and ensuring the end of impunity and victims' right to justice. Such approaches can effectively foster peace while also achieving justice through guarantees of non-repetition, vetting and reparations.
10. Transitional justice can effectively contribute to conflict prevention and sustaining peace. However, the long-term social and political struggles for justice and equality cannot be solved by transitional justice alone. Acknowledging and actively fostering linkages between transitional justice, development, security and peacebuilding can help overcome some of challenges of advancing transitional justice in current contexts and build community resilience.

UNDP's experiences documented throughout this paper also point to pragmatic suggestions for practitioners designing and implementing transitional justice programmes in diverse contexts. The foremost of these recommendations are presented below.

RECOMMENDATION 1

Develop and maintain a long-term vision for transitional justice while remaining ready to leverage windows of opportunity that manifest in the short-term. This requires multi-disciplinary teams and nuanced decision-making, as well as flexibility in programming and implementation, based on thorough and regularly updated context and risk analyses. Some interventions, particularly those involving institutional reforms may also need to be carried out on a repetitive or cyclical basis in order for system-wide and transformative change to manifest.

RECOMMENDATION 2

Avoid replicating models of transitional justice from other situations by developing context-based solutions. Maintain a focus on providing truth, justice, and reparations to victims but situate transitional justice processes within the broader development and peacebuilding efforts taking place. Collaborate with partners working to address the root causes of conflict to bring about true socio-political and economic transformation.

RECOMMENDATION 3

Where there are calls for an establishment of a special justice mechanisms, advocate for a consistent focus on building national capacity. The effectiveness of these prosecutions largely depends on the level of functioning of the entire justice chain. Also ensure that actors already working on the rule of law in country are actively involved in the design of new accountability measures.

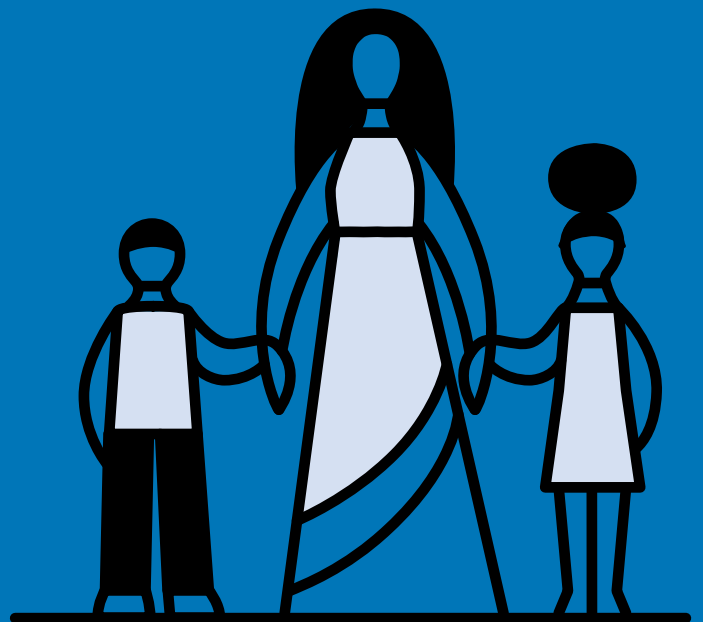
RECOMMENDATION 4

UNDP should integrate much more effectively transitional justice into its DDR, community violence reduction and reintegration programming. Opportunities to achieve transitional justice through such programmes can be identified when: i) DDR is programmed to function as a guarantee of non-repetition; ii) the vetting of members of armed forces and groups is conducted in close coordination with transitional justice aims and interventions; and iii) community-based reintegration become recognized as collective reparations for victims and communities affected by conflict.

RECOMMENDATION 5

Establish a programmatic link between transitional justice processes and the SDG framework at the national level. This can help advance transitional justice objectives even under circumstances of declining political will or frustration with special mechanisms. In addition, some of the resources available for the implementation of the 2030 Agenda may be able to be used to support transitional justice and close the justice gap.

Way Forward



At the time of publication of this report, the world is grappling with the COVID-19 pandemic. This has closed many windows of opportunity for transitional justice processes as states focus their efforts on other urgent priorities and put in place measures to curb the spread of the virus; and at the same time, the effects of the pandemic have made transitional justice and its objectives even more important.

Demands for justice and equality have been sweeping the globe as the pandemic has laid bare inequalities and uncovered long-standing grievances, including pervasive racism in systems of governance. Some state responses to the pandemic have been principled and even handed, while others have escalated the situation, committing human rights abuses in the guise of public health. Some of the ways societies have adapted to the COVID-19 pandemic, have also had human rights and equality implications. For example, women have disproportionately to men taken on the burden of childcare as schools have closed. And, rates of domestic violence have increased globally as some women and children have been isolated at home with their abusers and support services are limited.¹⁰⁴ The rapid digitalization of government services, while important when social distancing measures are in place, also pose risks to data privacy and can deepen inequalities when not everyone has access or understanding of the technology.

International partners and development practitioners must maintain a focus on transitional justice during COVID-19 response so that these processes can be pursued as soon as they are able to in conjunction with longer-term recovery efforts. In some contexts, transitional justice may be an appropriate vehicle, or can be drawn upon to inform the design and implementation of other processes to address historical grievances and human rights violations uncovered or brought on by the COVID-19 pandemic. Strengthening national justice systems is also of critical importance at this time to ensure people have access to justice, their rights are protected, and respect for the rule of law is maintained.

The COVID-19 pandemic has proven that we need integrated efforts to promote peace and security, human rights, and development and that the health and wellbeing of people and planet depend upon it. Transitional justice is a discipline that was developed to navigate these intersecting issues and will remain an important piece of the puzzle to foster sustainable peace and development.

Transitional justice processes help to strengthen the rule of law and human rights, promote systems for voice, inclusion, and solidarity, build trust in institutions, advance gender equality and maintain momentum in peaceful transitions. As such, they are a key part of UNDP's *COVID-19 response* in the area of effective governance - helping to build a new social contract and supporting decision-makers to manage complexity to move beyond recovery and towards the achievement of the 2030 Agenda.¹⁰⁵

Apart from situating transitional justice within a COVID-19 reality and utilizing its tools to support recovery efforts and ensure that we build back better, the discipline also needs to evolve in other areas. For example, protracted crises and the presence of violent armed groups and foreign terrorist fighters continues to plague many states. Transitional justice processes need to be more firmly linked with DDR efforts in order to help states overcome cycles of violence and create pathways to peace. In addition, the intergenerational dimensions of trauma need to be better addressed through transitional justice to foster trust in the state. Youth in particular, must be more meaningfully engaged as change agents for peace and justice in their communities. The efficacy of the softer aspects of transitional justice, such as memorialization and reconciliation, should also be further examined, particularly as we see a growing number of non-traditional transitional justice contexts where these processes could be useful in creating peaceful, just, and inclusive societies. Lastly, the contributions of restorative justice practices and informal justice systems to further the aims of transitional justice should be analysed and the connections strengthened.

UNDP remains committed to supporting transitional justice processes around the world and partnering with other UN agencies and international organizations to take forward these important areas of work. The lessons learned and experiences outlined in this document provide us with the resolve to keep working for truth, justice, and reconciliation, and will inform our efforts to create peaceful, just, and inclusive societies over the years to come.

UNDP approach, will remain in supporting and promoting comprehensive TJ processes, including a development approach, participatory processes and a gender and youth focus, ensuring that these inclusive procedures provide effective access to justice for those that - directly and indirectly - are affected by mass human rights violations, accomplishing the 2030 Agenda goal of "leaving no one behind".

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