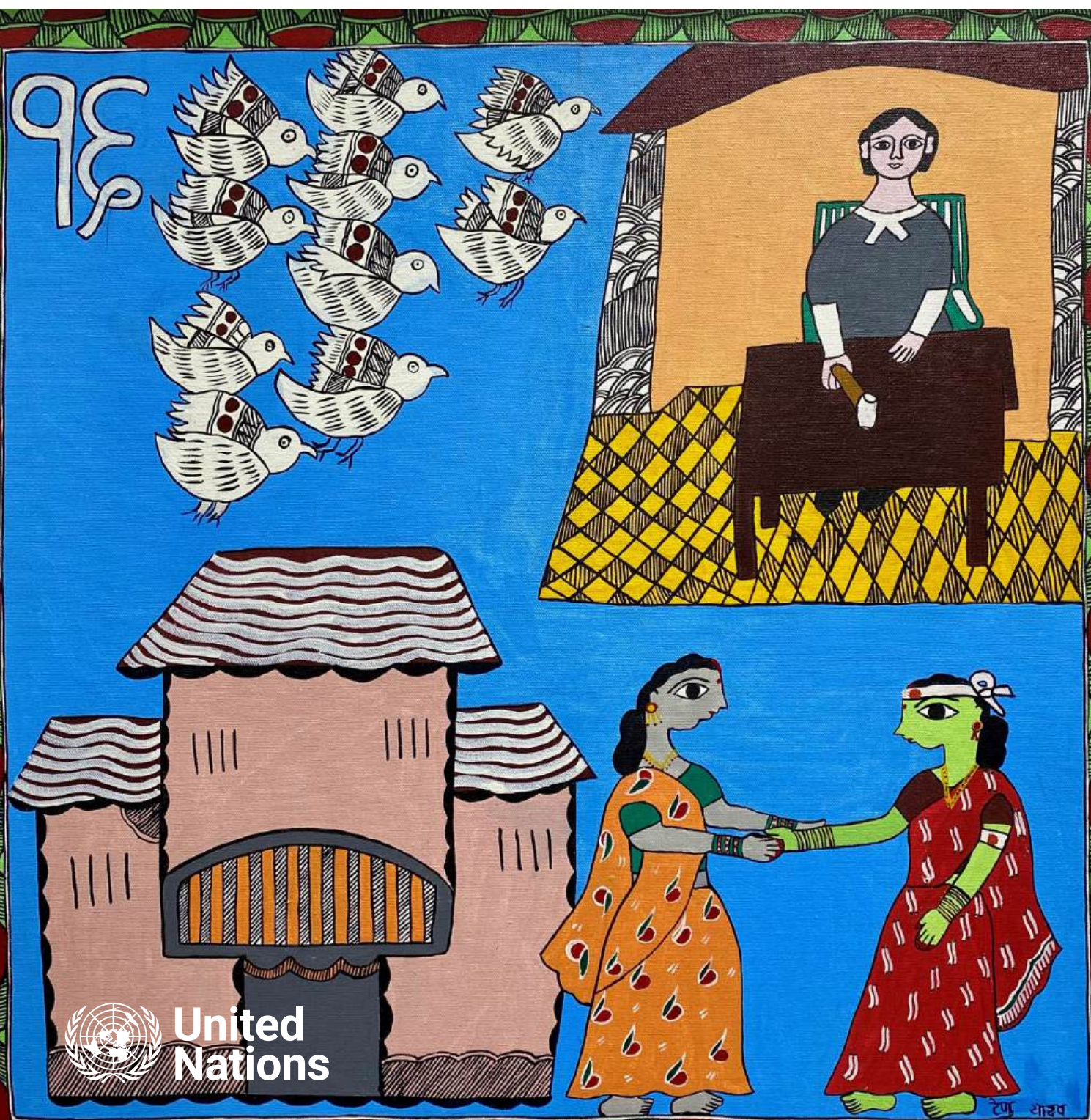


GUIDANCE NOTE OF THE SECRETARY-GENERAL

# Transitional Justice

## A Strategic Tool for People, Prevention and Peace



# Transitional Justice

## A Strategic Tool for People, Prevention and Peace

### Introduction 2

### 1. Key features of the United Nations approach to transitional justice 5

|                   |    |
|-------------------|----|
| Normative         | 5  |
| Strategic         | 6  |
| Inclusive         | 8  |
| Gender-responsive | 10 |
| Transformative    | 11 |

### 2. Key elements of comprehensive transitional justice processes 13

|                              |    |
|------------------------------|----|
| Consultations                | 13 |
| Truth seeking                | 14 |
| Criminal justice             | 16 |
| Reparation                   | 18 |
| Guarantees of non-recurrence | 20 |

### 3. Operationalizing transitional justice support: the way forward for the United Nations 22

|                                                                          |    |
|--------------------------------------------------------------------------|----|
| Institutional understanding and positioning of transitional justice      | 22 |
| Innovation in the design and implementation of transitional justice work | 23 |
| Tangible and transformational impact for people and communities          | 25 |

# INTRODUCTION

The potential of transitional justice, as a strategic policy tool to help build just and inclusive futures in fractured societies that are grappling with legacies of conflict and/or large-scale human rights violations and abuses, is often underutilized by States and other stakeholders. Offering a comprehensive framework for analysis and coordinated action to address widening and harmful justice gaps, transitional justice can be a catalyst for change for societies at large, in addition to being a critical modality of redress for victims. It is an enabler for the prevention of conflict and serious violations, for sustaining peace, for accountability and the rule of law, for social cohesion, societal healing and reconciliation, and for sustainable development and the realization of the Sustainable Development Goals, particularly Goal 16.<sup>1</sup>

Calls for “transitional justice” have arisen in increasingly diverse and complex contexts.<sup>2</sup> We live in a world that is in turmoil. People have low levels of interpersonal and institutional trust, with many

## WHAT IS TRANSITIONAL JUSTICE FOR THE UNITED NATIONS?

Since 2004, the United Nations has defined transitional justice 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, serve justice and achieve reconciliation.” It has noted that “these may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”<sup>3</sup>

Based on States’ human rights obligations, a wider notion of justice has been advanced in the field of transitional justice, in which further elements of redress complement and reinforce processes of criminal accountability. This has crystallized into four interrelated dimensions: truth seeking, criminal justice, reparation and guarantees of non-recurrence. The concept of guarantees of non-recurrence refers not only to institutional reform and vetting, but also to measures in the societal, cultural and individual spheres.<sup>4</sup>

The United Nations stands for a holistic approach to transitional justice, meaning that these four dimensions are part of a comprehensive policy.

<sup>1</sup> On the goals of transitional justice, see, for example, the 2012 report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/21/46](#)); the twin resolutions on the review of the United Nations peacebuilding architecture ([A/RES/70/262](#) and [S/RES/2282](#)); World Bank and United Nations, [Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict](#), Washington, D.C., 2018; and the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR), “Human rights and transitional justice” (on the contribution of transitional justice to sustaining peace and the realization of Goal 16 of the Sustainable Development Goals) ([A/HRC/49/39](#)).

<sup>2</sup> These include post-authoritarian transitions, weakly institutionalized post-conflict settings, contexts of ongoing conflict, situations affected by terrorism or violent extremism, stagnating political transitions, and even well-established democracies dealing with historical injustices. On the multiple contexts in which transitional justice is nowadays employed and the corresponding institutional, capacity and other challenges, see the 2017 report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, in particular the section on “Transitional justice in weakly institutionalized post-conflict settings” ([A/HRC/36/50](#)). See also the 2021 report of the Special Rapporteur, “Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts” ([A/76/180](#)).

<sup>3</sup> Report of the Secretary-General, “The rule of law and transitional justice in conflict and post-conflict societies” ([S/2004/616](#)).

<sup>4</sup> See, for example, the 2015 report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, which addressed guarantees of non-recurrence in particular ([A/HRC/30/42](#)).



feeling left behind.<sup>5</sup> Social fractures and protests are on the rise, often fomented by a loss of shared truth and understanding, while increased levels of grievance, power imbalance, inequality and other forms of marginalization call into question the very idea of a shared social contract.

In such contexts, the capacity of transitional justice processes to acknowledge victims' experiences and empower them as rights holders, to strengthen levels of civic and institutional trust, to enhance inclusion at individual and collective levels, to increase gender equality, and to identify root causes of conflict and abuses, with a view to tackling them as part of a transformative prevention agenda, comes into sharper focus.<sup>6</sup>

While remaining realistic about the immediate impact of transitional justice processes in extremely challenging contexts, the main purpose of this guidance note is to shift practice and mindsets so that the potential of transitional justice is better harnessed. Building on earlier contributions of the United Nations to the normative and conceptual consolidation of the field,<sup>7</sup> this revised guidance note is underpinned by **three core objectives**:

- Promoting transitional justice as a **pragmatic human rights-based policy tool at the disposal of national stakeholders** that is relevant to enhancing peace and security, human rights and accountability, and sustainable development, and therefore as a strategically important and cross-cutting policy area relevant to the entire Organization;
- Achieving greater **innovation in the design and implementation** of the Organization's transitional justice work in support of national stakeholders;
- Contributing to a **tangible and transformational impact for people and communities**.

As such, the guidance note seeks to ensure that United Nations support to transitional justice processes is strategic, integrated, innovative and

<sup>5</sup> United Nations, [Our Common Agenda: Report of the Secretary-General](#) (New York, 2021), paras. 16, 20 and 27.

<sup>6</sup> See [A/HRC/49/39](#).

<sup>7</sup> See, for example, the reports of the Secretary-General headed "The rule of law and transitional justice in conflict and post-conflict societies" ([S/2004/616](#) and [S/2011/634](#)) and the first "[Guidance note of the Secretary-General: United Nations approach to transitional justice](#)", issued in 2010.

people-centred – countering what has at times become an ad hoc, fragmented, formulaic and technocratic approach.

Transitional justice policies in line with this guidance note are an essential part of the toolbox of the Secretary-General’s Call to Action for Human Rights, as well as of Our Common Agenda (to enhance the legitimacy of social contracts anchored in human rights), of the New Vision for the Rule of Law (to

strengthen accountability and rule of law), and of United Nations efforts towards A New Agenda for Peace (to address risk factors of instability, violence and conflict).<sup>8</sup>

<sup>8</sup> António Guterres, [The highest aspiration: a call to action for human rights](#) (United Nations, 2020); United Nations, [Our Common Agenda](#); António Guterres, [New Vision of the Secretary-General for the Rule of Law](#) (United Nations, 2023); United Nations, [Our Common Agenda Policy Brief 9 - A New Agenda for Peace](#) (United Nations, 2023).

## GOALS OF TRANSITIONAL JUSTICE



## 1

# KEY FEATURES OF THE UNITED NATIONS APPROACH TO TRANSITIONAL JUSTICE

The extent to which transitional justice can be successful depends on multiple factors, including policy design and contextual dynamics. There are five interrelated and mutually reinforcing features that should characterize the work of the United Nations to increase its chances of success. These are to be normative, strategic, inclusive, gender-responsive, and transformative in ambition.

01

## NORMATIVE:

**basing assistance on and promoting compliance with international norms and standards**

### IN A NUTSHELL:

The United Nations must ensure that its transitional justice support is norm-compliant, promoting transitional justice processes as opportunities for societies to reaffirm the validity and centrality of human rights and other international norms and standards that protect people's dignity, and to strive for justice.

Transitional justice has strong foundations in international law, particularly international

humanitarian law and international human rights law. Rights of victims and corresponding obligations of States regarding effective remedy and redress for serious human rights violations and abuses are set out under a variety of international legal instruments. These obligations pertain, inter alia, to the fulfilment of rights to truth,<sup>9</sup> justice<sup>10</sup> and reparation,<sup>11</sup> and to the prevention of recurrence,<sup>12</sup> and they have been articulated by the United Nations treaty bodies and by international and regional courts.<sup>13</sup> Other instruments, while not directly binding as such, reflect these norms and elaborate on additional standards, principles and guidelines that are relevant to transitional justice, often as the product of multilateral processes.<sup>14</sup>

In its advocacy and advice to stakeholders, the United Nations will consistently encourage compliance with applicable international norms and full consideration of authoritative standards and guidance. Adhering to the normative roots of transitional justice means that the United Nations must promote a human rights-based and

<sup>9</sup> International Covenant on Civil and Political Rights, art. 2; International Convention for the Protection of All Persons from Enforced Disappearance, art. 24.

<sup>10</sup> International Covenant on Civil and Political Rights, art. 2; Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, arts. 4, 5, 7 and 12; International Convention for the Protection of All Persons from Enforced Disappearance, arts. 3, 6, 7 and 11; Convention on the Prevention and Punishment of the Crime of Genocide, art. 3.

<sup>11</sup> Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Convention against Torture, art. 14; International Convention for the Protection of All Persons from Enforced Disappearance, art. 24; Convention on the Rights of the Child, art. 39.

<sup>12</sup> International Covenant on Civil and Political Rights, art. 2; Convention against Torture, art. 2; International Convention for the Protection of All Persons from Enforced Disappearance, art. 23; Convention on the Prevention and Punishment of the Crime of Genocide, art. 1.

<sup>13</sup> See, for example, International Court of Justice, LaGrand Case (Germany v. United States), [Judgment, 27 June 2001](#); Inter-American Court of Human Rights, Case of Velasquez Rodriguez v. Honduras, [Judgment, 29 July 1988](#); European Court of Human Rights, Case of Benzer and others v. Turkey, [Judgment, 24 March 2014](#); African Commission on Human and Peoples' Rights, Zimbabwe Human Rights NGO Forum v. Zimbabwe, [Decision, 11–25 May 2006](#); United Nations Human Rights Committee, Communication No. 1874/2009 (regarding Algeria) ([CCPR/C/109/D/1874/2009](#)).

<sup>14</sup> Updated set of principles for the protection and promotion of human rights through action to combat impunity ([E/CN.4/2005/102/Add.1](#)); 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 ([A/RES/60/147](#)). See also Commission on Human Rights resolutions [2005/66](#), [2005/70](#) and [2005/81](#); Human Rights Council resolutions [9/10](#), [9/11](#), [12/11](#), [12/12](#), [21/7](#), [21/15](#), [33/19](#), [42/17](#) and [51/23](#); General Assembly resolution [68/165](#), "The EU's Policy Framework on support to transitional justice" (2015); and [Transitional Justice Policy](#) (African Union, 2019).

victim-centred<sup>15</sup> approach to transitional justice. Compliance with norms and providing redress for human rights violations and abuses are central to reaffirming victims as rights holders and addressing their problems, which include various forms of marginalization. The United Nations must oppose political instrumentalization or the discriminatory or otherwise selective use of transitional justice processes. The very fact that serious human rights violations and abuses have occurred determines the need for redress, which should not be influenced by the national, racial, social, political, ethnic, religious, gender or other characteristics or affiliations of the victim or apparent perpetrator. Finally, in consideration of the grounding of transitional justice in human rights, the United Nations must follow a holistic approach to transitional justice. The various elements of transitional justice are not options that can be traded off against each other; rather, they must all be part of an overarching strategy.

United Nations engagement is itself also guided by the applicable international norms, as well as by United Nations internal rules, policies and procedures. For example, the United Nations will neither establish nor assist tribunals that permit capital punishment,<sup>16</sup> and it will not endorse provisions in peace agreements such as amnesties for genocide, crimes against humanity, war crimes or gross human rights violations or abuses.<sup>17</sup>



UN Photo / Eskinder Debebe

<sup>15</sup> This guidance note uses the terms “victim” and “victim-centred” in recognition of the legal rights of victims under international law. However, the guidance note also acknowledges and respects the value and utility of the terms “survivor” and “survivor-centred” which emphasize the empowerment, agency and resilience of individuals who have experienced a violation.

<sup>16</sup> This means that evidence collected by United Nations accountability mechanisms should be shared for use in criminal proceedings only where the death penalty cannot be imposed. See, for example, the report of the Secretary-General on “Strengthening and coordinating United Nations rule of law activities” (A/75/284), para. 74.

<sup>17</sup> See, for example, [S/2004/616](#).

<sup>18</sup> For more information on lessons related to United Nations programming in support of transitional justice, see Salif Nimaga, “[Secretary-General’s Peacebuilding Fund: thematic review – PBF-supported projects on transitional justice](#)”, Peacebuilding Support Office, 28 April 2020.

## 02

### STRATEGIC:

**encouraging innovative solutions that are tailored to the context and fit for purpose, with a holistic and long-term perspective and coordinated with other reform processes**

#### IN A NUTSHELL:

Aiming for strategic relevance, the United Nations must encourage a comprehensive transitional justice perspective and assist in the development of functionally adequate and context-specific solutions, in support of identified long-term goals and in coordination with peacebuilding and other reform agendas.

In planning and implementing transitional justice policies and programmes, societies should emphasize the fundamental aims they seek to achieve and adopt means that are adequate to those goals. When transitional justice policies are being designed, the main question must remain, “What is the best way in this particular context to satisfy the rights of victims and society at large to truth, justice, reparation and non-recurrence?” This should not be replaced by a more technical question such as “What is the easiest way of establishing typical transitional justice institutions, such as truth commissions, prosecutorial mechanisms and reparations programmes?” The central point is that transitional justice cannot be reduced to a formulaic, technocratic, apolitical exercise.

Despite the mantra that there is no “one-size-fits-all” blueprint for transitional justice, there has been considerable replication in transitional justice programming, including by the United Nations. Programming in support of national transitional justice processes should be informed by a strategy. The strategy, in turn, needs to be context-specific.<sup>18</sup> Each situation is marked by its own specificities and complexities, all of which need to be taken into account in the design and implementation of transitional justice policies and support strategies.

In order for their goals to be achieved, such policies are contingent on an understanding of the prevailing political, security, societal and economic dynamics, the historical origins of grievances, the nature and depth of social divisions and mistrust, patterns of exclusion, cultural notions of recognition and the cultural and practical resources for redress, inclusion and reconciliation, and on identifying stakeholders that express and embody these various considerations.<sup>19</sup>

The United Nations stands for a comprehensive approach to transitional justice because international experience shows that the different measures work best if they are planned and implemented not as isolated initiatives but as part of a coherent policy.<sup>20</sup> Setting out a holistic policy does not necessarily require that all its elements be implemented simultaneously. Pragmatism, a long-term perspective and prioritization are critical in the face of challenges such as limited political will, security, institutional capacity and resources. Comprehensiveness means that such factors are duly considered, without diminishing the commitment to securing victims' rights to truth, justice, reparation and guarantees of non-recurrence. Finding creative ways to make progress, even in the most challenging situations, is crucial and possible, for example by focusing early engagement on advocacy, capacity-building and preparatory steps.

Finally, in order to be strategic, transitional justice policies, projects and programmes must be aligned with other reform processes. Transitional justice is typically implemented in situations where a range of national and international programming measures are simultaneously taking place on peacebuilding, prevention, reconciliation, equal access to justice for all, broader rule of law reform, security sector reform, disarmament, demobilization, rehabilitation and reintegration processes, economic and social recovery, and sustainable development. National leadership needs to shepherd a State's political, institutional and financial resources across these interconnected areas. Mutual alignment of transitional justice initiatives and interventions in these adjacent policy areas is critical to reinforce efforts and to optimize the use of resources towards shared goals. It also helps transitional justice to be seen as relevant in contexts where populations face scarcity of jobs, food, shelter or security, ensuring

that (temporary) transitional justice measures contribute to the strengthening of more permanent national capacities for peace, prevention and development. The Sustainable Development Goals framework, with its planning and reporting systems, is an important instrument for the type of strategic planning that integrates transitional justice into broader reform processes in a way that strengthens both.<sup>21</sup>



UN Photo / Eric Kanstein

<sup>19</sup> For guidance on conflict-sensitive approaches, see United Nations Sustainable Development Group, [Good practice note: conflict sensitivity, peacebuilding and sustaining peace](#), 2022. Conflict sensitivity is about bringing awareness of conflict dynamics to United Nations entities that deliver development and humanitarian assistance and support to political processes, with the goal of minimizing the risk that those activities may worsen conflict dynamics and bring countries further off track on their path to achieving the Sustainable Development Goals. This is a minimum requirement for the United Nations, aligned with the principle of “do no harm” and laying the foundations for activities that sustain peace and further sustainable development, with the promotion, protection and fulfilment of human rights at their core.

<sup>20</sup> For more on the comprehensive character of transitional justice, see [A/HRC/21/46](#), paras. 22–27.

<sup>21</sup> See [A/HRC/49/39](#); report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on “Sustainable Development Goals and transitional justice: leaving no victim behind” ([A/77/162](#)); and United Nations Development Programme (UNDP), [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](#) (New York, 2020). See also Working Group on Transitional Justice and SDG16+, “[On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations](#)”, International Center for Transitional Justice, May 2019. The Sustainable Development Goals framework is not the only tool available. The Universal Period Review, with its reporting requirement, is another useful instrument. See, for example, the report presented to the Human Rights Council in 2020 pursuant to its resolution 38/18, “Overview of consultations on the contribution of the Human Rights Council to the prevention of human rights violations” ([A/HRC/43/37](#)).

**INCLUSIVE:**

**empowering victims, involving the marginalized, adopting a transgenerational and child-sensitive lens, and fostering community ownership**

**IN A NUTSHELL:**

United Nations support to transitional justice must be victim-centred and should foster broad community ownership. In addition to bringing people into transitional justice processes, with a focus on the traditionally excluded and marginalized, the United Nations can help place the issue of inclusivity on the public agenda and build more inclusive institutions for the future. This requires a transgenerational lens, harnessing the potential of children and youth in peacebuilding and taking into account the challenges encountered by older persons.

Successful transitional justice processes recognize the centrality of victims and their essential role in the design and implementation of measures. By having victims initiate, drive and participate in the process, and by taking their rights, needs and aspirations into account at every step of the way, a transitional justice process can empower victims to effectively assert themselves as rights holders and reaffirm their dignity. This is most effective when their participation is conceived as an ongoing process, not as single initiatives. Ensuring a victim-centred approach requires strong involvement on the part of civil society, including women's and youth-led organizations. Victims and civil society organizations play a critical role in advocacy, in accessing and mobilizing victims, in education and capacity building, and in providing technical, logistical and other support. Ad hoc interactions, tokenism or actions which engender a sense that victims have been used solely to endorse or provide "legitimacy" without serious consultation and opportunities to take on leadership should be avoided.

Meaningful participation in the conduct of public affairs is not only a human right:<sup>22</sup> it fosters civic engagement, provides recognition, facilitates public awareness and understanding, helps humanize complex issues, and gives legitimacy to the process.<sup>23</sup> It also increases the likelihood that the proposed policies will capture the opinions and sense of justice of victims and communities. A key contribution of transitional justice is to promote the inclusion of communities and segments of the population who are often marginalized or discriminated against, such as women and girls, ethnic and religious minorities, indigenous peoples, those in rural regions, refugees, stateless and internally displaced persons, migrants, persons with disabilities, and people with diverse sexual orientation, gender identity, gender expression or sex characteristics.<sup>24</sup>

Beyond the inclusion of victims and the traditionally marginalized, the success of transitional justice policies also depends on wider community ownership, including among the public at large. In an era in which inequalities are deepening and people feel alienated and disaffected from a common political project, mechanisms of social integration are essential. Processes that are elite-driven or only acknowledged by select stakeholders are not effective, and the broadest and deepest possible public understanding and involvement are critical. In the design and implementation of transitional justice measures, national consultations, outreach and public communication campaigns and the mobilization of agents for peace (for example, women, persons with diverse sexual orientation, gender identity, gender expression or sex

<sup>22</sup> Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25; International Convention on the Rights of All Migrant Workers and Members of Their Families, arts. 41 and 42; African Charter on Human and Peoples' Rights, art. 13 (1); American Convention on Human Rights, art. 23 (1) (a); Inter-American Democratic Charter, art. 2; Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3. See also Human Rights Committee, General Comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service.

<sup>23</sup> OHCHR, [Guidelines for States on the effective implementation of the right to participate in public affairs](#), 2018; report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/34/62](#)), "Victim participation in transitional justice measures", paras. 24–30.

<sup>24</sup> See, for example, the report of the Special Rapporteur on the human rights of internally displaced persons ([A/73/173](#)), "Internal displacement and transitional justice"; United Nations Permanent Forum on Indigenous Issues, [Expert Group Meeting: 'Truth, Transitional Justice and Reconciliation Processes' 15–17 Nov. 2022](#); report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, on peace, security, sexual orientation and gender identity ([A/77/235](#)).

characteristics, children and youth, human rights defenders, labour unions, religious organizations, the media and the business sector) are essential.

A critical factor in fostering inclusivity and broad community ownership is the integration of a transgenerational perspective in transitional justice policies and programmes, duly considering the key contribution of children and youth<sup>25</sup> in laying the foundation for a more just and peaceful society and taking into account the specific challenges encountered by older persons. Children and youth are among those most affected by armed conflict, terrorism and violent extremism, oppression and unstable political environments, and they must be fully included as rights holders and agents of change.<sup>26</sup> In addition to the energy, viewpoints and innovation that young people can bring, their engagement allows for a strong, forward-looking focus on the transmission of memory to subsequent generations while addressing the intergenerational impacts of violence and oppression, including psychosocially. When children are informed, supported, guided and given age-appropriate tools and platforms in accordance with their best interests and evolving capacities, their participation in transitional justice can help build their capacity for active involvement in post-conflict recovery and peacebuilding. When youth is involved in a manner that is respectful of their agency, aspirations, diversity and creativity, transitional justice processes can help address the marginalization and alienation that young people may experience and increase overall social cohesion and civic trust. In short, young people are critical stakeholders and must be empowered to claim their rights and meaningfully

participate in transitional justice processes. This requires deliberate policies and procedures that are child-sensitive and centred on youth.<sup>27</sup>

Finally, in addition to empowering victims and bringing people into the peace process, transitional justice measures can assist in identifying and addressing grievances and root causes associated with exclusion, placing the issue of inclusivity on the public agenda and building more inclusive institutions for the future. Inclusive discussions about past serious human rights violations not only help understand their specific characteristics, circumstances and impacts, including intergenerationally, but will often also reveal persistent patterns of inequality, marginalization, discrimination and other economic, social and cultural rights violations.<sup>28</sup>

<sup>25</sup> Article 1 of the Convention on the Rights of the Child defines “children” as persons up to the age of 18. The United Nations defines “youth” as persons between the ages of 15 and 24 years.

<sup>26</sup> See Security Council resolution [2250 \(2015\)](#); identical letters dated 2 March 2018 from the Secretary-General, “The missing peace: independent progress study on youth, peace and security” ([A/72/761-S/2018/86](#)) (see also the [full report](#): Graeme Simpson, *The Missing Peace: Independent Progress Study on Youth, Peace and Security* (United Nations Population Fund, 2018)); report of the Secretary-General, “Youth and peace and security” ([S/2020/167](#)); United Nations and Folke Bernadotte Academy, [Youth, Peace and Security: A Programming Handbook](#) (New York, 2021).

<sup>27</sup> “[Guidance Note of the Secretary-General: UN Approach to Justice for Children](#)”, September 2008; United Nations Children’s Fund (UNICEF) Office of Research - Innocenti, “[Children and transitional justice](#)”; UNICEF, “[#Reimagine justice for children](#)”, 2021; see also *The International Journal of Transitional Justice*, vol. 16, No. 1, [special issue on youth and transitional justice](#), March 2022.

<sup>28</sup> OHCHR, [Transitional Justice and Economic, Social and Cultural Rights](#) (New York and Geneva, 2014).



Consultation Task Force for Reconciliation Mechanisms Photo

## **GENDER-RESPONSIVE: adopting and consistently advocating for a gender- responsive approach, including by promoting women's leadership and addressing the gendered dimension of root causes of violations**

### **IN A NUTSHELL:**

United Nations work on transitional justice must not only support addressing the specific violations experienced by women and girls, as well as by people with diverse sexual orientation, gender identity, gender expression and sex characteristics, but also advocate for their full and meaningful participation and leadership and help address the gendered aspects of the root causes of conflict and abuse. Transitional justice processes constitute unique opportunities to examine the social constructs, gender norms and other factors that have caused or exacerbated gender-based discrimination and violence. They can help advance gender equality and transform a society.

For transitional justice to advance prevention and sustainable peace, it must be gender-responsive in at least three ways. First, transitional justice processes should sensitively and comprehensively address the specific human rights violations experienced by women, girls, men and boys – including sexual and gender-based violence – and examine how people may have been targeted or may have experienced violations differently because of their sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Given their specific societal, cultural, economic or family circumstances, women and girls may have been targeted for or impacted differently by human rights violations. Likewise, LGBTQI+ persons can experience gender-based

discrimination and violence rooted in a perception of non-compliance with socially accepted gender roles. Often, such human rights violations are compounded by intersecting forms of vulnerability and discrimination, including those based on age, ethnicity, religion, disability and migration or refugee status, among other factors. As a result, women, girls, men and boys, as well as LGBTQI+ persons, are likely to have differentiated needs and unique viewpoints on causes and remedies.<sup>29</sup> To address sexual violence, transitional justice processes must tackle stigma, respect confidentiality and respond to specific health impacts, including needs relating to sexual and reproductive health and to mental health.<sup>30</sup>

Second, transitional justice processes should ensure the full and meaningful participation of women from diverse backgrounds and people with diverse sexual orientation, gender identity, gender expression and sex characteristics as equal rights holders, agents of change and leaders.<sup>31</sup> They must be actively engaged in the gathering of information and evidence, setting agendas, building coalitions, mobilizing strategies for change, and asserting influence to ensure that decisions reflect their diverse interests and the wider interests of society. This includes survivors of sexual and gender-based violence, political leaders, technical experts, peacebuilders, journalists, women human rights defenders and women organizations, and LGBTQI+ rights activists.

Third, the transitional justice process should seek to understand and begin to address gendered aspects of the root causes of conflict and abuse, including by considering pre-existing patterns of gender-based stereotyping, discrimination and violence. In most cases, this may involve examining patriarchal and male-dominated power structures, be they in the home, community or public sphere. Pre-existing

<sup>29</sup> See, for example, the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, "The gender perspective in transitional justice processes" ([A/75/174](#)).

<sup>30</sup> See, for example, OHCHR, [Strategic litigation for sexual and gender-based violence: lessons learned](#), 2019; [Protection of victims of sexual violence: lessons learned](#), 2019. For a useful framework for understanding the specific needs of survivors in relation to reparations, see "Guidance note of the Secretary-General: Reparations for conflict-related sexual violence", June 2014.

<sup>31</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), [A window of opportunity: making transitional justice work for women](#), 2nd ed., October 2012; UN-Women and UNDP, [Women's Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace](#) (New York, 2022); [A/77/235](#).

social and structural conditions that led to gender-based violence in the first place and continue to exist to the peril of women and girls, which also affect LGBTQI+ persons, must be addressed. While transitional justice measures cannot achieve these profound transformations on their own, they can help catalyse them, not least by making visible some of the factors that hold back women, girls and LGBTQI+ persons to begin with.



UN Photo / JC McIlwaine

## 05 **TRANSFORMATIVE: supporting a broader transformative project that seeks to address the structural causes of and contributors to conflict and violations, and to make a tangible difference in people's lives**

### **IN A NUTSHELL:**

The United Nations must adopt a people-centred approach, adjusting policies and methods of work to people's actual needs, conditions, circumstances and capacities, making sure that the proposed measures are user-friendly and deliver results that make a difference in people's lives. It must focus on making a sustainable and transformative impact for people and communities. This requires connecting transitional justice support to a broader peacebuilding and preventive agenda that addresses the structural causes and contributors to conflict and violations.

Transitional justice aspires to be transformative at various levels. It seeks to transform the position of victims within a society, restoring their dignity and reaffirming their status as rights holders. It aims to contribute to the transformation of societal relations, addressing disinformation, distrust, inequality and discrimination, exclusion, and marginalization, thereby promoting healing

and reconciliation. It also endeavours to contribute to the transformation of dysfunctional State institutions, inequitable power structures, State capture and corruption, missing safeguards and other structural issues that may lie at the root of serious human rights violations, undermine the rule of law and weaken the population's trust in the State and its institutions. Transitional justice cannot achieve these transformations on its own, but it can contribute to them and should be planned in ways that seek to maximize this potential.

Realizing such a transformative ambition begins with ensuring that a transitional justice process is people-centred (not only victim-centred) and is aimed at making a tangible difference in the lives of the broader population, while showing that peace and justice positively concern everyone. Such an approach is informed by the differentiated wants and needs of people, and advocacy and programming should duly consider people's conditions, circumstances and capacities. After decades-long conflict or repression, people may not see themselves as "rights holders" with the capacity and agency to interact with an authoritative body; they may encounter psychological or practical challenges in meaningfully engaging in a process. They may be reluctant if their engagement risks retraumatization or revictimization. The wider population may be uninterested or even adversely disposed because of disinformation or misinformation. Devising sound programmes and user-friendly methods thus entails considering a range of tangential activities and services, requiring investment in public outreach and communication, behavioural science,<sup>32</sup> mental

<sup>32</sup> United Nations Innovation Network, [United Nations Behavioural Science Report](#), 2021; ["Behavioural science guidance note: Secretary-General's guidance on behavioural science"](#), 2021.

health and psychosocial support,<sup>33</sup> paralegal services, accessibility and logistics, among other areas. It also implies making an effort to seek coordination with social protection and development programmes, including in the areas of health, education and reform of access to justice.

Building better futures is also contingent on identifying and addressing the factors that enabled human rights violations in the first place. Transitional justice processes should therefore engage in an in-depth examination of the causes and facilitators of serious human rights violations, and they

should be embedded within a preventive agenda that targets transformation in the institutional, economic, societal, cultural and personal spheres. While all components of a holistic transitional justice process are relevant, the inherently forward-looking concept of guarantees of non-recurrence provides an ideal framework to assist societies in this endeavour.<sup>34</sup> It allows for a connection between the specific preventive dimension of transitional justice programmes and broader “upstream” efforts to prevent human rights violations, atrocity crimes and armed conflict more generally, well in advance of responses at times of crisis or conflict.<sup>35</sup>



UN Photo / Cristina Domínguez

<sup>33</sup> Brandon Hamber, *Transitional Justice, Mental Health and Psychosocial Support: Renewing the United Nations Approach to Transitional Justice* (2021) (paper developed as part of the guidance note revision project), available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice); see also United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh and the Human Rights in Trauma Mental Health Program at Stanford University, *Trauma-Informed Investigations Field Guide* (United Nations, New York, 2021).

<sup>34</sup> See, for example, the reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on the topics of guarantees of non-recurrence (A/HRC/30/42) and a comprehensive framework approach to prevention (A/72/523); see also the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-

General on the Prevention of Genocide, “Joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence” (A/HRC/37/65).

<sup>35</sup> Report of the High-level Independent Panel on Peace Operations on uniting our strengths for peace: politics, partnership and people (A/70/95-S/2015/446); Challenge of sustaining peace: Report of the Advisory Group of Experts on the Review of the Peacebuilding Architecture (A/69/968-S/2015/490); Radhika Coomaraswamy, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (UN-Women, 2015).

# 2. KEY ELEMENTS OF COMPREHENSIVE TRANSITIONAL JUSTICE PROCESSES

The United Nations promotes a holistic approach to transitional justice, understanding truth, justice, reparation and guarantees of non-recurrence as interrelated elements of a coherent policy. It is critical to reflect on how the rights and aspirations of people can be satisfied in each of these areas, rather than being guided by preconceived models or mechanisms. This is one of the key reasons why consultations are critical in informing coherent policies.

## 01 | CONSULTATIONS

Consultations, like participation in general, contribute to successful transitional justice in various ways. First, they facilitate the acquiring of essential knowledge and specific insights. Consultations with victims and other stakeholders increase the likelihood that transitional justice measures will capture their diverse views on justice and on what constitutes effective redress. They enable a closer congruence between the expressed needs of victims and measures yet to be designed, while recognizing social, cultural, historical and political realities.

Second, consultations increase the legitimacy of future transitional justice measures because the process of consulting is itself a measure of the recognition and empowerment of victims and communities, and it helps them gain or regain a place in the public sphere that they were denied. The success and sustainability of transitional justice measures may depend, to some extent, on the positive involvement of groups who were previously excluded or marginalized. Consultations also facilitate the identification of commonalities of experiences, values and principles between different groups. This is valuable in itself, but also as a driver of coalition and consensus building, which is crucial in the adoption of policies on contentious issues.

Consultations and participatory methods provide unique opportunities to accelerate and deepen

societal integration or cohesion through direct contact with victims – seeing them and listening to their personal testimony in officially sanctioned settings, where victims are shown respect as rights holders. The undertaking of broad and inclusive consultations signals a genuine willingness to establish an inclusive society based on the rule of law. It also helps to foster a broader understanding within society of the value of addressing the past, including among segments of the population that may have been less affected.

Four crucial factors underlie successful consultations. First, they require effective capacity-building and sensitization among all stakeholders well in advance, not merely as a prelude to a consultation event. Second, they should not be construed as one-off events but as on-going processes that continuously capture the needs of victims, which may change throughout what are often decades-long transitions. Third, they require the selection of an inclusive and gender-balanced group of stakeholders (not just from elite groups) to bolster the sustainability of the process. Religious figures, traditional leaders, medical professionals, teachers, entrepreneurs and labour leaders are examples of trusted people in the community who can play an important role in bridging social gaps. Lastly, safety, consent and confidentiality are primordial requirements for meaningful consultations.

## KEY DOCUMENTS FOR FURTHER READING:

- Office of the United Nations High Commissioner for Human Rights (OHCHR), [Rule-of-Law Tools for Post-Conflict States: National consultations on transitional justice](#)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/71/567](#)), “Promotion of truth, justice, reparation and guarantees of non-recurrence” (on national consultations concerning the design and implementation of transitional justice measures)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/34/62](#)),

“Victim participation in transitional justice measures”

- OHCHR, [Guidelines for States on the effective implementation of the right to participate in public affairs](#)
- Peacebuilding Support Office, [United Nations community engagement guidelines on peacebuilding and sustaining peace](#)
- United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and United Nations Development Programme (UNDP), [Women’s Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace](#)

## 02 | TRUTH SEEKING

The right to truth entitles victims, their relatives and the public to seek and obtain all relevant information concerning the commission of the alleged violation, the fate and whereabouts of victims and the extent to which the violation may have been officially authorized. It requires States to establish institutions, mechanisms and procedures authorized to seek information about disputed events. While criminal courts have a role to play in establishing facts, judicial records will generally be insufficient.

In addition to cataloguing the nature, context and extent of violations, truth seeking is aimed at recognizing victims’ experiences, rebuilding trust, strengthening the rule of law and promoting social integration and reconciliation. Truth processes may give victims an opportunity to speak in a public forum, affirming their status as equal rights holders. Official acknowledgment of violations contributes to ending cycles of resentment and mistrust. Truth-seeking initiatives can also provide important information for other measures, including prosecutions and reparation programmes. Their analysis of systemic failures and deficiencies of State institutions, and of structural dimensions of

violence and abuse, contributes to setting reform priorities. Furthermore, truth seeking can contribute to addressing narratives of collective grievances and victimization that may be exploited, for example by terrorist or violent extremist groups.<sup>36</sup>

While formal truth commissions are the most prevalent mechanism to ensure this right, other measures can also do so. These include civil society-led truth-seeking processes, community-based initiatives, commissions of inquiry, fact-finding missions and mapping exercises, human rights commissions, mechanisms to reveal the fate of the missing or disappeared, forensic investigations, the locating of mass graves and the exhumation and identification of bodies,<sup>37</sup> the preservation of and

<sup>36</sup> See, for example, the report of the Secretary-General on the plan of action to prevent violent extremism ([A/70/674](#)).

<sup>37</sup> See, for example, Human Rights Council resolutions [10/26](#) and [15/5](#) on forensic genetics and human rights; International Committee of the Red Cross, “[Forensic identification of human remains](#)”, December 2013; “[The forensic human identification process: an integrated approach](#)”, February 2022; “Medico-legal death investigations: report of the Special Rapporteur on extrajudicial, summary or arbitrary executions” ([A/HRC/50/34](#)).

granting public access to intelligence and security services' archives,<sup>38</sup> arts initiatives,<sup>39</sup> and public apologies.<sup>40</sup>

When planning for truth seeking, some recurring challenges must be borne in mind. First, each context demands an examination of its truth deficits, the distinct ways in which the desire for truth manifests, and the opportunities for and obstacles to uncovering truth. The context will determine the most effective combination of measures to satisfy the right to truth for victims and society. This does not always involve a truth commission. For example, in some contexts the identification and return of remains will be a primary concern. In other contexts, measures to foster coexistence are crucial. These may include community work or ceremonies where perpetrators acknowledge responsibility and engage in forms of reparation after listening to victims. Such local initiatives do not necessarily articulate a unifying shared narrative, but they limit the range of permissible lies, help reduce scapegoating and establish basic facts that any credible account of violations must recognize.

Second, if a truth commission is being established it must be independent, and its mandate, objectives

and powers should be tailored to the context. It should be given adequate resources. There is no one-size-fits-all template,<sup>41</sup> but a number of elements are critical for success: independence as reflected in membership, mandate and budgetary and staffing control; impartiality as reflected in the substantive focus of the mandate; a non-politicized procedure for the selection of commissioners and the resulting credibility and moral standing of commissioners; appropriate powers to facilitate serious inquiry and investigations; a clear age- and gender-sensitive methodology; procedures for fair treatment of victims and alleged perpetrators; participatory procedures and effective outreach to victims and other stakeholders; an impartial, thorough process for drawing findings and recommendations; and the power to release findings directly to the public, independent of government approval or control.

Finally, the rise of disinformation and hate speech campaigns on social and other media to distort facts and fuel polarization poses challenges to truth-seeking processes.<sup>42</sup> Truth-seeking initiatives may require specific strategies and expertise to address this threat, drawing, for instance, on digital forensics and behavioural science.

### KEY DOCUMENTS FOR FURTHER READING:

- OHCHR, [Rule-of-Law Tools for Post-Conflict States: Truth commissions](#)
- OHCHR, [Rule-of-Law Tools for Post-Conflict States: Archives](#)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/24/42](#)) (on “selected challenges faced by truth commissions” and “responses to strengthen the effectiveness of those mechanisms”)

- Priscilla Hayner, Transitional justice in peace processes: United Nations policy and challenges in practice (paper developed under the guidance note revision project), available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice)
- United Nations Children's Fund (UNICEF) and Harvard Law School, [Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation](#)

<sup>38</sup> See, for example, OHCHR, [Rule of Law Tools for Post-Conflict States: Archives](#) (New York and Geneva, United Nations, 2015); Swisspeace, [Archives: dealing with the past – What we do](#) and [Resources](#).

<sup>39</sup> See Clara Ramírez-Barat, ed., [Transitional Justice, Culture, and Society: Beyond Outreach](#) (New York, Social Science Research Council, 2014).

<sup>40</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/74/147](#)) (on “apologies for gross human rights violations and serious violations of international humanitarian law”).

<sup>41</sup> Because of the influence of the Truth and Reconciliation Commission of South Africa, there is a mistaken belief that truth commissions are

necessarily related to amnesties. In fact, the great majority of truth commissions do not grant or even recommend amnesties, and many of them transfer evidence to prosecutorial authorities.

<sup>42</sup> See the [United Nations Strategy and Plan of Action on Hate Speech](#) and [United Nations Strategy and Plan of Action on Hate Speech: Detailed Guidance on Implementation for United Nations Field Presences](#) (United Nations, 2020); report of the Secretary-General: “Countering disinformation for the promotion and protection of human rights and fundamental freedoms” ([A/77/287](#)); United Nations, [Combating Holocaust and genocide denial: protecting survivors, preserving memory, and promoting resilience – policy paper](#), June 2022.

## 03 | CRIMINAL JUSTICE

Various sources of international law obligate States to investigate, prosecute and punish gross violations and abuses of international human rights law and serious violations of international humanitarian law.<sup>43</sup> The State's fulfilment of this obligation is crucial to prevention. Bringing alleged perpetrators to trial in accordance with fair trial standards, and seeing them adequately punished if convicted, helps strengthen societal trust and the rule of law. This obligation is not different in post-authoritarian, post-conflict or other transitional justice contexts. However, in such circumstances, States will often face major obstacles in holding alleged perpetrators accountable, relating to questions of both willingness and capacity. A holistic transitional justice policy will seek to address such obstacles.

In response to a lack of willingness or ability, there has been a helpful diversification, in recent decades, of venues in which criminal accountability for human rights crimes may be pursued. The International Criminal Court and national courts exercising extraterritorial or universal jurisdiction play invaluable roles in difficult contexts, although such internationalized initiatives cannot displace or fully satisfy the general demand for justice domestically. Complementarity is a fundamental principle that underpins the work of the International Criminal Court. Specialized domestic criminal tribunals, chambers and prosecutorial units have been created, too. To address gaps in capacity, some of these bodies have been hybrid in structure, involving both national and international judges, prosecutors and investigators. While investment in temporary, ad hoc or specialized courts and tribunals is critical, it cannot be a substitute for thorough structural, procedural and personnel reforms of domestic justice systems to guarantee their independence, effectiveness and sustainability and to safeguard the preventive quality of local criminal justice.

Domestic institutions may have been misused for political ends, and justice institutions may be weak, inoperative or non-existent because of violence, politicization or systematic underinvestment. In such contexts, it will be important to identify the core elements or preconditions across the



whole criminal justice chain (from investigation and preservation of evidence to conditions of detention) that need to be in place to jump-start the system and plant seeds for local and sustainable justice. One such condition is the presence of adequate investigation and prosecutorial strategies, structures, procedures and capacities. There will often be a need to create or strengthen independent, impartial entities capable of investigating complex human rights crimes in politically sensitive environments, which may include developing the forensic capacities needed for investigating mass crimes. On the prosecution side, in contexts in which the number of cases easily exceeds capacity, there will be a need for prioritization strategies based on fair, transparent criteria. This will help to deploy resources for greatest impact and to reduce risks of political selectivity or instrumentalization. Another precondition is the presence of adequate

<sup>43</sup> These include the Convention on the Prevention and Punishment of the Crime of Genocide, arts. 4 and 5; the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, art. 50; the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, art. 129; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 146; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 85; the Convention against Torture, art. 4; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 6; and the International Convention for the Protection of All Persons from Enforced Disappearance, arts. 3, 7, 9 and 11. See also the [Rome Statute of the International Criminal Court](#). Regarding conflict-related sexual violence, see also relevant Security Council resolutions, in particular resolution [2467 \(2019\)](#), para. 30.

structures and capacities to ensure equal access to justice for all, including access to information and the availability of specialized legal advice, representation, support services (including victim and witness protection measures) and legal aid. If such capacity-building is aligned with broader rule of law and justice reform, it will be useful not only for redressing past violations, but also in combating ongoing organized crime, corruption and terrorist offences.

Such capacity-building support for structural reform must be accompanied by strategies to address deficits in what may be termed “political will”. In addition to amplifying justice demands from victims and communities, including at the grass-roots level, this will usually consist in sustained advocacy to preserve space for future justice opportunities (e.g. in peace talks or through good offices) and to create an enabling environment (e.g. through human rights and justice education, coalition-building or the leveraging of regional and international mechanisms).

Finally, the question of amnesties and leniency measures will often arise during peace processes and in the design of transitional justice policies, perhaps because of a practical inability to deal effectively with all perpetrators. The United Nations position on amnesties is clear: it cannot condone

or encourage amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights.<sup>44</sup> Amnesties are permissible for other crimes, notably political offences related to resisting the State, and may in some contexts help lay a foundation for peace. Where prosecutorial strategies focus on the “most responsible” perpetrators, this will still leave out numerous other perpetrators. The question then arises as to what other measures of accountability can be applied to prevent the emergence of impunity gaps that risk destabilizing society. Reduced, commuted or alternative sentencing may be an option, provided that the sentence remains proportionate to the gravity of the crimes and that victims’ rights to truth, justice and reparation are respected, not just abstractly but in consultation with them. Amnesty and leniency policies will enjoy greater legitimacy if they are adopted through a process that consults all stakeholders and that fully clarifies the purpose, scope and conditions of the measures.<sup>45</sup>

<sup>44</sup> See [S/2004/616](#) and OHCHR, [Rule-of-law Tools for Post-conflict States: Amnesties](#) (New York and Geneva, United Nations, 2009).

<sup>45</sup> Priscilla Hayner, “Transitional justice in peace processes: United Nations policy and challenges in practice” (paper developed as part of the guidance note revision project), October 2022, available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice); Barney Afako, “A field of dilemmas: managing transitional justice in peace processes” (paper developed as part of the guidance note revision project), April 2022, available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice).

## KEY DOCUMENTS FOR FURTHER READING:

- OHCHR, [Rule-of-Law Tools for Post-Conflict States: Prosecution initiatives](#)
- OHCHR, [Rule-of-Law Tools for Post-Conflict States: Amnesties](#)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/27/56](#)) (on prosecutorial prioritization strategies in the aftermath of serious violations)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/48/60](#)) (on “accountability: prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes”)
- United Nations, [Handbook for Judicial Affairs Officers in United Nations Peacekeeping Operations](#)
- Cath Collins, Advancing the criminal justice pillar of transitional justice in challenging contexts: preconditions for successful criminal justice (paper developed under the guidance note revision project), available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice)
- UNICEF, [“#Reimagine justice for children”](#)
- Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, [Model legislative provisions and guidance on investigation and prosecution of conflict-related sexual violence](#)

## 04 | REPARATION

Reparation for serious human rights and humanitarian law violations is critical to help victims, survivors, families and communities overcome the often devastating and multigenerational impacts they experience. However, major gaps continue to exist between the robust normative foundation of the right to remedy and reparation and practical reality. The lack of attention to victims' claims and the precariousness of their situation exacerbate their vulnerability and sense of injustice, further entrenching victims' grievances and weakening their trust in the State. It destabilizes communities and undermines the prospects for sustainable peace. It deprives women and girl survivors of a potential lifeline in the face of the stigma, social exclusion and economic marginalization they frequently experience.

Reparation can be accorded judicially. Considering the often large number of victims, however, as well as the complexity, duration or unavailability of court proceedings, it will generally be preferable to offer reparations through administrative programmes. 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, which set out five categories of measures required to ensure full and effective reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition), provide a framework for States to develop adequate reparation policies.<sup>46</sup> Measures can be individual or collective, depending on whether the benefits target specific victims or groups. They can be financial, material (e.g. related

to health care, education or housing benefits) or symbolic (e.g. memorials, monuments, museums, reburial ceremonies or the expunging of politically motivated convictions). Victims generally prefer a combination of benefits across these categories, and this is considered more effective in providing recognition and fostering social cohesion.<sup>47</sup> Mental health and psychosocial support will often be a priority for overcoming the multigenerational effects of violations, which include inter-group mistrust, mistrust in institutions and negative predispositions towards people considered as "others".<sup>48</sup>

Establishing such administrative programmes is challenging. The chances of success in terms of impact can be expected to increase if the programme is not only comprehensive but also inclusive (covering various types of victims and violations), if it is linked to other justice initiatives (such as efforts aimed at truth, prosecutions and guarantees of non-recurrence), and if it is consultative (involving victims, survivors and grass-roots organizations, including women's and youth-led organizations, in the design, implementation and evaluation of the programme). It should also be distinct from general welfare or development projects. This means that, in a reparations programme, the State offers benefits with the acknowledgement that a violation was committed and harm done, for which it takes responsibility. Potential concerns about scarcity of resources and the expense of reparations programmes should not lead to their pre-emptive elimination. The resource implications of a potential programme that covers the full range of possible measures (individual,

<sup>46</sup> The five categories in full are: restitution to restore victims to their original situation; compensation for economically assessable damage; rehabilitation providing medical and psychological care, as well as legal and social services; satisfaction covering a broad range of measures including symbolic acts, truth seeking and judicial and administrative sanctions; and guarantees of non-repetition. See [A/RES/60/147](#), annex, paras. 19–23.

<sup>47</sup> See Pablo de Greiff, "Introduction: [Repairing the past – compensation for victims of human rights violations](#)", in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford, Oxford University Press, 2006); see also the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/42/45](#)) (on "practical experiences of domestic reparation programmes").

<sup>48</sup> See, for example, Hamber, *Transitional Justice, Mental Health and Psychosocial Support*, available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice); see also Yael Danieli, ed., *International Handbook of Multigenerational Legacies of Trauma* (New York, Plenum Press, 1998).



collective, financial, material and symbolic) should be calculated, allowing for a transparent discussion on prioritization, resource allocation and funding options.

Finally, considering how urgent the needs of victims and survivors generally are, how long it can take to set up a justice and reparations programme, and how initial stabilization efforts are often focused on (former) combatants or fighters, specific attention must be paid from the earliest stages to the rapid delivery of vital services and high-impact benefits to

victims and survivors, especially those in precarious situations (such as displaced persons, persons with disabilities, children, older persons, widows with dependents and survivors of sexual and gender-based violence). Such interim measures in the areas of sanitation, housing, education, protection and health care, as well as measures to confer legal identity, should be adopted not in lieu of fully fledged reparations programmes, but while they are being developed and in support of that process, and the participation of victims and survivors should be enabled.

### KEY DOCUMENTS FOR FURTHER READING:

- 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 ([A/RES/60/147](#))
- OHCHR, [Rule-of-Law Tools for Post-Conflict States: Reparations programmes](#)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/69/518](#)) (on reparation for victims in the aftermath of gross violations of human rights and serious violations of international humanitarian law)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/42/45](#)) (on practical experiences of domestic reparation programmes)
- [Guidance note of the Secretary-General: Reparations for conflict-related sexual violence](#)
- Impunity Watch and International Network of Victims and Survivors of Serious Human Rights Abuses (INOVAS), [Reparations as a catalytic power to change victims' and survivors' lives: perspectives and contributions from the grassroots level](#)



## 05 | GUARANTEES OF NON-RECURRENCE

Establishing the truth about violations and abuses, prosecuting perpetrators and repairing harms are unlikely to be perceived as justice if such measures are not accompanied by a State's commitment and tangible action to stop the continuation of violations and prevent their recurrence. Truth seeking, criminal justice and reparations have preventive effects, but the fourth pillar of transitional justice – guarantees of non-recurrence – is inherently forward-looking and refers to a core function, namely prevention, rather than to a specific measure. It is a broad category of measures, the content of which ought to be determined in each specific context by an in-depth analysis of the type of violations and abuses that occurred, the ways in which they were committed, their root causes, their impacts on victims and communities and how they can best be prevented in the future.

The focus is often on institutional reform, seeking to disable abusive capabilities and strengthen integrity within State institutions, notably the security sector. Examples include the cantonment and disbanding of abusive groups through disarmament, demobilization and reintegration processes,<sup>49</sup> using vetting to remove perpetrators from the security

sector, and through broader security sector reform, increasing internal accountability and promoting effective civilian oversight. Other examples of guarantees of non-recurrence may include targeted steps in the areas of constitutional and legal reform, including those taken to ensure the compliance of emergency and security legislation with human rights, justice reform to enhance the independence of the judiciary, and the establishment of independent human rights institutions and ombudspersons.

A narrow focus on the institutional field is insufficient, however. Effective prevention and sustainable transformation require more than changes in the security sector and institutional engineering. Measures that touch upon the societal, cultural and personal spheres are also needed. Examples of measures at the societal level that aim at non-recurrence include repealing laws that limit civic space; fostering a free environment where civil society can advocate and network, alongside the promotion of anti-discrimination laws and policies; implementing legal empowerment programmes; adopting policies that protect and promote the rights to freedom of expression and association; and cultivating a free and independent media sector. Targeted measures in the cultural and personal spheres may include aspects of formal and informal education, particularly the teaching of history (based on textbooks and curricula that acknowledge the abusive past, encourage critical and multi-perspective thinking and affirm a commitment to human rights),<sup>50</sup> interfaith dialogue,<sup>51</sup> art-based and cultural initiatives to promote tolerance and social solidarity, memorialization initiatives (to honour victims and create conditions for societal debate and dialogue on the causes and consequences of

OHCHR Photo / Carmen Murcia



<sup>49</sup> Integrated disarmament, demobilization and reintegration processes constitute multidimensional approaches that contribute to the entire peace continuum, from prevention, conflict resolution and peacekeeping to peacebuilding and development.

<sup>50</sup> See, for example, the report of the Special Rapporteur in the field of cultural rights (A/68/296) (on the writing and teaching of history).

<sup>51</sup> See, for example, OHCHR, [The Beirut Declaration and its 18 commitments on Faith for Rights: Report and outlook](#), 16th ed. (Geneva, 2023); Office on Genocide Prevention and the Responsibility to Protect, [Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes](#).

past abuse and the attribution of responsibility),<sup>52</sup> and the maintaining and opening of archives. In concert with reparations, programmes to provide mental health and psychosocial support can lead, importantly, to resolving grievances and abjuring long-entrenched stereotypes and prejudices. If victims' grievances are not addressed, but are instead passed on through the generations, they constitute major risk factors for future violence.<sup>53</sup>

The potential of transitional justice, through its pillar of guarantees of non-recurrence, to help

societies develop effective prevention strategies is often overlooked. Seen as an umbrella concept that covers the institutional, societal, cultural and personal spheres, transitional justice may offer a useful framework for the analysis and formulation of a prevention action plan. Prevention strategies in the context of transitional justice must be connected with broader "upstream" efforts to prevent human rights violations, atrocity crimes, terrorism and armed conflict more generally.<sup>54</sup>

### KEY DOCUMENTS FOR FURTHER READING:

- OHCHR, [Rule-of-Law Tools for Post-Conflict States: Vetting – an operational framework](#)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/30/42](#)) (on guarantees of non-recurrence)
- Report of the Special Rapporteur ([A/70/438](#)) (on security sector reform, including the vetting of security institutions)
- Report of the Special Rapporteur ([A/72/523](#)) (on a comprehensive framework approach to prevention)
- Report of the Special Rapporteur ([A/HRC/45/45](#)) (on memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice)
- Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide, "Joint study on the contribution of

transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence" ([A/HRC/37/65](#))

- [Guidance note of the Secretary-General on United Nations constitutional assistance](#)
- Silke Rusch, Coordination of DDR initiatives with transitional justice efforts in the context of sustaining peace (paper developed under the guidance note revision project), available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice)
- [Integrated Disarmament, Demobilization and Reintegration Standards](#), particularly module 6.20 on disarmament, demobilization and reintegration and transitional justice
- United Nations, [Framework of analysis for atrocity crimes: a tool for prevention](#)
- UN Action Against Sexual Violence in Conflict, [Framework for the prevention of conflict-related sexual violence](#)

<sup>52</sup> Report of the Special Rapporteur in the field of cultural rights on "Memorialization processes" (in post-conflict and divided societies) ([A/HRC/25/49](#)); report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on "Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice" ([A/HRC/45/45](#)). In the latter report, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence argues that memorialization processes are both a stand-alone and a cross-cutting pillar of transitional justice, as memorialization contributes to the implementation of the other four pillars and is a vital tool for enabling societies to emerge

from the cycle of hatred and conflict and to begin taking steps towards building a culture of peace.

<sup>53</sup> See, for example, Hamber, *Transitional Justice, Mental Health and Psychosocial Support*, available at [www.ohchr.org/en/sg-guidance-note-transitional-justice](http://www.ohchr.org/en/sg-guidance-note-transitional-justice). See also [A/70/674](#).

<sup>54</sup> The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence proposed the development of a "comprehensive framework approach to prevention" that would allow for the systematic and ordered planning of a broad prevention policy (see [A/72/523](#)).

# 3. OPERATIONALIZING TRANSITIONAL JUSTICE SUPPORT: THE WAY FORWARD FOR THE UNITED NATIONS

Considering the objectives, principles and features laid out in this guidance note, and to ensure that United Nations support to transitional justice remains relevant and is attuned to emerging challenges, the organization must adjust its institutional understanding and positioning of transitional justice, become more innovative in the design and implementation of its transitional justice work, and further reinvigorate the victim- and people-centeredness of transitional justice in seeking to make an early, tangible and transformative difference for people and communities. To help ensure that the work of the United Nations on transitional justice is more consistently **strategic, integrated, innovative and people-centred**, the following is needed:

## 01 | INSTITUTIONAL UNDERSTANDING AND POSITIONING OF TRANSITIONAL JUSTICE

- 1 Promote an understanding of transitional justice not only as a normative framework to pursue redress for victims of serious human rights violations, but also as a **forward-looking, strategic and pragmatic tool** in the service of long-term policy goals such as prevention and the sustaining of peace, accountability and rule of law, healing and reconciliation, and sustainable development.
- 2 Understand and use transitional justice as a **human rights-based problem-solving instrument** to build better futures – for peacebuilding and sustaining peace, as well as for sustainable development and the realization of the Sustainable Development Goals, and thus for **Our Common Agenda and the New Agenda for Peace**.
- 3 Recognize transitional justice as a **cross-cutting policy area** relevant to the mandates of most departments and agencies across the peace and security, human rights and development pillars of the organization, and as a **shared responsibility** that requires cross-organizational support based on joint analysis and planning, appropriate linking with adjacent policy areas and effective coordination.
- 4 Ensure appropriate **leadership, involvement and support for transitional justice from senior United Nations officials at Headquarters** and in-country (in particular from Special Representatives of the Secretary-General, Resident Coordinators and Humanitarian Coordinators), including by enhancing the capacity to define coherent engagement packages that connect the advocacy, programming and communication strands of transitional justice work.
- 5 Recognizing the **importance of effective coordination** in the area of transitional justice (within a comprehensive transitional justice policy, and with broader peacebuilding and peace consolidation strategies, policies and programmes), ensure that the senior United Nations official in-country has the requisite role and capacity to foster such coordination, including by creating a **local United Nations coordination mechanism where appropriate** and by **using the convening power** of the United Nations to bring international funding and technical partners together to foster common, strategic and long-term approaches to support nationally set transitional justice priorities.

- 6 Based on the existing inter-agency advisory committee for the development of this guidance note, operationalize a **standing United Nations inter-agency transitional justice task force** to foster closer collaboration and coordination across the organization, including by bringing together existing expertise and capacity where useful, facilitating exchange of information, joint analysis and strategizing, as well as aiding the overall implementation of this guidance note and its strategic, integrated, innovative and people-oriented approach.

## 02 INNOVATION IN THE DESIGN AND IMPLEMENTATION OF TRANSITIONAL JUSTICE WORK

- 1 To avoid formulaic responses and to foster creativity, ensure that United Nations work on transitional justice is based on **longer-term, comprehensive support strategies and consistent messaging**, informed by **solid, integrated, strategic age- and gender-sensitive analysis and planning**, and a long-term vision that accounts for what is politically possible and practically feasible – guided by the core objective of identifying, in each specific context, how best to ensure the rights of victims and affected communities to truth, justice and reparation while helping to prevent the recurrence of serious human rights violations and abuses.

- 2 Ensure that planning models for transitional justice support include a **situational and political economy analysis** (considering key political, historical, sociocultural, security and economic factors, as well as conflict sensitivity), **stakeholder analysis** (on key actors that can positively or negatively influence a process, with identification of change agents), a **justice factor and gap analysis** (on various conflict, peace and justice factors, including a focus on impunity structures), and **analysis of requisite preconditions** for a conducive environment for transitional justice (covering political will, institutional strength and the security situation).



- 3 Acknowledge that no one single United Nations entity will possess or have access to all the information needed for such in-depth analysis and strategic planning, and that there must therefore be a **joint and collaborative effort across the three United Nations pillars**.

- 4 Use the analysis and planning process to **position transitional justice within the broader peacebuilding and peace consolidation landscape**, articulating the interconnections and coherence between policy areas; find the most appropriate framing for transitional justice in the context; facilitate prioritization and development of a longer-term vision; and articulate the specific objectives of United Nations support based on realistic theories of change, effective data collection and impact monitoring.

- 5 **Identify the most relevant entry points for, and ways to frame, transitional justice responses in each context**, with a recognition that terminology is of lesser importance (i.e. the work does not need to be called or framed as “transitional justice”) and with better usage of the inherent flexibility of transitional justice and its connections with adjacent policy areas and agendas (including prevention, sustaining peace and the Sustainable Development Goals).



**6** Systematically **include a transitional justice and past-sensitive lens in all existing analytical and planning processes**, including the development of integrated strategic frameworks or mission concepts (including through strategic assessments and technical assessment missions), as well as conflict and development analyses and common country analyses that underpin the development of United Nations Sustainable Development Cooperation Frameworks and other collaboration frameworks and programmes; where such existing processes have not led to a transitional justice vision and strategy, complement them with a specific transitional justice analysis.

**7** See **peace processes as opportunities for stakeholders to confront the dilemmas** of addressing the past and seek to advise parties creatively on transitional justice (beyond recalling international norms and standards), offering sound and agile strategies based on comprehensive conflict analysis, stakeholder mapping and consultation with national experts, policymakers, civil society and, in particular, victims and affected communities; therefore, equip United Nations mediators with relevant human rights and transitional justice expertise, and encourage the participation of such experts during peace negotiations.

**8** Leveraging the convening power of the United Nations, **assist with the identification of the fullest range of constituencies, representatives, institutions and partners** who are needed to carry the transitional justice process forward and support the political, economic and societal transformation the country is undergoing, with a focus on those who are at risk of being left behind and bringing them into the process.

**9** **Considering the limitations posed by institutional weakness**, act as an enabler and assist stakeholders with the identification of mitigation measures, including by ensuring that capacity-building activities to strengthen State institutions in transitional justice are coordinated with broader State-building, justice, and security sector reform initiatives.

**10** Deepen understanding of the **links between justice, stabilization and security** and, especially in insecure and weakly institutionalized contexts, explore the extent to which other stabilization and peacebuilding efforts that are supported by the United Nations, such as disarmament, demobilization and reintegration processes, offer opportunities to address local justice demands and make connections with transitional justice, including in the context of community reintegration and community violence reduction programmes; therefore, further enhance the coordination of disarmament, demobilization and reintegration initiatives with transitional justice processes and mechanisms, where appropriate, in a mutually reinforcing manner.

**11** Accept that commencing fully fledged transitional justice processes may in some contexts be ill advised or impossible and, in such contexts, focus on **strategic preparatory activities and the building of long-term capacities of national stakeholders** (for example through consistent advocacy, consulting the population, familiarization of key constituencies with transitional justice concepts and theories, strengthening the capacities of civil society, promoting “gateway” rights such as legal identity, documentation of violations and preservation of evidence).

- 1 Consistently incorporate in United Nations advocacy, engagement and support to transitional justice processes a **strong focus on effective and user-friendly process design, based on inclusion and participation**, notably by promoting inclusive methods of work and outcomes (providing a wide range of national stakeholders with the space, tools and access to information that are necessary for their participation); by amplifying the voices of victims (encouraging victim-sensitive procedures and victim protection, victim organization and networking, and strategies to empower victims politically and economically and to mitigate risks and challenges such as stigmatization, economic burden and retraumatization); by focusing on outreach and communication; and by working in active consultation and partnership with civil society, including at grass-roots level.
- 2 In transitional justice advocacy and programming, consider **the interests, needs and expectations of victims, affected communities and societies** and **adjust methodologies to people's conditions, circumstances and capacities**, including by considering tangential activities and services (outreach and communication, mental health and psychosocial support, paralegal services, accessibility, logistics, etc.) and by seeking effective coordination with social protection and development programmes.
- 3 Promote an understanding of guarantees of non-recurrence that is not limited to institutional reform and **embed transitional justice work within a broader preventive agenda** that addresses the structural and root causes of serious violations, while seeking to contribute to transformation in the institutional, economic, societal, cultural and personal spheres.
- 4 Systematically incorporate a **mental health and psychosocial support lens** to enhance analysis, to improve provision of mental health and psychosocial support internal to transitional justice mechanisms, to make links with community-level mental health and psychosocial support to complement transitional justice processes, and to enable people to participate in transitional justice processes.
- 5 Incorporate a **transgenerational perspective** in transitional justice work and encourage the adoption of policies and procedures that are child-sensitive and youth-centric.
- 6 Ensure that United Nations projects and programmes are **informed by a gender analysis and theories of change**, with a gender perspective integrated in programme budgets, workplans and monitoring and evaluation – focusing on the promotion of **meaningful participation and the leadership of women and girls**; promote comprehensive redress for gender-based violations; and continue to strive to meet the commitment to ensure that 15 per cent of United Nations-managed funding in support of peacebuilding, including in relation to transitional justice, is dedicated to projects which have the advancement of gender equality as the principal objective ([S/2010/466](#), para. 36).
- 7 Increase **attention to the rapid delivery of services and benefits to victims**, especially those in precarious situations, including by exploring how the vast experience of the United Nations in humanitarian assistance can help craft programmes that address the urgent needs of victims as an entry point for longer-term redress and reparation processes.
- 8 Strengthen **internal monitoring and evaluation** by investing in the development of innovative and practice-oriented methodologies for data collection to measure, monitor and evaluate progress on transitional justice in a way that can reflect long-term benefits.





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This artwork illustrating SDG16 on just, peaceful and inclusive societies is part of “SDGs in Mithila” – a joint initiative of the UN Resident Coordinator Office in Nepal and Janakpur Women Development Centre to localize the 17 SDGs in Nepal engaging local women artists.



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